

BELOW IS THE CASENOTE FOR THE MARCH 1947 TRIAL BEFORE THE HONG KONG SUPREME COURT (CASE NOTE FOR FILE HKRS 163-1-216, COMPLETE FILE AT THE HONG KONG PUBLIC RECORDS OFFICE).

Case No.	HKRS 163-1-216 (from Hong Kong Public Records Office)
Name of the Accused	Inouye Kanao
Court	The Supreme Court of Hong Kong – Ordinary Criminal Session
Date of Charge	[illegible] March 1947
Charge	High Treason by adhering to the King’s enemies elsewhere than in the King’s Realm, to wit, in the Colony of Hong Kong, contrary to the Treason Act 1351, 23 Edward III, Statute 5, Chapter 2.
Basic Description of allegations against the Accused and legal issues therein	<p>Background Kanao (the “Accused”) was an Interpreter, who worked for the Gendarmerie in Hong Kong. He was sentenced to death by the War Crimes Court in Case No. WO/235/927. The case was never confirmed, as the Colonial Office confirmed that he was born in Canada. The case was transferred to the Hong Kong Supreme Court for him to be tried for High Treason before a jury.</p> <p>Prosecution allegations The Prosecution alleged that the Accused worked with the enemy regime. He was an Interpreter for the Gendarmerie, and also participated in torturing Chinese, British and Commonwealth nationals who were detained in Hong Kong. The tortures he took part in included “water torture”, burning, suspending by the arms or wrists and the “airplane” torture.</p> <p>In addition, the Prosecution stressed the fact that the Accused joined the Japanese Gendarmerie “quite voluntarily”. The Accused had the chance to resign but he chose not to do so.</p> <p>Defence submissions Despite the Accused’s previous contention in the War Crime Court that he was a Canadian national, in the Supreme Court, he denied that he was a British subject. The Defence argued that High Treason is an offence that could only apply to British subjects. Therefore, the Accused should not be convicted.</p> <p>Other than this jurisdictional challenge, the main line of defence was the Accused’s alleged lack of intention to adhere to, aid or comfort the King’s enemies. He claimed that he believed the purpose of the Gendarmerie was only to further counter-espionage in the place. He claimed that he assisted in order to further counter-espionage in the place in a way that was not treacherous. When he joined the Gendarmerie, it did not occur to him that he was doing wrong. He argued that at the time, he thought it was not wrong to work for the Japanese Empire as he felt that the English King was his enemy.</p>

	<p>The Accused also denied taking part in torture, but did not deny that he conducted counter-espionage to the best of his ability.</p> <p>Judge’s summing up to jury</p> <p>The focus of the case was on High Treason. The Judge explained to the jury the two elements to be satisfied for the crime of High Treason. First, the Accused had to be shown to be a person who owed allegiance to the Crown at the material dates. Secondly, the Accused had to be shown to have adhered to and aided and comforted the King’s enemies and he intended to do so.</p> <p>On the first element, the Judge stressed that the registration of the Accused’s birth with the Japanese Consulate did not necessarily mean he was a Japanese subject. Also, the fact that he could not be a voter or hold any official position in Canada did not mean he was not a British subject. The Judge added that although he acted as if he always thought he was a Japanese subject, the jury should not deem him to be a Japanese subject. The jury had also to take into account the fact that at his earlier War Crimes trials, he took advantage of his birth in Canada to claim to be a Canadian subject.</p> <p>The Judge also advised on the law of nationality. He advised that, in law, the Accused had dual nationality. For him to abandon his British nationality, he had to make a declaration of alienation under an Act of Parliament or its Canadian equivalent. However, this did not apply when the country to which he wished to belong was at war with His Majesty. In the absence of such a declaration, the Accused was held by the Judge to be a British subject.</p> <p>On the second element, although it was clear that the Accused joined the Japanese Gendarmerie voluntarily, it was for the jury to decide on whether he was guilty of the allegations. If the jury were to hold that the Accused believed that he was doing right, with a purely patriotic motive to carry out a legal or moral duty, the Accused must be acquitted. Otherwise, if the jury were to hold that he had the object of assisting the King’s enemies and was guided by evil motive, he would be guilty of High Treason.</p>
Prosecutor	Lonsdale
Defence Counsel	Loseby (instructed by H.K. Woo)
Jurors	Nam Sen Soo F.S. Elarte J.K. Hadland (chosen as foreman) Tsang Wah Shin R.B. Anderton Pak Lien Wong N.C. Begley
Judges	Cor. Blackall C. J.
Advisory Officer	None
Prosecution	George Beverley Officer i/c Canadian War Crimes

Witnesses	Puddicombe	Liaison Section H.K. Detachment	
	John Greaves Haggan	Staff Captain Legal, Land Forces Hqrs, H.K.	
	Matsuda Kimichiba	Japanese Interpreter, Supreme Court	
	Percy Lowe	Sub. Inspector, H.K. Police	
	Shiozawa Kunio	Japanese Army Officer in detention at Stanley	
	Mary Violet Power	Widow of John Chas Power who worked in Chin. Maritime Customs until 1930, when he came to live in H.K. doing medical work for Govt at the time of fall of H.K.	
	Ho Fook Sang	Unknown – lived at 29 Hillwood Road, Kowloon	
	Consalo Sang	Unknown, friend of Henry Lee	
	Maria Olmos Lee	Unknown, lived at Victory Avenue Kowloon	
	Vincente Nicholas Atienza	M.D. lived at 17 Lock Road during occupation	
	Kwong Kam Sui	Wife of Wong Pui	
	Leung Hing Ling	Widow of So Sing Hon, retired Govt. Servant	
	Albert Edward Peveril Guest	Supervisor Govt. Radio Dept. H.K.	
	Ame Madar	Unknown	
	Frank Charles Whitfield	School Teacher Diocesan School Kowloon	
	William Cecil Low	C.J.'s Clerk	
	Muhamed Yussuf Khan	Clerk in Post Office	
	Mohamed Ahsan	Supervisor G.P.O.	
	Wilfred Mariott Lawrence	Wireless Operator for Govt.	
	Lai Chak Po	Clerk, Kowloon Magistrate Court	
	Dev. Saran Das	Interpreter, Kowloon Magistrate Court	
	Chen Wai Mui	Widow of Henry Chan who was arrested and died within a few days of release.	
	William Chang	Wireless Technician	
	Felizerto Augesdo Sequiera	Unknown, lived at 12 Granville Road	
	Joyce Hansfield Yip	Unknown	
	Lam Sik	Wireless Operator	
	Wong King Chuen	S.I. H.K. Police	
Lau Mau	Interpreter at C.I.D. Police		

		Reservist before war	
	Wong Chung	S.I. Police before occup.	
	Wong Yan Sang	Police Reservist before occupation	
	Lai Ching Fan	Unknown	
	Rampal Ghillote	Treasury Clerk	
	James Thompson Mackensie	A.S.P. Hong Kong	
Defence Witness	Inouye Kanao	Accused	
Trial Dates	15, 16, 17, 18 April 1947		
Judgement Dates	22 April 1947 (with appeal against conviction of the offence of High Treason) Leave to appeal granted on 27 May 1947, Appeal decision on 16 July 1947		
Judgement	Jury's verdict - Guilty.		
Petition	<p>The Accused appealed on the grounds that “the Judge was wrong in law and misdirected the jury in directing them that the appellant at all material times was a British subject.” He also pointed out that many “important and necessary documents” did not arrive in time for this trial in Hong Kong. All the witnesses he had sought to appear for him had not been available at trial.</p> <p>Furthermore, the Accused suggested that all that he did was committed under orders from his superior Gendarme officers. He only acted in the capacity of a simple Interpreter. So, he contended that the sentence was too severe.</p>		
Sentence Imposed	Death penalty, carried out on 27 August 1947.		
Keywords	Gendarme/Gendarmes/Gendarmerie; Interpreter; High Treason; Nationality; Jurisdictional challenge; Torture; Espionage; Misdirection; Superior Order		
Remarks	<p>There is no access to the case file for the Supreme Court proceedings. It can be consulted at the Hong Kong Public Records Office.</p> <p>Link to the War Crimes case against Innouye Kanao (Case No. WO/235/927). Note that the emphasis is different in this case, which stresses the High Treason rather than the torture and ill-treatment that the War Crimes case focused on.</p>		