

ON APPEAL
FROM THE SUPREME COURT OF HONG KONG

BETWEEN :

THE ATTORNEY GENERAL OF HONG KONG Appellant

- (1) PAT CHIUK-WAH
- (2) YEUNG KWONG-FAT
- (3) SHUM KIANG-FOR
- (4) NG SHUI-WOO

AND
UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
-7 HIRSHZ
25 RUSSELL SQUARE
LONDON, W.C.1.

Respondents

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CASE FOR THE APPELLANT

RECORD

1. This is an appeal from a judgment of the Supreme Court of Hong Kong in its appellate jurisdiction (Rigby, S.P.J. and Mills-Owens J., Hogan, C.J. dissenting), dismissing the appeal by way of case stated of the Appellant from a decision of a District Judge that the Respondents had no case to answer on six charges brought by the Appellant against them under the Forgery Ordinance, Cap. 209, Laws of Hong Kong.

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2. The offences with which the Respondents were charged related to alleged forgery of British National Insurance Stamps. There were originally seven charges, but in relation to one of them the Appellant did not appeal to the Supreme Court. Of the six charges which were the subject of the appeal, one was of forgery of valuable securities contrary to s.4 (2) (a) of the Ordinance, and five were of possession of implements of forgery contrary to s.11 (d) or (in one charge) to s.11 (e).

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P. 5-8

3. The relevant Hong Kong statutory provisions are set out in the appendix hereto.

RECORD

4. The facts set out in the stated case included the following :-

(a) On the 18th day of July, 1968 a police party went to premises known as the Hop Shing Printing Press. There they found the 2nd Respondent in the act of printing what purported to be British National Insurance stamps. The 1st Respondent was the manager and part owner of that printing press. The 3rd Respondent had played a part in the production of certain photographic materials necessary for the printing to take place, while the 4th Respondent was his wife and shared with him a room in which some of these materials were found. 10

PP. 3-4

(b) The scheme of National Insurance in the United Kingdom provides for the payment of weekly contributions to a fund known as the National Insurance Fund at varying rates, as set out in the case stated by the learned District Judge. 20

P.2,
11.19-34

5. At the conclusion of the Crown's case in the District Court, Counsel for the Respondents submitted that they had no case to answer on any of the charges, on the grounds, inter alia, that British National Insurance Stamps were not 'valuable securities' within the meaning of section 2 of the Forfeiture Ordinance as alleged in the charge under section 4 (2) (a), nor were they "documents entitling or evidencing the title of any person to any share or interest in any public fund of any part of Her Majesty's dominions" within section 11 of the Ordinance. The learned District Judge upheld these submissions and ruled that the Respondents had no case to answer on any of the charges. 30

6. On the 13th of September, 1968, the Appellant, being dissatisfied with the learned Judge's decision, applied to him to state a case in respect of charges 1, 3, 4, 5, 6 and 7 for the opinion and consideration of the Supreme Court. On the 29th of October, 1968 the learned Judge stated a case, as set out in the record of proceedings. 40

PP. 1-16

7. The appeal by way of case stated was heard by the Supreme Court sitting as the Full Court (Hogan, C.J., Rigby, S.P.J. and Mills-Owens, J.) on the 27th and 28th of January, 1969. On the 20th of March, 1969 the said Court dismissed the appeal by a majority (Rigby, S.P.J. and Mills-Owens, J.), with Hogan, C.J. dissenting.

8. Rigby, S.P.J. took the view that the Respondents should have been charged under section 7 (4) (a) of the Forgery Ordinance, which provides:

PP.30-31

"Forgery of the following seals or dies, if committed with intent to defraud or deceive, shall be felony and punishable with imprisonment for seven years -

(a) any seal or die provided, made or used by or under the authority of the Government of any part of Her Majesty's dominions, the Government of any foreign country, or the Governor or the head of department of the Government of the Colony."

"Seal" is defined by section 2 of the same Ordinance to include :-

"any stamp or impression of a seal or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal, as well as the seal itself."

and "die" is defined as :-

"any plate, type, tool, chop or implement whatsoever and also any part of any die, plate, type, tool, chop or implement, and any stamp or impression thereof or any part of such stamp or impression."

He thought that section 7 (4) (a) was an exclusive provision and the Crown was precluded from bringing charges against the Respondents under any other sections in the same Ordinance. He further held that British National Insurance

P.36, ll.
22-27.

RECORD

Stamps were not valuable securities within the meaning of section 2 of the Ordinance, and in his judgment he said that :-

P.31 ll.
19-31

"Before turning to the definition under the Ordinance as to what constitutes a "valuable security", I, for my part, as a matter of ordinary common parlance, find myself quite unable to accept or regard an unused or unstamped stamp as falling within the ordinary connotation or meaning of what I would have regarded as a "valuable security". For myself, I would have thought that in common parlance a "valuable security" is some instrument or document that provides evidence of a right, title or interest to property or goods e.g. a title deed, a share certificate, or even a pawnbroker's ticket."

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After referring to the case of Reg. v. Riley (1896) 1 Q.B. 309, he went on to say :-

P.35 ll.
28-38

"In my judgment the meaning placed upon the word "instrument" is to be construed in the light of the facts of each case in relation to the charges brought, and having regard to the mischief which the section was designedly intended to avert or defeat."

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"Referring to the present case, for myself I am quite unable to appreciate how an unstamped National Health Insurance Stamp, unaffixed to any card, can be said to be an "instrument evidencing the payment of money" "

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P.36

He rejected the argument of the Crown that 'instrument' and 'document' were synonymous in the definition of 'valuable security', and said:

"In my judgment the word "instrument" within the definition of "valuable security" means and includes some document of a formal nature which, on the face of it, evidences the right of a person to the payment of money or the delivery of a chattel."

He concluded that the appeal should be dismissed. 40

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P. 40

PP. 40-42

9. Mills-Owens, J. also took the view that British National Insurance Stamps were not "valuable securities". An insurance stamp, in his view, was a combination of a money token and an accounting device. It provided no security for payment of the amount indicated on it, or any quantifiable portion of it. A valuable security was such by reason of, and according to, its tenor, though it might be necessary to resort to collateral material. The learned Judge said it was not possible to speak of enforcing an insurance stamp, or establishing a right or title according to its terms; even by reference to the relevant legislation, the stamp in itself did not necessarily secure statutory benefit. He therefore concluded that insurance stamps were not "valuable securities". He did not wish finally to decide in this case whether s.7(4) (a) of the Ordinance was appropriate (and, if so, exclusively applicable) to the making of such fictitious stamps.

P.38, l.
43- P.39,
l.44.

P. 18, ll.
28-41.

10. Hogan, C.J., who would have allowed the appeal, was inclined to the view that an insurance stamp was a 'valuable security' within the common sense meaning of the phrase and without any reference to the statutory extended definition. If a thing was capable of ownership and contained writing, the contents of which would at the appropriate time and place enable the owner to obtain in exchange for it money or money's worth, then it would seem to fit the ordinary concept of a valuable security. It had, however, been argued for the Respondents that this was not so and that for the Crown to succeed it must be demonstrated that a stamp was a writing entitling or evidencing the title of a person to a share or interest in a public fund, or was an accountable receipt, or was any receipt or other instrument evidencing the payment of money. A stamp, so the argument ran, was not in the first category because it provided no title for anybody to anything; it was not in the second category because it was neither a receipt nor accountable; and, as to the third category, it was neither a receipt nor anything falling only just short of a receipt, which was

P.20, l.
9- P.21,
l.27.

RECORD

P.22, l.
33-P.23,
l.30.

how 'instrument', in its context, must be construed. The learned Chief Justice was of the view that the Crown was justified, on the authorities cited, in contending that

P.23, l.32-
P.28, l.13.

'instrument' and 'writings' were synonymous; that no particular significance attached to the use of the word 'instrument' in the definition; and, that any writing which evidenced the payment of money would be covered. Also, looking only at the statutorily extended meaning of the phrase 'valuable security', the submission, made on behalf of the Crown, that insurance stamps showed evidence of title to a share or interest in a public fund, was correct, even although this argument had been but tentatively put forward. Insurance stamps formed part of a chain which drew money out of the public fund when the prescribed conditions were satisfied, and the fact that rights were not spelt out on the face of the stamp was immaterial, for the 'document' or 'instrument' had to be read in its own context. Examination

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P.23, l.
31-P.24,
l.22; P.
28, ll.
18-27.

of a stamp in the context of the rules and regulations under which it was issued showed that it resembled very closely a share certificate, which was an obvious type of valuable security. Further, and in any event, in the view of the learned Chief Justice, an insurance stamp was a 'receipt for other instrument evidencing the payment of money', because it was the instrument whereby money was obtained from the public, and by which members of the public could show that money had been paid into the national fund. It was evidence of that payment, evidence of the discharge of a financial obligation, and it was accepted as such.

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P.28, l.
28-P.29,
l.26

11. The learned Chief Justice then dealt with the argument that because the forging of an insurance stamp could be charged as an offence under Section 7 (4) it could not therefore be an offence of forging a valuable security under Section 4 (2). This argument turned on two factors; first, whether it was an offence at all under Section 7 (4), and second, if it was, whether that fact would prevent it from being an offence under another Section. As to the first point, the answer must depend upon whether such

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10 stamps were to be regarded as 'stamps or impressions of a seal or die'. He did not find it necessary to decide this question because it seemed to him that the second part of the argument was untenable. Whereas some sections of the Ordinance, such as Section 6, adopted an exclusive basis, in others there was a great deal of overlapping. Sections 4 and 7, however, were framed in an entirely different manner and were not mutually exclusive. For the reasons he had advanced, Hogan, C.J. would have allowed the appeal, in respect of both the offence charged under Section 4 (2) (a) and those charged under Section 11.

20 12. The Appellant respectfully submits that the judgments of Rigby, S.P.J. and Mills-Owens, J. are wrong and Hogan, C.J. is correct in holding that National Insurance Stamps are valuable securities, because they are documents evidencing the payment of money. The only reason why the liability to contribute can be discharged by fixing a stamp to a card is that the stamp is itself evidence that the sum stated on it has been paid. The stamp by itself, therefore, after it has been obtained from the Post Office and before it has been affixed to a card, does evidence the payment of money. A National Insurance stamp has its place in a statutory scheme, and that place is to
30 constitute evidence that a payment has been made and so to be used in discharge of a statutory liability to pay. The Minister, furthermore, has power to refund money on the production of unused stamps, and clearly in such a case he accepts the stamps as evidence of the payment of money.

40 13. The Appellant respectfully submits that the authorities on which the learned District Judge relied were decided upon the wording of old statutes not containing the words "or other instrument evidencing the payment of money" which now extend the definition of "valuable security" in the Forgery Ordinance. These words are of great importance, and neither the learned District Judge nor Rigby, S.P.J. nor Mills-Owens, J. has correctly applied them to the facts of the present case.

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14. It is respectfully submitted further that, even apart from the extended definition of "valuable security" in the Ordinance, a National Insurance stamp is a valuable security in the ordinary meaning of those words, as has been held by Hogan, C.J. It is a document which is obtained by the payment of money and contains writing which will enable the holder to obtain money, or money's worth, at the appropriate time and place, as is provided in the National Insurance and Industrial Injuries (Collection of Contributions) Regulations, 1948. 10

15. It is respectfully submitted that, on the authority of R. v. Riley (1896), 1 Q.B. 321, the stamps are 'instruments', so as to fall within the definition of "valuable securities" in section 2 of the Forgery Ordinance.

16. It is respectfully submitted that Rigby, S.P.J. was wrong in stating that the Crown should have brought the charge under section 7 (4) of the Forgery Ordinance. Section 7 (4) deals with the forgery of "any seal or die provided, made or used under the authority of the Government of any part of Her Majesty's Dominions". Rigby, S.P.J. considered that, as, by section 2 of the Ordinance, "seal" includes any stamp and "stamp" includes "a stamp impressed by means of a die as well as an adhesive stamp", therefore in section 7 (4) the reference to "any seal" is to be read as a reference to "any adhesive stamp". It is submitted that this is not correct. In the definition of "seal", the word "stamp" is part of the compendious expression, "stamp or impression of a seal". This is clear from the remaining words of the section, "or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal, as well as the seal itself". The definition refers to "the stamp of a seal", and has nothing to do with an adhesive stamp. 20 30 40

17. It is further respectfully submitted that Hogan, C.J. was correct, for the reasons which he gave, in holding that National Insurance stamps are documents "entitling or evidencing the title of any person to any share or interest

in any public stock, annuity, fund, or debt of any part of Her Majesty's dominions".

18. The Appellant respectfully submits that the judgment of the Supreme Court of Hong Kong was wrong and ought to be reversed, and this appeal ought to be allowed, for the following (among other)

R E A S O N S

- 10 (1) BECAUSE National Insurance stamps are 'instruments' within the meaning of the Forgery Ordinance:
- (2) BECAUSE such stamps are valuable securities in the ordinary meaning of those words:
- (3) BECAUSE such stamps are instruments 'evidencing the payment of money' within the meaning of the said Ordinance:
- 20 (4) BECAUSE such stamps are documents 'evidencing the title of any person' to a share or interest in the National Insurance Fund:
- (5) BECAUSE of the other reasons given by Hogan, C.J.,

J. G. LE QUESNE

R. G. PENLINGTON

A P P E N D I X

Forgery Ordinance, Cap.200, Laws of Hong Kong.

Section 2 (in part)

- 30 "die" includes any plate, type, tool, chop or implement whatsoever, and also any part of any die, plate, type, tool, chop or implement, and any stamp or impression thereof or any part of such stamp or impression;

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Section 2 (in part) (contd)

"document of title to goods" includes any bill of lading, India warrant, dock warrant, godown warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize either by indorsement or by delivery the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to; 10

"document of title to lands" includes any deed, map, rool, register or instrument in writing being or containing evidence of the title or any part of the title to any land or to any interest in or arising out of any land, or any authenticated copy thereof; 20

"revenue paper" means any paper provided by the proper authority for the purpose of being used for stamps, licences, permits, post office money orders or postal orders, or for any purpose whatever connected with the public revenue;

"seal" includes any stamp or impression of a seal or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal, as well as the seal itself; 30

"stamp" includes a stamp impressed by means of a die as well as an adhesive stamp;

"valuable security" includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any part of Her Majesty's dominions or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without Her Majesty's dominions, or to any deposit in any bank, and also includes any scrip, debenture, bill, 40

note, warrant, order or other security for the payment of money or any authority or request for the payment of money or for the delivery or transfer of goods or chattles, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money or the delivery of any chattel personal.

Section 3

10 3. (1) For the purposes of this Ordinance, forgery is the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Ordinance the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Ordinance provided.

20 (2) A document is false within the meaning of this Ordinance if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorize its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated
30 therein; and in particular a document is false -

(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal or otherwise, has been made therein;

(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person;

40 (c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it.

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(3) For the purposes of this Ordinance -

- (a) it is immaterial in what language a document is expressed or in what place within or without Her Majesty's dominions it is expressed to take effect;
- (b) forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law; and 10
- (c) the crossing on any cheque, draft on a banker, post office money order, postal order, coupon or other document the crossing of which is authorized or recognized by law, shall be a material part of such cheque, draft, order, coupon or document.

(4) A document may be a false document for the purpose of this Ordinance notwithstanding that it is not false in any such manner as is described in subsection (2). 20

Section 4

(1) Forgery of the following documents, if committed with intent to defraud, shall be felony and punishable with imprisonment for life -

- (a) any will, codicil or other testamentary document, either of a dead or of a living person, or any probate or letters of administration, whether with or without the will annexed; 30
- (b) any deed or bond, or any assignment at law or in equity of any deed or bond, or any attestation of the execution of any deed or bond;
- (c) any bank note, or any indorsement on or assignment of any bank note

(2) Forgery of the following documents, if committed with intent to defraud, shall be felony

and punishable with imprisonment for fourteen years -

- (a) any valuable security or assignment thereof or indorsement thereon, or where the valuable security is a bill of exchange, any acceptance thereof;
- (b) any document of title to lands or any assignment thereof or indorsement thereon;
- 10 (c) any document of title to goods or any assignment thereof or indorsement thereon;
- (d) any power of attorney or other authority to transfer any share or interest in any stock, annuity or public fund of the United Kingdom or any part of Her Majesty's dominions or of any foreign state or country or to transfer any share or interest in the debt of any public body, company or society, British or foreign or in the Capital Stock of any such Company or Society, or to receive any dividend or money payable in respect of such share or interest or any attestation of any such power of attorney or other authority;
- 20 (e) any entry in any book or register which is evidence of the title of any person to any share or interest hereinbefore mentioned or to any dividend or interest payable in respect thereof;
- (f) any policy of insurance or any assignment thereof or indorsement thereon;
- 30 (g) any charter party or any assignment thereof;
- (h) any declaration, warrant, order, affidavit, affirmation, certificate or other document required or authorized to be made by or for the purposes of the Government Annuities Act, 1929, or by the National Debt Commissioners acting under the authority of the said Act;
- 40 (i) any certificate, certificate of valuation, sentence or decree of condemnation or restitution, or any copy of such sentence

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or decree, or any receipt required by the Slave Trade Acts.

Section 7

(1) Forgery of the following seals, if committed with intent to defraud or deceive, shall be felony and punishable with imprisonment for life -

(a) the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of Her Majesty, Her Majesty's Royal Sign Manual, any of Her Majesty's seals appointed by the twenty-fourth Article of the Union between England and Scotland to be kept, used and continued in Scotland, the Great Seal of Northern Ireland, the Privy Seal of Northern Ireland or the public seal of the Colony; 10

(b) the seal of any court of record

(2) Forgery of the following seals, if committed with intent to defraud or deceive, shall be felony and punishable with imprisonment for fourteen years - 20

(a) the seal of any register office relating to births, baptisms, marriages or deaths;

(b) the seal of or belonging to any office for the registry of deeds or titles to lands.

(3) Forgery, committed with intent to defraud or deceive, shall be felony and punishable with imprisonment for seven years, if committed in respect of the seal of any court of justice other than a court of record 30

(4) Forgery of the following seals or dies, if committed with intent to defraud or deceive, shall be felony and punishable with imprisonment for seven years -

(a) any seal or die provided, made or used by or under the authority of the Government of any part of Her Majesty's dominions, the Government of any foreign country, or the

Governor or the head of any department of the Government of the Colony;

- (b) any seal or die provided, made or used by any person, firm or company for the purpose of the affairs of such person, firm or company

Section 11

Any person who without lawful authority or excuse -

- 10 (a) makes, uses or knowingly has in his custody or possession any paper intended to resemble and pass as -
 - (i) special paper such as is provided and used for making any bank note;
 - (ii) revenue paper;
- 20 (b) makes, uses or knowingly has in his custody or possession any frame, mould or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to and used in or on any such paper;
- 30 (c) engraves or in anywise makes upon any plate, wood, stone or other material any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words figures, letters, marks, lines or devices peculiar to and used in or on any bank note, or in or on any document entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any part of Her Majesty's dominions or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without Her Majesty's dominions;
- 40 (d) uses or knowingly has in his custody or possession any plate, wood, stone or other material upon which any such words, figures,

RECORD

letters, marks, lines or devices have been engraved or in anywise made as aforesaid; or

- (e) uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid,

shall be guilty of felony and on conviction thereof shall be liable to imprisonment for seven years.

Interpretation Ordinance, Cap. 1,
Laws of Hong Kong

Section 3 (part)

"Document" means any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means.

No. 34 of 1969.

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG
KONG

B E T W E E N

THE ATTORNEY GENERAL OF HONG KONG

Appellant

- and -

- (1) PAT CHIUK-WAH
- (2) YEUNG KWONG-FAT
- (3) SHUM KIANG-BOR
- (4) NG SHUI-WOO

Respondents

CASE FOR THE APPELLANT

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