

17 OF 1978

In the Privy Council

Miscellaneous Proceedings  
Action No. 334 of 1977

---

**ON APPEAL**  
**FROM THE COURT OF APPEAL OF HONG KONG**

---

**BETWEEN**

LAI MAN YAU .. .. . *Appellant*  
*(Plaintiff)*

**AND**

THE ATTORNEY GENERAL .. .. . *Respondent*  
*(Defendant)*

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**RECORD OF PROCEEDINGS**

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YUNG, YU, YUEN & CO.  
Solicitors for The Appellant  
THE LEGAL DEPARTMENT  
Solicitors for the Respondent

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**ON APPEAL**  
**FROM THE COURT OF APPEAL OF HONG KONG**

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BETWEEN

LAI MAN YAU .. .. . *Appellant*  
*(Plaintiff)*

AND

THE ATTORNEY GENERAL .. .. . *Respondent*  
*(Defendant)*

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**RECORD OF PROCEEDINGS**

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**YUNG, YU, YUEN & CO.**  
**Solicitors for The Appellant**  
**THE LEGAL DEPARTMENT**  
**Solicitors for the Respondent**

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**In the Supreme Court of Hong Kong**

**High Court**

**Miscellaneous Proceedings**

**Action No. 334 of 1977**

**ON APPEAL**  
**FROM THE COURT OF APPEAL OF HONG KONG**

BETWEEN

LAI MAN YAU .. .. . *Appellant*  
*(Plaintiff)*

AND

THE ATTORNEY GENERAL .. .. . *Respondent*  
*(Defendant)*

**RECORD OF PROCEEDINGS**

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Amended as in Red this  
4th day of June, 1977  
pursuant to Order of  
Mr. Registrar O'Dea  
dated the 2nd day of  
June, 1977.

Sd. S. H. MAYO (L.S.)  
Registrar.

1977, No. 334

10

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT  
MISCELLANEOUS PROCEEDINGS

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

IN THE MATTER of Section 10(1) (b)  
of the Prevention of Bribery  
Ordinance Chapter 201 of Laws of  
Hong Kong.

*Originating  
Summons  
with supporting  
affidavit*

BETWEEN:

LAI MAN YAU

*Plaintiff*

and

20

~~COMMISSIONER OF INDEPENDENT COMMISSION~~  
~~AGAINST CORRUPTION~~  
THE ATTORNEY GENERAL

*Defendant*

SUMMONS

To ~~Commissioner of Independent Commission Against Corruption, Hutchison  
House, Hong Kong,~~

the Defendant The Attorney General of Legal Department, Central Govern-  
ment Offices, East Wing, Hong Kong.

30 Let the Defendant, within 8 days after service of this Summons on him,  
inclusive of the day of service, cause an appearance to be entered to this  
summons, which is issued on the application of the Plaintiff, Lai Man Yau, of  
Flat A, Clarke Mansion, 2nd floor, No. 9 Kingston Street, Hong Kong.

10

By this summons the Plaintiff seeks the following relief namely:

- (1) A declaration that upon a true construction of Section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201 of the Laws of Hong Kong, the Plaintiff not being or having been a Crown Servant at any material time is not liable to prosecution under the said section;
- (2) A declaration that the Notice dated 1st February 1977 made by the Commissioner under Section 14A of the Prevention of Bribery Ordinance Cap. 201 purportedly restraining the Plaintiff from disposing of property specified in the said Notice is null and void and of no legal effect.
- (3) A declaration that an order dated 5th January 1977 made by a Magistrate on the Application of the Commissioner under Section 17A of the Prevention of Bribery Ordinance Cap. 201, is null void and of no legal effect.
- (4) Further and/or other relief.
- (5) Costs.

If the Defendant does not enter an appearance, such judgment may be given or order made against or in relation to it as the Court may think just and expedient.

20 Dated the 24th day of May, 1977.

Sd. S. H. MAYO  
Registrar.

Sd. Yung, Yu, Yuen & Co.  
Solicitors for the Plaintiff.

NOTE: This summons may not be served more than twelve calendar months after the above date unless renewed by order of the Court.

This Summons was taken out by Messrs. Yung, Yu, Yuen & Company of No. 45 Des Voeux Road Central, 11th floor, Victoria in the Colony of Hong Kong, Solicitors for the Plaintiff.

**DIRECTIONS FOR ENTERING APPEARANCE**

The Defendant may enter an appearance in person or by solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

**Originating  
Summons  
with supporting  
affidavit**





IN THE SUPREME COURT OF HONG KONG  
HIGH COURT  
MISCELLANEOUS PROCEEDINGS

Originating  
Summons  
with supporting  
affidavit

IN THE MATTER OF Section 10(1) (b)  
of the Prevention of Bribery  
Ordinance Chapter 201 of Laws of  
Hong Kong.

10 BETWEEN

LAI MAN YAU

*Plaintiff*

and

THE ATTORNEY GENERAL

~~COMMISSIONER OF INDEPENDENT COMMISSION~~

~~AGAINST CORRUPTION~~

*Defendant*

AFFIRMATION

I, LAI MAN YAU, Merchant and retired Police Officer, of Flat A, Clarke Mansion, 2nd floor, No. 9 Kingston Street, Hong Kong, do solemnly, sincerely and truly affirm and say as follows:

20 1. I was born in Hong Kong on 20th May 1918. I joined the Royal Hong Kong Police Force as a Police Constable on 13th July 1936. On 1st December 1947 I was promoted to a Corporal. On 1st December 1953 I was promoted to a Sergeant and on 1st November 1956 I was promoted to a Staff Sergeant Class II. I retired from the Royal Hong Kong Police Force in July 1969. I am at present a Merchant.

30 2. On 5th January 1977 at about 7.30 a.m., officers from Independent Commission Against Corruption arrived at my home and conducted a search. Shortly after 8.00 a.m. my solicitor arrived followed by Counsel some time later. The officers stated at the conclusion of the search in the presence of my solicitor and Counsel that they wanted to take me, my wife and daughter back to Hutchison House for questioning. Counsel then told the officer that we were not willing to go unless we were arrested, whereupon the officer in

charge stated in English to my daughter: "You are now under arrest for an offence under Section 10(1)(b) of the Prevention of Bribery Ordinance" and the officer Lee Chun-Sang said to me in Cantonese: "You are now being arrested for an offence under Section 10(1)(b) of the Prevention of Bribery Ordinance". My wife was similarly arrested. We were then taken back to the said Commission where further enquiries were made of us for an alleged offence under the said Section 10(1)(b). My wife and daughter were released the same day but I was detained until the next day and then released on bail of \$50,000.00 cash until 13th April 1977, on which day I was required to  
10 extend my bail to 13th June 1977. My travel documents were seized by the said Commission under a warrant by a Magistrate dated 5th January, 1977, a copy whereof is annexed hereto marked "LMY-1"

3. On 1st February 1977 I was served with a Notice under Section 14A(1) of the Prevention of Bribery Ordinance whereby I was restrained from dealing or disposing with my properties; a copy of the said Notice is exhibited hereto marked "LMY-2".

4. On or about 18th April 1977, my wife was served with a Restraining Order granted in Miscellaneous Proceedings Action No. 89 of the District Court of Hong Kong pursuant to Section 14C of the Prevention of Bribery  
20 Ordinance Cap. 201, whereby my wife was restrained from dealing or disposing with her properties. There is now shown to me and annexed hereto marked "LMY-3" a copy of an affidavit made by the said Lee Chun-sang in the said proceedings and I draw the Honourable Court's attention to paragraph 2 thereof.

5. When I was being interrogated in Hutchison House I asked the officers what was the reason why they had arrested me and why they were questioning me: they replied that it was in respect of Section 10(1)(b) of the Prevention of Bribery Ordinance.

30 AND lastly I do solemnly sincerely and truly affirm and say that the contents of this my affirmation are true.

AFFIRMED at Messrs. Yung, Yu, Yuen )  
& Company, of 45 Des Voeux Road )  
Central, Victoria in the Colony ) (Sd.) Lai Man Yau  
of Hong Kong this 23rd day of )  
May, 1977. )

Before me,  
(Sd.) Philip Yuen  
Solicitor,  
Hong Kong.

This Affirmation is tiled herein on behalf of the Plaintiff.

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT  
MISCELLANEOUS PROCEEDINGS

Originating  
Summons  
with supporting  
affidavit

---

IN THE MATTER OF Section 10 (1) (b)  
of the Prevention of Bribery  
Ordinance Chapter 201 of Laws of  
Hong Kong.

---

BETWEEN

10

LAI MAN YAU

*Plaintiff*

and

THE ATTORNEY GENERAL

~~COMMISSIONER OF INDEPENDENT COMMISSION~~

~~AGAINST CORRUPTION~~

*Defendant*

---

THIS LIST OF EXHIBIT REFERRED TO IN THE AFFIRMATION  
OF LAI MAN YAU ON THE 24TH DAY OF MAY 1977

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EXHIBIT MARKED

CONSISTS OF PAGE

“LMY-1”

1

“LMY-2”

2

“LMY-3”

8

20

YUNG, YU, YUEN & CO.,  
SOLICITORS FOR THE PLAINTIFF,  
HONG KONG.



Info. No. 22/27  
Court No. 27/77

This is the Exhibit marked "LMY-1"  
referred to in the Affirmation of

Lai Man Yau  
dated 23rd day of May, 1977.  
Before me,

Sd. Philip Yuen  
Solicitor, Hong Kong

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Originating  
Summons  
with supporting  
affidavit

10

IN THE MAGISTRATE'S COURT

Held at Central

IN THE MATTER OF Section 17A  
of the Prevention of Bribery  
Ordinance, Chapter 201.

Notice to Surrender Travel Documents

20 TAKE NOTICE that pursuant to Section 17A of the Prevention of  
Bribery Ordinance, AN ORDER has been made by Mr Paul Corfe, magistrate,  
that you surrender to the Commissioner of the Independent Commission  
Against Corruption any travel document in your possession, for a period of  
six months.

DATED this 5th day of January 1977

Signed by Paul Corfe  
(Magistrate)

To:

Mr. LAI MAN YAU  
9, Kingston Street,  
2nd Floor, Block A,  
Clarke Mansion,  
Hong Kong.



Independent Commission Against Corruption  
Hutchison House, 7th floor,  
10, Harcourt Road,  
Hong Kong.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

This is the Exhibit marked "LMY 2"  
referred to in the Affirmation of  
Lai Man Yau  
dated the 23rd day of May, 1977.

Originating  
Summons  
with supporting  
affidavit

Before me,

10

Sd. Philip Yuen  
Solicitor, Hong Kong.

To: Mr. LAI Man-yau @ LAI Man @ LAI Yau  
9 Kingston Street  
Clarke Mansion  
Flat A & B, 2nd floor  
Hong Kong

Notice under Section 14A(1) of the  
Prevention of Bribery Ordinance

20 Whereas you are the subject of an investigation in respect of an offence  
suspected to have been committed under the Prevention of Bribery Ordinance,  
Chapter 201, Laws of Hong Kong, you are hereby directed not to in any way  
dispose of or otherwise deal with any interest you have in any of the  
property specified in the schedule below, without my consent, within the  
period of twelve months from the date this Notice is served on you.

Schedule

- 30 (a) Shaukiwan Inland Lot No. 459 (No. 24, Shing On Street, Shaukiwan, Hong Kong).
- (b) All those 38 equal undivided 84th parts or shares of and in New Kowloon Inland Lot No. 4709 (Yau Fook Building, 167-175 Cha Kwo Ling Road, Kowloon.

Ground floor, Block A,  
First floor, Blocks A, B, E and F,  
Second floor, Blocks B, E, and F,

10

Third floor, Blocks A, E and F,  
Fourth floor, Blocks A, B, E and F,  
Fifth floor, Blocks A, B, E and F,  
Sixth floor, Blocks A, B, E and F,  
Seventh floor, Blocks A, B, E and F,  
Eighth floor, Blocks A, B, E and F,  
Ninth floor, Blocks A, B, E and F,  
Tenth floor and roofs of Blocks E and F and  
flat roofs adjacent to Tenth floor of Blocks  
E and F).

- (c) Demarcation District No. 118, Lot Nos. 748, 1091 and 1453, Yuen Long, New Territories.
- (d) House at Shui Pin Wai, Lot No. 21, Yuen Long, New Territories.
- (e) Yuen Long Town Lot No. 33, Man Kee Industrial Building, Yuen Long, New Territories, Ground floor and garage, First floor, Second floor, Fourth floor, Fifth floor, Sixth floor, Seventh floor and Eighth floor.

20

I inform you that if you in any way dispose of or otherwise deal with any interest you have in the property specified in the Schedule in contravention of this Notice you may be guilty of an offence under Section 14A(5) of the Prevention of Bribery Ordinance and liable on conviction to imprisonment for three years and to a fine of \$50,000 or the value of the property disposed of or otherwise dealt with.

DATED this 4th day of February, 1977.

Signed by G. A. Harknett  
for Commissioner  
Independent Commission Against Corruption

By virtue of a written authority dated 5th January, 1977, the Commissioner of the Independent Commission Against Corruption has, under Section 13(1)(d) of the I.C.A.C. Ordinance, authorised Mr. G. A. Harknett to exercise the powers of the Commissioner under Section 14A of the Prevention of Bribery Ordinance.



This is the Exhibit marked "LMY 3"  
referred to in the Affirmation of  
Lai Man Yau  
dated the 23rd day of May 1977.

Before me,

Sd. Philip Yuen  
Solicitor, Hong Kong.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Originating  
Summons  
with supporting  
affidavit

AFFIDAVIT

IN THE DISTRICT COURT OF HONG KONG

10

Holden at Victoria

Miscellaneous Proceedings No. 89.

IN THE MATTER of Section 14C of the Prevention of Bribery Ordinance,  
Chapter 201, Laws of Hong Kong.

I, LEE Chun-sang, swear and say as follows:—

1. I am an Investigating Officer of the Independent Commission Against Corruption.
- 20 2. That LAI Man-yau alias LAI Man alias LAI Yau (who has been a Crown Servant, namely a Detective Staff Sergeant II in the Royal Hong Kong Police who retired in August, 1969) is the subject of an investigation in respect of an offence suspected to have been committed by him under Section 10(1)(b) of the Prevention of Bribery Ordinance, Chapter 201, Laws of Hong Kong.
3. That I have been in charge of the investigation referred to in paragraph 2 hereof since 8th day of September 1976.
4. That AU-YEUNG Yin alias AU-YEUNG Oi alias AU-YUNG Yin is the legal wife of the said LAI Man-yau alias LAI Man alias LAI Yau.

10

5. That from enquiries made by officers of the Independent Commission Against Corruption at the Land Office and at the appropriate District Office in the New Territories and from the memorials with the annexures thereto and other documents referred to hereunder in respect of each of the properties referred to thereunder certified copies of which memorials and their annexures and other documents have been furnished to the Commissioner of the Independent Commission Against Corruption by the Land Office or as the case may be by the appropriate District Office in the New Territories, which copies of the memorials and other documents I have seen, I say that the properties referred to hereunder are held by the said AU-YEUNG Yin, either in her own name, or under one of her said aliases as specified hereunder in respect of the said property:

20

(a) No. 17 Irving Street, Hong Kong (Inland Lot No. 7238) is held by AU-YEUNG Yin in the name of AU-YEUNG Oi by virtue of an indenture of assignment dated 31st day of December, 1951 between AU-YEUNG Oi as the purchaser and KWAN Kai-ming as the vendor.

30

Memorial No. 208963 received at the Land Office on 25th day of January, 1952.

(b) First all that the right title interest and advantage of and in two equal undivided twenty fourth parts or shares of and in subsection 2 of Section B of Inland Lot No. 3454. Secondly all that the right title interest and advantage of and in six equal undivided twenty fourth parts or shares of and in Sub-section 4 of Section B of Inland Lot No. 3454 and Thirdly all that the right title interest and advantage of and in eight equal undivided one hundred and forty fourth parts or shares of and in the Remaining Portion of Section B of Inland Lot No. 3454.

This property is held by AU-YEUNG Yin in her own name by virtue of an indenture of assignment dated the 25th day of June, 1955 between AU-YEUNG Yin as the purchaser and CHAN Tak-tai as the vendor.

Memorial No. 239232 received at the Land Office on the 16th day of September, 1955.

- (c) No. 7A, Junction Road, Front Portion, First Floor, Kowloon (One equal undivided tenth part or share of and in Subsection 1 of Section A of New Kowloon Inland Lot No. 2638) is held by AU-YEUNG Yin in the name of AU-YEUNG Oi by virtue of an indenture of assignment dated 15th day of February, 1957 between AU-YEUNG Oi as the purchaser and KU Zing-kwan as the vendor.

Memorial No. 257958 received at the Land Office on 16th day of May 1957.

- 10 (d) Nos. 1 and 3 Burrows Street, Hong Kong (Section C of Marine Lot No. 108 and Section C of Marine Lot No. 109). This property is held by AU-YEUNG Yin in the name of AU-YEUNG Oi by virtue of an indenture of assignment dated 18th day of April, 1958 between AU-YEUNG Oi as the purchaser and William Ngartse Thomas TAM as the first vendor and Hong Kong Investment Company Limited as the second vendor.

Memorial No. 275468 received at the Land Office on 2nd day of May, 1958.

- 20 (e) Vienna Mansion, Second Floor, Flat A, Hong Kong (One equal undivided seventy second part or share of and in Subsection 7 of Section A of Marine Lot. No. 52). This property is held by AU-YEUNG Yin in her own name by virtue of an indenture of assignment dated 26th May, 1960 between AU-YEUNG Yin as the purchaser and Hanifa SADICK as the vendor.

Memorial No. 317271 received at the Land Office on the 16th day of June, 1960.

- 30 (f) Demarcation District No. 120, Lot No. 508, Yuen Long, New Territories. This property is held by AU-YEUNG Yin in her own name by virtue of a Conveyance on Sale dated 15th May, 1963 between AU-YEUNG Yin as the purchaser and TO Hop-shing as the vendor.

Memorial received at the District Office, Yuen Long, on the 15th day of May, 1963.

10

(g) Demarcation District No. 120, Lot No. 3782, Yuen Long, New Territories, having erected thereon a restaurant. This property is held by AU-YEUNG Yin in the name of AU-YEUNG Oi by virtue of New Grant No. 892 dated 23rd day of September, 1963 and entered in the Deed Register, Yuen Long District Office.

(h) Demarcation District No. 120 Lot No. 516, Yuen Long, New Territories. This property is held by AU-YEUNG Yin in her own name by virtue of a Conveyance on Sale dated 26th November, 1963 between AU-YEUNG Yin as the purchaser and MAK Ping as the vendor.

Memorial No. 152183 received at the District Office, Yuen Long on 26th day of November, 1963.

(i) Demaracation District No. 120, Lot No. 517, Yuen Long, New Territories. This property is held by AU-YEUNG Yin in her own name by virtue of a Conveyance on Sale dated 27th January, 1964 between AU-YEUNG Yin as the purchaser and TO Cheong-shing as vendor.

Memorial No. 152649 received at the District Office, Yuen Long on 27th day of January, 1964.

20

(j) 32-44 Fuk Chak Street, Hoi Hing Building, First Floor, Flats C4 and C5, Kowloon (Two equal undivided two hundred and seventy eighth parts or shares of and in Subsection 3 of Section M of Kowloon Marine Lot No. 28).

This property is held by AU-YEUNG Yin in the name of AU-YUNG Yin by virtue of an indenture of assignment dated the 15th day of April, 1965 between AU-YUNG Yin as the purchaser and Hoi Hing Investment Company Limited as the vendor.

30

Memorial Nos. 484155 and 484156 received at the Land Office on 29th day April, 1965.

(k) No. 9, Kingston Street, Clarke Mansion, Second Floor, Flat A, Hong Kong (One equal undivided sixty third part or share of and in the Remaining Portion of Section U of Marine Lot No. 231 and the Extension thereto). This property is held by AU-YEUNG Yin in the name of AU-YUNG Yin by virtue of an indenture of assignment dated the 29th day of July, 1965

between AU-YUNG Yin as the purchaser and Kum Hing Land Investment Company Limited as the vendor.

Memorial No. 498406 received at Land Office on 17th day of August, 1965.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

- 10 (l) No. 9, Kingston Street, Clarke Mansion, Second Floor, Flat B, Hong Kong (One equal undivided sixty third part or share of and in the Remaining Portion of Section U of Marine Lot No. 231 and the Extension thereto). This property is held by AU-YEUNG Yin in the name of AU-YUNG Yin by virtue of an indenture of assignment dated the 29th day of July, 1965 between AU-YUNG Yin as the purchaser and Kum Hing Investment Company Limited as the vendor.

Originating  
Summons  
with supporting  
affidavit

Memorial No. 498051 received at Land Office on 13th day of August, 1965.

- 20 (m) No. 6, Hart Avenue, Ground Floor, Kowloon (One equal undivided fourth part or share of and in the Remaining Portion of Subsection 1 of Section C of Kowloon Inland Lot No. 576). This property is held by AU-YEUNG Yin in the name of AU-YUNG (otherwise spelt as YEUNG) Yin by virtue of an indenture of assignment dated the 26th day of October, 1965 between AU-YUNG Yin as the purchaser and LAM Kwong-yim as the vendor.

Memorial No. 508645 received at Land Office on the 5th day of November, 1965.

- 30 (n) Kingston Building, Second Floor, Flats B5 & B4, Hong Kong (Two equal undivided one hundred and eighty fifth parts or shares and in Section YY of Marine Lot No. 231 and the Extension thereto). This property is held by AU-YEUNG Yin in the name of AU-YUNG Yin by virtue of an indenture of assignment dated the 17th day of November, 1966 between AU-YUNG Yin as the purchaser and Capital Land Investment Company Limited as the vendor.

Memorial No. 560608 received at Land Office on 5th day of December, 1966.

- (o) Demarcation District No. 120, Lot No. 3837, Yuen Long, New Territories, having erected thereon a hotel. This property is held by AU-YEUNG Yin in her own name by virtue of New

Grant No. 1213 dated 22nd day of November, 1966 and entered in the Deed Register, Yuen Long District Office.

6. Statements have been obtained in writing from persons who have stated that they are and whom I believe to be tenants of premises in the properties referred to in paragraph 5(a), (b), (c), (d), (e), (j), (m) and (n) to the effect set out hereunder –
- (a) in respect of the property referred to in paragraph 5(a), one tenant has produced receipts for rent bearing the chop of LAI Man-yau;
- 10 (b) in respect of the property referred to in paragraph 5(b), one tenant has produced receipts for rent bearing the chop of LAI Man-yau and a second tenant has stated that LAI Man-yau has collected the rent on occasions;
- (c) in respect of the property referred to in paragraph 5(c), one tenant has produced receipts for rent bearing the chop of LAI Man-yau;
- (d) in respect of the property referred to in paragraph 5(d):—
- 20 (i) four tenants have produced receipts for rent bearing the chop of LAI Man-yau; and
- (ii) one tenant has stated that when he entered into the tenancy he discussed the terms of the tenancy agreement with LAI Man-yau who claimed himself to be the landlord;
- (e) in respect of the property referred to in paragraph 5(e), one tenant has produced receipts for rent signed by LAI Man-yau and has stated that LAI Man-yau claimed to be the landlord and came to inspect the flat;
- (f) in respect of the property referred to in paragraph 5(j), one tenant has stated that LAI Man-yau claimed to be the landlord of the flat occupied by him and discussed the terms of the tenancy with him;
- 30 (g) in respect of the property referred to in paragraph 5(m), the daughter of the previous owner of the property has stated that

although the property was sold to the wife of LAI Man-yau, LAI Man-yau handled the transaction and that after the property was sold she became a tenant, that the rent was collected by LAI Man-yau and that the receipts issued for the rent bore the chop of LAI Man-yau;

- (h) in respect of the property referred to in paragraph 5(n) –
- (i) the tenant of Flat B5 has stated that LAI Man-yau introduced himself as the landlord and signed the tenancy agreement and that receipts issued for rent bore the chop of LAI Man-yau; and
  - (ii) the tenant of Flat B4 stated he discussed with LAI Man-yau the question of the increase in rent for the flat.

10

7. LAI Man-yau is the Managing Director of the Fairyland Restaurant Ltd., the owners of the Restaurant erected on the property referred to in paragraph 5(g), and is the Managing Director of the Rose Garden Hotel Ltd., the owners of the hotel erected on the property referred to in paragraph 5(o).

8. The property referred to in paragraph 5(f), (h) and (i) are vacant lots, and the properties referred to in paragraph 5 (k) and (l) comprise the residence of LAI Man-yau.

20

9. The purchase prices and dates of purchase for the properties referred to in paragraph 5 as stated in the relevant documents referred to herein were as follows:

<u>Sub-paragraph in paragraph 5 in which property is referred to:</u>	<u>Date of Purchase</u>	<u>Purchase Price</u>
(a)	31.12.51	\$110,000
(b)	25.6.55	50,000
(c)	15.2.57	38,700
(d)	18.4.58	340,000
(e)	26.5.60	80,000
(f)	15.5.63	4,356
(g)	23.9.63	147,345
(h)	26.11.63	3,832.80
(i)	27.1.64	5,226

30

	<u>Sub-paragraph in paragraph 5 in which property is referred to:</u>	<u>Date of purchase</u>	<u>Purchase Price</u>
	(j)	15.4.65	49,864
	(k)	29.7.65	86,000
	(l)	29.7.65	86,500
	(m)	26.10.65	70,000
	(n)	17.11.66	169,000
10	(o)	22.11.66	213,000

In addition to the money expended on the purchase of the properties referred to in paragraph 5(g) and (o), \$612,000 was expended on the construction of a restaurant on the property referred to in paragraph 5(g) between 1965 and 1969 and \$1,303,785 was expended on the construction of a hotel on the property referred to in paragraph 5(o) between 1968 and 1971.

- 20
10. During the period when the said properties were purchased, the said AU-YEUNG Yin was to the best of my knowledge and belief a housewife with no source of income other than her husband, the said LAI Man-yau.
11. The said AU-YEUNG Yin alias AU YEUNG Oi alias AU-YUNG Yin has refused to answer any questions regarding ownership of the said properties in her own name and has stated that AU-YEUNG Oi is not her alias but is the name of her sister. I have seen a Statutory Declaration dated the 20th day of October 1964 made by AU-YEUNG Yin in which she declared that she was also known as AU-YEUNG Oi and in fact both of the names of AU-YEUNG Yin and AU-YEUNG Oi refer to the same and only person, herself.
- 30
12. I believe that the property referred to in paragraph 5(a) – (o) is held by the said AU-YEUNG Yin alias AU-YEUNG Oi alias AU-YUNG Yin for or on behalf of or to the order of the said LAI Man-yau.

And lastly, I swear and say that the contents of this affidavit are true to the best of my knowledge and belief.



Sworn at the Courts of Justice in the Colony of Hong Kong this 15th day of April, 1977.

Before me.            )  
                                  )  
                                  )

Sd. Lee Chun Sang

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Signed by Djung Sai Hung  
A Commissioner for Oath

Originating  
Summons  
with supporting  
affidavit



IN THE SUPREME COURT OF HONG KONG  
MISCELLANEOUS PROCEEDING NO. 334 OF 1977

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*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

In the matter of section 10(1)(b)  
of the Prevention of Bribery  
Ordinance Chapter 201 of Laws  
of Hong Kong.

Judgment of  
Justice Cons

BETWEEN

LAI Man-yau

*Plaintiff*

and

10

ATTORNEY GENERAL

---

*Defendant*

Coram: Cons, J.

Date: 11th July, 1977.

JUDGMENT

By the summons originating these proceedings the court is asked to make three declarations. The principal one involves the question "Can a person who ceased to be a Crown servant before the provisions of the Prevention of Bribery Ordinance, Cap. 201, came into operation be convicted of an offence against section 10(1)(b) thereof?" The other two declarations are consequential.

20 Section 10(1) provides as follows:

"Any person who, being or having been a Crown servant —

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence."

The plaintiff was at one time a member of the Police Force. His record of service is long, from before the War in 1936 until July 1969 when he retired with the rank of Staff Sergeant, a rank which he had then held for some thirteen years. In July 1969 the Prevention of Bribery Ordinance had not yet been enacted. It was not passed until December 1970. Even then it was not brought into operation until five months later, that is on 14th of May 1971. Thus at the time the Staff Sergeant ceased to be a Crown servant there was no such offence as being in control of unexplained disproportionate resources. At the most this position could have given rise to disciplinary proceedings within the Force. It could not have been the ground of a criminal prosecution.

The Staff Sergeant and his wife each own a considerable number of properties. It is possible that he will be charged on the basis that the ownership of these properties is disproportionate to his present and past official emoluments. Now his wife's properties were purchased prior to the time that he retired from the Force. And I will assume for the present purposes that the position is the same with regard to his own. It is therefore argued on his behalf that to take these properties as a basis for prosecution under section 10(1)(b) is to apply the Prevention of Bribery Ordinance retrospectively and that there is no justification for taking that course.

It is well settled that a criminal statute will not be given retrospective effect unless the words of the statute demand this in clear terms. I would respectfully agree with the various authorities to which I was referred. I would also agree that upon a proper construction of section 10(1)(b) that section does not have retrospective effect. However, and with every respect to learned counsel, I think his argument that the Staff Sergeant is not liable to prosecution under it is based on a false premise. There is in my view no retrospective element involved in the present circumstances. It is immaterial when the properties were first acquired. It is control at the date of the charge which must first be proved by the Crown. That is what paragraph (b) says: "is in control". The charge date must of course be subsequent to the 13th of May 1971. And it may be necessary to delve into the past to bring out or perhaps discredit the explanation put forward. That was shown in Hunt's Case<sup>(1)</sup>. But other than that it matters not when the properties were acquired. It is said that over the years the social and economic change in Hong Kong has so distorted values that the Legislature cannot possibly have intended there to be a comparison between the present and that is long past. It is true that there have been tremendous changes. These may raise difficulties in some cases when considering whether or not there is disproportion and whether or not an explanation is satisfactory. The difficulties may well increase the further that

(1) 1974 H.K.L.R. 31 at 54.

one has to go back into the past. But I am not persuaded that they are so great as to warrant my overriding the clear words of the Ordinance.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Judgment of  
Justice Cons

10 For this reason I am not prepared to make the declaration requested. It is therefore not necessary to consider whether I ought also to refuse them in the exercise of my discretion. Counsel for the Crown argued that I should do so and leave the principal question for decision in the course of the criminal trial. I do not think I would have refused. This is not a hypothetical case. The Staff Sergeant has for six months already been subjected to very real restraints upon his freedoms. Furthermore corruption trials are usually long and expensive. If in truth there is no legal basis for putting the Staff Sergeant on trial and he can by this short and simple procedure test whether that is so or not, he ought to be allowed to do so. Counsel fears that this may lead to frustration of prosecutions and the harrassment of the Attorney General by potential defendants. I do not think he need be unduly afraid. If there are genuine doubts as to the law it is desirable that they should be settled as quickly as possible. That is to everybody's advantage, and if the procedure should be abused that can easily be dealt with.

Henry Litton, Q.C. and Jimmy Kwong (Yung, Yu, Yuen & Co.) for plaintiff.  
Mr. G. Fuller, Crown Counsel, for the defendant.



1977, No. 334

IN THE SUPREME COURT OF HONG KONG  
HIGH COURT  
MISCELLANEOUS PROCEEDINGS

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*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Judgment of  
Justice Cons

IN THE MATTER of Section 10(1)(b)  
of the Prevention of Bribery  
Ordinance, Chapter 201 of the Laws  
of Hong Kong.

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BETWEEN:

10

LAI MAN YAU

*Plaintiff*

and

THE ATTORNEY GENERAL

*Defendant*

---

BEFORE THE HONOURABLE MR. JUSTICE CONS IN COURT

ORDER

Upon application by the Plaintiff by Originating Summons and upon reading the affirmation of Lai Man Yau filed herein on the 24th day of May, 1977 and upon hearing Counsel for the Plaintiff and Crown Counsel for the Defendant IT IS ORDERED that the declarations sought by the Plaintiff herein be refused with costs to the Defendant. Certificate for Counsel for  
20 chambers matters.

Dated the 11th day of July, 1977.

Sd. P.A.G. CAMERON (L.S.)  
Acting Registrar.





No. 44 of 1977

IN THE COURT OF APPEAL

(On Appeal from High Court Miscellaneous Proceedings No. 334/77)

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Notice of  
Motion of  
Appeal

---

BETWEEN

LAI MAN YAU

*Appellant  
(Plaintiff)*

and

THE ATTORNEY GENERAL

*Respondent  
(Defendant)*

---

NOTICE OF MOTION OF APPEAL

10 TAKE NOTICE that the Court of Appeal will be moved by Counsel for the above-named Appellant to hear an Appeal from a Judgment herein of the Honourable Mr. Justice Cons made on the 11th day of July, 1977 whereby the Plaintiff's Originating Summons was dismissed with costs to the Defendant.

AND FURTHER TAKE NOTICE that the Grounds of Appeal will be as follows:—

1. The Learned Trial Judge erred in law in failing to rule on the question that the Plaintiff, having retired in 1969, is not a person who is or has been a Crown Servant at any material time, viz., after the commencement of the Prevention of Bribery Ordinance.
- 20 2. The Learned Trial Judge erred in law in basing his ruling, viz., that there is no retrospective element involved in the circumstances in question, wholly on his rejection of the premise that a prosecution under Section 10(1)(b) on the basis of properties acquired before the commencement of the said Section is to apply it retrospectively.

AND the Plaintiff will seek an Order that the said Judgment of the Learned Judge may be set aside and the relief prayed in the Originating Summons herein be granted and that the Plaintiff's costs of this appeal and of the Court below be paid by the Defendant.

Dated the 19th day of July, 1977.

JIMMY KWONG  
COUNSEL FOR THE APPELLANT.

SD. YUNG, YU, YUEN & CO.,  
SOLICITORS FOR THE APPELLANT.

10 To: the above named Respondent,  
The Attorney General,  
Legal Department,  
Hong Kong.

IN THE COURT OF APPEAL  
on appeal from the High Court

1977 No. 44  
(Civil)

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

BETWEEN:

LAI Man-yau

*Appellant*

and

Judgment  
of the  
Court of  
Appeal  
Briggs,  
C.J.

THE ATTORNEY GENERAL

*Respondent*

Coram: Briggs, C.J.,  
Huggins & Pickering, JJ.A.

Date: 23rd November, 1977.

10

JUDGMENT

The appellant joined the Royal Hong Kong Police Force in 1936 and served until 1969 when he retired. At that time he held the rank of Staff Sergeant, Class III.

At the time of his retirement the Prevention of Bribery Ordinance had not been enacted. This occurred in December 1970. And the Ordinance was brought into force on May 14th, 1971. The appellant owns a large number of properties.

20 On January 5th, 1977 the appellant was arrested for an offence contrary to section 10(1)(b) of the Prevention of Bribery Ordinance. He was granted bail in a large sum and was served with a Notice under section 14A(1) of the Ordinance restraining him from dealing with or disposing of his properties. He also surrendered his travel documents pursuant to an order of a magistrate made under section 17A of the Ordinance.

Section 10(1)(b) of the Prevention of Bribery Ordinance reads as follows:—

“10. (1) Any person who, being or having been a Crown servant —

.....

(b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments, shall, unless he gives a satisfactory explanation to the court as to . . . how such pecuniary resources or property came under his control, be guilty of an offence.”

10

The maximum sentence for an offence under this section is, if the conviction is on indictment, a fine of \$100,000 and imprisonment for ten years. In addition, the court has power to order a person so convicted to pay the Crown a sum equal to the value of the property found to have been unlawfully acquired. Failure to comply with an order made under section 14A of the Ordinance restraining the disposal of the property is likewise an offence under the Ordinance, the penalty for which is a fine of \$50,000 or the value of the property disposed of, whichever is greater, and to imprisonment for three years.

By an originating summons dated May 24th, 1977, the appellant sought three declarations as follows:—

20

“(1) A declaration that upon a true construction of Section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201 of the Laws of Hong Kong, the Plaintiff not being or having been a Crown Servant at any material time is not liable to prosecution under the said section;

(2) A declaration that the Notice dated 1st February 1977 made by the Commissioner under Section 14A of the Prevention of Bribery Ordinance Cap. 201 purportedly restraining the Plaintiff from disposing of property specified in the said Notice is null and void and of no legal effect.

30

(3) A declaration that an order dated 5th January 1977 made by a Magistrate on the Application of the Commissioner under Section 17A of the Prevention of Bribery Ordinance Cap. 201, is null void and of no legal effect.”

The Court declined to make the declarations sought and this is an appeal against that decision. It is agreed that the second and third declarations must be granted if the court grants the appellant a declaration in the terms of the first declaration sought.

It is also agreed that the question to be decided in this appeal is of a very narrow compass. It is simply this: what is the meaning of the words

“having been a Crown servant” in section 10(1) of the Ordinance? Do these words include a person who has been a Crown servant, but who ceased to be a Crown servant before the Ordinance was passed? The appellant is such a person and a member of the Royal Hong Kong Police Force is, of course, a Crown servant.

The general rule is that the language used in an Ordinance must be used in its natural and ordinary sense. It is not necessary to cite authority for this proposition.

10 If we were to ask the appellant “Have you been a Crown servant?” He will obviously reply “Yes”. Prima facie therefore the appellant comes within the phrase “having been a Crown servant” in section 10(1) of the Ordinance and that section therefore applies to him.

On page 66 of Craies on Statute Law (6th Ed.) the following words appear:—

“If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver.”

20 The words of section 10(1) of the Ordinance are in my view clear and unambiguous and mean that any person who has at any time been a Crown servant comes within that section, he “has been” a Crown servant. And it matters not whether he has resigned before or after the Ordinance creating the offence to which the section refers was passed into law.

30 I would be content to leave the matter there but counsel for the appellant has argued that the proper construction of the words is to confine them to the period subsequent to the coming into force of the Ordinance. Section 10 of the Ordinance, it is said, introduced an entirely new offence and that offence can only be committed by a person who is a Crown servant and who has been a Crown servant since the Ordinance came into operation. The appellant resigned from the Police Force before that date and therefore is not caught by the Section.

To put it another way, the construction of the section urged by the appellant is as if the words of the section read: —

“Any person who being or having been a Crown servant since the coming into operation of this Ordinance is in control of pecuniary resources or property . . .”.

If, he said, the legislature had intended to include Crown servants who had ceased to be such before the Ordinance came into force the section would have read as follows:—

“Any person who, being or having been a Crown servant whether before or after the passing of the Ordinance is in control of pecuniary resources or property . . .” etc.

10           Mr. Litton drew our attention to various cases which deal with the construction of retrospective legislation. It is not his contention that the Ordinance operates retrospectively. It clearly does not. But it is his argument that there is a retrospective element in the offence and that the rules which apply to the construction of retrospective enactments are to be applied in this case. Mr. Litton analysed the offence in great detail. He said that the various ingredients of the offence must all be proved to exist at the time of the period referred to in the charge: this must be, of course, a period after the coming into force of the Ordinance which created the offence. Thus the fact of the disproportion of the amount, 20 the control and the failure to give an explanation must all be so proved. Similarly, it is argued it must be proved that at that period, the period referred to in the charge, the alleged offender was either then a Crown servant or had been such since the Ordinance came into force but had left the service. This, of course, is in line with the construction of the section urged by Mr. Litton. It was argued that unless the words of the section, namely, “any person having been a Crown servant” was “clear beyond a peradventure”, this court should not hold that a person who had resigned before the coming into force of the Ordinance came within the words of the section.

30           As I have already said, I am of the opinion that the words are in Mr. Litton’s phrase “clear beyond a peradventure”.

When dealing with retrospective enactments the Editor of the 6th Ed. of Craies on Statute Law has this to say (at page 386):—

“A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches

a new disability in respect to transactions or considerations already past. But a statute 'is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing'".

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

It has been held that retrospective effect ought not to be given to an enactment unless an intention to that effect is expressed in plain and unambiguous language. (See the headnote in Young v. Adams<sup>(1)</sup>). In the case of In re Athlumney Ex parte Wilson<sup>(2)</sup>, Wright, J. had this to say:—

Judgment  
of the  
Court of  
Appeal  
Briggs,  
C.J.

10

“Perhaps no rule of construction is more firmly established than this – that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.”

20

This case dealt with existing rights and obligations. What are the existing rights and obligations in the present case? Mr. Litton suggested that it was wrong, indeed unjust, for a Crown servant who had no obligation to explain his riches at the time he was in the service now to have to explain them and to be punished severely if he fails to do so. He had as it were a vested right to enjoy his riches without interference before the coming into force of the enactment. And the enactment sought to deprive him of that vested right.

30

I do not think that that is so. It may be said that there is a retrospective element in the offence with which we are dealing. However, I do not think that this case comes within the rule stated by Wright, J. in the Athlumney Case<sup>(2)</sup> which I have quoted above.

Shortly after the war possession of opium was declared to be an offence in Hong Kong by an Ordinance. It was a new offence. A person charged with the offence could not surely have pleaded that he had a vested interest to possess the opium which he had before the Ordinance making 'possession' an offence came into force.

(1) (1898) A.C. 469

(2) (1898) 2 Q.B. 547.

It was also suggested in argument that retrospective effect must not be given to a penal statute which Chapter 201 clearly is. This point was dealt with in R. v. Austin<sup>(3)</sup>, where Phillimore, J. had this to say:—

10

“It is said that a retrospective effect must not be given to a penal statute. No doubt; one can hardly imagine the Legislature punishing a man for having done an act which at the time of its commission was a perfectly innocent act. But to prescribe punishment for an old offender in case in the future he persists in his crime is quite another matter. The offence in question was committed since the Act. The Act says that a man guilty in the future may, if he has already been guilty in the past, be punished as he could not have been before the Act. There is nothing wrong in that. No man has such a vested interest in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history.”

20

But this apart, in my view the words of section 10(1) of the Ordinance are clear and unambiguous and mean exactly what they say. A person who has been a Crown servant includes a person who has been a Crown servant and has resigned, whether before or after the coming into force of the Ordinance. The appellant is such a person. It follows that he is not entitled to the declaration sought.

I would dismiss this appeal.

(Geoffrey Briggs)  
President.

Henry Litton, Q.C., Bernard Downey & Jimmy Kwong (Yung, Yu, Yuen & Co.) for appellant.

Fuller for the Crown/Respondent.

30 (3) (1913) 1 K.B. 551.



IN THE COURT OF APPEAL  
(On appeal from the High Court)

1977 No. 44  
(Civil)

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

BETWEEN

---

LAI Man-yau

*Appellant*

and

ATTORNEY GENERAL

---

*Respondent*

Judgment  
of the  
Court of  
Appeal  
Huggins,  
J.A.

Coram: Briggs, C.J., Huggins and Pickering, JJ.A.

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JUDGMENT

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Huggins, J.A.:

Once again we are called upon to interpret s.10(1) of the Prevention of Bribery Ordinance. In the present case the particular words under discussion are "or having been a Crown servant". Briefly the question is whether the Legislature intended thereby to include every person who has been a Crown servant at any time or only those who have been in the service of the Crown at some time since the passing of (or, alternatively, since the coming into force of) the Prevention of Bribery Ordinance.

20 I did not understand Mr. Litton to suggest that the words of the subsection, read in isolation, did not prima facie relate to all persons who have been Crown servants at any time, whether before or after the passing of the Ordinance. Certainly he accepted that that was a possible interpretation. His argument was that such an interpretation gave retrospective effect to the subsection, was absurd and unjust and could not have been intended by the Legislature. Accordingly he contended for a narrower interpretation which would avoid the alleged injustice.

The point is a short one and the help to be derived from the decided cases is limited. They clearly establish that the court is entitled to resort to a narrow interpretation where that seems to be consistent with the presumed

intention of the Legislature and that, where possible, it will be presumed that the Legislature does not intend to produce the injustice which commonly results from retrospective legislation. I say “where possible” because where the language of a statute is clear then the court is bound to assume that the Legislature meant, and intended, what it has said, even though the court might itself question the justice of the result. I accept that on the authority of In re Athlumney ex parte Wilson 1898 2 Q.B. 547 and Attorney General v Schiers (1833) 2 C.M. & R. 285 words as apparently unlimited as those now in question might in some contexts be taken to have been intended to exclude

10 persons (like the Appellant) who have ceased to be Crown servants before the date of the passing of the Ordinance. The headnote in the former case reads:

“The Bankruptcy Act, 1890, which was passed on August 18, 1890, and came into operation on January 1, 1891, provides (s.23) that where a debt, including interest, ‘has been proved’ on a debtor’s estate, such interest shall for the purposes of dividend be calculated at a rate not exceeding 5 per cent. per annum, without prejudice to the right of the creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts have been paid in full:—

20 Held, that the section was not retrospective in its operation, and therefore did not apply to a debt, including interest above 5 per cent., proved under a scheme adopted by the Court before the date of the passing of the Act.

Semble: If the scheme had been adopted between the dates of the passing of the Act and of its coming into operation, the section would have applied.”

The Chief Justice has already read the passage from the judgment of right, J. at p.551 where he referred to the impairing of an existing right or obligation. Mr. Litton was justifiably hesitant about submitting that the Appellant in our case had an “existing right” which would be impaired and he preferred

30 to put his case no higher than that the Appellant had an “existing expectation” that he could continue to control his pecuniary resources and property after the passing of the Ordinance without being subjected to the risk that he might be called upon to explain why they were disproportionate to his past official emoluments. Cons, J., in the court below, took the view that there was no retrospective element involved in the circumstances of this case, on the basis that the two elements, (a) of having been a Crown servant and (b) of controlling pecuniary resources or property, could both exist at a date

- subsequent to 13th May 1971. I think that was right and I find some support for that view in *Reg. v The Inhabitants of St. Mary, Whitechapel* (1848) 12 A. & E. 120, although I appreciate that that case was not concerned with a penal statute. The status of having been a Crown servant is not part of the actus reus, but is a factor limiting those who are capable of committing the actus reus. It is the second of the two elements mentioned which constitutes the actus reus. Mr. Litton himself informed us that the Bill which led to the Prevention of Bribery Ordinance contained the words "Any public servant who . . . ." in place of the words which now appear, "any person who, being
- 10 or having been a Crown servant . . . ." He also drew our attention to the former s.36 of the Police Force Ordinance (which was probably a source of the Bill), where the words were "Where it appears . . . . that any inspector, non-commissioned officer or constable . . . . is or has been . . . .". Although that form of words requires that the actus reus and the specified status shall be contemporaneous, it does not follow that the form eventually adopted in s.10 of the Prevention of Bribery Ordinance does not have the same requirement: the difference is that the status at the time of the actus reus need not necessarily be that of a Crown servant provided that it is that of an ex Crown servant.
- 20 There is no doubt a sense in which this wider interpretation of s.10 does introduce a retrospective element, but in my view that is not sufficient to bring into play the principle upon which the Appellant relies. Once one accepts the justice of the purpose underlying the subsection I see nothing unjust, oppressive or unreasonable in the wider interpretation for which Mr. Fuller contends and there is, in my judgment, no basis for saying that the Legislature cannot have intended to draw into the net persons such as the Appellant. On the contrary, I think the intention was to cast the net very wide and that it would be wrong to limit the words "or having been" by the
- 30 argument that that wider interpretation equally calls for the addition of the words "at any time, whether before or after the passing of this Ordinance" fails because those additional words are, in the context, necessarily implicit in the language in fact used.

I also would dismiss the appeal.

23rd November 1977.



IN THE COURT OF APPEAL  
on appeal from Miscellaneous Proceedings  
No. 334 of 1977

1977 No. 44  
(Civil)

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

BETWEEN

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LAI MAN-YAU

and

ATTORNEY GENERAL

---

Judgment  
of the  
Court of  
Appeal  
Pickering  
J.A.

10 Coram: Briggs, C.J., Huggins & Pickering, JJ.A.  
Date: 23rd November, 1977.

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JUDGMENT

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Pickering, J.A.:

Not without some initial hesitation I have come to the same view.

The argument that section 10(1) of the Prevention of Bribery Ordinance, Cap. 201, is capable of two interpretations and that the more lenient should be applied was at first sight tempting but upon consideration I am of the opinion that the wider and literal interpretation is the only one which is genuinely consistent with the intention of the legislature. Judicial authority can be quoted both in support of the interpretation that the words "or having been a Crown servant" relate back beyond the enactment and the coming into force of the Ordinance and for the view that the words refer to the past merely by anticipation in the sense that they are intended to embrace only a Crown servant who became or continued to be a Crown servant after the coming into operation of the Ordinance but was no longer a Crown servant at the date of the offence charged. Mr. Litton, leading counsel for the appellant, has cited the case of In re Athlumney ex parte Wilson<sup>(1)</sup> as a case where the court refused to adopt the more retrospective interpretation because it would have affected a vested right and suggests that in the present case such an interpretation would affect not only vested rights but the liberty of the subject.

(1) [1898] 2 Q.B. 547.

10 The liberty of the subject is of course affected whenever conduct formerly lawful is declared by the legislature to be henceforth unlawful. Thus a former Crown servant who had lost that status before section 10(1) came into operation is no more entitled to complain of interference with the liberty of the subject by reason of the sub-section than is an existing Crown servant. The issue is not the liberty of the subject but whether or not the sub-section applies to a Crown servant who had lost that status before the sub-section came into force. Corruption was a serious offence long before the Prevention of Bribery Ordinance saw the light of day and if it be an offence for a present-day or recently-retired Crown servant to enjoy a standard of living or to have control of assets which he is unable satisfactorily to explain, with the obvious implications in this territory, it would seem to be wholly illogical for the legislature to provide that a former Crown servant in a similarly embarrassing position should not equally be guilty of an offence merely because he had ceased to hold office under the Crown before the sub-section was enacted. If he is unable to give a satisfactory explanation the implications in regard to him are precisely those which apply to his present-day colleague.

Both sides placed some reliance upon section 19 of the Interpretation and General Clauses Ordinance, Cap. 1, which reads:—

20 “19. An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.”

30 It seems to me that this section assists the Crown rather than the appellant. Section 10 of the Prevention of Bribery Ordinance is a draconian section creating new offences and, subject to proof beyond reasonable doubt of the standard of living or the control of pecuniary resources, placing the burden of proof upon the balance of probabilities upon the accused. That such a section was intended to be interpreted in the widest possible sense is far more logical than that restrictive interpretation was intended or should be given. Mr. Litton has quoted Smith v. McArthur<sup>(2)</sup> as a case in which the court, calling in aid a New Zealand provision similar to our section 19 of the Interpretation and General Clauses Ordinance held that the literal meaning was not the correct one. But everything must depend upon the nature and scope of the legislation and I am satisfied that in construing the words “or having been a Crown servant” the effect of the literal interpretation is to conform to the intention of the legislature — and that after analysis of the words in the context of the Ordinance and the section in which they appear.

(2) 1904 A.C. 389.

It is further argued that the object of the Ordinance is contained in the long title and is “for the prevention of bribery” and not the punishment of persons failing to explain. The long title continues however “and for purposes necessary thereto or connected therewith” and it may fairly be said that the punishment of former Crown servants, at whatever period they were Crown servants, who are unable to explain their assets or standard of living is a purpose connected with the prevention of bribery of others.

I too would dismiss the appeal.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

Judgment  
of the  
Court of  
Appeal  
Pickering  
J.A.

H. Litton, Q.C., B. Downey & J. Kwong (Y.Y.Y. & Co.) for appellant.  
10 G.F. Fuller for Crown/respondent.





IN THE COURT OF APPEAL  
ON APPEAL FROM THE HIGH COURT

1977, No. 44  
(Civil)

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

BETWEEN:—

LAI MAN YAU

*Plaintiff  
(Appellant)*

and

THE ATTORNEY GENERAL

*Defendant  
(Respondent)*

Judgment  
Order  
dated  
23rd  
November  
1977

10 BEFORE THE HONOURABLE SIR GEOFFREY BRIGGS, CHIEF  
JUSTICE AND MR. JUSTICE HUGGINS AND MR. JUSTICE  
PICKERING IN COURT.

ORDER

On Wednesday the 23rd day of November, 1977.

UPON Motion by way of appeal from the judgment of the Honourable Mr. Justice Cons dated the 11th day of July, 1977 whereby the Plaintiff's Originating Summons was dismissed with costs to the Defendant.

AND UPON READING the said judgment dated the 11th day of July, 1977.

20 AND UPON hearing Counsel for the Plaintiff and Counsel for the Defendant.

THIS COURT DID ORDER that the said appeal should stand for judgment.

AND the said appeal standing this day for judgment in the presence of Counsel for the Plaintiff and for the Defendant.

THIS COURT DOTH ORDER that the said judgment entered the 11th day of July, 1977 be affirmed.

*In the Supreme  
Court of  
Hong Kong  
High Court  
Miscellaneous  
Proceedings*

AND IT IS ORDERED that the Plaintiff do pay to the Defendant his costs occasioned by the said appeal such costs to be taxed.

Judgment  
Order  
dated  
23rd  
November  
1977

S.H. MAYO  
Registrar.

IN THE COURT OF APPEAL

(On Appeal from High Court Miscellaneous Proceedings Action  
No. 334 of 1977)

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Notice of  
Motion  
for Leave  
to Appeal

BETWEEN:

LAI MAN YAU

*Appellant  
(Plaintiff)*

and

THE ATTORNEY GENERAL

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*Respondent  
(Defendant)*

NOTICE OF MOTION FOR LEAVE TO APPEAL

10 TAKE NOTICE that the Court of Appeal will be moved on Thursday, the 22nd day of December, 1977 at 9.30 o'clock in the forenoon at the sitting of the Court, or so soon thereafter as Counsel on behalf of the abovenamed Appellant for:

- (1) An order that leave be granted to the Appellant to Appeal to Her Majesty the Queen in Her Privy Council from the judgment of this Honourable Court pronounced by the Court on the 23rd day of November, 1977.

Dated the 2nd day of December, 1977.

20

Yung, Yu, Yuen & Co.  
Solicitors for the Appellant

To the abovenamed Respondent  
The Attorney General,  
Legal Department,  
Hong Kong.



IN THE COURT OF APPEAL

(On Appeal from High Court Miscellaneous Proceedings  
Action No. 334 of 1977)

Notice of  
Application  
for Leave  
to Appeal

BETWEEN:

LAI MAN YAU

*Appellant  
(Plaintiff)*

and

THE ATTORNEY GENERAL

*Respondent  
(Defendant)*

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

10 TAKE NOTICE that the Court of Appeal will be moved at 9.30 o'clock in the forenoon on Thursday, the 22nd day of December, 1977 or so soon thereafter as Counsel for the Appellant can be heard for leave to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court dated the 23rd day of November, 1977 in accordance with the Notice of Motion filed herein.

*Order in  
Council  
Regulating  
Appeals from  
The Court of  
Appeal for  
Hong Kong  
to Her  
Majesty in  
Council  
1909  
Rule 3*

Dated the 2nd day of December, 1977.

Yung, Yu, Yuen & Co.  
Solicitors for the Appellant

20 To the abovenamed Respondent (Defendant)  
The Attorney General,  
Legal Department,  
Hong Kong.



IN THE COURT OF APPEAL

(On Appeal from High Court Miscellaneous Proceedings  
Action No. 334 of 1977)

BETWEEN

LAI MAN YAU

*Appellant (Plaintiff)*

and

THE ATTORNEY GENERAL

*Respondent (Defendant)*

Order of  
the Court  
of Appeal  
Granting  
Leave  
to Appeal  
to the  
Privy  
Council

BEFORE THE HONOURABLE SIR GEOFFREY BRIGGS, CHIEF  
JUSTICE, MR. JUSTICE HUGGINS AND MR. JUSTICE PICKERING IN  
COURT.

10

ORDER

Upon hearing Counsel for the Appellant and Counsel for the Respondent  
IT IS ORDERED that: –

1. leave be granted to the Appellant to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Court pronounced on the 23rd day of November, 1977;
2. the Appellant do enter into good and sufficient security to the satisfaction of the Registrar in the sum of \$15,000.00 within three months from the date hereof for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant's not obtaining an Order granting him final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal;
3. the Record be prepared and be dispatched within three months from the date hereof;
4. the costs of this Application be costs in the Appeal. Dated the 22nd day Dated the 22nd day of December, 1977.

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Sd. P.A.G. Cameron (L.S.)  
Assist. Registrar.