

Privy Council Appeal No. 17 of 1978

Lai Man Yau - - - - - *Appellant*

v.

The Attorney General - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER 1978

Present at the Hearing :

LORD DIPLOCK
LORD HAILSHAM OF SAINT MARYLEBONE
LORD SALMON
LORD EDMUND-DAVIES
LORD KEITH OF KINKEL

[Delivered by LORD SALMON]

The appellant joined the Royal Hong Kong Police Force on 13th July 1936. Whilst he remained a member of that Force he was clearly a Crown servant. In July 1969, when he was a Staff Sergeant, he resigned from the Force and ceased to be a Crown servant.

In December 1970 the Prevention of Bribery Ordinance, Cap. 201, was enacted; it was brought into force on 14th May 1971, nearly two years after the appellant had ceased to be a Crown servant. On 5th January 1977 the appellant was arrested (and then released on bail) for an alleged offence contrary to section 10(1)(b) of the Ordinance. That subsection 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.”

The maximum sentence upon a conviction on indictment for this offence is H.K.\$100,000 and imprisonment for ten years. The court has power also to order a person so convicted to pay the Crown a sum not exceeding the value of the property or resources in question.

Section 10(2) provides (amongst other things) that if an accused's wife holds property on behalf of the accused or acquires property as a gift from the accused, such property shall, until the contrary is proved, be presumed to be in the control of the accused. On the hearing of an Originating Summons, to which reference will presently be made, affidavit evidence was adduced on behalf of the Attorney General that between December 1951 and November 1966 a number of properties had been acquired in the name of the appellant's wife for prices amounting in all to over H.K.\$1,450,000.

On the same day as the appellant was arrested, a magistrate, on an application by the Commissioner of the Independent Commission Against Corruption, made an Order under section 17A of the Ordinance for the appellant to surrender any travel document in his possession to the Commissioner. On 4th February 1977 the Commissioner caused a Notice to be served upon the appellant under section 14A(1) of the Ordinance prohibiting him from disposing of or otherwise dealing with any interest he had in any of the properties specified in the Notice.

On 24th May 1977 the appellant issued an Originating Summons against the Attorney General seeking a declaration that he could not be prosecuted under section 10(1)(b) of the Ordinance because he was not and had not been a Crown servant since the Ordinance came into force. In this Originating Summons the appellant also sought declarations that the magistrate's Order and the February Notice, referred to above, were each null and void. It has been conceded throughout by both parties that the issue in relation to each of the declarations sought in the Originating Summons turns exclusively upon the true construction of the opening words of section 10(1)(b) (*ibid.*). On the hearing of the Originating Summons Cons J. gave judgment refusing the declaration sought. The Court of Appeal unanimously dismissed the appeal from that judgment, and the appellant now appeals to Her Majesty in Council from the decision of the Court of Appeal.

For the cogent reasons so clearly stated in the judgments of the Court of Appeal, their Lordships are satisfied that this appeal cannot succeed. The matter might well be left there but for the very able argument addressed to this Board by Counsel for the appellant.

It is common ground that if the language of a statute is plain and unambiguous it must be enforced although it should lead to absurd or unjust results. If, however, the language of a statute is reasonably capable, without being distorted, of more than one meaning, the Courts should prefer the meaning which leads to a sensible and just result although it may not be the most literal meaning of the statutory language. See *Johnson v. Moreton* (H.L.) [1978] 3 W. L. R. 538 in which the authorities on this topic are reviewed. It is also well-established that to give a retrospective effect to a statute, particularly a penal statute, is normally unjust and should be avoided if it is possible to do so without doing violence to the language of the statute: *Young v. Adams* [1898] A.C.469.

In considering the meaning of the words "any person who being or having been a Crown servant" in section 10(1)(b) (*ibid.*) Briggs C.J. said that if the appellant were to be asked, "Have you been a Crown servant?" he would obviously answer, "Yes", and that, *prima facie*, therefore, the section applies to him. Counsel for the appellant, however, argues that the answer might well have been, "Yes, but only before the Ordinance came into operation", and that the words "since the coming into operation of this Ordinance" should be read into section 10(1)(b)

after the words "having been a Crown servant". Unless these words are added, so the argument runs, section 10(1)(b) will have a retrospective effect; it will create a new offence which punishes former Crown servants for bribes they received before the Ordinance came into operation. It is, however, a strong thing to read into an Act of Parliament or an Ordinance words which are not there; and in the absence of clear necessity it is a wrong thing to do. This proposition has never been doubted and has frequently been endorsed. See *Thompson v. Goold & Co.* [1910] A.C.409 *per* Lord Mersey at p.420.

Their Lordships, in spite of the attractive argument by Counsel for the appellant, consider that there is certainly no necessity to make the proposed addition to section 10(1)(b). Indeed, if it were made, the subsection would still operate retrospectively and would also lead to absurd results. Suppose that one police sergeant retired on 15th May 1971, the day after the Ordinance came into effect, and another police sergeant retired on the 13th May, and that neither could give a satisfactory explanation to the Court as to how property which was disproportionate to his past emoluments had come into his control. The first police sergeant would be guilty of an offence, and would, in effect, be punished for bribes he had taken before the Ordinance came into operation. The second police sergeant, however, who was in exactly the same position as the first, except that he had retired two days earlier, would go free. This cannot have been intended when the Ordinance was enacted, and there can be no justification for adding words to the subsection which would produce such a bizarre result. It is impossible not to give section 10(1)(b) retrospective effect without rewriting the whole subsection, which, of course, is not feasible on any view.

Reliance has been placed by the appellant upon the title of the Ordinance. The title, however, cannot alter the unambiguous meaning of any provision in the Ordinance. It has also been argued that the object of the Ordinance was to prevent bribery after it came into operation, since it is impossible for the Ordinance to prevent bribery which has already taken place. No doubt this is true, but there is no ground for thinking that the operation of section 10(1)(b) as construed by the Court of Appeal would not constitute a strong deterrent against any Crown servant accepting bribes in the future.

It has been said that the Ordinance is a draconian measure. No doubt it is. But when bribery and corruption become so rife that they seriously undermine the whole fabric of society, such measures may well be necessary. In any event, it is not for the Courts to decide whether or not an Ordinance ought to have been passed but only what it means once it is passed, and then to enforce it. Their Lordships consider that the language of section 10(1)(b) is clear and unambiguous and can bear only the meaning attributed to it by the Court of Appeal.

Their Lordships will accordingly humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the respondent's costs of this appeal.

In the Privy Council

LAI MAN YAU

v.

THE ATTORNEY GENERAL

DELIVERED BY
LORD SALMON