

34 OF 1969
No. of 1970

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)

BETWEEN :

THE ATTORNEY GENERAL OF HONG KONG Appellant

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PAT CHUIK-WAH
YEUNG KWONG-FAT
SHUM KIANG-BOT
NG SHIN-WOO

UNIVERSITY OF LONDON
and
INSTITUTE OF ADVANCED
LEGAL STUDIES
- 7 APR 1972
25 RUSSELL SQUARE Respondents
LONDON, W.C.1.

CASE FOR THE RESPONDENTS

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1. This is an Appeal by Special Leave from a Judgment of the Supreme Court of Hong Kong (Appellate Jurisdiction) (Rigby, S.P.J. and Mills-Owen, J., Hogan, C.J., dissenting) dated 20th March 1969, dismissing (by a majority) an appeal, by way of case stated, by the Appellant from a decision of the District Court of Hong Kong (Cons, District Judge) dated 16th September 1968, upon a submission of no case, acquitting the Respondents of seven charges preferred against them by the Appellant under the Forgery Ordinance, Ch.209 of the Laws of Hong Kong.

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2. The offences with which the Respondents, or one or others of them, were charged related to alleged forgery of British National Insurance Stamps, and were as follows :

(a) Under section 4 (2) (a) of the Forgery Ordinance, of the forgery of valuable securities, the forgery being with intent to defraud, and the valuable securities being purported British National Insurance Stamps;

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- (b) Under section 10 (3) of the Forgery Ordinance, of being in possession of forged documents without lawful authority or excuse, such forged documents being the said purported British National Insurance Stamps;
- (c) Under section 11 (d) of the Forgery Ordinance, of being in possession of implements of forgery, the possession being without lawful authority or excuse, and the implements being photographic negatives, the prints from which bore numerals letters and devices peculiar to British National Insurance Stamps 10
- (d) Under section 11 (d) of the Forgery Ordinance, of being in possession of implements of forgery, the possession being without lawful authority or excuse, and the implements being metal plates engraved with numerals letters marks and devices peculiar to British National Insurance Stamps; 20
- (e) Under section 11 (d) of the Forgery Ordinance, of being in possession of
- (f) implements of forgery, the possession being without lawful authority or excuse, and the implements being of the same nature as those referred to in (c) and (d) above;
- (g) Under section 11 (e) of the Forgery Ordinance, of being in possession of implements of forgery, the possession being without lawful authority or excuse, and the implements being a piece of tracing paper bearing numerals and a device which resembled numerals and a device peculiar to British National Insurance Stamps 30

3. At the trial of the Respondents, which took place on the 2nd, 3rd, 4th, 5th and 7th September, 1968, evidence was led by the prosecution to establish that on the 18th July 1968, a police party from the Commercial Crime Office raided certain premises at Kowloon, and there found the second Respondent in the act of printing adhesive stamps. The first Respondent was the manager and part owner of the printing press which was being used. The third Respondent had 40

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been a party to the production of certain photographic materials used in the printing process. The fourth Respondent was the wife of the third Respondent and shared a room with him, in which some of these photographic materials were found.

10 4. At the conclusion of the case for the prosecution, the learned District Judge acquitted all the accused of all the charges. In acquitting on the second charge, (that is, the charge under section 10 (3)), he observed that there was an inconsistency between that charge and the charge under section 4 (2) (a). If the second charge, being one going to possession, as opposed to forgery, was intended as an alternative, then the appropriate section for the charge was Section 10 (2). This was because section 7 (4) dealt with the forgery of seals or dies and, by reason of the definition section (section 2), stamps of the kind before him were equated with seals and dies. Therefore a charge of possession ought to be one drawn under the sub-section dealing with possession of seals or dies, and not the sub-section dealing with possession of documents known to be forged.

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30 5. On the 13th September, 1968, the Appellant acting under the District Court Ordinance, Section 38, applied to the learned District Judge to state a case for the opinion of the Full Court. This appeal was against the acquittal of the accused on the charges brought under Sections 4 (2) (a) and 11 only.

40 6. On the 29th October, 1968, the learned District Judge stated a case for the opinion of the Full Court. The case so stated showed that the learned District Judge had acquitted the Respondents of the charge under section 4 (2) (a) because he was of opinion that British National Insurance Stamps were not 'valuable securities' within the meaning of section 2 of the Forgery Ordinance, and the Respondents were acquitted of the charges under section 11 on the ground that such stamps were not: "Documents entitling or evidencing the title of any person to any share or interest in any public fund of

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any part of Her Majesty's Dominions" within section 11 of the Ordinance.

7. The learned District Judge found the following facts:

- (i) The scheme of national insurance in the United Kingdom provides for the payment of weekly contributions into a fund known as the National Insurance Fund at varying rates. The fund was at the material time under the control and management of the Minister of Pensions and National Insurance [National Insurance Act, 1965 - 1967]. 10
- (ii) Entitlement to the various benefits depends upon the number of contributions of the appropriate class by a claimant.
- (iii) Contributions are payable by affixing a stamp to an insurance card kept by or on behalf of an insured person in the space indicated for that purpose upon the card (National Insurance [Collection of Contributions] Regulations, S.1, 1958, No. 1274 Reg. 6 (1)). The cards are surrendered to the Ministry when making a claim for benefits. 20
- (iv) A stamp means an adhesive insurance stamp or, as the case may be, a stamp impressed in accordance with the National Insurance [Collection of Contributions] Regulations, Reg. 1. (2); The National Insurance and Industrial Injuries (Stamps) Regulations 1967 (the Schedule) S.1 1967 488). 30
- (v) Immediately after a stamp has been affixed to an insurance card it must be cancelled by writing in ink, or stamping the date upon which it is affixed. (Reg. 6 (7) (a) of the Collection of Contributions Regulations).
- (vi) For the purpose of the payment of contributions, insurance stamps must be prepared and issued in such manner as the Postmaster General, with the consent 40

of the Treasury, may direct National Insurance Act 1965, s.14 (2)

(vii) The stamps are obtainable only from Post Offices in the United Kingdom.

10 (viii) Allowance must be made by the Commissioner of Inland Revenue for any insurance stamp which has been inadvertently or undesignedly spoiled or rendered unfit for use before being affixed to an insurance card, and the Commissioner may repay the value of any stamp to any person having in his possession an insurance stamp for which he has no immediate use if it has not been spoiled or rendered unfit for use. (Stamp Duties Management Act 1891, ss.9, 11, 12, 27 as applied by the National Insurance and Industrial Injuries (Stamps) Regulations 1967).

20 8. That on the 20th March 1969, the Supreme Court of Hong Kong, sitting in its Appellate Jurisdiction, dismissed the Appellant's appeal by a majority, the learned Chief Justice, who dissented, being in favour of allowing the appeal.

30 9. Rigby, S.P.J., who delivered the leading judgment for dismissing the appeal referred first to section 7 (4) (a) of the Ordinance. This section, he said, "deals with the forgery of seals or dies. Under section 2 of the Ordinance, 'die' includes a 'stamp', and a 'stamp' is itself defined to include a stamp 'impressed by means of a dies as well as an adhesive stamp'." The Crown had conceded that section 7 (4) (a) might well have been the appropriate section under which to draft the charge of forgery, but had contended that the charge might also be preferred, under section 4 (2) (a), as forgery of a 'valuable security'.
40 If this was correct, the curious position arose that the Crown might elect to charge either under a section carrying a maximum penalty of seven years imprisonment, or, alternatively, under one carrying a maximum penalty of fourteen years imprisonment, for precisely the same offence. This, although not necessarily a valid reason for a charge not being brought under section 4 (2) (a), was a blatant

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inconsistency. For a charge under section 4 (2) (a) to succeed, it must be possible, as a matter of law, to regard an insurance stamp as a 'valuable security'. As a matter of ordinary common parlance, the learned Judge felt himself unable to regard an unused or unstamped stamp as falling within the ordinary meaning of 'valuable security'. The question was therefore whether such stamp fell within the extended definition of 'valuable security' contained in section 2. The Crown had conceded that it could not successfully be argued that an unused National Health Insurance Stamp was a 'writing entitling or evidencing the title of any person to a share or interest in any public fund', and that such argument could only arise when a stamp had been affixed to a card and cancelled, so as to give the contributor a claim to benefits out of the fund. Further, the Crown attached no weight to the proposition that an insurance stamp could be described as an 'accountable receipt'. The weight of the argument was that an insurance stamp was 'an instrument evidencing the payment of money'; 'instrument' and 'document' were synonymous terms. In the view of the learned Judge, 'instrument', must be construed in the light of the facts of each case and having regard to the mischief which the section was intended to avert. But the definition 'document' contained in the Interpretation Ordinance was of such breadth, that, for example, it embraced a coin. In his judgment the word 'instrument' within the definition of 'valuable security' meant and included some document of a formal nature which, on the face of it, evidenced the right of the person to the payment of money or the delivery of a chattel. The learned Judge expressed himself as quite unable to appreciate how an unstamped National Health Insurance Stamp, unaffixed to any card, could be said to be such an instrument. He came more readily to that conclusion because sections 4, 5, and 6 of the Ordinance drew a clear distinction between the forgery of different types of documents and attached varying degrees of punishment; further, section 7 expressly, and in his view exclusively, provided for the forgery of adhesive stamps. In his judgment the trial Judge was perfectly

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correct in holding that there was no case for the Respondents to answer.

10. Mills-Owen, J. agreed with Rigby, S.P.J., that forged insurance stamps were not 'valuable securities' within the meaning of the Ordinance, but left open the question as to whether such forgery comprised an offence under Section 7 (4) (a) of the Ordinance. The learned Judge first summarised the arguments advanced on behalf of the Crown and the Respondents. The Crown had argued that the alleged forged stamps were forgeries of a 'valuable security' within the normal meaning of the phrase; alternatively within its statutorily extended meaning, save that, as to the extended meaning, they fell either under 'writing 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' or 'receipt or other instrument evidencing the payment of money'. The Crown had, rightly, placed little, if any, reliance on the 'public fund' argument, for, in the view of the learned Judge, it would be straining the language of the definition beyond proper limits so to regard an insurance stamp. The argument for the Respondents had been that the stamps were not 'documents' for the purposes of the law of forgery, or, alternatively, if they were 'documents' they fell to be treated exclusively under section 7 (4) (a) of the Ordinance. There was, however, in his Lordship's view, also the question as to the extent to which the definition 'valuable security' could be extended in any event to documents made or intended to be operated as valuable securities out of the Hong Kong jurisdiction. The definition of 'valuable security', insofar as it related to public funds, expressly included United Kingdom funds, and section 11 had a similar provision; the doubt was whether a 'foreign' stamp could be regarded as a 'receipt or other instrument evidencing the payment of money'. On the one hand the provisions in early English Acts extended the law of forgery to the forgery of documents out of the jurisdiction and instruments payable out of the jurisdiction, but these provisions were not repeated in the Forgery Act,

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1913, upon which the Hong Kong Ordinance was closely modelled. On the other hand, section 3 (3) (a) of the Ordinance, like section 1 (3) (a) of the 1913 Act, provided that it was immaterial in what place within or without Her Majesty's Dominions the document was 'expressed' to take effect. As this point had not been argued, his Lordship did not propose to pursue it.

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11. Dealing with the argument that if the stamps fell within the Ordinance at all they fell exclusively within section 7 (4) (a), Mills-Owen J. noted that the corresponding English provision, Section 5 (4) (a) was in narrower terms, being confined to dies of the Inland Revenue and the Customs and Excise. It was no doubt partly for this reason that, in England, the making of fictitious postage stamps was dealt with by the Post Office Act. As to whether insurance stamps fell within, and if so exclusively within, Section 7 (4) (a), this was a matter of construction of the Forgery Ordinance as a whole, and no initial presumption arose that if an act or omission fell within the ambit of one part of the enactment it was excluded from another part. In the case of the Forgery Ordinance there was some basis for saying that the intention was to distinguish several forms or types of forgery and distinguish further between the more and less serious frauds, and make separate provision for each. It might well be that some documents could fall within more than one class, but the counterfeiting of seals and dies did form a class of their own. However, as this aspect of the case had not been fully argued, his Lordship did not wish to decide finally whether Section 7 (4) (a) was appropriate and, if so, exclusively applicable to the making of fictitious stamps.

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12. Mills-Owen J. then dealt with the contention of the Crown that National Insurance stamps fell within the expression 'valuable security' or within the meaning: 'other instrument evidencing the payment of money'. Although, no doubt, 'document' included a valuable security, a 'valuable security' must, in his lordship's view, be more than a mere document. Further, although a stamp might be a document, it could not be said to be an 'instrument'. 'Valuable security' in its

ordinary meaning must mean an instrument by or under which a fixed or ascertainable sum of money was secured. As such it would not include a simple receipt. The object of the definition section was to extend the ordinary meaning of the phrase, and the legislature, in 1913, in extending the meaning, no doubt had in mind cases decided prior to that year. The legislature had extended the meaning to embrace receipts and instruments evidencing the payment of money because it was necessary to cover the situation where there was forgery of something like a receipt or other acknowledgement in order to obtain money properly due to some one else. As insurance stamp could not be regarded as such an instrument.

13. Hogan, C.J., who delivered a judgment in favour of allowing 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 moneys 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 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 'instrument' and 'writings' were synonymous; that no particular significance attached to the

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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 only 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 fact of the stamp was immaterial, for the 'document' or 'instrument' had to be read in its own context. 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. 10 20

14. 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 stamps were to be regarded as 'stamps or impressions of a seal or die'. His Lordship 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. 30 40

15. The Respondents respectfully make the following submissions :-

- (a) The only point on the appeal is whether British National Insurance Stamps are "valuable securities" within the definition of the Forgery Ordinance (Section 2) which is identical to the definition contained in Section 18 of the Forgery Act 1913 (as amended).
- 10 (b) Whether any document is a "valuable security" or not depends on the proper interpretation of the law and not on any broad commonsense viewpoint.
- (c) Section 2 of the Forgery Ordinance contemplates three categories of writings, some of which describe stamps:
- (i) Writing entitling or evidencing the title of any person to matters specified therein
- 20 (ii) Accountable receipt
- (iii) "Receipts" or other instruments evidencing payment of money
- (d) Stamps, moreover, have never been regarded in law as "valuable securities" in the absence of any specific statutory provision. History of legislation on forgery bears out this submission.

16. The Respondents humbly submit that the majority Judgments of the Supreme Court of Hong Kong that British National Stamps are not "valuable securities" within the meaning of the Forgery Ordinance are right, and this appeal should be dismissed with costs awarded to the Respondents for the following among other

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- (1) BECAUSE a British National Insurance Stamp whether cancelled or not is not a "writing entitling or evidencing the title of any person to any share or interest in any public fund".

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- (2) BECAUSE the Forgery Ordinance does not extend to the counterfeiting or falsification of such things as stamps.
- (3) BECAUSE British National Insurance Stamps do not fall within the expression "valuable security" as ordinarily understood, quite apart from any statutory definition.
- (4) BECAUSE the Judgments of Rigby S.P.J. and Mills-Owen J. are right and ought to be upheld.
- (5) BECAUSE the Judgment of Hogan C.J. is wrong and ought not to be upheld.

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L. J. BLOM-COOPER

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)

B E T W E E N

THE ATTORNEY GENERAL OF
HONG KONG Appellant

- and -

PAT CHUIK - WAH
YEUNG KWONG - FAT
SHUM KIANG - BOT
NG SHIN - WOO Respondents

CASE FOR THE RESPONDENTS

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