

The Attorney-General of Hong Kong - - - - *Appellant*

v.

Pat Chiuk-Wah and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND MARCH 1971

Present at the Hearing :

LORD HODSON
LORD DONOVAN
LORD DIPLOCK

[*Delivered by* LORD DIPLOCK]

The questions in this appeal are whether Insurance Stamps issued pursuant to Regulations made under the National Insurance Act, 1965, of the United Kingdom constitute:

- (1) "valuable securities", for the purpose of supporting a charge of forgery under section 4(2)(a) of the Forgery Ordinance, Hong Kong, and
- (2) a "document . . . evidencing the title of any person to any . . . interest in any public . . . fund . . . of any part of Her Majesty's dominions", for the purpose of supporting a charge under section 11(d) of the same Ordinance.

The District Judge answered both these questions: "No". His decision was upheld upon appeal by case stated by a majority of the Supreme Court of Hong Kong (Rigby, S.P.J. and Mills-Owen, J.) Hogan, C.J. dissented.

Section 4 of the Forgery Ordinance, so far as it is relevant, reads as follows:

4. "(2) Forgery of the following documents, if committed with intent to defraud, shall be felony and punishable with imprisonment for fourteen years—
 - (a) any valuable security or assignment thereof or indorsement thereon, or where the valuable security is a bill of exchange, any acceptance thereof."

Section 2 contains an extended definition of "valuable security" as follows:

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

dominions, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order or other security for the payment of money or any authority or request for the payment of money or for the delivery or transfer of goods or chattels, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money or the delivery of any chattel personal.”

The Attorney-General of Hong Kong contends that National Insurance stamps, even if not included within the expression “valuable securities” in its ordinary meaning, fall within the words “any receipt or other instrument evidencing the payment of money”. It is accordingly necessary to see what is the function of these stamps under the United Kingdom legislation.

National Insurance stamps are issued for the purposes of the United Kingdom National Insurance Act, 1965.

That Act by section 83 makes provision for a National Insurance Fund into which are to be paid all contributions payable under the Act by insured persons and their employers, and out of which are to be paid *inter alia* all claims for benefits. Sections 2 to 7 impose upon insured persons or their employers a statutory liability to pay weekly contributions to the Fund. The amounts of the contributions are expressed in shillings and pence. Section 14, which provides for regulations to be made by the Minister, contemplates that those regulations may provide for contributions to be payable by means of adhesive insurance stamps to be sold through any Post Office.

The National Insurance and Industrial Injuries (Collections and Contributions) Regulations, 1948, which remain in force under the Act of 1965, provide by Regulation 2 for the issue to every insured person of an insurance card. Regulation 6 provides for the payment of weekly contributions by affixing insurance stamps to the insurance card for the appropriate weeks for which those contributions are made.

The Act provides for payment out of the Fund of twelve different kinds of benefit to insured persons. The insured person’s entitlement to benefit, of which “unemployment benefit” dealt with in section 19 of the Act is a typical example, is dependent *inter alia* upon his having paid a specified minimum number of contributions into the Fund.

The National Insurance Act, 1965, thus places upon the insured persons and employers to whom it relates a statutory obligation to pay money into the National Insurance Fund. The actual payment of money is made by the contributor to the Post Office, in return for which he receives a National Insurance stamp. It is not, however, credited to him as a contribution to the National Insurance Fund until it is affixed to his National Insurance card. There is also provision for repayment of its value to the person in possession of a stamp which he does not need for affixing to a card.

Their Lordships, in agreement with the dissenting judgment of the Chief Justice, are inclined to the view that a National Insurance stamp falls within the ordinary meaning of a “valuable security”; but they have no doubt that it clearly evidences “the payment of money” by or on behalf of the contributor, so as to bring it within the extended meaning. It has been argued for the respondents that, even if the stamp evidences the payment of money it is nevertheless not an “instrument” as required by the extended definition. In their Lordships’ view, the expression “instrument” in the context of the Forgery Ordinance is not confined to a formal document, but includes any document intended to have some

effect, as evidence of, or in connection with, a transaction which is capable of giving rise to legal rights or obligations. The stamp fulfils this requirement.

Their Lordships are accordingly of the opinion that a National Insurance stamp of the United Kingdom falls within the words of the definition of "valuable security", viz. "any receipt or other instrument evidencing the payment of money" and that the offence under section 4(2)(a) of the Forgery Ordinance was made out. They agree with the dissenting judgment of Hogan C.J. His careful and cogent citation of the relevant authorities makes it unnecessary for their Lordships to refer to them.

In order to constitute an offence under section 11(d) of the Forgery Ordinance it is not sufficient that the stamp should be an instrument evidencing the payment of money. It must fall within the words in section 11(c) "any document . . . evidencing the title of any person to any share or interest in any public . . . fund . . . of any part of Her Majesty's dominions."

In their Lordships' view, "interest" in a fund includes a contingent interest. The entitlement of a contributor to various types of benefit under the National Insurance Act, 1965, is dependent upon his having affixed to his National Insurance card a specified minimum number of stamps. The Insurance card, with the stamps affixed to it, thus evidences his title to a contingent interest to be paid out of the National Insurance Fund the amount of the benefits to which the Act entitles him upon satisfying the other relevant conditions laid down in the Act.

It has been contended for the respondents that until the stamp has been affixed to a National Insurance card it does not become evidence of the title of any person to an interest in the Fund. Their Lordships agree with the Chief Justice that the answer to this contention is to be found in section 3(3)(b) of the Forgery Ordinance. So far as is relevant, it provides:

3. (3) "(b) forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law."

In their Lordships' view it does not matter that the stamp until it is affixed to the card so as to form a composite document of which the stamp is a part would not be sufficient in law to evidence the title of a contributor to an interest in the National Insurance Fund.

Their Lordships will accordingly humbly advise Her Majesty that this appeal should be allowed. As the Attorney-General for Hong Kong has stated that no further proceedings are to be taken against the respondents, there is no need to remit the case to the District Court.

In the Privy Council

**THE ATTORNEY-GENERAL OF
HONG KONG**

v.

PAT CHUK-WAH AND OTHERS

DELIVERED BY
LORD DIPLOCK