

Judgment
56/1964

IN THE PRIVY COUNCIL

No. 26 of 1963

ON APPEAL
FROM THE FULL COURT OF HONG KONG

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :-

SIN POH AMALGAMATED (H.K.) LIMITED

(Plaintiffs)
Appellants

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- and -

THE HONOURABLE THE ATTORNEY-GENERAL

(1st Defendant)
First Respondent

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- and -

WILLIAM ALEXANDER BLAIR-KERR

(2nd Defendant)
Second Respondent

C A S E FOR THE FIRST AND SECOND RESPONDENTS

RECORD

1. This is an Appeal from a Judgment, dated the pp. 7-25
3rd April, 1963 of the Full Court of Hong Kong
(Hogan, C.J. Rigby, S.P.J., and Huggins, Actg. P.J.)
dismissing the Plaintiffs' claim.

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2. The Appeal concerns the powers of the Governor
in Council in Hong Kong, acting under the
Commissioners Powers Ordinance (c.86 of 1950) to
appoint a single commissioner for the purpose of
conducting an enquiry. By a warrant dated the 12th
February 1963, the Governor in Council appointed
the Honourable Mr. Justice W. A. Blair-Kerr, the
Second Respondent, a commissioner for the purpose of
instituting, making and conducting an enquiry in
accordance with certain terms specified in the said
warrant. The Commissioner duly commenced the
enquiry but in the course of the hearing the point
was taken by the Appellants, who were represented
at the enquiry, that, on a true reading of the
Commissioners Powers Ordinance, the Governor in
Council, when appointing a commission, had power

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only to appoint two or more commissioners and had no power to appoint a single commissioner. The Appellants claimed therefore that the Commissioner, in purporting to conduct the enquiry, was acting without jurisdiction. The Commissioner heard argument and ruled that the Governor in Council had power to appoint a single commissioner and hence that he (the Commissioner) had jurisdiction.

p. 2 3. Thereafter the Appellants commenced an action against the Respondents in the Supreme Court of Hong Kong. By their Statement of Claim they sought, inter alia: 10

- (a) a declaration that the appointment of the commission was illegal ultra vires null and void;
- (b) a declaration that the Appellants were not bound to attend the enquiry, or give evidence, or produce documents;
- (c) injunctions to restrain the Second Respondent
 - (i) from proceeding with the enquiry and 20
 - (ii) from exercising any of the powers contained in section 3 of the Commissioners Powers Ordinance and conferred upon him.
- (d) an order that the Second Respondent do deliver up to the Appellants all documents belonging to them but in his custody.

p. 5 4. Following upon this Statement of Claim a Special Case was agreed between the parties hereto and stated for the opinion of the Full Court. By the Special Case, which was dated the 27th March 1963, the questions for the opinion of the Court were: 30

p. 6

- (a) whether the Governor in Council was empowered by section 2 of the Commissioners' Powers Ordinance to appoint the Second Respondent as sole commissioner;
- (b) whether the Appellants were bound to attend the enquiry or give evidence or produce documents thereat;

- (c) whether the Second Respondent was entitled to proceed further with the enquiry or exercise any of the powers conferred by section 3 of the Commissioners' Powers of Ordinance;
- (d) whether the Second Respondent was entitled to retain documents belonging to the Appellants given into his custody in the course of the enquiry.

The Special Case then continued:-

p.6 L.34

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"If the Court shall be of opinion in the negative of the said questions, then Judgment shall be entered for the Plaintiff. If the Court shall be of the opinion in the Affirmative of the said questions, then Judgment shall be entered for the Defendants".

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5. The Commissioners Powers Ordinance (c.86 of the 1950 Edition of the Laws of Hong Kong) became law in 1886, but additions were made to it by two amending Ordinances in 1959. The Ordinance refers throughout to "Commissioners" in the plural, and contains a number of procedural directions which could be of relevance only to commissions comprising more than one commissioner. The Amended Ordinance provides, inter alia, as follows:

"Commissioners Powers"

"To enable the Governor to appoint commissioners for conducting inquiries"

Section 1. This Ordinance may be cited as the Commissioners Powers Ordinance

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Section 2. The Governor in Council shall have power -

(a) to nominate and appoint commissioners under the public seal for the purpose of instituting making and conducting any inquiry that may be deemed advisable and for reporting thereon, and.....

(d) to fix the quorum at meetings of commissioners where more than two are appointed.

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Section 3. All commissioners so appointed shall have all or any of the powers, rights and privileges following:

(a) and in such cases a summons under the hand of the Chairman or presiding member of any such commission..... may be substituted for and shall be equivalent to any form of process capable of being issued in any action or suit for enforcing the attendance of witnesses.....

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(b) the power for the purposes of their commission to enter and view any premises....."

6. The Interpretation Ordinance (c.1 of the 1950 Edition of the Laws) is a replacement of earlier Ordinances of which the Interpretation Ordinance of 1867 was in force in 1886. The Ordinance provides, inter alia, as follows:-

"Section 2(1) Save where the contrary intention appears either from this Ordinance or from the context of any enactment or instrument, the provisions of this Ordinance shall apply and shall apply only to this Ordinance and to all enactments now or hereafter in force made by competent authority in the Colony and to any instrument made or issued under or by virtue of any such enactment".

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"Section 3 (5) (a) words importing the masculine gender include females.

(b) Words in the singular include the plural and vice versa".

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"Section 19(2) Where any enactment confers a power or imposes a duty on the holder of an office, as such, the power may be exercised and the duty shall be performed by the holder for the time being of the office or by any person appointed to act in or perform the duties of the said office for the time being.

"Section 22. Where by or under any enactment, power is given to the Governor, or to the Governor in Council, or to any public officer or body, to appoint any board, tribunal,

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commission, committee, or similar body, then, in the absence of any provision to the contrary, it shall be lawful for the Governor, or the Governor in Council, or such public officer or body as the case may be, to appoint a Chairman of such board, tribunal, commission, committee, or similar body".

10 "Section 23. Where by or under any enactment, the Governor, or the Governor in Council, or any public officer or body, is empowered to
20 appoint or name a person to be a member of any board, tribunal, commission, committee, or similar body, or to have and exercise any powers or perform any duties, the Governor, or the Governor in Council, or such public
30 officer or body, as the case may be, may either appoint a person by name or direct the person for the time being holding the office designated by the Governor, or by the Governor in Council, or by such public officer or body as the case may be, to be a member of such board, tribunal, commission, committee, or similar body, or to have and exercise such powers and perform such duties; and thereupon, as from the date specified by the Governor, or by the Governor in Council, or by such public officer or body, as the case may be, the person appointed by name or the person for the time being holding such office shall be a member of such board, tribunal, commission, committee, or similar body, or shall have and may exercise such powers and perform such duties accordingly"

"Section 28. Whenever any act or thing is required by any enactment to be done by more than two persons, a majority of them may do it".

40 7. In his judgment delivered on the 3rd April 1963 the learned President of the Full Court (Hogan C.J) held that section 2(1) of the Interpretation Ordinance placed upon the Appellants the burden of showing sufficient contrary intention to exclude the provisions of Section 3(5)(b) of the Interpretation Ordinance. He held further that:

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p.13 L.1

"Neither the use of the word
"Commissioners" in Section 2(a) nor words

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implying the plural in subsequent provisions seems to me to reveal a contrary intent sufficient to prevent Section 3(5) of the Interpretation Ordinance having its usual effect".

pp.13 & 16
p. 15 L.41

Rigby, S.P.J. and Huggins Act. P.J. delivered concurring judgments, Rigby S.P.J. held that the Appellants had failed to rebut the statutory presumption arising under the Interpretation Ordinance that words in the plural include the singular. Huggins Actg. P.J. held that the language of the Commissioners Powers Ordinance did not sufficiently disclose an intention to exclude the provisions of the Interpretation Ordinance.

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p. 25 L.13

8. The Respondents respectfully submit that the judgment of the Full Court was right. It is submitted that taking into account section 2(1) of the Interpretation Ordinance the burden of showing that the law of Hong Kong does not permit the appointment, under the Commissioners Powers Ordinance, of a single commissioner lay upon the Appellants, and that the Appellants failed to discharge this burden. It is further submitted that neither the Commissioners Powers Ordinance nor the Interpretation Ordinance itself disclose any intent to exclude the application of Section 3(5)(b) of the latter Ordinance to the provisions of the former Ordinance.

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9. It is admitted that the intention of the Hong Kong Legislature; as expressed in the Commissioners Powers Ordinance, was that it should be possible for more than one commissioner to be appointed. This being so it was necessary for the Ordinance to make administrative provisions for cases in which there might be more than one commissioner, for example, the provision as to who was to sign a summons. It was not necessary for such provisions to be made in the case of the appointment of a single commissioner, for his powers speak for themselves. Therefore, these administrative provisions, while they confirm that there might be more than one commissioner, do not indicate any intent that there should never be a sole commissioner. Further, it is submitted that there is nothing inherent in the expression "commission" to require that it must be held by more than one

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commissioner as opposed to a sole commissioner.

10. It is further submitted that, upon a true reading of the Commissioners Powers Ordinance and the Interpretation Ordinance, it is apparent that the intention of the Hong Kong Legislature in passing the Commissioners Powers Ordinance was that it should be read and applied in the light of the whole of the Interpretation Ordinance. Thus, for example, the Commissioners Powers Ordinance contemplates that where more than one commissioner is appointed there shall be a Chairman, but the power of the Governor in Council to appoint a Chairman is derived from the Interpretation Ordinance and not from the Commissioners Powers Ordinance.

11. The Respondents respectfully submit that the Judgment of the Full Court of Hong Kong was right and ought to be affirmed for the following (amongst other)

R E A S O N S

- 20 (1) BECAUSE neither the Commissioners Powers Ordinance nor the Interpretation Ordinance shows an intention contrary to the application of section 3(5)(b) of the latter Ordinance to the former Ordinance
- 30 (2) BECAUSE the burden of showing that the law of Hong Kong does not permit the appointment, under the Commissioners Powers Ordinance, of a single commissioner lay upon the Appellants and the Appellants did not succeed in discharging that burden.
- (3) BECAUSE on a true reading of the Commissioners Powers Ordinance and the Interpretation Ordinance, it is apparent that the intention of the Hong Kong Legislature was that the former Ordinance should be read and applied in the light of the whole of the latter Ordinance.
- 40 (4) BECAUSE of the other reasons set out in the judgment of the Full Court of Hong Kong.

JOHN L. ARNOLD

GERALD DAVIES

No. 26 of 1963

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C A S E FOR THE FIRST AND SECOND
RESPONDENTS

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Solicitors for the Respondents