P.C.
G.M.B.

Judgment ... 1964

No. ...26..... of 1963..

In the Privy Council

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

SIN POH AMALGAMATED (H.K.) LIMITED
(Plaintiffs) . . . . Appellants

AND

THE HONOURABLE THE ATTORNEY GENERAL
(1st Defendant) . . . . *First Respondent*

WILLIAM ALEXANDER BLAIR-KERR
(2nd Defendant) . . . . *Second Respondent*

RECORD OF PROCEEDINGS

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

78720

CHARLES RUSSELL & Co.,
37, NORFOLK STREET,
STRAND, W.C.2.

Solicitors for the Respondents.

Markby Stewart & Wadesons,
Solicitors,
Moor House,
London Wall, E.C.2.

Solicitors for the Appellants.

No. ....26...... of 1963..

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FROM THE FULL COURT OF HONG KONG

BETWEEN

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(Plaintiffs) . . . . *Appellants*

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RECORD OF PROCEEDINGS

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EXHIBIT

EXHIBIT MARKED	DESCRIPTION OF DOCUMENT	DATE	PAGE
PJG	Exhibit to the Affidavit of Peter John Griffiths	22nd March 1963	

NOTE: No other Exhibits produced at the hearing of the Action.

No. 26 of 1963

In the Privy Council.

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

SIN POH AMALGAMATED (H.K.) LIMITED (Plaintiffs) . . . . *Appellants*

AND

THE HONOURABLE THE ATTORNEY GENERAL
10 (1st Defendant) . . . . *First Respondent*

WILLIAM ALEXANDER BLAIR-KERR (2nd Defendant) . . . . *Second Respondent*

RECORD OF PROCEEDINGS

In the Supreme Court of Hong Kong Original Jurisdiction

No. 1 Writ of Summons.

No. 1

WRIT OF SUMMONS

Action No. 249 of 1963

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

Between	Sin Poh Amalgamated (H.K.) Ltd.	Plaintiffs
20	and	
	The Honourable The Attorney General	1st Defendant
	William Alexander Blair-Kerr	2nd Defendant

ELIZABETH II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her Other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To The Honourable The Attorney General and to William Alexander Blair-Kerr of 7 Albany Flats, Victoria in the Colony of Hong Kong.

We command you that within eight days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of Sin Poh Amalgamated (H.K.) Ltd., a Company incorporated according to law in the Colony of Hong Kong whose registered office is situate at Nos. 177-179 Wanchai Road, Victoria aforesaid, and take notice that, in default of your so doing, the Court may give leave to the Plaintiff to proceed ex parte,

WITNESS The Honourable Sir Michael Hogan, Kt., C.M.G., Chief Justice of our said Court, the 21st day of March, 1963.

(L. S.) 10

C. P. D'Almada e Castro.
Registrar.

STATEMENT OF CLAIM.

The Plaintiffs Claim is for:—

1. A Declaration that the Commission purported to have been appointed by His Excellency the Governor-in-Council under Section 2 of the Commissioners' Powers Ordinance for the purpose of instituting making and conducting an enquiry into the circumstances in which certain articles or reports were published in the Hong Kong Tiger Standard newspaper dated 7th February 1963 and the Sing Tao Jih Pao newspaper dated 20 7th February 1963 and enquire into allegations that one Chan Kin Kin had been ill-treated at the time of and subsequent to his arrest on or about the 9th day of January 1963 was and is illegal ultra vires null and void.

2. A Declaration that the Plaintiffs by themselves their Directors servants employees or otherwise are not bound to attend the said enquiry or give evidence or produce documents thereat.

3. An Injunction to restrain and prohibit the 2nd Defendant from proceeding further with the said enquiry.

4. An Injunction to restrain and prohibit the Second Defendant from exer- 30 cising any of the powers rights or privileges mentioned in Section 3 of the said Ordinance.

5. An Order against the Second Defendant to deliver up to the Plaintiffs all the Plaintiffs' documents in his custody.

6. Further or other relief.

7. Costs.

Sgd. Wilkinson & Grist

Solicitors for the Plaintiffs.

No. 2

In the Supreme Court of Hong Kong Original Jurisdiction

No. 2 Affidavit of Peter John Griffiths.

AFFIDAVIT OF PETER JOHN GRIFFITHS DATED THE 22ND DAY OF MARCH 1963

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central Victoria in the Colony of Hong Kong, Solicitor, hereby make oath and say as follows:-

1. I am a Solicitor of the Supreme Court of Hong Kong and have the conduct of this Action on behalf of the above-named Plaintiff, Sin Poh Amalgamated (H.K.) Ltd., and as such I am authorised to make this Affidavit on behalf of the Plaintiff.

10 2. There is now produced to me marked "PJG" a copy of an announcement made by the Government Information Services giving particulars of the Commission of Enquiry referred to in paragraph 1 of the Writ of Summons issued herein. I verily believe that the said copy is a true copy of the Commission.

3. It will be observed that the Terms of Reference of the said enquiry are set out in the said Exhibit.

4. The Plaintiff Company are the proprietors and the publishers of the Hong Kong Tiger Standard newspaper and the Sing Tao Jih Pao newspaper, both of which are referred to in the Terms of Reference included in the 20 said Exhibit, and as such are interested parties in relation to the proceedings of the said Commission. The said Commission with the Second Defendant acting as sole Commissioner commenced an enquiry pursuant to the terms of the said Exhibit on the 19th day of February, 1963, and such enquiry is still continuing. In the course of the said enquiry, employees of the Plaintiff have been cross-examined as to the circumstances of the publications referred to in the said Exhibit and as to the policy, administration, control and running of the said two newspapers. In addition, the employees have been questioned as to the motives of the said newspapers in publishing the articles referred to and as 30 to the general motives underlying the policy of the two newspapers. The evidence of such employees has been given on oath administered by the direction of the Second Defendant. I understand that a Director of the Plaintiff is at present being called and is presently being questioned.

5. I make this Affidavit in support of the Summons issued herein under Order 27, Rule 2 of the Code of Civil Procedure for an Injunction to restrain the Second Defendant from continuing with the said enquiry.

AND lastly I make oath and say that the contents of this my Affidavit are true.

Sworn, etc.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 3 Summons Inter Partes.

No. 3

SUMMONS INTER PARTES

To The Honourable The Attorney General and to William Alexander Blair-Kerr, the above-named First and Second Defendants respectively.

You are hereby summoned to appear before the Honourable Sir Michael Hogan, Kt., C.M.G., Chief Justice, at his Chambers at the Supreme Court at 2.30 o'clock p.m. on Tuesday, the 26th day of March 1963, on the hearing of an application on the part of the above-named Plaintiff for an Order that the Second Defendant be restrained from proceeding further with an enquiry now proceeding under a Commission purported to have been appointed by His Excellency the Governor in Council under Section 2 of the Commissioners' Powers Ordinance for the purpose of instituting making and conducting an enquiry into the circumstances in which certain articles or reports were published in the Hong Kong Tiger Standard newspaper dated 7th February, 1963 and the Sing Tao Jih Pao newspaper dated 7th February, 1963 and enquire into allegations that one Chan Kin Kin had been ill-treated at the time of and subsequent to his arrest on or about the 9th day of January 1963. 10

And you are to take notice that if you do not appear the Court may consider and deal with the application in a summary way.

This Summons will be attended by Counsel for the above-named Plaintiff.
Dated the 22nd day of March, 1963. 20

(Chopped) C.P. D'Almada e Castro,

Registrar. (L.S.)

No. 4 Appearance of First Respondent.

No. 4

APPEARANCE OF FIRST RESPONDENT

ENTER AN APPEARANCE for the Attorney General the 1st Defendant in this action.

Dated the 25th day of March 1963.

(Sgd.) J.C. McRobert

Counsel for the 1st Defendant herein. 30

No. 5

APPEARANCE OF SECOND RESPONDENT

No. 5 Appearance of Second Respondent.

ENTER AN APPEARANCE for the 2nd Defendant in this action.

Dated the 25th day of March, 1963.

(Sgd.) D.E. D'Almada Remedios

Counsel for the 2nd Defendant herein.

No. 6

SPECIAL CASE

No. 6 Special Case.

This Action was commenced on the 21st day of March, 1963 by Writ
10 of Summons whereby the Plaintiff claimed as follows:—

A Declaration that the Commission purported to have been appointed by His Excellency the Governor in Council under Section 2 of the Commissioners' Powers Ordinance for the purpose of instituting making and conducting an enquiry into the circumstances in which certain articles or reports were published in the Hong Kong Tiger Standard newspaper dated 7th February, 1963 and the Sing Tao Jih Pao newspaper dated 7th February 1963 and enquire into allegations that one Chan Kin Kin had been ill-treated at the time of and subsequent to his arrest on or about the 9th day of January 1963 was and is illegal ultra vires null and void.

20 2. A Declaration that the Plaintiffs by themselves their Directors servants employees or other are not bound to attend the said enquiry or give evidence or produce documents thereat.

3. An Injunction to restrain and prohibit the 2nd Defendant from proceeding further with the said enquiry.

4. An Injunction to restrain and prohibit the Second Defendant from exercising any of the powers rights or privileges mentioned in Section 3 of the said Ordinance.

5. An Order against the Second Defendant to deliver up to the Plaintiffs all the Plaintiffs' documents in his custody.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 6 Special Case.

6. Further or other relief.

7. Costs.

The parties hereto have concurred in stating the question of law arising herein in the following case for the opinion of the Court:—

(1) On the 12th day of February, 1963, His Excellency the Governor in Council in purported exercise of the powers conferred upon him by Section 2 of the Commissioners' Powers Ordinance appointed the Second Defendant as Commissioner for the purpose of instituting making and conducting an enquiry as described in paragraph 1 of the Writ of Summons. Such appointment was notified in the Government Gazette dated the 15th day of February 1963 under the Reference GN 273. 10

(2) On the 19th day of February 1963, the Second Defendant commenced an enquiry pursuant to the said appointment and such enquiry is still continuing.

(3) The Terms of Reference of the Commissioner are set out in the Exhibit to the Affidavit of Peter John Griffiths filed herein on the 22nd day of March 1963.

(4) The Plaintiff is the Proprietor and Publisher of the Hong Kong Tiger Standard newspaper and the Sing Tao Jih Pao newspaper.

The questions for the opinion of the Court are:— 20

(A) Whether His Excellency the Governor in Council was empowered by Section 2 of the Commissioners' Powers Ordinance to appoint the Second Defendant as sole Commissioner.

(B) Whether the Plaintiffs by themselves their Directors servants employees or otherwise are bound to attend the said enquiry or to give evidence or produce documents thereat.

(C) Whether the Second Defendant is entitled to proceed further with the said enquiry and to exercise any of the powers rights or privileges mentioned in Section 3 of the Commissioners' Powers Ordinance. 30

(D) Whether the Second Defendant is entitled to retain documents of the Plaintiff given into his custody in the course of the said enquiry.

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.

The parties agree that the question of costs shall be decided by the Court at the hearing of this Special Case and shall be entered in the Judgment accordingly.

Dated the 27th day of March, 1963.

(Sgd.) Wilkinson & Grist
....
Solicitors for the Plaintiff

(Sgd.) P.F. Leonard
....
Counsel for 1st Defendant

(Sgd.) D. D'Almada Remedios
....
10 Counsel for 2nd Defendant

No. 7

No. 7 Judgment of the President of the Full Court.

JUDGMENT OF THE PRESIDENT OF THE FULL COURT.

In this case the plaintiff seeks a declaration that the purported appointment in February this year, of the Hon. Mr. Justice Blair-Kerr, as the sole Commissioner to hold an Inquiry, under the Commissioners' Powers Ordinance, Cap. 86, into certain matters more specifically described in the Writ was void because that Ordinance, when properly interpreted, only authorizes the appointment of a commission consisting of at least two commissioners.

It is contended that this result flows from the long title of the Ordinance 20 which is "To enable the Governor to appoint Commissioners for conducting inquiries," and from a number of provisions in the Ordinance which, it is said, clearly contemplate a plurality of persons. In this connection, reference is made to Section 2 which provides that the Governor in Council may appoint "commissioners" and to the use in subsequent sections of the expressions "commission," "chairman", "member" and "meeting" which it is claimed are inconsistent with the appointment of a single commissioner.

It is argued that the popular meaning of these words as shown in standard dictionaries should be given to them in the Ordinance unless there is some good and cogent reason for ascribing to them, in this context, some particular and special meanings. It is said that the burden of proving that a special meaning should be ascribed rests and rests heavily on the defendants.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 7 Judgment of the President of the Full Court.

Attention has also been directed to the legislation of other Commonwealth territories such as Nigeria, the Gold Coast, Kenya, Jamaica, Gambia and the Straits Settlements, where the corresponding Ordinances empowering the setting up of commissions, specify explicitly that the Governor might appoint one or more commissioners.

In support of these arguments, reference has been made to the following cases:—

(1) Attorney General for the Commonwealth of Australia and Others v. The Colonial Sugar Refining Company Limited and Others — 1914 A.C.237 at 252. 10

(2) Potts or Riddell v. Reid — 1943 A.C.1 at 22.

(3) R. v. National Arbitration Tribunal — 1952, 1 K.B.D.46 at 52.

(4) R. v. Industrial Disputes Tribunal and Another — 1957, 2 Q.B.D.483.

(5) Lockwood v. The Commonwealth and Others — 90 Commonwealth Laws Reports 177.

(6) In re Wier — 6 Chancery Appeal Cases 875.

(7) Richards v. McBride — 8 Q.B.D.122.

(8) R. v. J. Dudman — 4 Barnewall and Cresswells Reports 850.

(9) In re Fireproof Doors Limited — 1916, 2 Ch.D.143.

(10) East v. Bennett Brothers Limited — 1911, 1 Ch.D.163. 20

(11) Becke v. Smith — 2 Montagu and Bligh 191.

The argument of the Solicitor-General for the second defendant rests primarily on Section 2(1) and Section 3(5) of the Interpretation Ordinance which read as follows:—

> "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." 30

> "3. (5) (a) Words importing the masculine gender include females.
>
> (b) Words in the singular include the plural and vice versa."

Attention has also been drawn to the legislation of other British territories, e.g. Gibraltar, where the corresponding Ordinance is in a form similar to that in Hong Kong, but has been used apparently for the appointment of a single commissioner, and to the Tribunals of Inquiry (Evidence) Act, 1921, which fills a somewhat similar role in England. In it the expression "chairman" is used in a context which, if the argument of the plaintiff is correct, would indicate that only a plurality of persons is contemplated, yet this Act has been invoked when a single commissioner has been appointed by the House of 40 Commons, e.g. the Sheppard Inquiry (Hansard Vol.188 Col.1510) and the

"Thetis" Inquiry (Hansard Vol.348, Col.933). It has also been pointed out that, although out of some 30 Hong Kong Commissions, stretching back to the year 1890, the appointments of which have been traced, all but one have included more than one commissioner, in October 1941, a single commissioner, the then Chief Justice, was appointed to hold an Inquiry into corruption. It is agreed, however, that this Commission did not sit because on the day fixed for the first of its sittings, the 7th December, 1941, war descended upon the Colony.

Counsel for the 1st Defendant adopted the arguments advanced for the 2nd Defendant and also urged that since, by the provisions of the Interpretation Ordinance, the plural is to include the singular, unless the context otherwise requires, the mere use of a word in the plural does not of itself preclude the singular, and, therefore, the use of words which merely imply the plural can have no greater effect.

Counsel for the Plaintiff neatly countered the argument on the Gibraltar Ordinance by pointing out that the Gibraltar Interpretation Ordinance, which also prescribes that the plural should include the singular, makes no provision for a contrary intent arising from the context; but the edge is taken from this reply by the fact that the Straits Settlement Interpretation Ordinance is in similar terms.

As I understand it, the aim and purpose of the Interpretation Ordinance is to shorten and simplify the drafting of legislation by enabling certain expressions to include or imply meanings over and above their popular or dictionary meanings and, in the case of words of art, their ordinary legal meaning, without spelling out these additional meanings in each Ordinance. One of the most far reaching of these provisions is that the masculine shall include the feminine and that the singular shall include the plural and vice versa. Without these provisions it would be necessary to include in many Ordinances, references to both the masculine and the feminine, the singular and the plural, so that "he", "she" and "them", together with cognate expressions, would constantly recur. The intention was to relieve the draftsman from the necessity of including this additional verbiage.

When Fullager J., in an oral ex parte judgment in Lockwood v. The Commonwealth 90 Commonwealth L. R. 177, refused to apply the corresponding provision of the Australian Interpretation Act because he thought that to allow more than one Commissioner to be appointed when an Act authorized the Governor-General to issue Letters Patent to "such person" as the Governor-General thought fit, and to authorize "that person" to enquire and report, would be, not to interpret the relevant section but to distort its plain meaning, I think he gave too little weight to the fact that distortion is the precise effect that many interpretation provisions aim to achieve. They distort the normal meaning of certain expressions so as to expand or restrict the natural meaning of the words. To say that the masculine should include the feminine and the singular the plural is a patent distortion of ordinary language.

The Interpretation Ordinance specifically provided that these expanded meaning should be read into every Ordinance, unless a contrary intention appears from the context of the Ordinance itself, or from the Interpretation

In the Supreme Court of Hong Kong Original Jurisdiction

No. 7 Judgment of the President of the Full Court.

Ordinance. That seems clearly to put the burden of showing that there is a contrary intention on the person alleging it, in this case the plaintiff. As Devlin, J. indicated in Reg. v. Industrial Disputes Tribunal (1957) 2 Q.B. at p. 496, unless such countrary intention is shown the Interpretation Act would "have its usual effect." Furthermore, it seems apparent that the mere use of the male form does not of itself imply a contrary intention and the mere use of the singular form or the plural form does not of itself imply a contrary intention. If then, the use of the plural form in the main operative provision of the Ordinance does not indicate or imply that only a plurality of persons may be appointed, can the use of words which merely imply the plural in the ancillary provisions have any greater effect? 10

In this connection, it is apparent that Section 2(d) of Chapter 86 stands on an entirely different footing from Section 3(c). It deals with a particular type of Commission, a Commission where more than two Commissioners are appointed, and would clearly find its place quite appropriately in an Ordinance which had specifically empowered the Governor in Council to appoint one or more commissioners. Section 3(c) is more general in its scope and implications, purporting as it does to apply to any Commission appointed under the Ordinance. In reply to the contention that the word "meeting" in this Section necessarily implies a plurality of commissioners, it 20 might possibly be argued that the word presents no greater obstacle than in East v. Bennett (1911) 1 Chancery 163, where it was held that the requirement in Articles of Association, which apparently had no provision suggesting that the plural should include the singular, of a "meeting" could, if necessary, be satisfied by one person. But a more satisfying answer seems to lie in the argument that the expression used is the appropriate expression resulting from the adoption of the plural construction in the basic provision of the Ordinance. When the draftsman or the legislature used the plural construction in Section 2(a) for the purpose of conferring the power to appoint commissioners, from which all else flows in this Ordinance, the natural and appropriate form to adopt 30 in the subordinate and ancillary provision of the Ordinance is that which is apt to express the plural.

To require the draftsman to use, if he is to avoid a contrary implication, either a neutral form of expression in every ancillary clause or to include expressions apt for both the singular and the plural would not only lead to some very unusual drafting but would involve the very prolixity which the Interpretation Ordinance is designed to avoid.

The purpose of this part of the Interpretation Ordinance, and its effect, not only on words in the plural form but on words implying the plural emerges, perhaps, with greater clarity from Section 5 of the earlier Interpretation Ordinance, the 1867 Ordinance, than it does from that now in force but there 40 appears to be no significant difference in the ultimate effect of the two sections.

It is, of course, quite apparent that when you rely on a general provision such as that in the Interpretation Ordinance, which is, in Hong Kong, very properly made subject to the limitation that it only applies where the contrary

intention does not appear, you cannot have the same clarity of intention that is achieved by conferring in the Ordinance itself quite specifically, as in the Straits Settlements, the power to appoint one or more commissioners. But this clarity is obtained at the expense of the prolixity that I have just mentioned because, having adopted the dual form in the principal enabling section, the niceties of language and the natural construction requires that the dual form should also appear in every ancillary section. So, in the Malayan Ordinance, you get, for example, the provision in Section 7(1) that "the commissioner or commissioners may administer an oath to every person examined before him
10 or them . . . ". It may be noted, however, that, in taking pains to avoid the ambiguity over which we have had such interesting arguments during the course of hearing this appeal, the Ordinance swiftly throws up another. Does the form adopted indicate that the female is excluded? If reliance was not placed, as apparently it was not, on the provision in the Malayan Interpretation Ordinance that the plural includes the singular, could reliance be placed on the provision, in the same section of the Interpretation Ordinance, that the male includes the female? If this more prolix and extensive form of drafting is adopted, should not the provision read "before him, her or them?" Precisely the type of lengthy drafting which interpretation legislation is designed to avoid!

20 Normally, of course, legislation is prepared in the singular, when a choice is open, so that the mere appearance of the plural tends by itself to give the impression that the singular was not contemplated. To allow that view to prevail would, however, defeat the whole purpose of the Interpretation Ordinance; and when the plural form of appointment is likely to be used more often than the singular, it is generally more appropriate to draft in the plural which, apart from other considerations, provides an appropriate pattern for those additional provisions that are often required when more than one person is concerned.

30 Consequently, the use of the plural cannot by itself fairly be taken as indicating an intention to exclude Section 3(5) of the Interpretation Ordinance. Indeed, it has not been seriously suggested in the present case, that the mere use of the word "Commissioners" in Section 2(a) would by itself exclude the singular. More reliance is placed on the appearance in the ancillary provisions of expressions which imply a plurality, and, as Counsel for the plaintiff, relying on the Laws of England (2nd Ed.) Vol. 31 p.483 and Re Wier (1871 6 Ch. App. 875), has so rightly pointed out, account must be taken of these subsidiary provisions in seeking to establish the context of the legislation as a whole. But as the form of the subsidiary and ancillary provisions normally follows that of the main provisions, the mere fact that they do so conform and
40 use plural words or words implying the plural, when the main clauses are so drafted, would not appear to carry any great implication.

It would seem that something more is required, such as the deliberate use of the plural in contrast with the singular in the same provision — and that a main provision, which so influenced the Court in the National Arbitration Tribunal Case (1952) 1 K.B. 46.

Indeed, the freedom with which an interchange between plural and singular can occur is illustrated by the fact that the Industrial Disputes Order

In the Supreme Court of Hong Kong Original Jurisdiction

No. 7 Judgment of the President of the Full Court.

1951, which was under consideration in that case, provides that, in the Order, the expressions "worker" and "workman" shall have certain meanings, but the Order never uses these expressions in the singular and refers throughout to "workers" and "workmen".

To discover whether a contrary intention is implied one must, I think, look, not at the form of particular expressions, but at the substance and the tenor of the legislation as a whole. Whilst the mere use of the plural form without anything else may not be sufficient to exclude Section 3(5), if there is some substantive provision, essential to the functioning of the commission, which could not be satisfied without a plurality, that would be a very different matter, e.g. a provision that a commission should not sit to hear witnesses unless at least two commissioners were present. 10

Although, strictly speaking, there is no authority for looking to legislation elsewhere as an indication of the intention of our own legislature, the appearance in so many British Colonies or former British Colonies of Commissions of Enquiry Ordinances, later in date than the Hong Kong and Gibraltar Ordinances, which make specific provision for a single commissioner as well as a plurality of commissioners, can hardly fail to make one pause before holding that the Hong Kong Ordinance, enacted presumably on an older model achieves the same purpose. 20

It certainly looks as if, at some stage, the Colonial Office may have suggested to the various Dependencies that it would be wiser to make this dual provision and that this produced the dual form which appears in these later Ordinances, but whether this advice was given ex abundanti cautela or because it was thought essential to make the change, if a single appointment was contemplated, can only rest in the realm of speculation.

Moreover, these later Ordinances reveal a number of inconsistencies or variations. The Straits Settlements retain the long title in the plural form whilst the Gold Coast, having used the word "commissioners" in the ancillary provisions in a distributive form, without the definite article, which would seem 30 to include a single commissioner, provides in Section 9:—

> "9. The Commissioners acting under this Ordinance may make such rules for their own guidance and the conduct or management of proceedings before them . . . . . "

Nigeria has a similar provision in Section 6 in which only the plural form appears and again in Section 9.

The existence elsewhere of these dual form Ordinances can hardly lend any greater weight to the arguments of the plaintiff than is lent to those of the defendants by the fact that the Hong Kong Legislature, with the knowledge that an appointment of a single commissioner had been made on at least one 40 occasion, i.e. that in 1941, re-enacted in 1950 the Hong Kong Ordinance in its original form.

Neither the use of the word "Commissioners" in Section 2(a) nor words 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; and I would dismiss the claim.

(Michael Hogan)

President.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 7 Judgment of the President of the Full Court.

No. 8.

No. 8 Judgment of Mr. Justice Rigby, Full Court Judge.

JUDGMENT OF THE HONOURABLE MR. JUSTICE RIGBY, JUDGE OF THE FULL COURT

10 The short point in this case is whether His Excellency, the Governor-in-Council had power under the Commissioners' Powers Ordinance to appoint a single Commissioner for the purpose of conducting an enquiry appointed under the provisions of that Ordinance. It is contended on behalf of the plaintiffs that the whole tenor and context of that Ordinance contemplates and provides for an appointment of a plurality of Commissioners and that the appointment of a single Commissioner is ultra vires the powers conferred under the Ordinance and accordingly null and void. The Ordinance itself was enacted in 1886. It enables the Governor-in-Council "to nominate and appoint Commissioners under the public seal for the purpose of instituting, making and 20 conducting any enquiry that may be deemed advisable . . . " and it deals with the powers of such Commissioners. The expressions used throughout the Ordinance—

1. "chairman or presiding member of any such commission" (Sect.3(a));

2. "power to the commissioners to adjourn any meeting" (Sect.3(c));

and in the amending Ordinance of 1959 whereby power is given to the Governor-in-Council

3. "to fix the quorum at meetings of commissioners where more than 30 two are appointed" (Sect. 3(d));

are expressions consistent, and only consistent, with plurality. The short answer advanced on behalf of the defendants is to place reliance on the provisions in the Interpretation Ordinance that, save where the contrary intention appears, words in the singular include the plural and vice versa. Sect. 5 of the Interpretation Ordinance, 1867 — which was in force when the Commissioners' Powers Ordinance was enacted — provided, inter alia, that "Unless the contrary intention shall be expressly provided or shall be implied

In the Supreme Court of Hong Kong Original Jurisdiction

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from the context and general purview of the Ordinance . . . , words importing the singular number . . . only, shall be understood to include several matters as well as one matter, and several persons as well as one person, . . . ; and words importing the plural number shall be understood to apply to one matter as well as to more than one, and to one person as well as to more than one; . . . ".

Those provisions are re-enacted in Sect. 3(5) (b) read in conjunction with Sect. 2 of the Interpretation Ordinance, 1950 which came into operation under the Revised Edition of the Laws Ordinance, and which provides that "Save where the contrary intention appears either from this Ordinance or from the context of any enactment" (Sect. 2) "Words in the singular include the plural and vice versa" (Sect. 3(5) (b)).

2. The sole question is: reading the Commissioners' Powers Ordinance as a whole, is there anything in the Ordinance to exclude the presumption which arises by virtue of the Interpretation Ordinance that words in the singular include the plural and vice versa? Mr. Leonard, on behalf of the Attorney-General, put the matter very neatly and concisely when he said that plural must be read to include singular unless there is some clear contrary intention to be found in the Ordinance itself, that is to say, in the Commissioners' Powers Ordinance itself; but one cannot read that intention into the Ordinance simply from the fact that words of plurality have been used throughout. He submitted that to construe an intention that the legislature intended, and only intended, the appointment of a plurality of Commissioners simply by reason of the fact that words of plurality have been used throughout the Ordinance would be to defeat the very purpose of the Interpretation Ordinance itself that words in the plural should be understood to include words in the singular.

The Solicitor-General, appearing on behalf of the second defendant, Mr. Commissioner Blair-Kerr, informed the Court that from such research as he had been able to make there had been some 30 Commissions appointed under this Ordinance since it came into force in 1886 and that all of them had consisted of a plurality of Commissioners with the exception of one appointed by notification in the Gazette on the 31st October, 1941. On that occasion the then Chief Justice, Sir Atholl MacGregor, was appointed as a single Commissioner for the purpose of investigating corruption in the Colony. That Commission did not in fact sit since the date of appointment coincided with the outbreak of war in this area. The fact that in the past Commissions have been appointed with a plurality of Commissioners, as distinct from a single Commissioner, may, or may not, show the desirability of appointing two or more persons for the purpose of investigating any matter considered of sufficient public importance to warrant the appointment of a Commission. But this purely practical consideration is not, in my view, in itself of any relevance when considering the legal issue as to whether or not the Ordinance empowers the appointment of a single Commissioner.

3. For myself, the only doubt which arises in my mind is occasioned by a study of contemporary or comparative Colonial legislation of a similar nature to which we have been referred. In 1903 the Inquiry Commissions Ordinance of the Straits Settlements was enacted. Whilst the short title of

that Ordinance, as in the Hong Kong Ordinance, is "to enable the Governor to appoint Commissioners", Sect. 2 of the Ordinance provides that "the Governor may issue a Commission . . . appointing one or more Commissioners . . . to enquire into and report . . . " etc. In contemplation of the alternative appointment of a single Commissioner, or Commissioners, dealing with the powers of an appointed Commission, the subsequent sections of the Ordinance refer throughout to "the Commissioner or Commissioners". The intention of the legislature is made clear throughout that a Commission duly appointed may consist of one or more Commissioners. The Commissions
10 of Enquiry Ordinance of the Gold Coast, enacted in 1893, enabled the Governor "to issue a Commission appointing one or more Commissioners" to enquire into matters of a public nature. A similar provision is contained in the Commissions of Inquiry Ordinance of Nigeria, enacted in 1940, enabling the Governor to appoint one or more commissioners for the purpose of holding a Commission of Enquiry.

In each of these Colonial territories an Interpretation Ordinance containing similar provisions that words in the singular included the plural and vice versa, was in force at the time of the enactment of the respective Commissions of Enquiry Ordinances, yet despite that fact the legislature of those
20 territories thought it necessary or desirable — to embody in their Commissions of Enquiry Ordinances specific provisions for the appointment of a single Commissioner. The argument accordingly advanced on behalf of the plaintiffs is, by implication and by analogy, that where the legislature intends to provide for the appointment of a single Commissioner under an Ordinance of this kind it says so in terms made clear in the Ordinance itself. To my mind, the fundamental fallacy underlying the apparent logic of that argument is the fact that I do not think it is permissible to interpret a local statute by reference to the comparative, and subsequent, legislation of other Colonial territories. In reality it must remain within the realm of speculation as to whether the legislature
30 when enacting this Ordinance in 1886, contemplated and provided for the appointment of single Commissioner as well as for a plurality of Commissioners. In law that speculation can only be resolved by a consideration of the words used according to their ordinary and grammatical construction and bearing in mind the general provisions of the then existing Interpretation Ordinance. The whole Ordinance, as its very name implies — Commissioners' Powers Ordinance — is drafted in the plurality. It seems to me that it must be assumed that the draftsman of the Ordinance — and the legislature itself — were cognizant of the then existing Interpretation Ordinance and of its provisions that "words importing the plural number shall be understood to apply to one matter as well
40 as to more than one, and to one person as well as to more than one."

4. In my judgment the plaintiffs have failed to rebut the statutory presumption arising under the Interpretation Ordinance that words in the plural include the singular and I would hold that the appointment of Mr. Justice Blair-Kerr as a single Commissioner was a valid appointment intra vires the provisions of Sect. 2 of the Commissioners' Powers Ordinance.

5. I would accordingly dismiss this action with costs.

(I. C. C. Rigby)
Senior Puisne Judge

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No. 9.

JUDGMENT OF THE HONOURABLE MR. JUSTICE HUGGINS, JUDGE OF THE FULL COURT.

This is a special case which comes before the Court under the provisions of Order 9 of the Rules of the Supreme Court. The case states that the Governor-in-Council in purported exercise of powers vested in him by the Commissioners Powers Ordinance appointed the 2nd defendant, The Hon. Mr. Justice Blair-Kerr, as Commissioner to enquire into the circumstances in which certain articles or reports were published in the Hong Kong Tiger Standard newspaper 10 dated the 7th February, 1963 and the Sing Tao Jih Po newspaper dated the 7th February, 1963 and to enquire into allegations that one Chan Kin-kin had been ill-treated at the time of and subsequent to his arrest on or about the 9th January, 1963. The substantial question for the Court is whether this appointment of a sole Commissioner was valid. In the forefront of his argument leading Counsel for the plaintiffs emphasized the importance of this question to his clients. I shall have occasion to return to his argument on this point at a later stage, but I think it right to say at the outset that in so far as the plaintiffs are applying for a declaration of their legal rights the seriousness or otherwise of the possible outcome of this enquiry is immaterial. 20 If there has been no valid exercise of the powers conferred by this Ordinance then the plaintiffs are entitled to the declaration they seek even if the damage they might suffer by a continuation of the enquiry would be trifling.

It is not I think in dispute that the Commissioners Powers Ordinance is drafted throughout in terms which read literally and by themselves suggest that every enquiry shall be conducted by two or more Commissioners, nor that at Common law the plural can be construed to include the singular only where the nature of the subject matter requires: *Potts v. Reid* (1943) A.C.122. It is not (and indeed could not be) argued that the nature of the subject matter of this Ordinance requires that it should be possible to appoint a sole Commis- 30 sioner. It follows, therefore, that the appointment of the 2nd defendant can be upheld only if there be some statutory rule of interpretation which compels us to hold that the power to appoint "Commissioners" necessarily includes power to appoint "a Commissioner". The defendants submitted that such a statutory rule exists: it exists by virtue of sect. 2(1) and Sect. 3(5) (b) of the Interpretation Ordinance (Chapter 1 of revised Ordinances of 1950) which are in these terms.

> "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 40 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."
>
> "3. (5) Words in the singular include the plural and vice versa."

To this the plaintiffs reply that a contrary intention appears — and the short (but by no means simple) issue which we have to decide is whether this contention is right.

We have been referred to the history of the provisions which I have cited from the Interpretation Ordinance but I do not think any assistance is to be obtained from that.

We have also been referred to a number of statutes which are, or have been in the past, in force in other dependent territories in the Commonwealth. With the exception of the Commissions of Enquiry Ordinance of Gibraltar (Chapter 24 of the revised Ordinances of 1950) the practice appears to have been to provide expressly that there shall be "one or more commissioners". Again, the practice in other jurisdictions (except the mother country) does 10 not appear to me to assist us in ascertaining the intention of the legislature in Hong Kong. It is remarkable that in many cases great care has been taken to ensure that there is express power to appoint one or more commissioners but that may have been ex abundanti cautela. It may be that having had the benefit of listening to the argument which has been addressed to us and of seeing these other statutes some of us may think we could re-draft our own Ordinance so as to leave no doubt whether it was intended to permit of a sole commissioner: that does not help us to determine what was the intention of the legislature in enacting the Ordinance as it stands. Of course, if we had been referred to another Ordinance in similar terms and to a judicial 20 interpretation of that Ordinance, that might have constituted very persuasive authority. But that is not the position. The Commissions of Enquiry Ordinance of Gibraltar does provide for the appointment of "such persons" as the Governor shall think fit as commissioners and is otherwise in similar but not identical terms. We are informed that during the past 5 years a number of enquiries by single commissioner has been held by virtue of the purported exercise of powers conferred by that Ordinance. Indeed we are told that one enquiry by a single commissioner was ordered in 1940 in Hong Kong by virtue of the purported exercise of powers conferred by the Commissioners Powers Ordinance, but owing to the Second World War that Commission never sat. 30 The only conclusion I am prepared to draw from these Commonwealth Ordinances is that there seems to be a trend towards greater precision in drafting even at the expense of the conciseness which the interpretation statutes were aimed at producing. To infer from that that those statutes are ineffective to produce the result contended for by the defendants is to beg the question.

Before considering the terms of the Commissioners Powers Ordinance in detail I must refer to the case of *Richards v. McBride* (1881) 8 Q.B.D. 122, which was much relied upon by the plaintiffs. That was a case where the issue was very different from the one before us. An Act was to come into force "on the day next appointed." Prior to the coming into force of the Act a day had 40 been appointed and it was sought to argue that that was the day next appointed. The court held that it may have been the next appointed day but it was not the day next appointed. Grove J. said at page 123:

> "The draftsmen of this Act may have made a mistake. If so, the remedy is for the legislature to amend it. But we must construe Acts of Parliament as they are, without regard to consequences, except in those cases where the words used are so ambiguous that they may be construed in two senses, and even then we must not regard what happened in Parliament, but look to what is within the four corners of the Act, and to the grievance intended to be remedied, or, in penal

statutes, to the offence intended to be corrected. Taking the words 'day next appointed' to mean what they say, viz. the day which shall be next appointed, is there anything in the Act itself to show that the legislature meant 'the next day appointed?' I find nothing. I even doubt whether if there were words in the Act tending strongly the other way, I could pass from the plain grammatical construction of the phrase in question. The onus of shewing that the words do not mean what they say lies heavily on the party who alleges it."

Counsel for the Plaintiffs rely upon this passage as showing that since (as they submit) the Ordinance is drafted in terms which prima facie suggest a plurality of commissioners the onus rests on the Defendants to show the singular is to be included and it is a very heavy one. That is not what the Interpretation Ordinance says. The Ordinance places the onus of showing an intention to exclude the Ordinance fairly and squarely on the Plaintiffs but it is not the same "heavy onus" as that which must be discharged in a case to which the principle of Roberts v. McBride (1881) 8 Q.B.D., applies: it will suffice to show on a balance of probabilities that the intention was to exclude the Interpretation Ordinance. Counsel for the Defendants concede that this is correct.

Turning now to the Ordinance itself we find that the Preamble states it to be an Ordinance "To enable the Governor to appoint commissioners for conducting inquiries." That does not indicate any intention to exclude the provisions of the Interpretation Ordinance but Counsel for the Plaintiffs point to few words in the enacting sections which, they say, do clearly indicate such an intention. They are "Chairman", "Member", "Commission", "Meeting". It is conceded by the Defendants that each of these words denotes a plurality and it is therefore unnecessary for me to refer to the dictionary definitions which have been read to us and I would only add that having regard to the frequency with which single commissioners are appointed at the present day it may well be the word "commission" will shortly be found to have undergone a change of meaning and to include "a tribunal whether consisting of one or more persons charged with some specific function." Counsel for the Defendants argue that even now, though the word standing alone must normally (in this sense) be a *body* of persons, it is not inappropriate to a singularity of commissioners as well as to a plurality and were this the only word relied upon as showing an intention that there should always be a plurality under this Ordinance I would think the evidence insufficient to support the Plaintiffs' case. But in fact in the two places where it is employed in the third of the three meanings suggested in *R*. v. Budman (1825) 4 B. & C. 850, (i.e. "the persons by whom a trust or authority is exercised") it appears in conjunction with "chairman" and "(presiding) member." These are the only two places where those further words appear. As to "chairman" and "presiding member" the Plaintiffs say they are synonymous but that, I think, cannot be correct. It seems to me that there are two sets of circumstances primarily covered by these words: the first where a duly elected chairman presides (and prior to the enactment of Sect. 22 of the Interpretation Ordinance I think it must have been normal practice for commissioners to appoint their own chairman) and the second where another commissioner presides in the absence of the chairman. As the Solicitor General said, in Sect. 3(a) it is a case of "the man in charge will sign." It is further argued that a "chairman" need not necessarily take the chair only when he is accompanied by others of equal "rank": consequently a single commis-

sioner may be said to take the chair at a hearing at which he presides. But it is significant that in the Rules of Procedure in the Schedule to the Landlord and Tenant Ordinance the Legislature was careful to provide expressly for the case where a Tenancy Tribunal consists of only a single person: rule 1(3). Moreover the words used are, on each occasion, "chairman . . . of such commission." Despite a submission to the contrary, based upon a strict grammatical construction, I am satisfied that "such commission" must be read as "such commissioners" and accordingly I agree that prima facie the use of the word "chairman" supposes a plurality of commissioners.

10 The word "meeting" is used in two places, Sect. 2(d) and Sect. 3(c). There is certainly no support for the Plaintiffs to be found in the first of these provisions: it is concerned with the establishment of a quorum where there are three or more commissioners and is in a form which would not have been out of place in an ordinance expressly providing for the appointment of one or more commissioners. The second use of this word is in the proviso to Sect. 3(c), which relates to the adjournment of proceedings, and it is urged that you can have no meeting of one. The fact that it is in a proviso does not, on the principles stated in *Re Wier* (1871) 6 Ch. App. 875, indicate that less weight should be attached to the language used. Once again I am unable to accept 20 an argument that a single commissioner "meets" the witnesses and other present at a hearing. The Plaintiffs rely upon *East v. Bennett Bros. Ltd.* (1911) 1 Ch. 163. There the facts were that under the articles and memorandum of association of a company no new shares should be issued so as to rank equally with or in priority to the preference shares unless such issue was sanctioned by an extraordinary resolution of the holders of the preference shares present at a separate "meeting" summoned to consider the question. All the shares were, at the material time, held by one person and that person signed in the minute book of the company a record of his consent, as holder of all the preference shares, to such an issue of new shares. Having cited *In re Sanitary* 30 *Carbon Co.* (1877) W.N., 223 *and Sharp v. Dawes* Warrington, J 2 Q.B.D., 26 went on:

> "But now what I have to consider is whether this is not one of the cases referred to by Lord Coleridge C.J. as one in which it may be possible to show that the word "meeting" has a meaning different from the ordinary meaning. For that purpose I think I am entitled to see what is the object of the provision in the memorandum of association. Plainly, as I have already said, that object is that before affecting the rights of the preference shareholders it shall be necessary to obtain and record in a formal manner the assent of the preference shareholders to 40 that course. I think I may take it also that the persons who framed this document may have had, and must be taken to have had, in their minds the possibility at all events that this particular class of shares might fall into the hands of one person. There is nothing to prevent it in the constitution of the company. One must regard the memorandum as far as possible as providing for circumstances which in the ordinary course may arise. That being so, I think I may very fairly say that where one person only is the holder of all the shares of a particular class, and as that person cannot meet himself, or form a meeting with himself in the ordinary sense, the persons who framed this 50 memorandum having such a position in contemplation must be taken

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to have used the word "meeting", not in the strict sense in which it is usually used, but as including the case of one single shareholder."

The Defendants were unable, I think, to maintain that a meeting could consist of a single person but the substance of their argument on this aspect of the case is that an intention to exclude the Interpretation Ordinance cannot be inferred from the mere use of pluralities, for to do that would be to defeat the whole purpose of the Interpretation Ordinance. To this the Plaintiffs reply that it is not that the Legislature has merely used pluralities but it has used words which are wholly inapt to apply to a single commissioner.

I have been impressed by the argument that the mere fact that the word "meeting" was apt (and, indeed, that three if not all of these words were apt) only where there is a plurality of commissioners was inconclusive of the matter because the draftsman has adopted the plural form throughout. Since he started by referring to commissioners (in the plural) it would be absurd, it is said, to expect him suddenly to say, for example, "under the hand of the chairman or presiding member or, where there is a sole commissioner, the commissioner"—although it might have been necessary where the first reference was to "a commissioner" to say "the commissioner" or, where two or more commissioners are appointed, the presiding commissioner," otherwise all the commissioners would have to sign. It is clear that if a statute authorising the appointment of one or more commissioners contained a provision similiar to Sec. 3(c) one would have to assume that the draftsman had contemplated the situation which would arise in the case of a single commissioner and one might, adopting the principle of *East v. Bennett Bros. Ltd.*, (1911) 1 Ch., 163 properly construe "chairman" and "meeting" as including the sitting of one commissioner. One would have to do that to overcome what would otherwise be an apparent defect in the statute. As Denning, L.J. said in *Seaford Court Estates Ltd.* v. *Asher* (1949) 2 K.B., 481 at page 499:

> "It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the judge in *Heydon's Case* (1584) 3 Co. Rep., 7a, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd (1574) 2 Plowden 465. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

It seems to me, however, to be going rather far to say that because one may sometimes be forced to give words (and, in particular, the words "chairman"

and "meeting") a strained meaning in order to give force and effect to a particular enactment one is also to assume that in another enactment the Legislature has again given them this strained meaning, and from that assumption to conclude that, as the Legislature did not mean what it said, it cannot have intended to exclude the provisions of the Interpretation Ordinance. I find that a particularly unattractive line of reasoning where, as in the case of the word "meeting", a neutral word like "sitting" could so easily have been substituted: for the court to make a substitution like that is hardly the same thing as reading "an employer and a workman" for "employers and workmen" or vice
10 versa. Also I would have seen less difficulty in the present case had "presiding commissioner" been used instead of "chairman or presiding member of such commission."

In *Lockwood* v. *The Commonwealth* (1954) 90 C. L. R., 117 Fullagar, J. indicated in a forceful way that he thought he was being asked to alter the material of a statute. The circumstances of that case appear in his judgment at page 181:

> "The letters patent purport to be issued in pursuance of the Constitution of the Commonwealth, the Royal Commission Act 1954 and all other powers thereunto enabling. The Royal Commission Act 1954 became
> 20 law on 15th April, 1954. Section 3 of the Act is in the following terms:—"3. (1) The Governor-General is, by force of this section, empowered to issue, by Letters Patent in the name of the Queen, a Commission, directed to such person as he thinks fit, requiring or authorizing that person to make inquiry into and report upon subjects specified in the Letters Patent, being—(a) the commission of acts of espionage in Australia; (b) the commission in Australia of other acts prejudicial to the security or defence of Australia; or (c) subjects related to any matter referred to in either of the last two preceding paragraphs. (2) The Commissioner so appointed has all the powers
> 30 rights and privileges which are specified in the Royal Commissions Act 1902-1933 as appertaining to a Royal Commission and the provisions of that Act have effect as if they were enacted in this Act and in terms made applicable to the Commissioner."

The Learned judge then went on:

> "It is seen that s.3 of the Act of 1954 authorizes the issue of letters patent to such person as the Governor-General thinks fit. The letters patent may require or authorize that person to inquire and report. The commissioner so appointed is to have the powers conferred by the Royal Commissions Act 1902-1933 as if they were in terms made applicable
> 40 to the commissioner.
>
> It is quite clear that the section in terms gives power only to issue letters patent to a single person. If the Crown had been represented before me, reliance might perhaps have been placed on s.23 of the Acts Interpretation Act (Cth.) 1901-1950, which provides that, unless a contrary intention appears, words in the singular shall include the plural and words in the plural shall include the singular. But it seems to me that to use this provision to make s.3 of the Act of 1954

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authorize the appointment of several commissioners would be not to interpret s.3 but to distort its plain meaning. I can understand that, if an Act says that a man who owns a dog must register it, the Act Interpretation Act requires this to be read as meaning that, if a man keeps ten dogs, he must register his ten dogs. But if an Act says that the Governor-General may appoint a Commissioner of Taxation, I cannot think that the Acts Interpretation Act requires this to be read as meaning that ten Commissioners of Taxation may be appointed. Section 3 of the Royal Commission Act 1954 means, to my mind, that one person to be designated may be appointed to fill a specified office, and I do not think that the section can be made to mean anything else."

As appears from the passage just cited the proceedings before Fullagar, J. were ex parte so that he did not have the advantage of the full argument addressed to us. Perhaps because of this he found himself able to reach a decision with a confidence which I regret that I myself am unable to enjoy in the present case. Again as a result of that the reasoning which led him to his decision is stated only in the most general terms. Indeed, if I may say so with respect a closer consideration of his reasoning robs the decision of much of its apparent value to the Plaintiffs. In the first place I cannot help suspecting that the learned judge was influenced by the fact that when the Royal Commission Act 1954 was passed there was already in existence the Royal Commissions Act 1902-1933, under which "such person or persons" could be appointed as the Governor-General thought fit: he expressly stated in his judgment that he thought the later Act unnecessary for enabling the appointment of the commissioner in 1954. The difference in the wording of the two contemporaneous Acts in dealing with the matter of appointments would alone indicate an intention in the Act of 1954 to authorise the appointment of only one commissioner. Read entirely on their own the provisions of the Act of 1954 relied upon by the judge do not appear to me conclusively to negative an intention to exclude the provisions of the Acts Interpretation Act any more than would a provision that a man who owns a dog must register it. Moreover, there is force in the Solicitor General's submission that the learned judge bases part of his judgment on the assumption that there is a specific office to be filled, which would not appear to have been the case, and certainly is not here. Of course much would depend upon the circumstances in which a statute was passed but it would seem likely that a Commissioner of Taxation would be intended to be the permanent head of a Government department and, as such, would normally be a single person. (I think it may fairly be said that the case of the commission of several Commissioners of Admiralty to exercise the powers of Lord High Admiral, with the purpose of avoiding the concentration of powers in one man, is exceptional).

How is one to ascertain the intention of the legislature upon the point in issue? Primarily I think one must do so from the actual words used but one may also have regard to other matters outside the language of the statute (Denning, L.J. gives as an example the social conditions which give rise to it) which shows what the intention is. Here Counsel for the Plaintiffs rely upon the serious consequences which may result to their clients if we find for the Defendants. I accept without hesitation that the consequences would be serious, since any summons to give evidence or produce documents is, as

Counsel argue, an invasion of liberty. None the less I find it impossible to say that there is any inherent improbability that the Legislature would think fit to appoint a single commissioner for the sort of inquiry contemplated by the Ordinance. The fact that other legislatures have expressly provided for such single commissioners would make it difficult to hold the contrary view. The analogy to judicial inquiries in which a defendant is normally entitled to the decision of a jury seems to me to be taking the matter too far. I accept that we must look at the whole tenor of the Ordinance but in the present case the tenor of the Ordinance can only, it seems to me, be judged by the words of the
10 Ordinance itself. That was the position in *R.* v. *National Arbitrary Tribunal, ex parte South Shields Corporation* (1952) 1 K. B. 46 where two statutory orders came to be considered. The first was the Conditions of Employment and National Arbitration Order, 1940. That Order set up a Tribunal for the purpose of settling trade disputes and in Art. 7 of the Order appeared this definition:

> " 'trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of any person."

20 As to this Order the Court held that it could not be contended that its wording indicated any intention to exclude the application of the words of Section 1 of the Interpretation Act, 1889. The second Order to be considered was the Industrial Disputes Order 1951 and Article 12(1) of that Order was in these terms:

> " 'dispute' does not include a dispute as to the employment or non-employment of any person or as to whether any person should or should not be a member of any Trade Union but, save as aforesaid, means any dispute between an employer and workmen in the employment of that employer connected with the terms of the employment or with the
> 30 conditions of labour of any of those workmen."

As to this Order the Court took the view that it was clear that when it was found that by definition 'dispute' meant a dispute between an employer (in the singular) and workmen (in the plural), the Order was not contemplating the reference of a dispute which might arise between an employer and a single workman employed by him in connection with the terms of his employment, but was concerned with workmen as a class or body. Lord Goddard, C.J. said at page 53:

> "In our view the whole tenor of the order of 1951, and the fact that,
> 40 throughout the order, the word "employer" in the singular is used in conjunction with the word "workmen" in the plural indicate an intention that these words should be interpreted literally and, in consequence, that section 1 of the Interpretation Act, 1889, to which we have referred above, should not apply. Support for this construction is, we think, to be found in the fact that a single workman cannot report a dispute, but that the report must be by a trade union who normally act for workmen as a body or for a class of workmen."

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It may well be said that the intention of the second Order was indeed very plain particularly, as it revoked the Order of 1940 which contained no such distinction of number. As to the latter Order it is to be noticed that the use of the plural form "employers and workmen" was held not to indicate any intention to exclude a dispute between an employer and one workman. I do not think that *R.* v. *Industrial Disputes Tribunal, ex parte Queen Mary College, London* (1957) 2 Q. B. 483 takes the matter any further. That case was dealing with the second of the two Orders considered in the *Town Clerk's Case* (1952) 1 K. B. 46 and merely decided that although a dispute between an employer and a single workman was normally not a 'dispute' within the definition, nevertheless if a number of workmen adopted a dispute and made it their own that was sufficient to bring the dispute within its ambit. In relation to neither of these two Orders was there any apparent circumstance extraneous to the enacted provisions which could indicate one way or another the intention of the legislature. Both were concerned with trade disputes and, if anything, one might have expected that both were aimed at dealing with disputes which could lead to a general interruption of business rather than to disputes affecting only individuals. It cannot be pretended that the present case is as strong as the *Town Clerk's Case* (1952) 1 K. B. 46 but the judgment of the Divisional Court does emphasize the necessity of looking at the actual words used.

It may be, nevertheless, that Counsel for the 1st Defendant has given us a timely warning when he urges that we ought to be careful not to miss the wood for the trees. In other words we must guard ourselves against paying too much attention to the niceties of language and losing the general sense of the Ordinance. He says (I think rightly) that the mere use of pluralities is no evidence at all of the contrary intention which has to be shown. To use the expression used in the *Town Cler*k's Case (1952) 1 K. B., 46 one must look at the whole tenor of the Ordinance. I would add to that that in Sect. 3(5) of the Interpretation Ordinance there is no suggestion that the two provisions "the singular shall include the plural" and "the plural shall include the singular" are not to be given equal weight. It is significant that no single instance has been cited to us where a whole statute has been drafted in the plural form and has been interpreted also in the singular but neither, on the other hand, have we been referred to any statute drafted wholly in the singular which has been interpreted in the plural. I suppose there is some advantage to be gained by drafting in the plural where it is clear that the singular is not intended to be excluded because often the matters to be covered are more complex when the plural is employed. Thus the corresponding Ordinance of the Federated Malay States expressly provided for the appointment of one or more commissioners but the form of appointment in the Schedule is drafted in the plural.

In my view the decision in this case depends in the final analysis upon whether one takes a strict or a liberal view of the duty of the Legislature. For myself I have had grave doubts whether it is demanding "divine prescience" of the legislature to hold that it must be assumed to have considered the impact of the enlarging provisions of an interpretation ordinance and whether when

No. 9 Judgment of Mr. Justice Huggins, Full Court Judge.

it uses words which are manifestly inapt to a singularity without distorting or straining their natural meaning, it must not be taken to intend to exclude those enlarging provisions. I am finally persuaded that this strict view is not the correct one by the reference which has been made to the English Tribunals of Inquiry (Evidence) Act, 1921. That Act, when it is made to apply to any tribunal set up, confers certain powers in relation to the calling of witnesses and similar matters. Although Sect. 1(2) refers to the "chairman of the tribunal" we are told that there have been at least three one-man tribunals to which this Act has been made to apply in the course of the past 40 years and 10 on the principle of contemporanea expositio as laid down in the authorities cited in Wilberforce on Statute Law at page 142 I think there is an indication that the legal profession has accepted that the Act may properly be applied to such a tribunal. That being so I think the language of our own Ordinance should be similarly construed and does not sufficiently disclose an intention to exclude the provisions of the Interpretation Ordinance.

I agree with my Lords that the questions put to us should be answered in the affirmative.

(A. A. Huggins)
Acting Puisne Judge

20

No. 10.

No. 10 Petition for leave to Appeal to the Privy Council.

PETITION FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL.

The Honourable the Judges of the Supreme Court of Hong Kong.

The Humble Petition of the above-named Appellants Sin Poh Amalgamated (H.K.) Ltd.

RESPECTFULLY SHEWETH:—

1. That these proceedings were brought by Your Petitioners the above-named Appellants against the First and Second Respondents claiming as follows:—

30 (a) A Declaration that the Commission purported to have been appointed by His Excellency the Governor in Council under section 2 of the Commissioners' Powers Ordinance for the purpose of instituting making and conducting an enquiry into the circumstances in which certain articles or reports were published in the Hong Kong Tiger Standard newspaper dated 7th February, 1963

In the Supreme Court of Hong Kong Original Jurisdiction

No. 10 Petition for leave to Appeal to the Privy Council.

and the Sing Tao Jih Pao newspaper dated 7th February 1963 and enquire into allegations that one Chan Kin Kin had been ill-treated at the time of and subsequent to his arrest on or about the 9th day of January 1963 was and is illegal ultra vires null and void.

(b) A Declaration that the Plaintiffs by themselves their Directors servants employees or other are not bound to attend the said enquiry or give evidence or produce documents thereat.

(c) An Injunction to restrain and prohibit the 2nd Defendant from proceeding further with the said enquiry. 10

(d) An Injunction to restrain and prohibit the Second Defendant from exercising any of the powers rights or privileges mentioned in Section 3 of the said Ordinance.

(e) An Order against the Second Defendant to deliver up to the Plaintiffs' all the Plaintiffs' documents in his custody.

(f) Further or other relief.

(g) Costs.

2. That the matters in dispute were the subject of a Special Case agreed between the parties and dated the 27th day of March, 1963.

3. That pursuant to Order 12 Rule 18 of the Code of Civil Procedure the Honourable the Chief Justice ordered that the trial should be by the Full Court without a Jury. 20

4. That on the 28th and 29th days of March 1963 the Special Case was heard before the Full Court consisting of the Honourable the Chief Justice, Sir Michael Hogan, Kt., C.M.G., Mr. Justice Rigby and Mr. Justice Huggins, Puisne Judges.

5. That on the 3rd day of April 1963 Judgment was rendered by the Full Court dismissing the claims of the above-mentioned Appellants with costs.

6. Your Petitioners feel aggrieved by the said Judgment of this Honourable Court, and desire to appeal therefrom. 30

7. Your Petitioners therefore pray:—

(1) That this Honourable Court will be pleased to grant Your Petitioners leave to appeal from the said judgment of this Honourable Court to Her Majesty the Queen in Her Privy Council.

(2) That this Honourable Court may make such further or other Order in the premises as may seem just.

In the Supreme Court of Hong Kong Original Jurisdiction

No. 10 Petition for leave to Appeal to the Privy Council.

AND Your Petitioners will ever pray, etc.

Dated Hong Kong, the 17th day of April, 1963.

(Sd.) Leo D' Almada	(Sd.) Wilkinson & Grist
Counsel for the Appellants	Solicitors for the Appellants.

This Petition is filed by Messrs. Wilkinson & Grist of No. 2 Queen's Road Central, Victoria, Hong Kong, Solicitors for the above-named Appellants.

It is intended to serve this Petition on:—

The First and Second Respondents.

10

No. 11.

No. 11 Affidavit of Peter John Griffiths.

AFFIDAVIT OF PETER JOHN GRIFFITHS DATED THE 17TH DAY OF APRIL 1963

I, PETER JOHN GRIFFITHS of No. 2 Queen's Road Central, Victoria in the Colony of Hong Kong. Solicitor, hereby make oath and say as follows:—

1. I am the Solicitor for the above-named Appellants, Sin Poh Amalgamated (H.K.) Ltd. and as such I have the conduct and management of this Action.

2. The statements made in the Petition filed herein on even date for leave to appeal to Her Majesty the Queen in Her Privy Council from the 20 Judgment of this Honourable Court delivered in these proceedings on the 3rd day of April 1963 are to the best of my knowledge information and belief true in substance and in fact.

AND lastly I do make oath and say that the contents of this my Affidavit are true.

Sworn, Etc.

No. 12.

No. 12 Order giving provisional leave to Appeal to the Privy Council.

ORDER OF THE FULL COURT DATED THE 9TH DAY OF MAY, 1963 GIVING PROVISIONAL LEAVE TO APPEAL.

Upon the Petition of the Appellants filed herein on the 17th day of 30 April, 1963 and upon hearing Counsel for the Appellants and Counsel for the

In the Supreme Court of Hong Kong Original Jurisdiction

No. 12 Order giving provisional leave to Appeal to the Privy Council.

First Respondent and the Second Respondent and upon reading the said Petition and the Affidavit of Peter John Griffiths filed herein on the 17th day of April, 1963, IT IS ORDERED that leave be granted to the Appellants to appeal to Her Majesty the Queen in Her Privy Council against the Judgment of the Full Court herein dated the 3rd day of April 1963 conditional upon the Appellants within fourteen days from the date hereof entering into good and sufficient security of the sum of $10,000:00 either by payment in cash or provision of security to the satisfaction of the Registrar of this Court for the due prosecution of the appeal.

IT IS ALSO ORDERED that the said Appellants shall prepare and despatch the record of this Action within a period of four months from the date hereof. 10

Liberty to apply generally.

(Sd.) J. R. Oliver

Deputy Registrar. (L. S.)

EXHIBIT

Exhibit PJG

REFERRED TO IN THE FIRST AFFIDAVIT OF PETER JOHN GRIFFITHS DATED 22ND DAY OF MARCH 1963.

ATTENTION NEWS EDITOR: THE FOLLOWING ITEM IS TO REPLACE

G.I.S. ITEM 4:

COMMISSION 1

GOVERNMENT HAS TODAY ANNOUNCED THE APPOINTMENT OF A COMMISSION OF ENQUIRY SET UP UNDER THE COMMISSIONERS' POWERS ORDINANCE, CAP. 86, AND THE TERMS OF REFERENCE OF THAT COMMISSION.

THE FULL TEXT OF THE ANNOUNCEMENT IS AS FOLLOWS:

IN EXERCISE OF THE POWERS CONFERRED UPON HIM BY SECTION 2 OF THE COMMISSIONERS' POWERS ORDINANCE, THE GOVERNOR IN COUNCIL HAS APPOINTED THE HONOURABLE MR. JUSTICE BLAIR-KERR AS COMMISSIONER FOR THE PURPOSE OF INSTITUTING, MAKING AND CONDUCTING AN ENQUIRY IN ACCORDANCE WITH THE TERMS OF REFERENCE THEREOF SET OUT IN PARAGRAPH 5 AND OF REPORTING TO THE GOVERNOR THEREON.

IN EXERCISE OF THE POWERS AFORESAID THE GOVERNOR IN COUNCIL HAS APPOINTED GEORGE TIPPETT ROWE AS SECRETARY TO THE COMMISSIONER.

THE GOVERNOR IN COUNCIL DEEMS IT EXPEDIENT AND DIRECTS THAT THE COMMISSIONER SHALL, IN THE CONDUCT OF THE ENQUIRY, HAVE ALL THE POWERS, RIGHTS AND PRIVILEGES SPECIFIED IN SECTION 3 OF THE COMMISSIONERS' POWERS ORDINANCE,

(MORE) TIME: 12/1245.

COMMISSION 2

FOR THE PURPOSE OF PRESERVING SECURITY, THE GOVERNOR IN COUNCIL DIRECTS THAT THE POWERS CONFERRED UNDER PARAGRAPH (C) OF SECTION 3 OF THE ORDINANCE SHALL BE EXERCISED BY THE COMMISSIONER AS FOLLOWS:—

(A) THE COMMISSIONER SHALL EXCLUDE FROM THE ENQUIRY ALL PERSONS OTHER THAN —

Exhibit
PJG

(1) WITNESSES, WHO SHALL BE ADMITTED TO THE ENQUIRY SOLELY FOR THE PURPOSE OF GIVING EVIDENCE:

(2) THE COUNSEL OR SOLICITOR OF ANY PERSON ENTITLED TO BE REPRESENTED UNDER SECTION 6 OF THE ORDINANCE OR SUCH OTHER COUNSEL OR SOLICITOR AS MAY BE APPROVED BY THE COMMISSIONER.

(3) SUCH INTERPRETERS, REPORTERS RECORDING THE EVIDENCE FOR THE COMMISSIONER, AND OTHER CLERKS OR PERSONS AS THE COMMISSIONER MAY APPROVE. 10

THE TERMS OF REFERENCE OF THE SAID ENQUIRY SHALL BE AS FOLLOWS:—

(A) TO INQUIRE INTO THE CIRCUMSTANCES IN WHICH THE FOLLOWING ARTICLES OR REPORTS WERE PUBLISHED:

"THE ORDEAL OF CHAN KIN-KIN" PUBLISHED AT PAGES 1 AND 11 IN THE "HONG KONG TIGER STANDARD" NEWSPAPER DATED 7TH FEBRUARY, 1963:

THE ARTICLE OR REPORT PUBLISHED AT PAGE 24 OF THE "SING TAO JIH PAO" DATED 7TH FEBRUARY, 1963. 20

DESCRIBING THE ALLEGED EXPERIENCES OF ONE CHAN KIN-KIN:

(B) TO INQUIRE INTO THE ALLEGATIONS, CONTAINED IN THE ARTICLES OR REPORTS AFORESAID, THAT ONE CHAN KIN-KIN HAS BEEN ILL-TREATED AT THE TIME OF AND SUBSEQUENT TO HIS ARREST ON OR ABOUT THE 9TH JANUARY, 1963.

No. ....26... of 19~~6~~963

In the Privy Council

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

SIN POH AMALGAMATED (H.K.) LIMITED
(Plaintiffs) . . . . Appellants

AND

THE HONOURABLE THE ATTORNEY GENERAL
(1st Defendant) . . . . *First Respondent*

WILLIAM ALEXANDER BLAIR-KERR
(2nd Defendant) . . . . *Second Respondent*

RECORD OF PROCEEDINGS

CHARLES RUSSELL & Co.,
37, NORFOLK STREET,
STRAND, W.C.2.
Solicitors for the Respondents.

Markby Stewart & Wadesons,
Solicitors,
Moor House,
London Wall, E.C.2.

Solicitors for the Appellants.