Privy Council Appeal No. 26 *of* 1963

Sin Poh Amalgamated (H.K.) Limited – – – – – *Appellants*

v.

The Honourable the Attorney General and another – – – *Respondents*

FROM

THE FULL COURT OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 10TH DECEMBER 1964

Present at the Hearing:
LORD EVERSHED.
LORD MORRIS OF BORTH-Y-GEST.
LORD PEARCE.
LORD UPJOHN.
LORD WILBERFORCE.
[*Delivered by* LORD PEARCE]

The appellants published in their newspapers some articles and reports alleging that one Chan Kin-Kin was ill-treated at the time of and subsequent to his arrest. Thereupon the Governor-in-Council appointed the Hon. Mr. Justice Blair-Kerr, the second respondent, as Commissioner for the purpose of instituting, making and conducting an enquiry into the circumstances in which the articles and reports were published and into the allegations contained in them. In the present action the appellants claim a declaration that the appointment was illegal, *ultra vires*, null and void and an injunction to prohibit the second respondent from proceeding further with the enquiry.

The Commissioners Powers Ordinance (Chap. 86 of the Revised Edition of the Laws of Hong Kong) admittedly gives the Governor in Council power to appoint Commissioners (in the plural). The only issue in the case is whether the appointment of a sole Commissioner is permissible. The Full Court of Hong Kong unanimously held that the appointment was valid. Against that decision the appellants now appeal.

By s.2 of the Commissioners Powers Ordinance—" 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 enquiry that may be deemed advisable and for reporting thereon. . . . ". Throughout the Ordinance there are references to " the Commissioners " and there is no reference to a sole commissioner. Does the plural include the singular? If not, the appeal must succeed.

The Interpretation Ordinance (No. 1 of 1950) provides by s.2(1)—" Save where the contrary intention appears either from the 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 ". Section 3 lays down general provisions of interpretation, one of which is that " words in the singular include the plural and vice versa " (s.3(5)(6)). If therefore this provision applies to the Commissioners Powers Ordinance, the appointment was valid. Whether it does apply depends on whether " the contrary intention appears from the context " of the Commissioners Powers Ordinance. The original words of the Interpretation Ordinance as they existed at the time of the passing of the Commissioners Powers Ordinance

were amended after that date to their present form but it is agreed that for the purpose of the argument any such difference of wording has no significance.

Mr. Cripps in a forceful address for the appellants has put forward various arguments in favour of the view that " a contrary intention " does appear in the context. A side-note in the Ordinance refers to the Truck Act of 1870, which would seem to have been the English inspiration from which the Ordinance derived. But that Act was for the appointment of " a commission to inquire " for a particular purpose and expressly appointed two named commissioners. It is not necessary to decide how far one may properly make use of the side note, since the subject matter and terms of that Act differ so largely from the subject matter and terms of the Ordinance that it would provide no guidance on the point in issue. The attention of their Lordships was also called to a great number of statutes relating to other colonies, in the large majority of which there is a reference to the appointment of " one or more commissioners ". Even assuming, however, that one could properly consider an argument based on such material, the argument is two-edged. It could point equally to the likelihood that such an obvious convenience must have been intended similarly for Hong Kong and to the opposing likelihood that the words " one or more " would have been inserted in this Ordinance had it been intended that the Governor in Council in Hong Kong should have a similar power. Nor do their Lordships derive help from consideration of sections 22 and 23 which were introduced into the Interpretation Ordinance in 1950 and for the first time gave power to the Governor in Council to appoint a chairman of a commission. It cannot have been intended that in so oblique a fashion the powers of the Governor in Council should be limited to the appointment of commissioners in the plural if the Commissioners Powers Ordinance (as interpreted by the previous Interpretation Ordinance) had, up to 1950, given power to appoint a sole commissioner.

The main contention on which Mr. Cripps relies is that a contrary intention is shown by certain words in section 3 since they would be inapplicable and unworkable, he argues, if a sole commissioner were appointed. That section provides that the commissioners shall have the powers of a judge in respect of enforcing the attendance of witnesses, compelling the production of documents, punishing for contempt and ordering an inspection of property. It then continues—" and in such cases a summons under the hand of the chairman or presiding member of any such commission countersigned by the secretary or clerk, if any, to the commissioners may be substituted for and shall be equivalent to any form or process capable of being issued in any action or suit for enforcing the attendance of witnesses or compelling the production of documents; and any warrant of committal to prison issued for the purpose of enforcing any such powers as aforesaid shall be under the hand of the chairman or presiding member of any such commission as aforesaid countersigned by the secretary or clerk as aforesaid, if any, and shall not authorise the imprisonment of any offender for a period exceeding three months; ".

Those words are plainly intended to deal with details of procedure on the assumption that more than one commissioner is appointed. This is not surprising, in so far as the whole Ordinance is drafted on that assumption. The respondents' argument that the words " the chairman or presiding member " can apply to or include a sole member is not convincing. It may well be that the words would be held to do so, if the Ordinance had in terms provided for the appointment of a single commissioner and if the tenor of the Ordinance and the commonsense of the situation demanded such an interpretation. But *prima facie* the words " the chairman or presiding member " indicate that the draughtsman is assuming that there will be more than one member.

If an ordinance refers to " Commissioners " in the plural it is undoubtedly an alteration of its expressed intention if one reads it as referring to " Commissioners or sole Commissioner ". But the mere reference to the plural is not sufficient to show " a contrary intention ". If it were, then the Interpretation Ordinance would never apply at all. And the learned President of the Full Court aptly observed—" 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 use plural words or words implying the plural when the main clauses are so drafted would not appear to carry any great implication .... 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 tenor of the legislation as a whole. Whilst the mere use of the plural form without anything else may not be sufficient to exclude sec. 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 ".

It is to the appointing power in sec. 2 that one naturally looks first to see whether it contains any intention contrary to reading the plural " commissioners " as including the single " commissioner ". Beyond the bare fact that the plural is used, the section contains no evidence of any such intention. If one inserts after the word " commissioners " the words " or sole commissioner " no difficulty is thereby created, so far as that section is concerned.

If one were to add similar words in section 3, again no difficulty is created. The words on which the appellants rely would then read " and in such cases a summons under the hand of the chairman or presiding member or sole commissioner of every such commission " .... and, later, " any warrant of committal to prison issued for the purpose of enforcing any such powers as aforesaid shall be under the hand of the chairman or presiding member or sole commissioner of such commission ". This demonstrates that the provisions of section 3(*a*) are in fact entirely apt *mutatis-mutandis* to the procedure necessary on the appointment of a single commissioner.

No other section gives rise to difficulty. There is therefore nothing inherent in the Ordinance (apart from the mere fact that the plural is used), which is in any way unsuitable to the appointment of a single commissioner. There is nothing in the context of the Ordinance which could make the power to appoint a single commissioner seem out of accord with the intentions of the legislature. Such a power would seem to be a useful means of carrying out the general purposes and intention expressed in the ordinance; and the fact that certain matters of procedure are drafted to suit the appointment of more than one commissioner appears to be attributable to no more than the fact that the ordinance is drafted in plural terms. The Interpretation Ordinance was intended to avoid multiplicity of verbiage and to make the plural cover the singular except in such cases as one finds in the context of the legislation reason to suppose that the legislature, if offered such an amendment to the bill, would have rejected it. Here their Lordships cannot find any such reason.

There is thus no " contrary intention " sufficient to exclude the operation of the Interpretation Ordinance, and the appointment was validly made.

Their Lordships do not attach weight to the respondents' argument based on the fact that a sole commissioner was appointed in 1941. Owing to the intervention of hostile events the commissioner never sat; the legality of his appointment was never challenged; and there was never any occasion for such a challenge. Nor do they find it helpful to seek guidance from the practice in England. The Tribunals of Enquiry (Evidence) Act 1921, although very similar, has differences which might be important for the purposes of this argument.

Their Lordships will therefore humbly advise Her Majesty to dismiss the appeal. The appellants will pay the costs of the appeal.

(91123) Wt. 8069/113 80 1/65 Hw.

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DELIVERED BY
LORD PEARCE

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