

2/81

IN THE PRIVY COUNCIL

No. 13 of 1980

O N A P P E A L
FROM THE COURT OF APPEAL OF THE CROWN
COLONY OF HONG KONG

B E T W E E N :

THE ATTORNEY GENERAL

Appellant

- and -

HO PUI-YIU

Respondent

RECORD OF PROCEEDINGS

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O N A P P E A L
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O N A P P E A L
FROM THE COURT OF APPEAL OF THE CROWN
COLONY OF HONG KONG

B E T W E E N :

THE ATTORNEY GENERAL

Appellant

- and -

HO PUI-YIU

Respondent

RECORD OF PROCEEDINGS

10

No. 1

In the District
Court

Charge preferred against the Respondent

No. 1

Statement of Offence

Being a Crown Servant in control of pecuniary resources or property disproportionate to his then present or past official emoluments, contrary to section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong.

Charge preferred
against the
Respondent
dated
29th September
1977

Particulars of Offence

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HO Pui-yiu, Lawrence, a Crown Servant, was on 3rd December 1973 in control of pecuniary resources totalling \$15,516.09 and property, namely :-

- (i) Flat D, 15th Floor, Shung Chi House, Bailey Street, Hunghom, Kowloon;
- (ii) one Volkswagen motor car registration number BC1218;

In the District
Court

—
No. 1

Charge preferred
against the
Respondent
dated
29th September
1977

continued

- (iii) one fifth interest the following :-
2,000 shares of Realty Development
Corporation Ltd. 'A'
2,000 shares of Madison Securities Ltd.
- (iv) 44 shares of Hong Kong & Shanghai Banking
Corporation;
- (v) 400 shares of China Light & Power Co.
Ltd.;
- (vi) 1,200 shares of Hutchison International
Ltd.;
- (vii) 500 shares of Hong Kong Land Co. Ltd.;
- (viii) 1,000 shares of Yangtze-kiang Garment
Manufacturing Co. Ltd.;
- (ix) 100 shares of Hong Kong Telephone Co.
Ltd.;

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which pecuniary resources and property were dis-
proportionate to his then present or past official
emoluments.

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Judgment of
Garcia, D.J.
dated
27th April 1978

No. 2

Judgment of Garcia, D.J.

Coram: A. Garcia, D.J. in Court.

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REASONS FOR VERDICT

The defendant, Lawrence HO Pui-yiu, is charged
with the following offence:

Statement of offence

Being a Crown Servant in control of pecuniary
resources or property disproportionate to his then
present or past official emoluments, contrary to section

10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong.

In the District Court

Particulars of offence

No. 2

HO Pui-yiu, Lawrence, a Crown Servant, was on 3rd December 1973 in control of pecuniary resources totalling \$15,516.09 and property, namely :

Judgment of Garcia, D.J. dated 27th April 1978

continued

(i) Flat D, 15th floor, Shung Chi House, Bailey Street, Hunghom, Kowloon;

10 (ii) One Volkswagen motor car registration number BC1218;

(iii) one fifth interest the following :

2,000 shares of Realty Development Corporation Ltd. 'A'

2,000 shares of Madison Securities Ltd.;

(iv) 44 shares of Hong Kong & Shanghai Banking Corporation;

(v) 400 shares of China Light & Power Co. Ltd.;

(vi) 1200 shares of Hutchison International Ltd.;

(vii) 500 shares of Hong Kong Land Co. Ltd.;

20 (viii) 1,000 shares of YangtzeKiang Garment Manufacturing Co. Ltd.;

(ix) 100 shares of Hong Kong Telephone Co. Ltd.

which pecuniary resources and property were disproportionate to his then present or past official emoluments.

The defendant, who is now aged 41 years, first joined the Hong Kong Government service on 1st November 1956 as a Revenue Officer Class II at a salary of \$270 per month plus a cost of living allowance of 6% to 7% per month. On 1st September 1958 he was promoted to Revenue Sub-Inspector in the Preventive Service of the Commerce and

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continued

Industry Department. In October 1964, he was further promoted to the rank of Revenue Inspector in the same service, and between the date until 1st September 1970, when he was promoted to Senior Revenue Inspector, he had acted twice in the latter post. In November 1971, he was made Acting Chief Revenue Inspector and then this post was re-designated as Assistant Superintendent in 1973, he was substantively promoted to it on 12th December, 1973. On the 3rd December, 1973, he was therefore, still acting as an Assistant Superintendent of the newly designated Customs and Excise Service.

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In October 1968 he was sent on a study course to the United Kingdom and to three European cities, and in July 1970 he was again sent on a study course of about six months to Australia.

The defendant married TSUI Sau-chun, described as a teacher in the marriage certificate, on 28th November 1959, and their first-child, a son was born on 10th November 1961. Subsequent children were born on 28th November 1962, 21st October 1964, and 1st August 1970. It is significant to note that in respect of the first 3 children, the services of the same midwife, POON Yuem-ching, were used, whereas in the case of the birth of the last child, the delivery was carried out in Queen Elizabeth Hospital.

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Official emoluments

During the period from 1st November 1956 to 3rd December, 1973, according to the evidence first presented, the defendant's gross pay was \$302,674.12. After deductions of \$37,430.27 during that period, his net pay was calculated at \$265,243.85. Some modifications have had to be made to these figures because payments of arrears for salaries due to the defendant on salary adjustments amounting in all to \$2,835.43 were not added to the gross pay, nor were payments of subsistence allowance to the defendant, while he was on a study course in the United Kingdom in 1968, added to the gross pay, which payments totalled \$3,705.44. In addition, the defendant was paid a total of \$8,900 subsistence allowance during the study course he was sent

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to the Australia in 1970, a warm clothing allowance of \$640 for that course also. In addition he was also paid a furniture and domestic appliances allowance amounting to \$336.55. During the period in question the defendant obtained 3 salary advances (i) \$800 towards moving of quarters (ii) \$1,000 as funeral expenses for his mother and (iii) \$6,300 towards the purchase of a car. In the course of the evidence, it was conceded that these amounts ought to be added to the gross pay since there had been deductions of these amounts therefrom to arrive at the next pay and since a person who receives an advance of salary in effect receives a benefit and ought properly to have such sums included in his gross emoluments. The defendant was entitled to claim mileage allowance, plain clothes allowances and a warm clothing allowance for his study course in the United Kingdom and these have been calculated as \$6,615, \$340.39 and \$640 respectively. Revising the table shown in Exh. PH(4), the actual position as far as the defendant's net salary for the period from 1st November 1956 to 30th December 1975 is concerned, is as follows :

Gross Pay:

Basic Salary		\$269,44.00
Cost of living allowance		823.00
Advances:		
Chinese New Year	\$1,560.00	
Moving Quarters	800.00	
Funeral Expenses	1,000.00	
Motor Car	6,300.00	9,660.00
Interim allowances		2,450.00
Arrears of salary	6,811.31	
	<u>2,835.43</u>	9,646.74
Acting Pay		18,545.81
Education Award		393.00
Adjustment of salary		2,567.00
Special Bonus - 1967		
Disturbances		80.00

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continued

In the District Court	Subsistence allowance (UK)	\$3,705.44		
_____	(Aust.)	<u>8,900.00</u>	\$12,605.44	
No. 2	Warm clothing allowance (UK)	640.00		
Judgment of Garcia, D.J. dated 27th April 1978	(Aust.)	<u>640.00</u>	1,280.00	
continued	Furniture & Domestic appliances allowance		336.55	
	Mileage allowance		6,615.00	
	Plain clothes allowance		<u>340.39</u>	\$334,786.93 10
	<u>Deductions</u>			
	W & O Contributions		\$10,367.20	
	Advances (i) Chinese New Year	\$1,560.00		
	(ii) Moving Quarters	800.00		
	(iii) Funeral Expenses	1,000.00		
	(iv) Motor Car	<u>6,300.00</u>	9,660.00	
	Rent of Quarters		15,565.06	20
	Water Charges		1,093.72	
	Overpayment of Salary		513.29	
	Interest on Motor Car Advance		<u>231.00</u>	<u>37,430.27</u>
	Net Emoluments		\$297,336.66	

Further evidence was given that the records relating to payment of salaries to (sic) the defendant and deductions therefrom show that for the period from 2nd June 1972 to 3rd December 1973, he received a net salary of \$66,722.77, or an average of \$3,706 per month during that period of 18 months.

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This latter figure becomes significant when viewed in the content of the defendant's and his wife's acquisition of assets the subject of the present charge during almost the same period.

Bank Accounts

Between 1st November 1956 and 31st January 1960, the defendant's salary for the period was paid directly to him in cash and from the figures given in evidence the net amount paid to him was in the region of \$15,135.68. He was then already married but had no children at the latter date.

He opened a current account with the Hong Kong and Shanghai Banking Corporation, Kowloon Branch on 30th December 1959 and into which his salary for 1st February 1960 was first paid and this continued until 31st March 1961. No evidence has been given or is available as to the state of this particular account. Salary for the month of April 1961 and through until 31st January 1969 was paid into the defendant's current account number 68-233-032 with the same branch of the said Bank. Here again no evidence has been given of the state of this amount nor it appears is any such evidence available. His salary for the month of February 1969 and through until 31st December 1976 was paid into his current account no. 018-025536-001 with the Kowloon branch of the Hong Kong and Shanghai Bank, and copies of the statement of that account from 9th May 1969 to 20th December 1973 have been adduced in evidence. On the 3rd day of December 1973, the balance standing to the credit of that account was \$1,837.88. There is no doubt that this account was operated solely by the defendant himself.

The defendant's wife, HO TSUI Sau-chun, opened a Savings account with the Hong Kong & Shanghai Banking Corporation, Hung Hom Branch, on 21st August 1965 and according to the evidence of the Branch office manager of that Bank the said account numbered 912-2-004674 is still active. Again no evidence is available of the state of the account from its opening 1st January 1971. Statements showing the condition of that account are at Exhibits 16(1) to 16(4) and on the 3rd day of December 1973, it showed a credit balance of \$13,361.81. Part of the funds in that account was fed from cheque withdrawals from the defendant's current account and the entries in Exh. P16(1) for 22nd January 1971, showing a similar cheque deposit of \$2,000, and 28th April 1971

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continued

showing another cheque deposit of \$1,500, have their counterparts indicated in Exhibits P11(21), P11(22) and P11(24). The relevant cheques deposited into the defendant's wife's savings account are at Exhibits P11(18), P12(19), P11(20). The next cheque deposit into the savings account from funds in the defendant's current account was for the sum of \$300 on 7th May 1971 represented by the cheque in Exhibit P12(21). This was followed by 2 next cheque deposits, from funds in the defendant's current account, one for the sum of \$1,700 on 27th May 1971 (cheque Exhibit as P12(22)) and the other for \$200 on 23rd July 1971 (cheque Exhibit as P12(23)).

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On 28th June 1971, an order was given by the defendant to his Bank to the effect that the sum of \$1,700 be transferred from his current account every month as from 1st August 1971, to his wife's savings account No. 912-2-004674 and these transfers are reflected in Exhibits P11(28), P11(29), P11(30), P11(31), P11(33), P11(34), P11(36), P11(37), P11(39), P11(40), P11(41) and on 29th October 1972, that instruction was changed so that commencing on 31st October 1972 the amount to be transferred from the defendant's account was to be \$2,500, instead of \$1,700. These transfers are shown in Exhibits P11(43) to P11(56) inclusive. In addition to these transfers, further sums totalling \$27,378.00 for a similar period were transferred to his wife's account by means of cheques.

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In all, for that same period, a sum of \$95,578 was transferred to his wife's account.

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From the 1st January 1971 to 3rd December 1973, there is about 35 months the defendant earned net emoluments in the region of \$112,136 or \$3,204 per month.

The defendant's wife opened another savings account with the Hang Seng Bank Ltd. on 17th May 1973 (No. 6-004956) with an initial deposit of \$200 and this account up to 3rd December 1973 shows a credit balance of \$316.35. A statement of that account is at P19. The address which she registered with the Bank was Crystal Court, Man Wan Road, 7th floor, Flat F, Waterloo Road, Kowloon and this was changed to No. 8 Man Wan Road, Waterloo Road Hill, Flat D, 19th floor, address which

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have never been used by the defendant since all along up to the charge date his address he had been using was 11 Tsing Chau Street, 2nd floor, Hung Hom, Kowloon.

The total balance to the credit of all these 3 accounts is \$15,516.09 an amount which the Crown alleges is under the control of the defendant at the charge date.

Item (i) of property: Flat D, 15th floor, Shung Chi House, Bailey Street, Hung Hom, Kowloon

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continued

10 On the 18th October, 1972, the defendant's wife giving her address as Flat D, Harrison Court V, 20th floor, 8 Man Wan Road, Kowloon, agreed to purchase the mentioned flat for the sum of \$111,800, the purchase money to be paid as to \$41,800 upon the signing of the said agreement and the balance of \$70,000 by 72 equal monthly instalments of \$1,457.00 from 1st November 1972.

20 This agreement formed a preliminary site agreement whereby she undertook to pay \$1,000 as a deposit on 4th October 1972, and another sum of \$40,800 before 9th October 1972. The payment of the deposit of \$1,000 was made by a cheque 337316 dated 5th October 1972 drawn on Hang Seng Bank Ltd. whilst a sum of \$220 for disbursements was paid on 6th October 1972 also by a cheque No. 9318 drawn on Hang Seng Bank Ltd. The said sum of \$40,800 was paid by 2 cheques, one, a cashier order No. 260559 drawn on the Hong Kong and Shanghai Banking Corporation and the other a cheque No. 337317 drawn on Hang Seng Bank Ltd. (Exhs. P28(2) & P28(3)).

30 The funds for the cashier order were withdrawn from the defendant's wife's account with the Hong Kong & Shanghai Banking Corporation, and the relevant debit is shown in P16(2). There is no indication as to where the balance of \$19,800 had come from but it was represented by a cheque No. 337317 drawn on Hang Seng Bank Ltd. and it would have been comparatively simple to have obtained that information from the Bank concerned. However, as evidence has been given as to whether such information is or is not available.

40 Following the agreement dated 18th October 1972 and

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the payments of the above-mentioned sums, together with two additional sums of \$2,801 and \$26.20 for costs and disbursements, the first by a cheque No. 759819 drawn on the Hong Kong & Shanghai Banking Corporation and the second paid in cash on 8th August 1973, instalment payments up to the charge date in respect of the flat are as follows :-

<u>No.</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Cheque No.</u>	<u>Bank</u>	
1	1.11.72	\$1,457	282065	Hong Kong & Shanghai Banking Corporation	10
2	30.11.72	\$1,457	304175	"	
3	29.12.72	\$1,457	325189	"	
4	30. 1.73	\$1,457	372331	"	
5	28. 2.73	\$1,457	417784	"	
6	29. 3.73	\$1,457	695816	"	
7	1. 5.73	\$1,457	484471	"	
8	1. 6.73	\$1,457	484288	"	
9	25. 6.73	\$1,457	695819	"	
10	8. 8.73	\$1,457	Cash	"	20
11	24. 9.73	\$1,457	Cash	"	
12	14.10.73	\$1,457	Cash	"	
13	10.11.73	\$1,457	Cash	"	

Payment of further instalments was secured by a mortgage made between the defendant's wife and the Bank of East Asia Ltd. on 7th November 1974.

The total amount expended in the purchase of the said flat up to 3rd December 1973 was \$63,788.20.

(ii) Volkswagen Car No. BC1218

The Defendant owned 2 cars, one in succession to the other, prior to the acquisition of this car No. BC1218. The previous car was also a Volkswagen, AR4660, which he bought for \$8,500, second hand, 1970 model, and part of the payments therefore was made with the assistance of a government loan of \$6,300. This advance was repaid after 2 years. However on 10th February 1973, the defendant entered into an agreement to buy another Volkswagen car BC1218, from Jebesen Motors Ltd., King's Road, North Point, and the total price charged for the

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vehicle, inclusive of licence fees, etc. was \$17,210. Against this sum, the defendant was required to put up a non-refundable deposit of \$1,000, and he was allowed a trade-in allowance in his car AR4660. The balance of \$7,710 was to be paid in cash with the assistance of a government loan for the sum of \$7,500.

The deposit of \$1,000 was duly paid to the Company on 15th February 1973 and evidence given by the Accountant of the company, Mr. Luk Chung Lan, was that the sum paid in was represented by a cheque. The balance of \$7,500, aside from the trade-in allowance and \$210 partly cash, was paid on 12th March 1973, according to the witness by cheque, but not from the Hong Kong Government. It appears that the defendant was not eligible for a further advance from the Hong Kong Government to buy another car because the requisite period of time between the date of that loan for car No. AR4660 and the date of purchase of the present vehicle had not yet expired. The result of all these, according to the defendant was that he obtained the sum of \$7,500 from his wife to pay the balance so as to avoid the forfeiture of the \$1,000 deposit which was also provided by her.

As a preliminary observation there is nothing in the defendant's wife's account to indicate that this sum came from the savings account or that there was a transfer of such a sum to purchase a cashier order to meet that liability. Moreover, the defendant has been a government servant since 1st November 1956, and up to that date, that is, 10th February 1973, was not unfamiliar I would think, with the conditions governing the approval of loans by the Treasury for the purchase of motor cars certainly for a man of the defendant's intelligence and experience. It would not be too much to expect that he would make the necessary inquiries from the relevant authorities before embarking upon the purchase of a more than routine article like a motor car and paying a deposit of \$1,000 thereby committing himself to a liability which he says himself he could not afford to pay. Again surely one would have expected this type of common sense from a frugal and sensible man such as the defendant makes himself out to be. I can come to no other conclusion that if required the receipt which was issued to him subsequently would show that the balance of the funds \$7,520 came from government

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source, and in my view was done in order to cover up the fact that no explanation could be given for the sum of \$7,500 which provided the balance of the purchase price of the car.

(iii) 1/5th interest in 2,000 A shares of Realty Development Corporation, and 2,000 shares of Madison Securities Ltd.

Connection in July 1973, the defendant, joined with four other colleagues of the Customs and Excise Service and formed a syndicate for the purpose of buying shares. Each member of the syndicate participated to the extent of \$6,000, making a total of \$30,000 available for the purpose. The persons forming the syndicate are the defendant, Hui Po Cheung, Yuen King Tong, Wong Fan Wai and Shung Ring Wai. Hui Po Cheung collected the money from each of the participants and it was he who made the necessary arrangements to buy the shares involved. He does not however remember whether the defendant paid for his shares in cash or by cheque, or partly in one or partly in the other, or whether the total sum of the defendant's participation was paid in one sum or by 2 instalments. The shares which the syndicate originally purchased were :-

(i)	2,000 Realty A shares at \$11.80 each	= \$23,600.-
(ii)	2,000 Wai Tat shares at \$3.70 each	= <u>\$ 7,400.-</u>
		<u>\$31,000.-</u>

The shares in (ii) was sold for a slight profit of \$200 to \$300 but this profit was not re-used for further purchase of shares. The capital sum realised from the sale of these shares was re-invested in the present holding of 2,000 Madison Securities Ltd. shares which were purchased at \$3.30 per share, making the total for the purchase \$6,661. All dividends collected in respect of both lots of shares were spent in providing meals for the members of the syndicate. There is no doubt that with regard to this item and to the car, the defendant had full and direct control thereof.

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(iv) 44 shares of Hong Kong & Shanghai Banking Corporation

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continued

10 William Shih & Co. are a firm of stockbrokers and among one of their clients is a Mr. Yip Ho Ming. On 1st February 1973, they bought on his behalf one lot (40) of shares of the Hong Kong & Shanghai Banking Corporation at a total price of \$16,032. The apparent vendor of the shares was the Hong Kong & Shanghai Banking Corporation (Nominees) Ltd. and on 2nd February 1973, instead of the shares going to Mr. Yip an instrument of transfer was executed in favour of HO TSUI Sau chun, the defendant's wife, which transfer was subsequently registered on 28th February 1973. On 21st February 1973, 4 shares of the same Bank, originally held in the name of Tsui Sau King, Mr. Yip Ho Ming's wife, were also transferred to the defendant's wife and the value of such shares has been agreed by the parties as \$2,000.

20 Tsui Sau King is the elder sister of the defendant's wife. Yip Ho Ming has given evidence that he purchased the said shares on behalf of the defendant's wife after receiving instructions from his wife. There are only 2 transactions forming part of other dealings in shares by Mr. Yip Ho Ming for the defendant and his wife and his evidence thereto will be discussed with respect to the shares in items (viii) and (ix) of the particulars of the charge.

30 At no time do payments for these shares appear in either the defendant's account or his wife's account. It is however noted that the address used by the transferor of the 4 shares, that is Tsui Sau King, is Flat 5, at Hambra Building, Nathan Road, Kowloon, whereas at the date of the transfer, she was living with her husband and mother at Flat D5, Harrison Court, 20th floor, 8 Man Wan Road, Kowloon.

(v) 400 shares of China Light & Power Co. Ltd.

40 It was agreed by the parties that these shares were at the charge date held in the name of Ho Tsui Sau chun as indicated in Exhibits P39 and P40. These shares were bought on two different occasions through Tang Ping Kong & Co. stockbrokers. The first 200 at a price of \$10,848.60

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on 17th January 1973, and the second lot on 13th April 1973, at a price of \$11,907. Payment for the first lot, that is the sum of \$10,848.60 was made by a cashier order drawn on the Hong Kong & Shanghai Banking Corporation, Hung Hom Branch. The funds therefor coming from the defendant's wife's savings account with the same Bank. Payment for the second lot was also made by means of a cashier order for \$8,500 and a cheque made out for cash by the defendant for \$2,907. The funds for the cashier order came from the defendant's wife's savings account with the Hong Kong & Shanghai Banking Corporation whilst the cheque for \$2,907 was drawn on the defendant's current account with the same Bank. I am satisfied from the evidence given by Mr. Tang Ping Kong that the cheque for \$2,907 which he received (Exh. P12(32)) in part payment for the said 2nd lot of shares was issued by the defendant. It appears that the defendant's wife did not then have sufficient money in her account to meet the full cost of the 2nd lot of shares.

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(vi) 1,200 shares of Hutchison International Ltd.

It has also been agreed by the parties that 1,000 shares in this company were held by the defendant's wife in the charge date and the documents, Exhs. P44(1) and P44(2) show that up to 30th November 1973, due to bonuses and rights issues, she was the registered owner of 1,400 shares in the company. For the purpose of this charge however, since no value at the charge date had been assigned to these shares, only the acquisition cost value will be used to cover all the shares held in her name.

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The evidence relating to the purchase of these shares came from Mr. Yuen King Tong, a Senior Revenue Inspector of the Customs & Excise Service and an immediate subordinate of the defendant (between 1971 and 1973) working with him in the Investigation Section of the said service. Mr. Yuen King Tong is also a member of the share syndicate mentioned in (iii).

His evidence on the purchase of the 1,000 shares in Hutchison International Ltd., first of all, is that sometime in May, 1973, he was approached by the

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defendant to buy shares for him, as he has sister-in-law by the name of Bobbie Lo Wai Yiu, who was familiar with stockbrokers. An order to make by Mr. Yuen to Miss Lo for the said shares and upon being informed by the latter of the cost of the purchase. He was then handed a packet of money which he in turn delivered to Miss Lo. Miss Lo's evidence is to the effect that she did purchase some Hutchison International shares for someone, a certain Mr. Ho, as a result of a conversation with his brother-in-law, Mr. Yuen King Tong. She says that the cost of the shares was \$18,000 and this amount was handed to her by Mr. Yuen either in cash or by a cheque - she cannot remember which but eventually in exchange for what she got from Mr. Yuen. She received a cheque with which to pay for the share from a Mr. Lo Chung Leung, one of the partners of the firm with which she worked. She also states that stockbrokers do not accept cash for purchase of shares. Following this, she received a share certificate and receipt.

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Exhibit P46 which was produced by Mr. Ko Ki Kwong, a stock-market representative of Durtford Securities Ltd. at that time.

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Considering all these evidences, I find that the defendant did give instructions to Mr. Yuen King Tong, and eventually cash in the amount of \$18,162 to purchase the 1,000 shares of Hutchison International Ltd. which were eventually transferred to and registered in the name of the defendant's wife about 3 weeks after they were bought. In my view - cash in the said amount was handed to Mr. Yuen King Ton (sic) by the defendant even if a cheque had been issued for the said sum. There would have been no need of this cheque being converted into another cheque for issue by Lo Chung Leung for ultimate presentation to Durtford Securities Ltd. Here again, no record appears of any withdrawal from either of the defendant's wife's savings account to pay for their shares, nor is there any withdrawal of such an amount from that defendant's current account with the Hong Kong and Shanghai Banking Corporation.

(vii) 500 shares of Hong Kong Land Co. Ltd.

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It is also agreed by the partners that these shares were

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held at the charge date in the name of Ho Tsui Sau Chun,
the defendant's wife.

Mr. Tang Ping King, a sharebroker who gave evidence in relation to the purchase of the China Light and Power Co. Ltd. shares, is also concerned with the sale and purchase of the captioned shares. Mr. Tang's firm's records show sale and purchase of 300 Hong Kong Land Co. Ltd. shares to a Mr. Chan Wai Bun on 13th July 1973 for the sum of \$5,100 and these shares are sufficiently identified in Exhibits P48(1), P48(2) and P49 as being the shares which eventually found their way into the registered ownership of the defendant's wife. Payment for these shares was made by a cashier's order for the sum of \$5,149.50 drawn on Hang Seng Bank Ltd., Tokwa Wim Branch, in favour of Tang Ping Kong & Co. dated 12th July 1973 and funds for this sum were withdrawn from Ho Tsui Sau Chun's savings account with the Hang Seng Ltd. 6-004956. In turn the funds to enable such a withdrawal to be made, namely \$5,200, was deposited in cash the same day as the withdrawal of the \$5,149.50 to purchase the cashier order was made, that is, 12th July 1973. Why the cashier order was not purchased directly with the \$5,200 cash is in fact unexplained unless it was for the purpose of facilitating the purchase of the said cashier order.

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(viii) 1,000 shares of Yangtsekiang Garment
Manufacturing Co. Ltd. and

(ix) 100 shares of Hong Kong Telephone Co. Ltd.

The Crown alleges that these shares are held by Yip Ho Ming on behalf of the defendant. As previously noted, Yip Ho Ming is the husband of the defendant's wife's elder sister, Tsui Sau King, and during the relevant period, Mr. Yip was a pro-Assistant Manager of the Bank of America, dealing with letters of credit. His mother-in-law, Leung Fung Hin who is the mother of Mr. Tsui Sau Chun, as well, has been and is residing in the same premises as him.

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By reason of his relationship with the defendant and his wife, it was apparent at the very commencement of the evidence adduced from him that he was a most reluctant

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witness for the Crown and in my opinion uttered many untruths in the course of his giving evidence prior to and even after he was declared a hostile witness.

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10 What can be gathered from his evidence is that his flat was searched as early as May 1974 in connection with certain share dealings concerning the defendant and his wife, and that was 28th May 1974. He was interviewed by officers of the I.C.A.C. Amongst the documents
found in his premises was one referred to throughout these
proceedings as Annexure A in which were some notes and
figures showing the purchase of certain shares. Mr. Yip
has acknowledged that the document is in his handwriting
and the gist of his evidence so far as I am able to accept
it is that he had been instructed by his wife, Tsui Sau
King, to buy the above-mentioned shares for the defendant's
wife but that she, his wife, had misled him into writing
in the document that these shares were bought on behalf of
the defendant. He has given the absurd explanation that
his way of thinking, which he says is in accord with
20 Chinese tradition, whatever belonging to the wife belongs to the husband and vice versa, and that therefore he had put the name "Ho Pui Yiu" in the note whereas in reality, the shares were brought for and on behalf of Ho Tsui Sau Chun. I rejected his explanation because Mr. Yip is not an ignorant man and being a bank employee with a certain degree of responsibility, precision is of paramount importance in his job particularly is he deals with the opening of credit for customers of the Bank.

30 No further preference is made to the statement taken from him during an interview which he had with officers of the I.C.A.C., principally Simon Ho, since the latter is not available for the purpose of giving evidence in these proceedings.

From Mr. Yip's evidence, garbled and at times untrue, though it may be, I find that the shares above-mentioned were held on the charge date by Mr. Yip directly on behalf of the defendant and that their values on the dates of acquisition thereof are :

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(a)	1000 shares Yangtsekiang Garment Manufacturing Co. Ltd.	\$ 11,049.50
(b)	100 shares Hong Kong Telephone Co. Ltd.	<u>9,200.00</u>
		\$ <u>20,249.50</u>

The total amount of pecuniary resources and property
which the Crown alleges the defendant to be in control of on
the charge date works out at :

(a)	Bank accounts credit balance	\$ 15,516.09	
(b)	Flat D, 15/F, Shung Chi House	63,788.20	
(c)	Volkswagen Car No. BC1218	(sic) 88,710.00	10
(d)	1/5th interest in share syndicate	6,000.00	
(e)	44 shares HK & Shanghai Banking Corporation	18,032.00	
(f)	400 shares China Light & Power Co. Ltd.	22,755.60	
(g)	1,200 shares Hutchison International Ltd.	18,162.00	
(h)	500 shares Hong Kong Land Co. Ltd.	5,149.50	
(i)	1,000 shares Yangtsekiang Garment Manufacturing Co. Ltd.	11,049.50	20
(j)	100 shares H.K. Telephone Co. Ltd.	<u>9,200.00</u>	
		\$ <u>178,362.89</u>	

The defendant's affairs were first investigated in May
1974, but no active steps were apparently taken until 23rd
March 1976, when a search of his residence was made by
I.C.A.C. officers. As a result of the search certain
documents, and the defendant and his wife were taken back
to the I.C.A.C. Headquarters at Hutchison House when
they were interviewed separately. Apparently, no notes
of any significance of these interviews were made and
although the defendant was cautioned in respect of a
possible offence under Section 10(1)(b) of the Prevention
of Bribery Ordinance, no further action seems to have

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10 been taken against him for more than a year. The
sic defendant was eventually arrived at his home on 27th
September 1977 and charged with the present offence on
the same day. When asked as to why it took so long to
have the defendant charged with this offence, the answer
given by one of the I.C.A.C. officers engaged in inves-
tigating this case, Siu See King was "The investigation
was launched on rather a broad area. Besides, matters
were delayed by various Banks in an effort to trace what
we need." However that may be, the delay in bringing
defendant to trial was much prolonged.

20 At the end of the Crown case, it was submitted on
behalf of the defendant that he has no case to answer.
The submission in brief was based on 2 truths (i) that
as the Crown had not adduced any evidence as to the
value of the property set out in the charge, on the charge
date, there was no figure to compare with his net
official emoluments to show whether the resources and
property were disproportionate and therefore the defen-
dant ought to be discharged and (ii) if all the said property
had been purchased out of monetary gifts which the
defendant has made to his wife with no direction as to
what she should do with such moneys. There was no
evidence of any trust, agency bailment or gift of the
subsequent property to which the presumption in Section
10(2) of the Ordinance could be applied.

30 With regard to (i) I respectfully adopt the dicta in
R v. Sturgeon (1975) HKLR 685 "the conclusion we
have reached is that the calculation is not merely an
arithmetical one and the question to be asked is whether
that particular defendant could have acquired it with his
official emoluments" and say that it is a complete answer
to the submission on this matter.

40 So far as (ii) is concerned, the mere fact that the
monetary gifts had been converted into property does not
alter the position that such gifts came initially from the
husband and are only has to look at the purpose for which
the Ordinance was enacted, that is, "To make further and
better provision for the prevention of bribery and for pur-
poses necessary thereto or connected therewith", to
conclude that if presumption of control passes with the
alteration of the initial nature of the property compared in

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the trust, agency or gift, the whole purpose of the Ordinance would be defeated. I think the presumption in the submission, Section 19(2) of the Ordinance can be raised when the ultimate property or resources can be traced from an initial gift, trust or agency of resources can be traced from an corrupt Crown servants could make gifts of limited money, to be converted into property at a later date, to their close relatives with impurity.

In this respect, there is on a submission of no case to answer. I would respectfully refer to the judgment of Huggins, J.P. in Attorney General v. Tan Ki Ping Criminal Appeal No. 984 of 1976 where at page 3 he says :

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"The law in this case is :

(1) The Crown must establish a prima facie case whether it has been so is a pure matter of law and in reaching his decision the judge should not propose to make any finding of fact whatever;

(2) The Crown must prove the guilt of the defendant beyond reasonable doubt;

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(3) One of the elements of the offence may be established by operation of the presumption created by sub-section (2);

(4) The presumption will operate where, but only when the prosecution has proved to the jury beyond reasonable doubt the facts laid down is giving rise to the presumption;

(5) If the defendant wishes to adduce evidence in relation to any issue whatever (other than the admissibility of evidence) the only time he has a right to do so is when he is called upon to enter upon his defence and before the addresses of counsel."

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Further in respect of the presumption in section 10(2) of the said Ordinance, Huggins, J.P. said in Cheung Chu Kong v. The Queen Criminal Appeal No. 492 of 1977, at page 5 :

.... the primary fact is ".... the primary fact is "the reason to believe", no one questions that the burden of proving the guilt of the appellant and, therefore, of proving the primary facts giving rise to any presumption was on the Crown. No doubt what is "reason to believe" is largely a matter of opinion, but whether such reason to believe exists is nevertheless a matter of fact. Although in relation to the presumption it is the primary fact, by itself it may be said to be a matter of secondary fact the existence of which must be established from other "primary facts". In the present case those other primary facts are specified by the legislation, namely "the closeness of (the persons's) relationship to the accused and other circumstances". Those other primary facts must, of course, be "proved beyond reasonable doubt". Although there must be proof beyond reasonable doubt of the reason to believe and if the facts in which the belief is founded, and although those facts must be such as could reasonably found the belief. That is not to say that the existence of the trust, agency, bailment or gift must be proved beyond reasonable doubt.

However, the real force of Mr. Scrimen's argument lies in the contention that belief in relation to criminal proceedings must always be belief beyond all reasonable doubt, so that when the Crown seeks to establish beyond all reasonable doubt the existence of reason to believe it must establish beyond all reasonable doubt reason to believe beyond all reasonable doubt. If that be right, the words "there is reason to believe" are surplusage in the sense that the end result is the same whether they are there or not. The Crown must prove beyond all reasonable doubt the trust, agency, bailment or gift, for when there is reason to believe, beyond all reasonable doubt, the existence of fact it would be perverse not to believe the existence of that fact. But must believe in relation to criminal proceedings necessary be belief beyond all reasonable doubt? As was said in *Chan Sui Shing v. Reg.* (1974) HKLR 493, 498 what was to be proved beyond all reasonable doubt is the guilt of the defendant. If section 10(2) had said "where the Crown is satisfied that there is reason to believe on a balance of probabilities" no one could reasonably have contended that the belief which had to be proved was belief beyond

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all reasonable doubt and we do not think such a provision would be so outrageous that it is impossible the legislature could even contemplate it. We do not overlook the principle that a criminal statute should always be construed strictly and, in case of ambiguity in favour of the subject, but we do not think the general onus of proof is relevant to the interpretation of the sub-section. We have to give the statute such fair, large, liberal construction and interpretation as will best exercise the attainment of the object of the Ordinance according to its true intent, meaning and spirit: interpreted in *Mirchandam v. Reg. Criminal Appeal 1977, No. 266*. In so doing we must not treat words as otiose if they can be given some reasonable meaning. As it seems to us the only possible purpose in inserting the words "there is reason to believe" was to indicate that the existence of the trust, agency, bailment or gift did not have to be proved beyond reasonable doubt. If it were correct that there was a presumption in favour of requiring a higher standard of belief which could only be displayed by clear words, we would hold that such clear words have been used." 10 20

I think the Crown has proved the closeness of the relationship of the defendant to the holder of the properties set out in the charge, and the other circumstances mentioned above in relation to each of the said properties beyond a reasonable doubt, and in the circumstances, the presumption in section 10(2) of the Ordinance, so far as these properties are concerned, of which no evidence of direct control has been or could be adduced, applies.

In the result I held that the defendant had a case to answer in respect of all the pecuniary resources and the properties set out in the charge. 30

In the course of cross-examination of several witnesses for the Crown, principally Mr. Yuen King Tong, there was an indication made for the defence that the defendant and his wife were very frugal people and that throughout the years of their marriage they, particularly the wife had been able to save more than sufficient money to buy the properties in question. For the purposes of this trial both the defendant and his wife have compiled a table of income and expenditure in great detail, to indicate 40

how much money they could have saved from his official emoluments for the years 1959 to December 1973 and specifically for the purpose of showing that the money which went into the purchase of the flat and shares, etc. earn from his official emoluments and no other, aside from certain gifts of money which came from her father (\$ 20,000), and from her mother (36,000).

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10 Before coming back to this table, I shall deal first
of all with the money which was provided for the purchase
of the Volkswagen Car No. BC1218, because according to
the defendant, the funds for its purchase came by implic-
ation from savings which he had made through an invest-
ment in the Investors Overseas Services, and of which a
record is available in his statement of amount from the
Hong Kong & Shanghai Banking Corporation. (Exhibits
P11 - 1 to 56). There is no evidence to the contrary that
the amounts varying from \$130 to \$155 debited to his
current account represent his contributions to the IOS
investment. He states however that just as the IOS was
20 about to collapse in 1972, he had got wind of it and as
a result he was able to obtain a partial refund from the
Company amounting to \$6,779.76 (Exhibit P11(44)), and
he promptly added some money which was then in his account
and issued a cheque for \$7,000 on 27th November 1972 to
be deposited in his wife's savings account with the Hong Kong
and Shanghai Corporation (shown in Exh. P16(2)). With
regard to the purchase of the car, after his application for a
government loan had proved unsuccessful, and having already
deposited the sum of \$1,000 with the suppliers, he says that
30 in order to avoid the forfeiture of the said sum, he got the
sum of \$7,500 from his wife to pay for the balance due on the
car. The car was bought on 15th February 1973, by which
time his wife's savings account had only the sum of \$1,335.58
in credit. His evidence is further to the effect that the sum of
\$7,500 represented part of what he had given his wife out of the
IOS refund but in fact the payment of the balance of the purchase
price for the car was made by cheque to which I have earlier
alluded. His wife states that she presented \$8,520 towards the
cost of the car but in view of the above, I find this explanation
40 unsatisfactory. Nor am I impressed by the reasons he gave for
selling his previous car to his colleague bearing in mind that the
cost of the subject car is twice that of the previous one and his

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constant reminders to the Court of both his and his wife's
frugality.

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(i) Flat D, Shung Chi House, Bailey Street,
Hung Hom

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The defendant states that he was not aware of the purchase of this flat by his wife until he was asked to provide her with a cheque for \$1,457 on 30th March 1973 to pay for one of the instalments on the said flat. He further says that in the course of preparing his dot, he learnt that the sum of \$41,800 which was initially paid for the flat consisted partly of a gift of \$20,000 which his wife's father had given her and the sum of \$21,000 had come from his wife's savings account. So far as the wife's role in the purchase of this flat was concerned, she made the initial agreement to buy the flat on 4th October 1972 and paid a sum of \$1,000 deposit thereon. The first instalment so far as the agreement for sale and purchase of the flat stipulated was on or before 1st November 1972. On 29th October 1972, the standing instruction which the defendant had previously given to his Bank to pay \$1,700 into his wife's savings account every month was altered so that the sum of \$2,500 per month was to be transferred thereafter into her account, commencing from 31st October 1972. Payment was made and according to P16 (the wife's savings account) the sum of \$1,457 was withdrawn on 1st November 1972. No alterations had been made to the defendant's salary between October, November, December 1972 or since January 1973, and the change of amount represented by the standing order in my view was for the purpose of providing funds through his wife's account to meet part of the instalments in the flat the balance to come from rentals after leasing the flat, which occurred about a year later. In my view the defendant had knowledge of the purchase of the said flat and also provided the necessary funds to pay the instalments of the purchase price. The defendant's wife repeats that she was given the sum of \$20,000 in cash by her father towards the purchase of the flat, after she had paid the \$1,000 deposit on the flat, about the 5th or 6th October 1972. She says that the offer of \$20,000 to buy a flat had already been made by her father as far back as 1970 but

as the defendant's income then was "not very good" she did not take up his offer. The defendant's wife's father operated a catering service and a small restaurant at 133 and 137 Tung Choi Street, Ground Floor, which premises were subject to an exclusion order made under the Landlord & Tenant Ordinance, Cap. 255 on 13th August 1971. He was entitled to receive compensation under that order of \$64,000 and according to HO Tsui Sau Chun, her father was rich enough to provide her with amount \$20,000 gift to buy her flat. However, Mrs. Leung Fung Lin, that is, Ho Tsui Sau Chun's mother when referring to the compensation stated when her husband died he left the odd amount out of the \$64,000 and a flat in Sai Yeung Choi Street but quickly changed this to say that he had left her the whole sum of \$60,000.

Moreover, her husband had not been working for about 10 years prior to his death and they had both been supported by contributions from their sons, contrary to what the defendant's wife says of the prosperity of his business. She also says that her husband died when he was 65, about 7 years ago, and in view of this evidence, I find that the father of Ho Tsui Sau Chun could not have given her the \$20,000 which she states was a gift from him to her to buy the flat. In this connection I would make further reference to the letter written by her father on 29th November 1966 to the Inland Revenue Department to support this view. (Exhibit P53), and which letter I think is self-explanatory, of the \$21,000 which formed part of the initial payments for the flat, in cash deposit of \$10,000 was made to her savings account, on 8th July 1972 for which no corresponding entry appears in the defendant's current account, and another deposit of \$9,500 in cash was made on 23rd August 1972, again for which no corresponding entry appears in her husband's current account. No explanation has been given as to how such large cash deposits were made into her savings account, particularly for one who had not been working since at least 1961. I therefore reject the explanation with regard to the interest which the defendant holds in the flat and say all of the monies so far expended in the purchase of the flat at least up to the charge date came from him. However there is evidence to indicate that the payments of the instalments from November 1972 to October 1973 came from his official emoluments, totalling \$18,941.

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The amount therefore remaining unexplained in this item
is \$44,847.20.

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(iii) 1/5 interest in share syndicate

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In July 1970, the defendant went to Australia on a 6 month study tour and as asked previously he received a total of \$8,900 in subsistence allowances. The defendant says that of the amount, he spent about \$5,100 having a balance of \$3,800 which he brought back and credited to his Bank account, although no entry of the sum appears in the statements of his account at Exhibit P11. In fact, extracting the relevant figures from these statements, the total amount of subsistence allowance credited to his account totals \$8,540, and as far as can be ascertained from the said statements, a total of \$24,027.74 was paid into the account whilst a total of \$23,456.42 was withdrawn therefrom during the period whilst he was away in Australia, that is, from July 1970 to December 1970. The balance remaining in credit there was \$571.32. The defendant says that his wife, who had been authorised to draw on his account during his absence from the Colony had been able to save up some of the money and was then able to provide him with the necessary funds to enable him to participate in the said syndicate. The defendant has been able to show that he had not used up all his allowance and there is a probability that a major portion of this sum came from untainted sources. I accept his explanation as to where these funds had come from.

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(iv) 44 shares of Hong Kong & Shanghai Banking Corporation

The explanation as to how the funds for the purchase of these shares were provided is given by the defendant's wife who says that she was given the sum of \$20,000 in cash by her mother to invest the shares as it was during the time of the stock market boom, and that her mother was getting old, the implication being that if Mrs. Leung died while the shares were held in the defendant's wife's name, she would receive them as legacy. Mrs. Leung was at that time living with Yip Ho Ming and his wife, and is still doing so, and during that period Mr. Yip as he says in his evidence was helping other people, amongst others

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the defendant's wife and also Mrs. Leung to buy shares through his contacts in the stock market. Mrs. Leung's evidence regarding the \$20,000 is that she did give that sum to the defendant's wife to buy shares for her, although she did give \$1,000 to \$2,000 to her elder daughter (Mrs. Yip) for a like purpose. Mrs. Leung stated in answer to a question put to her in cross-examination that she draw the \$20,000 from her accounts with the Waterloo Road Branch of the Hong Kong & Shanghai Banking Corporation, the sum of \$15,000 from her fixed deposit account and \$5,000 from her savings Bank account. Earlier in the case, Mr. Chiu Man Yung, the Branch Manager of the Waterloo Road Branch of the Bank, in giving evidence for the Crown stated that Mrs. Leung Fung Ki and there was only one Leung Fung Ki having account in the Bank opened a fixed deposit account on 2nd November 1973 with the sum of \$10,000, but did not have such an account before that date and that following that the maximum she had to the credit of that account was \$20,000. He added that she did have a savings account which was opened on 10th August 1973. The evidence of the defendant's wife, briefly put regarding the sum of \$20,000 from her mother was that this sum was handed to her by her mother in cash and she in turn handed it to her elder sister who was then living in the same flat as the mother - Mrs. Leung was supposed to be suffering from kidney stones at the end of 1972 and early in 1973 and her investments were impaired - and this money was solemnly handed to her husband with the order that he buy shares for Tsui Sau Chun and have them eventually registered in latter's name to that she could eventually hold that on behalf of her mother. This explanation looked at in the light of the other evidence and of the fact that Mrs. Leung lived under the same roof with Mr. & Mrs. Yip Ho Ming, and there being no evidence to suggest that they were not on speaking terms - on the contrary he was buying shares for her - is nothing short of ludicrous and I reject the explanation as being completely unsatisfactory.

(v) 400 shares in China Light & Power Co. Ltd.

Funds for paying for the 1st lot of 200 shares came

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from the defendant's wife's savings account and the total account paid, that is \$10,848.60, was withdrawn from this account. She states however that before withdrawing that sum, she had earlier deposited \$5,000 in cash into that account to pay for the shares and her only explanation as to the money came from was from her own savings ket at home. The 2nd lot of 200 shares were bought for \$11,907, of which \$8,500 came from her savings account with the Hong Kong & Shanghai Banking Corporation - here again she makes reference to a deposit of \$4,500 in cash into the said savings account on 7th February 1973. She says that this money also came from her savings. The amount of \$11,907 is made up as follows: \$8,500 from her savings account, \$500 in cash from her savings, \$4,520 deposited into her savings account in cash and which came from her savings and the balance of \$2,907 came from her husband's current account. She says that she had asked him for this last sum. In my view this explanation with regard to the 2 sums of \$5,000 and \$4,500 that she says came from her savings at home is unsatisfactory because she has said all along that she had made prodigious savings, yet has had to obtain the sum of \$2,907 from her husband to buy the 2nd lot of shares instead of utilising her own savings of between \$20,000 to \$30,000 cash kept at home. 10 20

Part of the first payment of \$10,848.60 may have come from the \$7,000 which the defendant gave her from the IOS refund and part from savings from household money visible in the said savings account. However the amount of \$9,500 remains unexplained. 30

(vi) 1,200 shares in Hutchison International Ltd.

The explanation given for the funds used in the purchase of these shares is that \$16,000 of the \$18,000 cost of acquisition was money given to the defendant's wife by her mother to invest in shares. On this occasion this money was handed directly to the defendant who in turn handed it to Mr. Yuen King Tong, then to Bobby Lo to buy these shares. For the same reasons which I gave for rejection of the explanation regarding item (iv), I also reject the explanation as having no foundation in fact and after considering the defendant's evidence and that of Yuen King Tong. 40

(vi) 500 Hong Kong Land Co. Ltd.'s sharesIn the District
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10 The purchase price for these shares was \$5,149.50.
Payment of which was made by means of a cashier order
issued by the Hong Kong Bank Ltd. from funds in the
defendant's wife's savings account with that Bank. On
the same day as the cashier order was issued, a cash
deposit of \$5,200 was made into that account and her
explanation for that deposit is that the amount repre-
sented rentals originating from her father's flat at Lok
Shan Road, Tokawan, which flat was let at the rate of
\$150 per month. All that rent had previously been kept
in a box at home and finally paid into the account on the
same day she wanted to buy these shares. The ostensible
purpose of opening the savings account was to safeguard
the rentals and also to keep a record thereof in the Bank,
as she was afraid of being rubbed after the collection of
such rentals. Yet the amount which represented about
35 months' rental was kept at home even though the Bank
as she says was conveniently situated near her home and
20 she had easy access to it.

I find that this explanation of the origin of the funds
also unsatisfactory.

(viii) & (ix) 1,000 shares of Yangtsekiang Garment
Manufacturing Co. Ltd. and 100 shares of Hong
Kong Telephone Co. Ltd.

30 No explanation has been offered with regard to these
2 lots of shares as both the defendant and his wife com-
pletely doing that they ever had anything to do with these
shares. The defendant's wife does however state that
she did buy 500 Hong Kong Electric Co. Ltd. shares as
shown in Annexure A, and that after selling them for about
\$26,000 she kept the money at home and that the original
investment funds came from her savings at home. She
adds that the \$4,500 provided for the purchase of one lot
of China Light & Power Co. Ltd. shares came from the
proceeds of sale of the Hong Kong Electric shares and
that the \$8,500 for the Volkswagen car also came from
those proceeds and similarly the \$6,000 which the defen-
dant had used for his contribution to the share syndicate.
40 I did not accept her evidence that she had any savings at
home at all, and the explanation which she gives for the

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continued

provision of funds for the purchase of the Hong Kong Electric shares I do not find true. The sums of \$4,500 and the \$8,500 even if they came from the proceeds of sale of the Hong Kong Electric shares would still be monies not explainable in the sense that they did not arise out of official emoluments of the defendant, nor from any untainted source.

The defendant and his wife were taken at length through the table exhibited as D3 and the figure which is shown as their total savings from housekeeping monies amount to \$128,234 from December 1959 to 3rd December 1973. A majority of the expenditure figures on merely hypothetical although based on cost of living indices applicable to each of the months shown in the table. The defendant's wife was asked several times whether she could state what was the approximate amounts she had saved up at certain periods of time but she seemed unable to do so clearly or precisely such as would be expected of a person who purposes to be as frugal as herself and who was able to save as prodigiously as she says she had would be able to know by means how much she had at any given time or at the least would have kept some record rough though it may be of such savings, if any. It would also seem that when looking at the figures up to 1977, the defendant's wife should have savings, both in property and in cash of \$269,900, but so far as the defendant is concerned, he had the temerity to volunteer the statement that he has had to borrow money to meet his legal expenses in connection with this case and that he had obtained his head of department's consent to do so.

In the court of cross-examination the defendant was asked about the advance which he applied for in February 1969 in order to bury his mother. He replied that his wife had the \$1,000 to lend him for that purpose, but as it was for the burial of his mother and he being a dutiful son and proud man, it would be in effect a loss of face for him if he were to accept some loan for that purpose from someone who was only his mother's daughter-in-law. He was reminded that he had mentioned earlier that before she died his mother had given him some \$2,000, and also there was a similar gift of

10 money to his wife, he said he was afraid the amount was insufficient in the beginning as he did not realise his brothers were giving to contribute to the burial expenses as well. I suppose the duty only fell upon him even though his father was still alive at that time. In my opinion, he had had to take the advance, with greater loss of face since he went out of his immediate family to obtain funds for his mother's burial expenses, because neither he nor his wife had any money there, despite how much vaunted savings of \$32,000, to provide the \$1,000 for this purpose.

20 I do not accept as true the defendant's wife's evidence that she was able throughout those years to save the large sums she claims she did from housekeeping monies provided her by the defendant, that she kept such savings at home, and that eventually she took them out in dribs and drabs to invest in the properties set out in the particulars of charge. An examination of her savings account with the Hong Kong and Shanghai Banking Corporation indicates that of the money paid into her account for household expenses, a large portion of that money is withdrawn, and if her evidence on this subject is anything to go by she says that she would only withdraw money from the Bank when she requires it for use.

30 I mentioned at the start the significance of the use by the defendant's wife of the same midwife on the 3 occasions she gave birth to her children. The defendant was already in the government service then and in the course of his evidence he made the statement so as to emphasize his frugality that whenever any member of the family fell ill, only government doctors would be consulted. I don't think that he or she was as frugal as they made themselves not to be.

40 I think it pertinent to note generally that the outburst of investment activity did not begin until about the middle of 1972 when the defendant was then Acting Chief Revenue Inspector in the Investigation Division of the Customs and Excise Service. An explanation for this activity was that the stock market was then becoming and that investing in shares would lead to almost instant profits. This certainly did not apply to the investment in property.

In the District
Court

No. 2

Judgment of
Garcia, D.J.
dated
27th April 1978

continued

In the District
Court
—
No. 2
Judgment of
Garcia, D.J.
dated
27th April 1978
continued

So far as I am able to find from the evidence the only real savings which the defendant and his wife had been able to reach out of his official emoluments are those included in the credit balance to his current account, some of the credit balance to the Hong Kong Shanghai Bank savings account, and this applies equally to the Hang Seng Bank savings account up to 3rd December 1973. There is no evidence to indicate that the final balances of these 2 latter accounts, excluding those mentioned earlier on, do not represent savings from official emoluments. These balances therefore do not require any explanation. So far as the Defence submission on gifts of money from the defendant to his wife is concerned, I think a differentiation must be made between gifts of what proved to have come from official emoluments and gifts of money or property proceeding from questionable sources for which no satisfactory explanation has been or could be given. In this connection, Section 12(3) of the Prevention of Bribery Ordinance has relevance and referring to the case of *Chung Chu-keung v. The Queen* where it was said "in our view Mr. Aster is right when he says that it (an order under Section 12(3)) is able to an order for restitution or compensation and that the object is to put the connected person into the position he would have been in if he had considered only the wealth which he would explain: although it has not been proved that the unexplained wealth was the fruit of corruption, it is to be assumed that it was. The defendant has not rebutted the presumption in Section 10(2) of the Ordinance in respect of the items supplied to Court.

Accordingly I find that he was in control on the charge date of the following property of which no satisfactory explanation has been given.

Item (i)	\$44,847.20	
(ii)	8,710.00	
(iv)	18,032.00	
(v)	9,520.00	
(vi)	18,162.00	
(vii)	8,149.50	
(viii)	11,049.50	40
(ix)	<u>9,200.00</u>	
	\$124,650.20	

Taking into account the defendant's net official emolument of \$297,356.66 for the period up to 3rd December 1973, I find that the total amount of unexplained property under his control on the charge date is disproportionate to those emoluments and accordingly he is convicted of the offence charged in the Ordinance.

In the District Court

No. 2

Judgment of Garcia, D.J. dated 27th April 1978

continued

No. 3

Judges Notes (Martin Lee Submissions)

In the High Court

No. 3

Judges Notes (Martin Lee Submissions) dated 4th April 1978

10 Disproportion: Prosecution has to prove disproportion. Before you can be in position to prove disproportion certain basic figures to work on. Important for prosecution to prove 2 basic figures otherwise you will not find yourself in position to find disproportion. R. v. Sturgeon page 684.

Quantification has to be done on charge date. 2 basic figures - total official emoluments. All official earnings up to charge date.

Actual value of assets on charge date.

20 What is important you must have 2 basic figures - which one is disproportionate to another.

Difficulty is you do not have value of property on charge date at all.

Value of the money and pecuniary resources would not be qualified. All the other items - do not have a value placed on them.

30 Interest cost given is totally irrelevant only showed what value was before charge date. Just as irrelevant as giving you its value today. Position is that prosecution has not established even main ingredient of this particular offence. No evidence to prove essential element in alleged offence.

In the High
Court

No. 3

Judges Notes
(Martin Lee
Submissions)
dated
4th April 1978
continued

Finally Mok Chuen v. R. - page 2.

Firstly: Control: Only prima facie case made out in respect of accounts, cars and 1/5th share interest in the 2 transactions.

Disproportion: No evidence given at all of value of assets at charge date. Only signs pecuniary resources. Total figure - not basic salary: \$297,028.11. Net salary at page 4 - Exh. P4: + arrears of salary \$2835.43 (B), (C) \$3705.44 contra \$1820 advance, contra \$6300 car advance. P3A: Warm clothing allowance \$1280. UK allowance \$8900: Mileage allowance \$6615. Plain clothes allowance \$340.39. Ask Your Honour in finding reasons in \$15,000 odd compared with net emoluments of salary \$300,000. Reasonable jury will not say there is doubt in mind he could have saved up so much by honest living.

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No. 4

Judges Notes
(Peter Graham
Reply)
dated
4th April 1978

No. 4

Judges Notes (Peter Graham Reply)

Disproportionate Sturgeon test - when you look at official emoluments and look at assets could such assets have been acquired from official emoluments. Cannot see in Sturgeon's case as authority for proportion that proper date to assess value of assets is charge date. Correct approach which has been used by Court in fact is to take acquired cost and not value on charge date.

20

Evidence was not put in of value of shares on charge date. Mok Chuen's argument - that was initially raised in Cheung Shiu Keung's case not abandoned or argued before Court of Appeal. Court of Appeal specifically say would not decide that question. Your Honour may look at what is known of accused. Not very much evidence of defendant's personal circumstances. 4 children. Evidence that wife in registering herself originally claimed herself to be a nurse and then called herself a housewife.

30

When we have official emoluments of \$297,000 and pecuniary resources - assets held cost of which are

\$161,881. Having regard to fact that defendant is married man with 4 children reasonable pay would conclude assets are disproportionate even if figure is reduced by amount of shares - (viii) and (ix) assets would be disproportionate. Over official matters jury might look at although official emoluments earned over a long period of time in fact assets were acquired within a short space of time leaving aside bank accounts. All the property comes to a total of \$100730 with shares and mortgages on the flat including money in the bank accounts. During period September 1972 to July 1973 - according to bank statement he received salary of \$38,396.20- other incidental payments from Government he received \$42,000 odd during that period. Including bank accounts in record figures he earned \$48,000 he spent \$130,000. Evidence we have of bank accounts does not show these savings built up over the entire 16 years of his Government service. Evidence of car loans defendant obtained during Government would be circumstances following R. v. Sturgeon - incompatible with man stashing any substantial fact of his salary so that in 1972 and 1973 he could splash out and buying these shares. Ample evidence reasonable jury could come to show that assets are disproportionate to defendant's official emoluments.

No. 5

Judges Notes (Martin Lee Reply)

Dealing with matter and reason to believe. Submission on evidence no reason to believe that assets held by wife were in trust or on behalf of or as gift. Gift is contrary to she holding in trust for her husband.

My learned friend said if wife is in control of husband, everything she holds is in control of her husband. It is now sequitur. Case of Cheung Shiu Keung: dangerous to put any reliance on this case. He told me Mok Chuen's point was not argued at all. Point about Yip Ho Ming has given evidence he gave evidence in effect he was holding 2 lots of shares on behalf of defendant's wife and not for accused. Section 10(2) cannot be made use of unless it

In the High Court

No. 4

Judges Notes
(Peter Graham
Reply)dated
4th April 1978

continued

No. 5

Judges Notes
(Martin Lee
Reply)dated
4th April 1978

In the High
Court

No. 5

Judges Notes
(Martin Lee
Reply)
dated
4th April 1978
continued

was held for defendant. Cannot apply presumption twice. No evidence that Yip Ho Ming was holding them in trust for the husband. 44 shares of Hong Kong Bank defendant's wife put her name down. In respect of these 2 lots if she were beneficial owners of shares, she put her brother-in-law's name down. Quantification of assets for disproportion - cost price at date of acquisition can only be relevant on explanation. Section is clear and R. v. Sturgeon is clear. How can it be said that quantification is not at charge date. When it comes to explanation it would be different.

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Court looks at value at charge date. Disproportion must be looked at on charge date. Cannot referred cost price because that is not charge date.

Court adjourned to 6th April 1978 at 10 a. m.
for Ruling.

No. 6

Judges Notes
(Peter Graham
final address)
dated
14th April 1978

No. 6

Judges Notes (Peter Graham final address)

Then, having regard to the whole of the evidence, the presumption under section 10(2) could properly apply. In my submission on the evidence, having regard to the presumption, Your Honour would have little difficulty in finding that all the assets were in the control of the accused. That being so, in my submission, Your Honour will also have little difficulty in concluding that having regard to the total acquisition cost of the assets - and in my submission that is the only proper way to look at the acquisition cost - those assets are disproportionate to the official emoluments of the accused, disproportionate in the sense that having regard to the acquisition cost it is questionable whether or not they could have been acquired from the official emoluments. In my submission then Your Honour would have little difficulty in finding that the assets are in control and that they are disproportionate. The question then would be one of satisfactory explanation.

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No. 7

Judges Notes (Martin Lee's final submission)

My next submission, Your Honour, concerns the word "disproportion" and here I would certainly adopt and submit to Your Honour anew - but I will not do it at length, Your Honour, that until the values of the assets at the charge date are clearly proved to the Court beyond all reasonable doubt, the other figure, namely, official emoluments, cannot in itself show any disproportion. You need two figures proved beyond reasonable doubt before you can begin to consider whether one is disproportionate to the other.

Your Honour, at the end of the trial, the prosecution is in no better position than at the stage where the prosecution closes its case, namely, Your Honour is still at a complete loss to know the values of the assets at the charge date. Your Honour, it is only when the Court is satisfied beyond reasonable doubt that the defendant is in control of certain assets and it is only where the Court is further satisfied beyond reasonable doubt that such assets in his control are disproportionate to his official emoluments, that there is a duty for us to explain. It is made perfectly plain by the Court of Appeal in the various section 10 cases that came its way that it is only when you are satisfied of disproportion that you look to the evidence proffered by the defendant. And I would respectfully submit that if Your Honour is with me on this point, Your Honour need look no further and indeed Your Honour is enjoined not to look any further.

In the High Court

No. 7

Judges Notes
(Martin Lee's
final
submission)
dated
14th April 1978

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No. 8

Notice of Application for Leave to Appeal
against Conviction

I, HO Pui-yiu, Lawrence, having been convicted of the offence of "Being a Crown servant in control of pecuniary resources or property disproportionate to his then present or past official emoluments, contrary to section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong" and being now a prisoner

In the Court
of Appeal

No. 8

Notice of
Application for
Leave to
Appeal against
Conviction
dated
21st April 1978

In the Court
of Appeal

No. 8

Notice of
Application for
Leave to
Appeal against
Conviction
dated
21st April 1978
continued

in the Victoria Reception Centre at Old Bailey Street, Victoria and being desirous of appealing against my said conviction do hereby give you Notice that I hereby apply to the Court of Appeal for Leave to appeal against my said conviction on the grounds hereinafter set forth.

1. That the learned District Judge erred on a point of law holding that the prosecution need not adduce evidence as to the value of the assets at the charge date as opposed to the values at the dates of purchase to prove that the assets at the charge date were disproportionate to the official emoluments received by the Appellant from the commencement of Government Service up to the charge date. 10

2. That the learned District Judge had failed to direct himself on the standard of proof relating to the explanations furnished by the Appellant and his witnesses.

3. That the learned District Judge had wrongly "entered into the arena" during the trial in that he had cross-examined the Appellant, his wife and his mother-in-law on new matters not cross-examined on by counsel for the prosecution, thus showing bias against the Appellant, or failing to remain impartial throughout the trial. 20

4. That the learned District Judge erred on a point of law in holding that the presumption of control under section 10(2) of the Prevention of Bribery Ordinance can apply to property purchased by the Appellant's wife from money which she had received as gifts from the Appellant.

5. (a) That the learned District Judge's finding that 1000 shares of Yangzekiang Garment Manufacturing Co. Ltd. and 100 shares of Hong Kong Telephone Co. Ltd. were at the charge date held by one Yip Ho Ming directly for the Appellant was against the weight of evidence. 30

(b) That the said finding of the learned District Judge was wrong in that he had failed to appreciate sufficiently the fact that the said Yip Ho Ming had been turned into a hostile witness by the prosecution.

6. That on the evidence, the learned District Judge should have accepted the explanations offered by the

Appellant and his witnesses. The Appellant will give Particulars relating to specific findings of the learned District Judge when the transcripts of the Judgment and notes of evidence are available.

In the Court of Appeal

No. 8

7. That generally, it is unsafe and unsatisfactory to let the said conviction stand. The Appellant will give Particulars to this ground of appeal when the transcripts of the Judgment and notes of evidence are available.

Notice of Application for Leave to Appeal against Conviction dated 21st April 1978

Particulars of Trial and Conviction

- 10 1. Date of trial: 28/3/78 - 14/4/78 and 28/4/78 (excluding Saturdays, Sundays and holidays).
- 2. Sentence: 15 months of imprisonment and a fine of \$75,000.00. (Convicted on 28th April, 1978)

continued

You are required to answer the following questions :-

1. If you desire to apply to the Court of Appeal to assign you legal aid on your appeal, state your position in life, wages, salary, etc., and any other facts which you submit show reason for legal aid being assigned to you.

No.

20 2. If you desire to be present when the Court of Appeal considers your present application for leave to appeal, state the grounds on which you submit that the Court of Appeal should give you leave to be present thereat.

Yes.

State if you desire to be present at the final hearing of your appeal.

Yes.

30 3. The Court of Appeal, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal.

I will instruct counsel to present my case.

I desire to be present at the final hearing of my appeal.

In the Court
of Appeal

No. 9

Judgment of the Court of Appeal

No. 9

Judgment
dated
22nd January
1979

Pickering, J.A. :

The Appellant was convicted of being a Crown servant in control of pecuniary resources or property disproportionate to his then present or past official emoluments contrary to section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201. In the Particulars of Offence the date upon which he was alleged so to have been in control of disproportionate pecuniary resources or property (the charge date) was the 3rd December 1973. At the trial the learned judge was presented with evidence of the Appellant's total official emoluments from the date upon which he was first employed by the Hong Kong Government until the charge date. However no valuation of his total assets as at that date was before the Court. The value of certain items as at the charge date was agreed but the only valuation of the bulk of the assets was as at the date of acquisition thereof by the Appellant or his wife. At the close of the case for the prosecution it was submitted that in the absence of any valuation of assets as at the charge date the Appellant had no case to answer but this submission was rejected by the learned judge with the result that the first ground of appeal is that the judge erred on a point of law in holding that the prosecution need not adduce evidence as to the value of the assets as at the charge date as opposed to the values as at the dates of purchase. 10 20

Mr. Martin Lee, for the Appellant, contended that the Crown must prove beyond reasonable doubt that on the charge date certain assets were under the control of the Appellant and must prove also the value of those assets as at that date following which it was for the Crown to prove that the assets were disproportionate to the Appellant's official emoluments calculated up to that date; if such proof was forthcoming it was then for the Appellant to give an explanation, failing which he was guilty of the offence charged. It was, counsel argued, impossible to begin to prove disproportion until the value of the assets as at the charge date was compared with the total official emoluments up to that date. 30

Mr. Cahill, for the Crown, urged a contrary view maintaining that since the explanation required of an accused person, once disproportion had been established, related to "how such pecuniary resources or property came under his control" the use of the past tense did not imply a calculation of the disproportion as at the charge date but referred to the 40

acquisition date. The argument went on that it was for the Crown to prove control at the charge date but that to ascertain whether or not there was disproportion one must look at the emoluments and draw a line as at the acquisition date. In our view this approach flies in the face of the wording of the charge which alleges disproportion not at the acquisition date but at the charge date and to convict on the basis of the value at the acquisition date is to convict of something which was never charged. Common sense requires that if the official emoluments are to be valued as at the date of the charge (as is accepted) the property must be valued as at the same date.

We are told that the acquisition date approach has been employed in a number of cases before the Courts but that this is the first such case to reach this Court. The approach appears to have had its roots in a dictum of the Full Court in the case of Reg. v. Roy Sturgeon 1975 H.K.L.R. 677 at 686 where it was said :

"However, the conclusion we have reached is that the calculation is not merely an arithmetical one and the question to be asked is whether the property controlled by the defendant is such that it is questionable whether that particular defendant could have acquired it with his official emoluments."

What has obviously been overlooked is that the paragraph from which that passage is taken has nothing whatever to do with the valuation of property or the assessment of official emoluments such valuation and assessment had been considered in the earlier part of the judgment, where it was clearly assumed that the material date for the assessment of the official emoluments and for the valuation of the assets was the date of the charge. Indeed, no one ever suggested in that case that some other date could be taken for either of them. The "calculation" referred to in the paragraph in question was the comparison of the figures so arrived at and the point being made was that the same arithmetical proportion would not necessarily be disproportionate in every case. Thus possession of assets to a value of one half of total official emoluments might well be disproportionate in an accused with a large family and multitudinous expenses whilst not being disproportionate in the case of a bachelor. Mr. Cahill suggested that to require valuation of assets as at the charge date instead of as at the acquisition date

In the Court
of Appeal

No. 9

Judgment
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22nd January
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continued

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—————
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continued

could cause injustice to an accused as forcing him to go into the witness box, in order to rebut the presumption otherwise arising under section 10 of the Prevention of Bribery Ordinance, where property had undergone considerable appreciation in value between the acquisition date and the charge date. We see no injustice in an accused being required to give evidence of something so patent as the effects of inflation nor indeed is it necessary for the accused himself to go into the witness box to give evidence which could better come from an expert valuer. Conversely if assets have depreciated in value since the acquisition date so as to bring assets originally disproportionate to official emoluments beneath the umbrella of those emoluments there is no injustice to the Crown which has the widest latitude in selecting a charge date and can choose one close to the date of acquisition.

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The process involved in these cases under section 10(1)(b) of the Prevention of Bribery Ordinance was set out by this Court some two years later than the case of Sturgeon 1975 H.K.L.R. 677 at 686 in MOK Chuen and The Queen 1977 H.K.L.R. 605 where we said :-

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"The exercise required is that of considering the total assets as at the charge date, comparing them with total official emoluments and then examining any explanation put forward in regard to any disproportion found to exist - and that regardless of any denial of control in respect of property nonetheless found to be in control."

That passage was explicit whether or not there was any ambiguity in the passage in Sturgeon which has apparently caused the Crown to rely recently in this type of case upon valuation of assets as at the acquisition date. It is the later passage which should henceforth govern the conduct of prosecutions under section 10(1)(b).

30

In the present case no evidence was given of the value of the accused's total assets as at the charge date so that comparison of that total value with total emoluments as at the charge date was impossible. On this ground alone the appeal must be allowed, the conviction quashed and the sentence set aside. Moreover, this is

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not a case where we can say that the values at the charge date must have been greater than those at the dates of acquisition and accordingly we cannot apply the proviso.

In the Court
of Appeal

No. 9

Judgment
dated
22nd January
1979

continued

No. 10

Petition for Special Leave to Appeal to Her Majesty
in Council

In the Judicial
Committee of
the Privy
Council

No. 10

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN
COUNCIL

Petition for
Special Leave
to Appeal to
Her Majesty in
Council
dated
26th March 1979

10

THE HUMBLE PETITION
of THE ABOVE-NAMED
PETITIONER

S H E W E T H :-

1. THAT your Petitioner prays for special leave to appeal to Your Majesty in Council from the judgment of the Court of Appeal of the Supreme Court of Hong Kong (Briggs C.J., Huggins and Pickering, J.A.A.) dated the 22nd day of January, 1979 allowing an appeal by the Respondent against his conviction for an offence under Section 10(1)(b) of the Prevention of Bribery Ordinance, Chapter 201 of the Laws of Hong Kong.

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2. THAT Section 10 of the said Prevention of Bribery Ordinance provides -

In the Judicial
Committee of
the Privy
Council

No. 10

Petition for
Special Leave
to Appeal to
Her Majesty in
Council
dated
26th March 1979
continued

"10. (1) Any person who being or having been a
Crown Servant -

(a) maintains a standard of living above that
which is commensurate with his present or
past official emoluments; or,

(b) is in control of pecuniary resources or
property disproportionate to his present or
past official emoluments,

shall, unless he gives a satisfactory explanation to
the Court as to how he was able to maintain such a
standard of living or how such pecuniary resources
or property came under his control, be guilty of an
offence."

10

3. THAT the principal point of law which the Petitioner
seeks leave to argue is one of general importance namely,
must the Crown in a prosecution for an offence against the
said section 10(1)(b) necessarily adduce evidence to prove
the value of an accused's assets at the date laid in the
charge? Or, on the contrary, is the question whether
assets are or are not disproportionate to emoluments in
most cases best decided having regard to the cost of
acquiring the assets, the cost of acquisition remaining
constant though the value may fluctuate?

20

Further, the Petitioner seeks leave to submit by way
of appeal that the cost of assets acquired recently before
the date laid in the charge is at least prima facie evidence
of their value at that date.

4. THAT the Respondent was charged with the follow-
ing offence -

Statement of Offence

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Being a Crown servant in control of pecuniary

resources or property disproportionate to his then, present or past official emoluments, contrary to Section 10(1)(b) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong.

In the Judicial Committee of the Privy Council

Particulars of Offence

No. 10

HO Pui-Yiu, Lawrence, a Crown Servant, was on the 3rd (of) December, 1973 in control of pecuniary resources totalling \$15,516.09 and property, namely :-

Petition for Special Leave to Appeal to Her Majesty in Council dated 26th March 1979

10

(1) Flat D, 15/F, Shung Chi House, Bailey Street, Hung Hom, Kowloon;

continued

(2) one Volkswagen motor car, registration number BC 1218;

(3) one fifth interest in the following :-

2,000 shares of Realty Development Corporation Limited,

2,000 shares of Madison Securities Limited;

(4) 44 shares of Hong Kong and Shanghai Banking Corporation;

20

(5) 400 shares of China Light and Power Company Limited;

(6) 1,200 shares of Hutchison International Limited;

(7) 500 shares of Hong Kong Land Company Limited;

(8) 1,000 shares of the Yangtzekian Garment Manufacturing Company Limited; and

(9) 100 shares of Hong Kong Telephone Company Limited;

30

which pecuniary resources and property were disproportionate to his then, present or past official emoluments.

5. THAT the trial of the said Respondent commenced on

In the Judicial
Committee of
the Privy
Council

—————
No. 10

Petition for
Special Leave
to Appeal to
Her Majesty in
Council
dated
26th March 1979
continued

the 28th March, 1978 before His Honour Judge Garcia in Victoria District Court, Hong Kong and concluded on the 28th April, 1978.

6. THAT the case for the Crown consisted of agreed evidence, oral evidence and documentary evidence. Such evidence established the following :-

- (1) the Respondent was a married man with four children;
- (2) his net salary for the period 1st November, 1956 to 30th December, 1973 was H.K. \$297,336.66; 10
- (3) between 2nd June, 1972 and 3rd December, 1973 his net salary was HK\$66,722.77, an average of HK\$3706 per month;
- (4) on the 3rd December, 1973 the Respondent was in control of the pecuniary resources and property acquired and paid for as listed below:

<u>Item</u>	<u>Date of Acquisition</u>	<u>Payment</u>	20
(i) Bank account creditors		\$15,516.09	
(ii) Flat D, 15th Floor Shung Chi House	18.10.72	\$41,800 down payment \$21,987 further payments down to 3.12.73 Total \$63,788.20	
(iii) Volkswagen Car	15. 2.73	\$ 8,710 after deducting "trade in" allowance	30
(iv) 1/5th interest in share syndicate	July 1973	\$ 6,000	

	<u>Item</u>	<u>Date of Acquisition</u>	<u>Payment</u>	In the Judicial Committee of the Privy Council
	(v) 44 Shares H.K. and Shanghai Banking Corporation	February 1973	\$18,032	_____ No. 10
	(vi) 400 Shares China Light & Power Co. Ltd.	17. 1.73	\$22,755.60	Petition for Special Leave to Appeal to Her Majesty in Council dated 26th March 1979
10	(vii) 1,200 Shares Hutchison International Ltd.	May 1973	\$18,162	continued
	(viii) 500 Shares Hong Kong Land Co. Ltd.	July 1973	\$ 5,149.50	
	(ix) 1,000 Shares Yangtsekiang Garment Manufacturing Co. Ltd.	After Mid 1972	\$11,049.50	
20	(x) 100 Shares Hong Kong Telephone Co. Ltd.	After Mid 1972	\$ 9,200	

			\$ 178,362.89	

At the end of the Crown case Counsel for the Respondent submitted to the learned trial judge, inter alia, that there was no case to answer, in that, there was no evidence of the value of the assets as at the charge date and that accordingly the necessary element of disproportionality had not been proved by the Crown. The learned trial judge held that the Respondent had a case to answer and the Respondent then adduced evidence. No evidence adduced on behalf of the Respondent touched upon the values of the assets alleged to be under the control of the Respondent.

7. THAT the learned trial judge convicted the Respondent on the 28th April, 1978 and sentenced him to a

In the Judicial
Committee of
the Privy
Council

No. 10

Petition for
Special Leave
to Appeal to
Her Majesty in
Council

dated
26th March 1979

continued

term of imprisonment and to a fine of \$75,000. In the course of his judgment the learned trial judge referred to the submission made by Counsel for the Respondent at the conclusion of the prosecution evidence and reaffirmed his rejection of that submission. The learned trial judge accepted that the Crown was required to quantify the value of the assets under the control of the Respondent at the charge date and held that in the absence of other evidence as to the value of a particular asset he was entitled to adopt the acquisition cost of such asset to the Respondent.

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8. THAT from this decision the Respondent appealed to the Court of Appeal of the Supreme Court, Hong Kong and prayed in aid of this appeal, inter alia, the following ground :-

"That the learned trial judge erred on a point of law in holding that the prosecution need not adduce evidence as to the value of the assets at the charge date as opposed to the values at the date of purchase to prove that the assets at the charge date were disproportionate to the official emoluments received by the Appellant from the commencement of Government service up to the charge date".

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9. THAT the Court of Appeal of the Supreme Court of Hong Kong commenced the hearing of this appeal on the 2nd January, 1979 and this hearing concluded on the 9th January, 1979, and allowed the appeal on the aforementioned ground, stating inter alia :-

"In the present case no evidence was given of the value of the accused's total assets as at the charge date so that comparison of that total value with total emoluments as at the charge date was impossible Moreover, this is not a case where we can say that the values at the charge date must have been greater than those at the date of acquisition, and accordingly we cannot apply the proviso."

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10. THAT your Petitioner respectfully submits that -

(a) the Court of Appeal erred in holding that no

evidence had been given as to the value of the accused's total assets at the charge date;

- (b) the Court of Appeal erred in holding, by implication, that evidence of the acquisition cost of assets recently acquired was not prima facie evidence of the value of those assets as at the date of the charge;
- (c) the learned trial judge was correct, in the absence of direct evidence as to the value at charge date of the various assets, to adopt the acquisition costs in quantifying those assets and in assessing whether there was a disproportion between assets and emoluments;
- (d) the Court of Appeal erred in law in adopting as the sole test of such disproportion a balancing of total official emoluments received throughout a Crown servant's service against assets controlled by him on charge date and in failing to regard the financial position of such a Crown servant at the respective dates upon which such assets were acquired and the prices paid therefor; and
- (e) that the Court of Appeal erred in law in ruling that the acquisition cost of assets was irrelevant in determining the issue of disproportion having regard to the requirement that a satisfactory explanation, should such be held to be required, relates to how such assets came under the control of an accused.

In the Judicial
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No. 10

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continued

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AND YOUR PETITIONER
THEREFORE HUMBLY PRAYS
THAT YOUR MAJESTY IN
COUNCIL may be graciously
pleased to grant special leave to
appeal against the Judgment of
the Full Court of Appeal of Hong
Kong dated the 22nd of January,
1979 for the foregoing reasons
and for such further relief in

evidence had been given as to the value of the accused's total assets at the charge date;

(b) the Court of Appeal erred in holding, by implication, that evidence of the acquisition cost of assets recently acquired was not prima facie evidence of the value of those assets as at the date of the charge;

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(c) the learned trial judge was correct, in the absence of direct evidence as to the value at charge date of the various assets, to adopt the acquisition costs in quantifying those assets and in assessing whether there was a disproportion between assets and emoluments;

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(d) the Court of Appeal erred in law in adopting as the sole test of such disproportion a balancing of total official emoluments received throughout a Crown servant's service against assets controlled by him on charge date and in failing to regard the financial position of such a Crown servant at the respective dates upon which such assets were acquired and the prices paid therefor; and

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(e) that the Court of Appeal erred in law in ruling that the acquisition cost of assets was irrelevant in determining the issue of disproportion having regard to the requirement that a satisfactory explanation, should such be held to be required, relates to how such assets came under the control of an accused.

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No.10

Petition for
Special Leave
to Appeal to
Her Majesty in
Council
dated
26th March 1979

continued

AND YOUR PETITIONER
THEREFORE HUMBLY PRAYS
THAT YOUR MAJESTY IN
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In the Judicial
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continued

the premises as to Your
Majesty in Council may
seem fit.

AND YOUR PETITIONER
WILL EVER PRAY, ETC.

Christopher French, Q.C.

No. 11

Order Granting
Special Leave
to Appeal to
Her Majesty in
Council
dated
11th April 1979

No. 11

Order Granting Special Leave to Appeal
to Her Majesty in Council

AT THE COURT AT WINDSOR CASTLE

The 11th day of April 1979

Present

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS there was this day at the Board a Report
from the Judicial Committee of the Privy Council dated
the 9th day of April 1979 in the words following viz:-

"WHEREAS by virtue of His late Majesty King
Edward the Seventh's Order in Council of the 18th
day of October 1909 there was referred unto this
Committee a humble Petition of The Attorney
General in the matter of an Appeal from the Court
of Appeal of Hong Kong between the Petitioner and
Ho Pui-yiu Respondent setting forth that the Peti-
tioner prays for special leave to appeal from a
Judgment of the Court of Appeal of Hong Kong dated

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the 22nd January 1979 allowing an Appeal by the Respondent against his conviction in Victoria District Court of an offence under section 10(1)(b) of the Prevention of Bribery Ordinance: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Judgment of the Court of Appeal of Hong Kong dated the 22nd January 1979 and for further relief:

In the Judicial
Committee of
the Privy
Council

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No. 11

Order Granting
Special Leave
to Appeal to
Her Majesty in
Council
dated
11th April 1979

continued

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his appeal against the Judgment of the Court of Appeal of Hong Kong dated the 22nd January 1979:

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"And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

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HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order it as is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Hong Kong and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

N. E. LEIGH

IN THE PRIVY COUNCIL

No. 13 of 1980

O N A P P E A L
FROM THE COURT OF APPEAL OF THE CROWN
COLONY OF HONG KONG

B E T W E E N :

THE ATTORNEY GENERAL

Appellant

- and -

HO PUI-YIU

Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.
Hale Court
Lincoln's Inn
London WC2A 3UL
Appellant's Solicitors

BOWER COTTON & BOWER
4 Breems Buildings
Chancery Lane
London EC4
Respondent's Solicitors