

ON APPEAL  
FROM THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION

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B E T W E E N :-

THE ATTORNEY GENERAL Appellant

- and -

- (1) PAT CHIUK-WAH
- (2) YEUNG KWONG-FAT
- (3) SHUM KIANG-BOR alias SHUM PO
- (4) NG SHUI-WOO Respondents

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R E C O R D O F P R O C E E D I N G S

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 7 APR 1972  
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LONDON, W.C.1.

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Solicitors for the Respondents

9,1971

IN THE PRIVY COUNCIL

No. 34 of 1969

ON APPEAL  
FROM THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION

BETWEEN:-

THE ATTORNEY GENERAL

Appellant

- and -

- (1) PAT CHIUK-WAH  
(2) YEUNG KWONG-FAT  
(3) SHUM KIANG-BOR alias SHUM PO  
(4) NG SHUI-WOO
- Respondents

RECORD OF PROCEEDINGS

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ON APPEAL  
FROM THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION

B E T W E E N:-

THE ATTORNEY GENERAL

Appellant

- and -

(1) PAT CHIUK-WAH  
(2) YEUNG KWONG-FAT  
(3) SHUM KIANG-BOR alias SHUM PO  
(4) NG SHUI-WOO

Respondents

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R E C O R D     O F     P R O C E E D I N G S

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NO. 1  
CASE STATED

In the Supreme  
Court of Hong  
Kong Appellate  
Jurisdiction

No. 1

Case Stated  
29th October  
1968

This is a case stated by the undersigned, a judge of the District Court of the Colony of Hong Kong under the District Court Ordinance (Cap.5) for the purposes of appeal to the Full Court of the Supreme Court on a question of law which arose before me as hereinafter stated:-

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(1) At the Victoria District Court in the said Colony, from the 2nd to 5th days of September, 1968, charges under sections 4, 10 and 11 of the Forgery Ordinance, (Cap.209) were prosecuted by the Attorney General (hereinafter called the "Appellant") against PAT Chiuk-wah, YEUNG Kwong-fat, SHUM Kiang-bor alias SHUM Po and NG Shui-wood (hereinafter called the "Respondents").

In the Supreme  
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Kong Appellate  
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No. 1

Case Stated  
29th October  
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(continued)

- (2) Upon the conclusion of the Crown's case and upon hearing submissions by defence counsel and counsel for the Crown, on the 7th day of September I dismissed all the charges against the respondents and ordered their acquittal.
- (3) The Appellant, being dissatisfied with my order of acquittal as being erroneous in point of law has, pursuant to section 38 of the District Court Ordinance, duly applied to me in writing to state and sign a case setting forth the facts and the grounds on which my order was made in order that he may appeal therefrom to the Full Court. 10
- (4) Now, therefore I Derek Cons in compliance with the said application do hereby state and sign the following case.
- (5) A copy of the charges as laid against the Respondents is annexed hereto.
- (6) (a) I dismissed the 1st charge being of the opinion that British National Insurance Stamps are not "valuable securities" within the meaning of section 2 of the Forgery Ordinance (hereinafter called "the Ordinance"). 20
- (b) I dismissed the 2nd charge upon grounds against which the Appellant does not appeal.
- (c) I dismissed the remaining charges on the grounds that the said stamps are not "documents entitling or evidencing the title of any person to any share or interest in any public fund of any part of Her Majesty's dominions" within Section 11 of the Ordinance. 30
- A short statement of the reasons for my verdict is annexed.
- (7) It was contended by the Appellant that the said stamps were valuable securities within the meaning of section 2 of the Ordinance. In relation to the charges under section 11, it was also contended that the said stamps did entitle or evidence the title of a person to a 40

share or interest in a public fund of the government of the United Kingdom which description is also part of the definition of "valuable security" in section 2 of the Ordinance. And the question of law which arises in this case is therefore, "are British National Insurance Stamps 'valuable securities' within the meaning of the Ordinance?"

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- 10 (8) Upon the completion of the Crown's case I found the following facts:-
- (i) The scheme of national insurance in the United Kingdom provides for the payment of weekly contributions into a fund known as the National Insurance Fund at varying rates. The fund is under the control and management of the Minister of Pensions and National Insurance National Insurance Act, 1965 - 1967.
- 20 (ii) Entitlement to the various benefits depends upon the number of contributions of the appropriate class by a claimant.
- (iii) Contributions are payable by affixing a stamp to an insurance card kept by or on behalf of an insured person in the space indicated for that purpose upon the card (National Insurance Collection of Contributions Regulations, S. 1, 1948, No. 1274, Reg. 6 (1). The cards are surrendered to the Ministry when making a claim for benefits.
- 30 (iv) A stamp means an adhesive insurance stamp or, as the case may be, a stamp impressed in accordance with the National Insurance (Industrial injuries) Act 1965. (The National Insurance Collection of Contributions Regulations, Reg. 1 (2); The National Insurance and Industrial Injuries (Stamps) Regulations 1967 (the Schedule) S. 1 1967 488).
- 40 (v) Immediately after a stamp has been affixed to an insurance card it must be cancelled by writing in ink, or stamping, the date upon which it is affixed. (Reg. 6(7)(a) of the Collection of Contributions

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(continued)

Initialled by  
H.H.Judge Cons.

Regulations).

- (vi) For the purpose of the payment of contributions, insurance stamps must be prepared and issued in such manner as the Postmaster General, with the consent of the Treasury, may direct N.I. Act 1965, s. 14(2)
- (vii) The stamps are obtainable only from Post Offices in the United Kingdom.
- (viii) Allowance must be made by the Commissioner of Inland Revenue for any insurance stamp which has been inadvertently or undesignedly spoiled or rendered unfit for use before being affixed to an insurance card, and the Commissioner may repay the value of any stamp to any person having in his possession an insurance stamp for which he has no immediate use if it has not been spoiled or rendered unfit for use. (Stamp Duties Management Act 1891, ss. 9, 11, 12, 27 as applied by the N.I. and Industrial Injuries (Stamps) Regulations 1967). 10 20

Dated this 29th day of October, 1968.

(Sd.)

(D. Cons)  
District Judge.

CERTIFIED TRUE COPY

C. NG)  
(C. Ng)  
Ag. P.S. II

V.D.C. No. 35/68

In the District of Hong Kong  
Holden at Victoria

The Queen

against

- (1) PAT Chiuk-wah
- (2) YEUNG Kwong-fat
- (3) SHUM Kiang-bor  
alias SHUM Po
- (4) NG Shui-woo (female)

In the Supreme  
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The Court is informed that the following charges are preferred against PAT Chiuk-wah, YEUNG Kwong-fat, SHUM Kiang-bor alias SHUM Po and NG Shui-woo by the Attorney General.

1st Charge (against 1st, 2nd &  
3rd accused)

Statement of Offence

Forgery of valuable securities, contrary to section 4(2)(a) of the Forgery Ordinance, Cap.209.

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Particulars of Offence

PAT Chiuk-wah, YEUNG Kwong-fat and SHUM Kiang-bor alias SHUM Po on or about the 18th day of July, 1968, at 287-9, Block 2, second floor, Cheungshawan Resettlement Factory Building, in this Colony, with intent to defraud, forged a quantity of stamps purporting to be British National Insurance Stamps.

2nd Charge (against 1st, 2nd &  
3rd accused)

Statement of Offence

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Possession of forged documents, contrary to section 10(3) of the Forgery Ordinance, Cap. 209.

Particulars of Offence

PAT Chiuk-wah, YEUNG Kwong-fat and SHUM Kiang-bor alias SHUM Po, on the 18th day of July, 1968, at 287-9, Block 2, second floor, Cheungshawan Resettlement Factory Building, in this Colony, without lawful authority or excuse had in their custody or possession twenty thousand three hundred and ninety nine forged documents,

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namely, British National Insurance Stamps, knowing  
the same to be forged.

3rd Charge (against 1st, 2nd and  
3rd accused)

Statement of Offence

Possession of implements of forgery, contrary  
to section 11(d) of the Forgery Ordinance, Cap.209.

Particulars of Offence

PAT Chiuk-wah, YEUNG Kwong-fat and SHUM Kiang-  
bor alias SHUM Po, on the 18th day of July, 1968, at 10  
287-9, Block 2, second floor, Cheungshawan  
Resettlement Factory Building, in this Colony,  
without lawful authority or excuse, knowingly had  
in their custody or possession three photographic  
negatives upon which had been engraved or in anywise  
made certain numerals, letters and devices, the  
prints whereof resembled in whole or in part  
certain numerals, letters and devices peculiar to  
and used on British National Insurance Stamps.

4th Charge (against 1st and  
2nd accused)

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Statement of Offence

Possession of implements of forgery, contrary  
to section 11(d) of the Forgery Ordinance, Cap.209.

Particulars of Offence

PAT Chiuk-wah and YEUNG Kwong-fat, on the 18th  
day of July, 1968, at 287-9, Block 2, second floor,  
Sheungchawan Resettlement Factory Building, in this  
Colony, without lawful authority or excuse,  
knowingly had in their custody or possession five  
pieces of metal plates upon which had been engraved  
or in anywise made certain numerals, letters,  
marks and devices, the prints whereof resembled in  
whole or in part certain numerals, letters, marks  
and devices peculiar to and used on British National  
Insurance Stamps. 30

5th Charge (against 3rd accused  
only)

Statement of Offence

Possession of implements of forgery, contrary  
to section 11(d) of the Forgery Ordinance, Cap.209.

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Particulars of Offence

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(continued)

10 SHUM Kiang-bor alias SHUM Po, on the 18th day of July, 1968, at 37, Peiho Street, first floor, Shanshuipo, in this Colony, without lawful authority or excuse, knowingly had in his custody or possession four plastic photographic positives upon which had been engraved or in anywise made certain numerals, letters and devices, the prints whereof resembled in whole or in part certain numerals, letters and devices peculiar to and used on British National Insurance Stamps and two photographic negatives upon which had been engraved or in anywise made certain numerals, marks and a device, the prints whereof resembled in whole or in part certain numerals, marks and a device peculiar to and used on British National Insurance Stamps.

6th Charge (against 3rd and 4th  
accused)

Statement of Offence

20 Possession of implements of forgery, contrary to section 11(d) of the Forgery Ordinance, Cap.209.

Particulars of Offence

30 SHUM Kiang-bor alias SHUM Po and NG Shui-woo, on the 18th day of July, 1968, at 39, Peiho Street, second floor, Shanshuipo, in this Colony, without lawful authority or excuse, knowingly had in their custody or possession five plastic photographic positives upon which had been engraved or in anywise made certain numerals, letters, marks and a device, the prints whereof resembled in whole or in part certain numerals, letters, marks and a device peculiar to and used on British National Insurance Stamps.

7th Charge (against 3rd and 4th  
accused)

Statement of Offence

Possession of implements of forgery, contrary to section 11(e) of the Forgery Ordinance, Cap.209.

Particulars of Offence

40 SHUM Kiang-bor alias SHUM Po and NG Shui-woo, on the 18th day of July, 1968, at 39, Peiho Street,

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second floor, Shamshuipo, in this Colony, without lawful authority or excuse, knowingly had in their custody or possession one piece of tracing paper upon which had been printed or in anywise made certain numerals and a device which resembled in whole or in part certain numerals and a device peculiar to and used on British National Insurance Stamps.

Dated this 3rd day of August, 1968.

(continued)

sd. M.R. Sandor  
Crown Counsel

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for and on behalf of the Attorney General

Date of Pleading: 8.8.68 - 10 a.m.

The 1st, 2nd & 3rd accused persons are in Victoria Reception Centre.

The 4th accused person is on bail and her address is:-

No. 39, Peiho Street, 2nd floor, Shamshuipo,  
Kowloon.

SHORT STATEMENT OF REASONS FOR VERDICT

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This case arises as the result of raids by members of the Commercial Crimes Office upon suspicion of forgery of United Kingdom National Insurance stamps. The 1st defendant is the manager and part owner of a press where the 2nd defendant was found in the act of printing stamps; the 3rd defendant was shown to have had a part in the production of certain photographic materials necessary for the printing; while the 4th defendant is his wife and shares with him a room in which some of those materials were found.

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In his submission of no case on behalf of the 1st and 2nd defendants Mr. Sanguinetti raised six points. The first of these is that a National Insurance Stamp is not "a valuable security" within the definition section of the Forgery Ordinance. Mr. Wong for the prosecution on the other hand suggests that a stamp falls within any one of three classes therein referred to. The first of these is "any

writing entitling or evidencing the title of any person to any share or interest in any public..... fund.....of Her Majesty's Dominions....."

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10 I will leave till later, when I deal with the word "document", the question as to whether or not a stamp can be said to be "a writing". I accept for the moment that the National Insurance Fund is a fund within the section whether it be public or not or need to be and I put aside the question of whether or not a valuable security can be said to be such if payment of it depends upon the fulfillment of uncertain conditions (R. v. Tatlock (1)). But I am not satisfied that the stamp by itself shows any title. In itself it is nothing but a coloured piece of paper bearing a few words and a price, although it may well become part of a title once it has been affixed to a card properly issued by the Ministry of Social Security. The Crown sought to emphasize its refundable value. This could arise where a person has over-purchased or otherwise purchased stamps for which he no longer has any need, but in this respect it does not seem to me to differ from any item which a purchaser later finds unwanted and which the shopkeeper is willing to repurchase for the same price. Any object can be to some extent looked upon as security for its own value but this does not make it a valuable security. The value of a stamp is also refundable if it should be spoiled, as for example by the spilling of ink on to it but that point is shortly disposed of because the stamps before me were in no way spoiled.

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Secondly, it was suggested that the stamp is an "accountable receipt" within the section. I have been unable anywhere to find the definition of "accountable" in this respect, but it seems to me to be open to two interpretations. It may imply that it is something which will be put into an account to be produced to the auditors in due course or to be kept merely as evidence of payment. Alternatively, it was described in Fitchie's case (2), a case which concerned a pawnbroker's ticket, it is a receipt for goods for which the person receiving them is accountable. Neither these two categories seems to me to be appropriate to a National Insurance stamp.

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(1) 2 Q.B.D. 163.

(2) 1857 D. & B. 175.

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But whatever meaning is to be given to "accountable" the item must also still be a "receipt". The Ordinance provides no definition of this but there are many examples to be found in the Law reports. I take four of these to help me in my decision. On the one hand, there are the cases of Fitchie which I have already mentioned and also the case of Fitch (3). This latter case concerned the issue of toll-gate tickets upon a turnpike road, which tickets were later presented by the drivers who obtained them to their own employers to obtain a refund. Both the pawnticket and the toll-gate tickets were held by the Courts to be receipts. On the other hand there are the cases of Clark & Newsam (4) and Gooden (5). The former of these concerned a script certificate issued, as I understand the case, upon a call for part-payment of a share. The amount paid was entered upon the certificate. Nevertheless it was held not to be an accountable receipt. Baron Alderson remarked:-

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"It is merely a certificate that something has been done that will entitle the holder of the document at a future period to shares in the company."

Gooden was the case of an ordinary railway ticket, which again was held not to be a receipt. In fact, counsel who prosecuted in the earlier case of Boult (6) appears to have foreseen the difficulty, for he laid his charge as one of obtaining by falsely pretending that a forged ticket was genuine. A railway ticket is something that is bought from a railway company and later surrendered to the company in return for the benefits of travelling. A National Insurance stamp is something that is bought from the Minister and surrendered again to him in return for various benefits. The two appear to me to be so similar that I am prepared to base my decision on this case.

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The third class within the definition relates to "receipts or other instruments evidencing the payment of money". I have already dealt with the

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- (3) 1862 L. & C. 159  
(4) (1847) 1 Ex. 131  
(5) (1871) 11 Cox 672.  
(6) (1848) 2 C. & K. 604

question of receipts. Again there is no definition of "instrument" within the Ordinance and I can find no useful one elsewhere. But I have derived considerable assistance from an article which was drawn to my attention, an article by Professor Glanville Williams which appears in the 1948 Modern Law Review Volume 2 at page 150. At page 160 he makes his submission that "instrument", so far as the law of forgery is concerned, is synonymous with the word "document". I am prepared to accede to that submission and I will merely comment now in passing that the words "other instrument" seem to imply that in any event "a receipt" must also be such would fall within the class of things that can in law amount to an "instrument" or "document". Nor does a stamp evidence the payment of money. It merely, like e.g. many a packet of soap powder, carries its own price tag.

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Mr. Sanguinetti's second point was that there is no evidence of intent to defraud on the part of the 1st or 2nd defendants. But there is evidence that the 1st defendant made a remark to the sergeant that his foki was printing "green coloured insurance papers". And he also wrote in the sergeant's note-book the words "I know it is not right". There is no such direct evidence against the 2nd defendant, but it would not be unreasonable to infer that he must have known from the stamps themselves that they were official stamps of some kind. And in the absence of any other explanation, it would not be unreasonable to infer that stamps which are forged are intended to defraud some person somewhere.

Mr. Sanguinetti's third point was that there was no evidence that any of the defendants had knowledge that the devices in question resemble those used on National Insurance stamps. This relates to counts 3 to 7 inclusive, all of which are laid under section 11 of the Ordinance. The argument presupposes that the word "knowingly" relates not only to the phrase "has in his custody or possession" but also to all the remaining words of the various sub-sections. If this were the correct interpretation it would seem more appropriate that the word "knowingly" should have been placed in front of the word "uses"; otherwise, it places a different requirement of knowledge on the user as

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opposed to the possessor. With respect to the present case I am satisfied that the three requirements of these offences are fulfilled if it be shown that any defendant had possession of an article, that he knew he had possession and that the article was, in fact, one of the prohibited items.

Fourthly, it was suggested that such a stamp is not "a document". This is a word that has caused a lot of difficulty in the history of the law of forgery, but the cases would appear to establish that the words "writing", "instrument" and "document" are in that law one and the same thing. This is set out in so many words in Russell on Crime in the 12th Edition at page 1219 and is supported by Professor Glanville Williams in the article to which I have already referred. But these two learned authors have different tests for limiting the category. The latter argues that it is limited to those things which have no practical utility as such, but whose value lies solely in the symbols that they carry. This would include for example a written testimonial (Sharman) (7) but not the wrapping paper in Smiths case (8). Turner on the other hand is satisfied with anything which in a visible form conveys a definite statement. His argument is set out in Russell and also in the 19th edition of Kenny at page 384. An insurance stamp clearly fails this test. By itself it conveys no statement at all. The information that it had been or would be sold by the Post Office and might later support a claim for benefits comes not from the stamp, but from the extrinsic knowledge of the person who is looking at it. As to the first test the answer is not so obvious, but I think the proper view is that it is an object, bought as such for its own sake, for the purpose of completing the insurance card.

The point which really gives me pause in looking at this aspect of the case is the definition of "document" in our own Interpretation Ordinance. "Document" is there said as meaning "any publication and any matter written expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of

(7) (1854) Dears 285.

(8) (1848) Dears & Bell 566.

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these means". A stamp is not "a publication" within the normal sense of that word, but it may well fall within the second part of the definition. The difficulties that arise from this are firstly, what is meant by the word "matter" in the definition and whether that perhaps should not also in the context of forgery, be subject to one of the two tests that I have just outlined; and secondly, whether the legislature can be taken to have intended to set aside as it were by a side wind the historical basis of the law of forgery. I also have doubts if the definition would extend to either "writing" or "instrument".

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Finally Mr. Sanguinetti suggested that there was no evidence that the stamps found on the factory premises were indeed forgeries at all, as genuine stamps had not been proved. I agree that no person was called who was experienced in the production or printing of the genuine stamps, but I find it impossible to believe that a reasonable person, using his commonsense, would accept that the Government of the United Kingdom could choose to print such important stamps, in Hong Kong, in a small factory such as this one, and through the agency of a man who chooses to disappear as soon as it becomes apparent that the Police are making inquiries.

After Mr. Gunston's submission of no case, Mr. Sanguinetti made a further submission, but if it raised any point not already covered by the previous five, I must apologize and regret that I was unable to comprehend it.

Mr. Gunston associated himself with Mr. Sanguinetti's arguments as far as they were appropriate to his clients and also made the three further submissions on the facts. Firstly, he suggested that there was no evidence that the 3rd defendant took part in the actual forgery. With this I agree. There was evidence that he procured the necessary photographic material, but there is no evidence as to how that material passed from him to the 1st and 2nd defendants, no evidence that he was ever on the premises in Cheungshawan and no evidence that he had any connection whatsoever with those defendants or the actual making of the stamps.

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The second point was that there was no evidence that the 3rd defendant had possession of the stamps and the negatives at the Cheungshawan premises. With this I again agree. The prosecution sought to rely on his possession of similar negatives and positives to show that he thereby retained some sort of control sufficient to bring into operation section 14 of the Forgery Ordinance. This section provides that a person shall nevertheless still be deemed to have an article in his custody or possession if he knowingly and wilfully has it in the actual custody or possession of some other person. But here there is no evidence that the 3rd defendant knew the forged stamps were on the Cheungshawan premises or that he had intended that they should be there. 10

Thirdly, Mr. Gunston submitted that there was no evidence that the 4th defendant had possession of the items now Exh. 31. But she did admit to the Police that all the things in the room at 39 Pai Ho Street were hers, and also to the ownership of the key which unlocked the drawer containing Exh. 31. There was also a certain inconsistency about her making a mark to the statement taken originally by the police constable and yet being able to sign her name in answer to the charge put to her by Inspector Hughes. My attention was drawn to the case of Boober (9) as authority for the proposition that where a man and woman live together in a room as husband and wife, the possession of the articles in that room is deemed to be in the man alone. I agree that this is what the headnote to the case implies, but it is not fully supported by the judgment, which shows that there are circumstances where the possession may yet be in others. In any event it seems to me that present day conditions in Hong Kong are not the same as were extant in England one hundred years ago. Were I sitting with the jury, I would undoubtedly leave the case of the 4th defendant to them; but I might add that sitting as a judge alone, I am of the opinion that were no further evidence called in respect of her, I would find her not guilty. 20 30 40

I turn now to the charges themselves. The



Statement of Offence under the 1st charge is forgery of valuable securities. But for the reasons already given I am satisfied that the stamps in question are not valuable securities within the Ordinance; they do not entitle or evidence the title of any person, are not accountable receipts or receipts at all and do not evidence the payment of money. I also have doubts that they are "writings" or "instruments" as envisaged by the law of forgery.

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The second charge is brought under section 10(3) of the Ordinance, which provides that a person shall be guilty of a misdemeanour where without lawful authority or excuse he has in his custody or possession a forged document the possession of which is not made illegal under this or any other enactment for the time being in force. Obviously there is inconsistency between this charge and the first charge, which was frankly admitted by counsel for the Crown. It may be that it was originally inserted as a form of alternative charge in case the first should not prove satisfactory. Section 7(4) deals with the forgery of seals or dies made or used by Her Majesty's Governments. The definition section in effect equates stamps of the kind before me with seals or dies. This then would seem to me to be the obvious section under which charges arising from this case should have been brought. So simple does this seem that for a long time I looked to find the elementary fallacy that I had not perceived. But it still eludes me. If therefore the facts in this case support a charge under that section, then clearly the appropriate section, where the Crown also wishes to bring a charge of possession, should be subsection (2) of section 10. Mr. Wong asked that I should amend to a charge under that subsection, but this would in effect be the substitution of a new charge and I am not prepared to accede to that request. He further, relying on the authority of Garland (10) asked me to deal with the charge on the ground that it set out a common law forgery. But this again would appear to be a substitution, for the offence as presently laid is an offence of possession. No authority has been shown to me that possession of a forged document was an offence at common law.

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(1) (1910) 1 K.B. 154.

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The remaining charges are laid under paragraphs (d) or (e) section 11. By reason of the use of the words "any such words, figures etc." and "made as aforesaid", these paragraphs relate back to the catalogue of items in paragraph (c). The appropriate item there is "any document entitling or evidencing the title of any person to any share or interest in any.....fund..... of any part of Her Majesty's Dominions....." Again the requirement of title or evidence of title is the impassable hurdle for the Crown and these charges must also fall.

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I may add that the first, second and third charges would also fail as against the 3rd defendant for lack of evidence.

(D. Cons)  
District Judge

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JUDGMENT OF HOGAN, C.J.

This is an appeal by way of case stated from a District Court Judge's decision that the respondents had no case to answer on charges of forging of valuable securities contrary to s.4(2) (a) of the Forgery Ordinance (Cap.209), possession of forged documents contrary to s.10(3), and of implements of forgery contrary to s.11(d) and s.11(e). The articles alleged to have been forged purported to be British National Insurance Stamps issued under statutory provisions in the United Kingdom and having on the face of them the words and figures:-

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"Nat. Insurance: N.H.S.  
56'8  
S.E.T. 25' -"

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The first question put to us on the case stated is whether these stamps are valuable securities, an expression which has an extended meaning in the Forgery Ordinance by virtue of the following part of Section 2:-

"valuable security" includes any writing

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entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any part of Her Majesty's dominions or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without Her Majesty's dominions, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order or other security for the payment of money or any authority or request for the payment of money or for the delivery or transfer of goods or chattels, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money or the delivery of any chattel personal."

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The details of the scheme under which these stamps are issued appear in the District Judge's findings of fact as follows:-

- "(1) The scheme of national insurance in the United Kingdom provides for the payment of weekly contributions into a fund known as the National Insurance Fund at varying rates. The fund is under the control and management of the Minister of Pensions and National Insurance National Insurance Act, 1965 - 1967.
- (ii) Entitlement to the various benefits depends upon the number of contributions of the appropriate class by a claimant.
- (iii) Contributions are payable by affixing a stamp to an insurance card kept by or on behalf of an insured person in the space indicated for that purpose upon the card (National Insurance Collection of Contributions Regulations, S.I. 1948, No. 1274, Reg. 6(1)). The cards are surrendered to the Ministry when making a claim for benefits.
- (iv) A stamp means an adhesive insurance stamp or, as the case may be, a stamp impressed in accordance with the National Insurance (Industrial Injuries) Act 1965. (The National Insurance Collection of Contributions Regulations, Reg. 1(2)); The National

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Insurance and Industrial Injuries (Stamps)  
Regulations 1967 (the Schedule) S.I. 1967 483).

- (v) Immediately after a stamp has been affixed to an insurance card it must be cancelled by writing in ink, or stamping, the date upon which it is affixed. (Reg. 6(7)(a) of the Collection of Contributions Regulations). 10
- (vi) For the purpose of the payment of contributions, insurance stamps must be prepared and issued in such manner as the Postmaster General, with the consent of the Treasury, may direct N.I. Act 1965, s. 14(2)7. 10
- (vii) The stamps are obtainable only from Post Offices in the United Kingdom.
- (viii) Allowance must be made by the Commissioner of Inland Revenue for any insurance stamp which has been inadvertently or undesignedly spoiled or rendered unfit for use before being affixed to an insurance card, and the Commissioner may repay the value of any stamp to any person having in his possession an insurance stamp for which he has no immediate use if it has not been spoiled or rendered unfit for use. (Stamp Duties Management Act 1891, ss. 9, 11, 12, 27 as applied by the N.I. and Industrial Injuries (Stamps) Regulations 1967). 20

If the matter were to be determined simply by the application of common sense or common knowledge, without reference to decided cases or other statutory provisions the appellant would appear to have reasonable prospects of success. If a thing is capable of ownership and contains writing, the contents of which will, at the appropriate time and place, enable the owner to obtain in exchange for it money or money's worth it would seem to fit the ordinary concept of a "valuable security". The stamps in the present case would appear to be such a thing, particularly when, like a tax certificate, they can be used to fulfill a statutory obligation to pay money. 30 40

Counsel for the Crown, contended that the legislation should be so interpreted and that there is no case which shows that this construction

is wrong. Counsel for the respondents, on the other hand, contended that there is no case which shows that it is right; and he has directed our attention to a number of textbooks, including Halsbury's Laws of England (2nd Ed. Vol.10), Russell on Crime and the English Empire Digest (Vol.15), none of which treat stamps such as these as falling within the expression "valuable security". Moreover, he says, there are special provisions in the English Legislation, from part of which the Forgery Ordinance is taken, making specific provision for forgery of, for example, post office money orders.

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It is a safe presumption, he said, that the Legislature does nothing in vain and these special provisions would not have been introduced in the U.K. if the matter could have been covered by general provisions of the kind relied on by the Crown in the present case, which, apart from a slight addition to the definition of "valuable security" in 1913, have been in existence for many years in England both in the Forgery Act of 1861 and the Larceny Acts.

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He referred us to the decision in R. v. Ansell<sup>(1)</sup> for this contention that the law of forgery has many technicalities and that one must be careful of locking merely to common sense or simple logic. The history of the law emphasized the need for caution, he said, and there was a grave danger that if the present appeal was allowed the whole structure of the law of forgery, as hitherto understood, would be undermined.

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In R. v. Ansell<sup>(1)</sup>, Byles J. queried whether a post office order which required the payee to sign "the receipt on the other side" was properly described as a receipt. "Is it not in truth", he said, "an order for the payment of money" but as it had hitherto been taken as a receipt, he decided to treat it as such, whilst reserving the point for the Court of Criminal Appeal. No trace can be found of any resulting decision by the Court of Criminal Appeal but, counsel said, it was questions of this kind which illustrated and emphasized the need for the special legislation

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(1) 8 Cox C.C. p. 409

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introduced in England to deal specifically with currency and banknotes, post office money orders, etc. - a point subsequently taken up by counsel for the Crown, who suggested that the special provision now contained in section 23 of the English Post Office Act, 1953, dealing with money orders, might well have had its origin in the doubt expressed in this particular case.

Counsel for the respondents went on to say that only if the Crown was able to put the stamps into one or other of the following three categories mentioned in the definition of "valuable security" in the Forgery Ordinance, could they succeed on this appeal:- 10

- (1) a writing entitling or evidencing the title of a person to a share or interest in a public fund, etc.;
- (2) an accountable receipt; or
- (3) any receipt or other instrument evidencing the payment of money. 20

The first category was negatived, he said, because the stamp in itself provided no title for anybody to anything. Many conditions had to be satisfied by a claimant before he could obtain National Insurance benefits; e.g. affixing the stamp to a card, residence in the U.K. etc.; whilst a refund was payable not to the employee but to the employer and was subject to the discretion of the Revenue. He reinforced this argument by reference to the case of R. v. Tatlock (2), where Cockburn, C.J., when negativing the proposition that a policy of insurance was a "valuable security", said: "A valuable security is one on which money is payable irrespective of any contingency". 30

At this stage in his argument counsel was, I think, disposed to say that one could, in dealing with this issue, look at the U.K. legislation providing for the issue of National Insurance stamps. But he later resiled from this approach and his argument about a contingency should, I think, be treated as subject to a primary contention that the stamps in question must be read apart from the National Insurance legislation; 40

nothing can be read into a stamp beyond that which is conveyed by the words and figures appearing on it; one cannot go outside the instrument itself, and whatever is required must be found on the face of it.

10 As for the second category of accountable receipts, he said that these insurance stamps are neither receipts nor accountable. In this connection he adopted the argument of the judge in the court below that such a stamp is no more of a receipt than is a railway ticket which, in R. v. Gooden (3), was held by Cleasby B. not to be an acquittance or receipt under the Forgery Act, 1861.

20 He also relied on the case of R. V. Harvey (4), which is mentioned in Roscoe's Criminal Evidence, 16th Edition, p.610, as showing that a document bearing a proper stamp and uttered as a genuine receipt which said that X paid to Y a sum of money but was unsigned by Y did not import an acknowledgment.

As for the third category, a receipt or other instrument evidencing the payment of money, counsel said that this category would fall only just short of a receipt and a national insurance stamp was certainly not within it and had never been so held.

30 The Judge in the court below seems to have based his decision primarily on the analogy between a railway ticket and the stamps in question. He said, after referring to Gooden's case:-

40 "A railway ticket is something that is bought from a railway company and later surrendered back to the company in return for the benefits of travelling. A national insurance stamp is something that is bought from a minister and surrendered again to him in return for various benefits. The two appear to me to be so similar that I am prepared to base my decision on this case."

Counsel for the Crown, in attacking this conclusion,

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(3) 11 Cox C.C. p. 672.

(4) (1812) R. & R. 227.

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stressed that reliance on this case and others mentioned by the Judge and counsel for the respondents was unjustified because the decisions preceded the amendment of the law in 1913, introducing the third category mentioned above, i.e. instruments evidencing the payment of money, which had not hitherto been held to amount to receipts.

Moreover, he said the stamps must be seen in the context of the legislation providing for their sale etc. of which, he said, judicial notice must be taken by the Hong Kong courts under section 75 of the Interpretation Ordinance, a view which would appear to have commended itself to the Judge in the court below who, in the case stated, has set out the relevant English legislation and, in effect, has rested his decision on it. 10

Although, before us, counsel for the respondents was ultimately disposed to question this approach, he had not previously queried the case stated or attempted to secure the inclusion of any such issue. No such issue having been raised on the case stated, this appeal should be decided on the basis that the Judge was right to take account of the relevant English legislation. 20

Having suggested at the outset of this appeal that the case could be decided simply by common sense and the application of ordinary logic, counsel for the Crown turned to his contention that the stamp fell within the extended definition of "valuable security" provided by section 2 of the Forgery Ordinance. 30

He sought at the outset to remove any difficulties arising from the use of the expressions "writing", "document" and "instrument" by suggesting that these were, in the context of this legislation, virtually synonymous terms. In R. v. Closs (5), Cockburn C.J., delivering the judgment of five judges, said "A forgery must be of some document or writing". In R. v. Smith (6) Pollock C.B., in dealing with the question of forgery, used the terms "document" and "instrument" as if they were interchangeable, whilst in 40

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(5) 7 Cox C.C., P.494.

(6) Vol. 169, E.R. p.1122.



R. v. Riley (7), where a forged telegram was treated as a forged instrument for the purposes of the Forgery Act 1861, Wills J. (at p.321) referred to older authorities, including Blackstone and East, for the conclusion that in this context "instruments" and "writings" could be treated as synonymous. His view was summed up in the following paragraph:-

10 "I cannot see anything in the nature of such a section which should make it necessary or desirable to restrict the application of the word 'instrument' to writing of a formal character, and I think it is meant to include writings of every description if false and known to be false by the person who makes use of them for the purpose indicated"

20 In another passage in the same judgment, which is quoted by Professor Glanville Williams in his article on documents in the Modern Law Review (8) to which the judgment in the court below referred, instrument in this context was stated to include "any writing which, if accepted and acted upon, would establish a business relation and lead directly to business dealings with another person".

30 It seems to me that counsel for the Crown was justified, by these authorities, in his contention that no particular significance attached to the use of the word "instrument" in the definition, and that any writing which evidenced the payment of money would be covered by it.

40 Counsel also directed our attention to the case of R. v. West (9) where the judges in 1847 considered the question whether certain forged documents were acquittances and receipts within the meaning of earlier statutes and, in holding that they were not, drew a distinction between such an instrument and one which "might be used as evidence of the payment". They went on to say that "any written paper capable of being so used was not a receipt, as, for instance, a letter written by a landlord to a third person, saying that his tenant had duly paid his rent". This

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(7) (1896) 1 Q.B. p. 321  
 (8) Vol. 11 Modern Law Rev., p.150.  
 (9) 169 E.R. p. 236.

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distinction is further emphasized in the commentary to this case appearing in the English Reports. If such a distinction is to be drawn, then counsel maintained, these insurance stamps would be evidence of receipt of money by the Post Office in England under the relevant legislation, because they show the money which has been paid for them and were created for that purpose and are treated as such. In contrast to the decision in Gooden's (3) case, he directed attention to the decision in R. v. Fitch and Howley (10), a case of greater authority as it was decided not at first instance but by the Court for Crown Cases Reserved, where a turnpike toll ticket was held to be a receipt for money, as was a pawn ticket in the case of R. v. Fitchie (11).

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These cases would seem to afford strong grounds for discounting the relevance of Gooden's (3) case and to suggest that the stamps in the present instance, when considered in conjunction with the legislation creating them, are evidenced of the receipt of money.

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Moreover, there are two cases mentioned in Stroud's Judicial Dictionary R. v. Boulton (12) and R. V. Beecham (13) as authority for the contention that a railway ticket, whether or not it is a receipt, is nevertheless, a "valuable security". At first sight I had some doubt as to whether these cases quite justify this interpretation of them, but on reflection I think they do.

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Counsel for the Crown put the main weight of this part of his argument on the contention that the stamps are receipts etc. and only put forward somewhat tentatively the further suggestion that they show a title or interest in a public fund.

In this connection, however, it is material to mention that section 3(3)(b) of the Forgery Ordinance says:-

"forgery of a document may be complete even

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- (3) 11 Cox C.C., p.672  
(10) 169 E.R. p. 1344.  
(11) 169 E.R. p. 865  
(12) 19 L.J.M.C. 67.  
(13) 5 Cox C.C. 181.

if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law;".

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10 In approaching this matter, I think we must bear in mind the observations of the judges in R. v. Smith (6) where, when dealing with a theft of certificates of a foreign railway company, they laid stress on the mischief the legislation in question was intended to provide against; a consideration also well to the fore in the judgment of Wills J. in Riley's (7) case.

20 Successful use of a forgery such as this could strike directly at the financial solvency of the National Health Insurance Scheme. The aim of the scheme is to get money into a central fund and at a later stage to pay it out to those in respect of whom contributions have been made. Money flows in through the sale of stamps and there can be few more simple instances of writing evidencing the payment of money than a national insurance stamp which, on the face of it, shows the price which has been paid for it.

30 In the same way, a tax certificate shows the price that has been paid for it and it is evidence of that payment which will be accepted by Government in discharge of an obligation to pay taxes. To that extent, it is similar to a national insurance stamp but, unlike the national insurance stamp it does not fulfill the definition twice over by providing, as the stamp does, a link in the title to financial benefits from the central fund.

40 The tax payer gets benefits as a citizen of the territory but his title to these benefits is not normally dependent on the possession and production of appropriate certificates. He merely discharges an obligation by presenting his certificate, his rights as a citizen are usually dependent on something else and independent of the tax payment, but the beneficiary of the fund depends on being able to produce stamps and cards at the appropriate time just as the holder of

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(6) Vol. 169, E.R. p. 1122  
(7) (1896) 1 Q.B. p.321.

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shares may be required to produce his share certificate as evidence of his title to receive dividends or distribution of capital etc.

One might perhaps be misled by the fact that this article is called a "stamp"; a name which does not readily conjure up the idea of a valuable security. Moreover, it is small, has gum on the back and bears comparatively few words or figures. All these tell against immediate acceptance of the article as a valuable security but they are all mere incidentals that do not affect the cardinal test, which is the function of the article. What does it do? 10

It is, in the first place, the instrument whereby money is obtained from the public and members of the public can show that money has been paid. In the ordinary course of business, a national insurance stamp does not get into the hands of the public unless money has been paid for it and the presence of the stamp in the hands of the public is an indication that money has been paid into the national fund. It is evidence of that payment; evidence of the discharge of a financial obligation and accepted as such. This brings it within the first limb of the extended definition of valuable security. 20

True, it is not evidence until it gets into the hands of the public in the ordinary way but then no receipt is evidence of payment until it is delivered as such. Prior to delivery and whilst still in the hands of the person who signs it and who signs in anticipation of payment it is not a receipt. It does not become so until it is handed over or delivered as a receipt. Similarly, the stamps would presumably become evidence of payment when they come into the hands of the public in the ordinary way. 30

But not only are they valuable securities because they are evidence of the payment of money, which is perhaps their primary function, they are also valuable securities because they form an essential link in the title to receive financial benefits from the fund. They are part of a chain which draws money out of the fund when the prescribed conditions are satisfied. The fact that these rights are not spelt out on the face of 40

the stamp is immaterial. The document or instrument, call it what you will, has to be read in its own context. Its purpose and effect must be gathered not only from what is apparent on the face of the stamp but from the rules, regulations etc. under which it is issued and the context in which it is produced. Once it is accepted that regard has also to be had to these it is immaterial how much or how little appears on the face of the stamp and how much appears in the statute or regulations which spell out the rights etc. to which the stamp will give access. In all this, it resembles very closely a share certificate which would seem a very obvious type of valuable security. A share certificate doesn't spell out the financial benefits which will come to the holder of it. The certificate must in the first place be read in the light of the legislation under which it is issued and the other documents affecting it such as the Memorandum and Articles of Association of the Company, but even these do not give the right to dividends, refund of capital, bonus shares etc. which make this type of instrument a valuable security in the eyes of the majority of people. All these are dependent on other contingencies, the success of the company and the decision to pay out money in this way but an essential link in the right to get this money is the ownership of the share certificate. In the same way, under the National Insurance Scheme, an essential element in the creation of a right to benefit under it is the ownership and presentation of a properly stamped card. The stamp forms an essential link in the chain which draws out these benefits.

Whilst the observations of Pollock, C.J. in Tatlock's (2) case may have been appropriate to the facts of the case in the context of which they were used they cannot, I think, be taken as having a universal validity. It would be going altogether too far to say that the presence of a contingency prevents any document from being a valuable security. A statement so sweeping would appear to exclude, for example, bonds which are to be drawn for redemption, if not indeed share certificates, in respect of which the payment of dividends or the return of capital etc. must depend on a number of

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contingencies. Something which at the appropriate time and place will or may, because of what is written on it, produce financial benefits would appear to possess the essential characteristics of a valuable security.

Consequently it seems to me that the forgery of stamps such as these is a forgery of a valuable security in the sense in which that term is used in the Forgery Ordinance because they will, by means of the writing and figures appearing on them, entitle an individual, when they are presented for payment in the appropriate circumstances, to the receipt of financial benefits. I think they fall within the ordinary meaning of "valuable security", as used in this legislation without regard to any special definition; but, if wrong in that construction, so that it becomes necessary to look at the extended definition, I am satisfied that a genuine stamp of this kind would be evidence of the receipt of money by the post office in the same way that a turnpike toll ticket or the pawnbroker's receipt could be regarded as evidence of the receipt of money, and that they are also evidence of title to a share or interest in a public fund, not necessarily as yet complete but sufficient to bring the stamp within the purview of section 3(3)(b).

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The argument that because forging a stamp could be charged as an offence under Section 7(4) it cannot therefore be an offence of forging a valuable security under section 4(2) turns on two factors; first, whether it is an offence under section 7(4) and, secondly, whether that would prevent it from being an offence under another section.

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Whether it is an offence under section 7(4) appears to depend on whether these stamps are to be regarded as "stamps or impressions of a seal or dye". They may be but I don't think it is necessary to decide this question because the second part of the argument seems to me untenable. The Stamp Ordinance is not constructed on the basis of a series of exclusive categories; so that what falls into the category prescribed and protected by one section cannot fall into the

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category prescribed and protected by another. far from it. It is apparent that in the earlier sections there is a great deal of overlapping so that the same act may be an offence under two or more sections e.g. forgery of a banknote may be an offence under section 4(1)(a) which carries a penalty of life imprisonment or may be forgery of a valuable security under section 4(2) which carries a penalty of 14 years. There are some sections in the Ordinance which adopt the exclusive basis e.g. section 6 which prescribes punishments for certain types of forgeries which have not been covered by other sections. Clearly if so covered section 6 would not catch the operation again but sections 4 and 7 are framed in an entirely different manner and do not bear this relationship.

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As for the question why the same action should be an offence under section 7(4) which carries a maximum penalty of 7 years and also an offence under section 4(2) which carries a maximum penalty of 14 years, the answer could be simply that forging every kind of stamp would not necessarily be as serious as forging the type of stamp which creates a valuable security or a banknote for that matter.

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Turning to the second question put to us, whether there was evidence of an offence against S.11, where the writing in question must entitle or be evidence of title to a fund etc. in part of Her Majesty's dominions etc.; for the reasons already indicated, I would answer that also in the affirmative.

I would allow the appeal.

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JUDGMENT OF RIGBY, S.P.J.

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On the 18th of July, 1968, a police party raided certain premises in Hong Kong. There they found a printing press in, or upon, which stamps were actually being printed or processed at the time of the arrival of the police. The stamps bore a close resemblance to, and were clearly intended to pass as, National Health Insurance Stamps of the United Kingdom issued under, or in direct connection with, a fund under the control and management of the Minister of Pensions and National Insurance in connection with the provisions of the United Kingdom National Insurance Act 1965-1967. As a result the defendants, in different capacities, were charged in the District Court with forgery of valuable securities contrary to section 4(2)(a) of the Forgery Ordinance (Cap. 209), possession of forged documents, contrary to section 10(3), and possession of implements of forgery contrary to section 11(d) and (e) of the Ordinance. 10 20

At the conclusion of the case for the prosecution, the learned trial judge ruled, as a matter of law, that the defendants had no case to answer on any of the charges and he accordingly discharged them. The Attorney General now appeals, by way of case stated, against the dismissal of the charges under sections 4(2)(a) and 11(d) and (e).

Before proceeding any further it is, I think, directly relevant to say that section 7(4)(a) of the Ordinance deals with the forgery of seals or dies. Under section 2 of the Ordinance "die" includes a "stamp", and a stamp is itself defined to include a stamp "impressed by means of a die as well as an adhesive stamp". The maximum penalty for any offence under this section, namely section 7(4)(a), is 7 years' imprisonment. Mr. Sandor, Crown Counsel, at some stage in the course of his able argument, frankly admitted that in drafting the indictment in this case he had overlooked section 7(4)(a) and he conceded - a concession with which I am in agreement other than to say that in my view that concession does not go far enough - that it might well have been the appropriate section under which to draft this charge. But he contended that the charge might 30 40



also be preferred under section 4(2)(a) as forgery of a "valuable security". Section 4(2)(a) provides, upon conviction, for a maximum penalty of 14 years' imprisonment. If Mr. Sandor's argument is correct that a stamp can properly be regarded as a "valuable security" one therefore gets the curious position that the Crown may elect to charge the forger of such a stamp either under section 7(4)(a), which carries a maximum penalty of 7 years' imprisonment or, alternatively, under section 4(2)(a) which carries a maximum penalty of 14 years' imprisonment, for what is precisely the same offence. Possibly that apparently blatant inconsistency would not, in itself, provide a valid reason for such a charge not being brought under section 4(2)(a) if, as a matter of law, an insurance stamp can properly be regarded as a "valuable security".

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Before turning to the definition under the Ordinance as to what constitutes a "valuable security" I for my part, as a matter of ordinary common parlance, find myself quite unable to accept or regard an unused or unstamped stamp as falling within the ordinary connotation or meaning of what I would have regarded as a "valuable security". For myself, I would have thought that in common parlance a "valuable security" is some instrument or document that provides evidence of a right, title or interest to property or goods, e.g. a title deed, a share certificate, or even a pawnbroker's ticket.

The question then arises whether a stamp can be brought within the definition of "valuable security" as defined in section 2 of the Ordinance.

Valuable security is there defined to include:-

- (1) "any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity fund or debt of any part of Her Majesty's dominions or of any foreign state."
- (2) "Any script, debenture, bill.....or other security for the delivery or transfer of goods or chattels....."
- (3) "Any accountable receipt, release or

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discharge."

- (4) "Any receipt or other instrument evidencing the payment of money or the delivery of any chattel personal."

The scheme of National Insurance in the United Kingdom provides for the payment of weekly contributions into a fund known as the National Insurance Fund at varying rates. Contributions are payable by affixing stamps to an insurance card kept by, or on behalf of, an insured person in the space indicated for that purpose on the card. The cards are surrendered to the Ministry when making a claim for benefits. The stamps are adhesive stamps, purchased from the Post Office, and affixed by the contributor or his employer to the card specially provided for the purpose. Immediately after the stamp has been affixed it must be cancelled by writing in ink, or by stamping, the date upon which it is affixed. Thereafter the contributor is entitled, upon production and surrender of the stamped card, to certain benefits, subject to certain conditions. The face value of stamps not used or inadvertently spoiled may be recovered from the Ministry of Inland Revenue, but not as of right. 10 20

Mr. Sandor conceded, and in my view rightly conceded, that he could not successfully argue that an unused National Health Insurance Stamp was a "writing entitling or evidencing the title of any person to any share or interest in any public fund" and that such an argument could not arise unless and until the stamp has been affixed to the card and cancelled by writing in ink, or stamping, the date upon which it was affixed, so as to give the contributor a claim to benefits out of the fund. Again, as I understood his argument, he did not seek - and in my view rightly so - to place any weight upon any argument that such a stamp could be described as an "accountable receipt". For myself, I am unable to appreciate how a stamp such as this could be regarded as an "accountable receipt". He based the weight of his argument upon the contention that a stamp fell within the final limb of the definition as "an instrument evidencing the payment of money". Mr. Sandor contended that the words "instrument" or "document" 30 40

were synonymous. He referred to the definition of "document" contained in the Interpretation Ordinance and to the two cases of The Queen v. Riley (1) and Rex. v. Cade (2).

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No. 3

Judgment of Rigby, S.P.J.

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(continued)

10 In Riley's case the question turned upon whether a fraudulently ante-dated telegram sent to a bookmaker placing a bet on a horse - a telegram purporting to have been sent before the race was run - was a "forged instrument" within the meaning of section 38 of the Forgery Act 1861. A bench of five judges, albeit two of them expressing doubt, held that the telegram was an instrument within the meaning of the section. Hawkins J., in the course of his judgment said:

20 "I am not aware of any authority for saying that in law the term 'instrument' has ever been confined to any definite class of legal documents. In the absence of such authority, I cannot but think the term ought to be interpreted according to its generally understood and ordinary meaning, as stated in the dictionaries of Dr. Johnson and of Webster.....  
When applied to a writing, Dr. Johnson defines it as 'a writing - a writing containing any contract or order.' Webster's definition is 'a writing expressive of some act, contract, process, or proceeding.'"

Wills J., in the course of his judgment, said:

30 "...there is every reason why sections inserted for the purpose of advancing justice by getting rid of mere useless technicalities should be applied to forgeries of every description."

Later on he said:

40 "I cannot see anything in the nature of such a section which should make it necessary or desirable to restrict the application of the word 'instrument' to writings of a formal character, and I think it is meant to include writings of every description if false and

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(1) (1896) 1 Q.B. 309.  
(2) (1914) 2 K.B. 209.

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known to be false by the person who makes use of them for the purpose indicated."

Later he said:

"I think further that, even if the true construction of the word 'instrument' required a more restricted meaning, the telegram in the present case would fall within it. It was a writing which, if accepted and acted upon, would establish a business relation and lead directly to business dealings with another person."

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In Cade's case the question was whether a letter purporting to come from, and to be signed by, a man employed by the prosecutor to whom it was addressed, and requesting the payment of one pound, could be regarded as a "forged instrument" within the meaning of section 7 of the Forgery Act 1913, on a prosecution under the section for obtaining money by means of a forged instrument. That court, holding itself bound by Riley's case, held that the letter was a forged instrument within the meaning of section 7. In the course of his judgment in that case Lord Reading, L.C.J., delivering the judgment of the court, adopting the words of Wills J. in Riley's case, said:

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"The document is really a business document; in the words of Wills J. in Reg. v. Riley it is 'a writing which, if accepted and acted upon, would establish a business relation and lead directly to business dealings with another person.' If, therefore, the word 'instrument' in s. 7 of the Act of 1913 means or includes a business document, this letter was an instrument within the meaning of that section."

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To my mind both these cases, and the judgments in relation to the facts thereof, are readily distinguishable from the case before us. In both cases the accused was charged with obtaining, or attempting to obtain, money by means of a "forged instrument". In both cases the courts held that the documents themselves, upon the basis of which money was fraudulently obtained - or sought to be fraudulently obtained - were "instruments". They were documents which, as between the parties thereto,

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in the words of Wills J., "if accepted and acted upon, would establish a business relation and lead directly to business dealings between those persons". They were accordingly regarded as "instruments" within the meaning of, and for the purpose of, sections 38 and 7 of the respective Forgery Acts. It would seem manifest that the mischief intended to be avoided by that section was to prevent persons obtaining money by the fraudulent making or alteration of a writing to the prejudice of another man's right. In the context of a charge brought under those particular sections there would seem to be no reason or justification whatsoever to distinguish between a document and an instrument. The crucial question in each case was: was the document or instrument forged with the intention of obtaining money as a result of that forgery? In such circumstances it would seem to me - as, indeed, it seemed to appear to both the courts concerned - that it was an unnecessary refinement or, rather, an unnecessary quibble, to place too restricted a precise legal construction upon the meaning of the word "instrument"; it was sufficient if it was a written document - forged by the writer - which by its terms facilitated, and was made with the intention of facilitating, the obtaining of money as a result of that forged document. In my judgment the meaning placed upon the word "instrument" is to be construed in the light of the facts of each case in relation to the charges brought, and having regard to the mischief which the section was designedly intended to avert or defeat.

Reverting to the present case, for myself I am quiet unable to appreciate how an unstamped National Health Insurance Stamp, unaffixed to any card, can be said to be an "instrument evidencing the payment of money". It is true that mere possession of the stamp shows that someone, at some time, must have paid the face value shown on the stamp for the right to possess it. But, by the same argument, could not a gaming disc issued by a gaming club in exchange for money, with the value of the disc and the name of the club upon it, be regarded as an "instrument evidencing the payment of money?" Because undoubtedly such a disc would come within the definition of "document" under the Interpretation Ordinance as meaning "any matter .....expressed.....upon any substance by

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means of letters, characters, figures or marks, or by more than one of these means." Indeed, under the definition of a document contained in the Shorter Oxford Dictionary, a coin can be described as a document. It is the argument of the Crown that "instrument" and "document", are synonymous within the meaning of the definition of "valuable security" contained in the Forgery Ordinance. For my part, I find myself quite unable to accept this argument. In my judgment the word "instrument" within the definition of "valuable security" means and includes some document of a formal nature which, on the face of it, evidences the right of a person to the payment of money or the delivery of a chattel. I come the more readily to this conclusion because it would seem manifest from a consideration of sections 4, 5 and 6 of the Forgery Ordinance itself that provision is made in those sections for a clear distinction in regard to the forgery of different types of documents, with varying degrees of seriousness and varying degrees of punishment provided. Finally, section 7 expressly, and in my view exclusively, provides for forgery of seals and dies; "seals" under the definition section of the Ordinance, includes "stamps" and the definition of stamps includes "a stamp impressed by means of a die as well as an adhesive stamp".

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In my judgment the learned judge was perfectly correct in holding that, as a matter of law, there was no case for the respondents to meet upon the charges, the subject of this appeal, and I would accordingly dismiss this appeal.

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No. 4

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NO. 4

JUDGMENT OF MILLS-OWEN, J.

The main argument raised on this appeal from the District Court, by way of case stated, is that the alleged forged stamps are forgeries of a 'valuable security', whether within its ordinary meaning or within the extended definition provided by section 2 of the Forgery Ordinance. Included in the definition are (a) a 'writing entitling or evidencing the title of any person to any share or interest in any public.....fund.....of any

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part of Her Majesty's Dominions'; (b) 'a receipt or other instrument evidencing the payment of money'. In respect of some of the offences charged we are concerned only with that part of the definition which I have termed (a) above, as those charges are brought under section 11 of the Ordinance, which does not contain the words set out in (b) above.

10 It would be straining the language of the definition beyond proper limits to say that a British National Insurance stamp falls within (a), in my view, and, as I understood Mr. Sandor, Counsel for the appellant, he places little, if indeed, any, reliance on (a).

20 For the respondents it is contended by Mr. Sanguinetti that the Forgery Ordinance does not extend to the counterfeiting or falsification of such things as stamps; they are not 'documents' for the purposes of the law of forgery; or, at least, so it is argued, if do fall within the Ordinance they fall exclusively within section 7(4)(a) under which, read with section 3(1), it is an offence to counterfeit 'any seal or die provided, made or used by or under the authority of the Government of any part of Her Majesty's Dominions .....

30 'seal' and 'die' being defined by section 2 to include any stamp or impression thereof. If this is correct the appeal must fail as the charges with which we are concerned were brought under sections 4(2)(a) and 11(d) and (e). (A charge which was brought under section 10(3) was dismissed and no appeal is brought in respect of its dismissal).

40 It is also contended on the part of the respondents that the court is precluded from making reference to the English national insurance legislation in order to ascertain the nature or characteristics of genuine insurance stamps, notwithstanding that by virtue of the Interpretation Ordinance (Cap.1 of the Laws of Hong Kong) English statutes are to be judicially noticed here.

Dealing first with the matter of reference to English law: in my opinion it is permissible, indeed essential, to do so. The definition of 'valuable security', in so far as it relates to public funds, expressly includes any such fund of the United Kingdom; section 11 contains a similar

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provision. But a question arises, in my view, whether other parts of the definition of 'valuable security' contained in section 2 extend to documents made, or intended to operate as valuable securities, out of the jurisdiction; that is to say other parts of the definition which do not expressly extend to 'foreign' documents. If this doubt is well-founded it means that the appellant cannot rely on that part of the definition of 'valuable security' which I have referred to as (b) above; that is to say the appellant cannot contend that such a stamp is 'a receipt or other instrument evidencing the payment of money', for the reason that it is a 'foreign' stamp. Section 30 of the Forgery Act 1830 (11 Geo. IV and 1 Wm. IV. Cap.66) expressly extended the law of forgery to the forging of documents made out of the jurisdiction and to instruments payable out of the jurisdiction - see also section 40 of the Forgery Act of 1861, to the like effect. These provisions were not repeated in the Forgery Act 1913 upon which our Ordinance is very closely modelled, but our section 3(3)(a), as section 1(3)(a) of the English Act, provides that it is immaterial in what place within or without Her Majesty's Dominions a document is 'expressed' to take effect. However, the point has not been argued and I do not propose to pursue it.

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On the hearing of the appeal we were referred to the English national insurance legislation but it was noted that the genuine stamps exhibited contain a small panel or inset comprising the letters 'S.E.T.', some of them also having '25/-' placed in a small panel adjoining those letters. Presumably this means "Selective Employment Tax 25/-" (see the Finance Act 1966), but there is no reference to this in the case stated nor was any reference made to the legislation relevant to Selective Employment Tax on the hearing of the appeal. In the view which I take of the matter, it is unnecessary for me to deal with this aspect of the case.

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I turn to the contention that if the stamps fall within the Ordinance at all they fall exclusively within section 7(4)(a) in which case the appropriate charge would have been that of forging or counterfeiting the genuine dies by the use of which genuine stamps are produced, or the impression or stamps of such dies. Section 7(4)(a)



of the Ordinance is wider in its terms than the corresponding section 5(4)(a) of the English Act, which latter is confined to dies of the Inland Revenue and the Customs and Excise. (It is, possibly, for this reason that the making of fictitious postage stamps, in England, is dealt with by the Post Office Acts). It is a matter of construction of the Forgery Ordinance as a whole whether the insurance stamps fall within, and exclusively fall within, section 7(4)(a). No initial presumption arises that if an act or omission clearly falls within the ambit of one part of an enactment it is excluded from the ambit of another part. In the case of the Forgery Ordinance there is some basis for saying that the intention was to distinguish several forms or types of forgery and make provision for each severally. Thus, section 7 deals with seals and dies; other sections, e.g., deal, severally, with forged instruments of State, banknotes, valuable securities, registers, documents which are of a special kind etc. and with the making of false revenue and banknote paper, and so on. Clearly also, however, it is one of the objects of the Ordinance, as to the case of the Forgery Act 1913, to distinguish between the more heinous and the less heinous forms of forgery. It may well be that some documents could fall within more than one class, but counterfeiting of seals and dies and the impressions thereof would appear to form a class of their own and a particular kind of 'forgery'; this, I think, receives emphasis by reason of the provision of section 3(1) that in the case of seals and dies forgery means the counterfeiting thereof. This aspect of the case has, however, not been fully argued; moreover, we have no evidence as to how genuine stamps are produced and how the alleged forged stamps were produced - by what means or process. I would not, therefore, wish to decide finally on this appeal whether section 7(4)(a) is appropriate, and, if so, exclusively applicable to the making of fictitious stamps such as those with which we are now concerned.

Turning to the contention for the appellant that genuine National insurance stamps fall within the expression 'valuable security' either as ordinarily understood or within the meaning of the definition: 'other instrument evidencing the payment of money', the argument is that they do so

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because anyone who lawfully has in his possession a genuine stamp may apply it towards securing statutory benefits, and must have acquired it on payment of money therefor at a Post Office; it is therefore, so it is contended, a 'valuable security' in both senses. I am unable to accept these contentions. A 'valuable security' must, I think, be something more than a mere 'document' or 'writing', although a valuable security must be a 'writing' and, no doubt, 'document' includes a valuable security for the purposes of the definition of forgery contained in section 3. As it appears to me, it would be artificial to hold that 'valuable security' includes such an article as an insurance stamp, or for that matter, a postage or other revenue stamp, whether the expression 'valuable security' is considered in its ordinary meaning or by reference to the definition contained in section 2. An insurance stamp, in my view, is a combination of a money token and accounting device; it represents, and is intended to represent, money - easily transportable and accountable money. The purpose of such stamps is to assist in the checking of the discharge by employers (or self-employed persons) of their obligations under the legislation and the assessment of the entitlement of persons to benefit thereunder (subject to certain other legislative conditions, such as residence, entitling them to benefit). In itself such a stamp provides no security for the payment of the amount indicated thereon, or any quantifiable portion of it. The fact that in some circumstances the Ministry may recoup the holder of an unused stamp makes no difference to its primary nature or characteristics, as it seems to me. The very word 'instrument' appears foreign to such a stamp. The object of the definition of 'valuable security' is to extend its ordinary significance, and in this respect, I think, it is evident that the Legislature had in mind the cases decided prior to the Act of 1913. Thus, to 'receipt' has been added 'or other instrument evidencing the payment of money', so as to extend the forgery law to writings which are not receipts per se but on the face of which some payment of money is acknowledged or otherwise made evident, so that, by forgery of any such writing, money may fraudulently be obtained. 'Valuable security' in its ordinary significance must be taken to mean an instrument by or under which a fixed or ascertainable

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sum of money is secured; an instrument which can be enforced or form the basis of proceedings for the recovery of a fixed or ascertainable sum of money, according to its terms; an instrument which is such by its very terms. Ordinarily it would not include a simple receipt, but by the legislation a receipt becomes a valuable security. The extended definition, to include instruments evidencing the payment of money, was necessary e.g. to cover the common case where a person forges something like a receipt or some form of acknowledgment or record of payment in order to obtain, by its production, money properly due to someone else. An insurance stamp in itself secures nothing, whether per se or by reference to the legislation. There is no legal right to recoupment of an unused stamp. Possession of an insurance stamp in itself gives no legal title to recovery of the amount, or part, thereof. Under the legislation, a number of conditions have to be satisfied and what is 'insured' is not payment of the face value of the stamps but 'benefits' according to the scheme of the legislation. Certain questions as to entitlement to benefit are to be decided by the Minister (27 Halsbury's Laws, para. 1364). I appreciate that in the case of some valuable securities it is necessary to resort to material other than that appearing on the face of the instrument in order to establish the right or title which it secures, as, for example, in the case of a share certificate where reference to the company's accounts, or the minutes of its resolutions, or its memorandum or articles of association may become necessary in order to ascertain, for example, whether a dividend is due or whether the company is in liquidation. Nevertheless, in substance the right or title secured in such a case derives from the face of the instrument; that, indeed, is its purpose. Without attempting an all-embracing definition, it may be said that a valuable security is such by reason of, and according to, its tenor - accepting that it may be necessary to resort to collateral material in some instances. In the case of an insurance stamp, on the contrary, one cannot speak of enforcing it, or of establishing a right or title, according to its terms; it does not purport to confer any right or title, and even by reference to the relevant legislation a stamp in itself does not necessarily secure statutory benefit. Thus, in my opinion, although such stamps

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are not to be considered in isolation, as it were, but to be viewed in the light of the legislation concerning them, they are not 'valuable securities'. Further, I would take the view that it is not permissible to consider the extended definition otherwise than in the context of the law of forgery. The criminal law requires the maximum degree of definition (per Lord Tucker in Board of Trade v. Owen (1); in my view it would be straining the language of the Ordinance to say that such stamps are valuable securities.

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For the foregoing reasons I would disallow the appeal.

(R. H. Mills-Owen)  
Puisne Judge

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(1) (1957) 1 All E.R. 411 at 421.

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NO. 5.

ORDER GRANTING SPECIAL LEAVE TO APPEAL  
TO HER MAJESTY IN COUNCIL

In the Privy  
Council

No. 5

Order granting  
Special Leave  
to Appeal to  
Her Majesty in  
Council

22nd October  
1969

(L.S.)

AT THE COURT AT BUCKINGHAM PALACE

The 22nd day of October 1969

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR. BENN
LORD STONHAM	MRS. HART
LORD CHALFONT	SIR HUMPHREY GIBBS

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W H E R E A S there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 9th day of October 1969 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 of Hong Kong in the matter of an Appeal from the Supreme Court of Hong Kong (Appellate Jurisdiction) between the Petitioner and (1) Pat Chiuk-Wah (2) Yeung Kwong-Pat (3) Shum Kiang-Bot and (4) Ng Shin-Woo Respondents setting forth that the Petitioner desires to obtain special leave to appeal to Your Majesty in Council from a Judgment of the Supreme Court of Hong Kong (Appellate Jurisdiction) dated the 20th March 1969 dismissing an Appeal by the Petitioner by way of Case stated from a Decision of the District Court of Hong Kong made on the 16th September 1968 acquitting the Respondents of seven charges relating to the alleged forgery of British National Insurance stamps; And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal to Your Majesty in Council against the said Judgment of the Supreme Court of Hong Kong (Appellate Jurisdiction) dated the 20th March 1969:

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(continued)

"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 no one appearing at the Bar on behalf of the Respondents Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Supreme Court of Hong Kong (Appellate Jurisdiction) dated the 20th March 1969.

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"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

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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 as it 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.

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W. G. AGNEW.

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No. 34 of 1969

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION

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B E T W E E N:

THE ATTORNEY GENERAL Appellant

- and -

(1) PAT CHIUK-WAH  
(2) YEUNG KWONG-FAT  
(3) SHUM KIANG-BOR alias SHUM PO  
(4) NG SHUI-WOO Respondents

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RECORD OF PROCEEDINGS

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