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LONDON W.C.1

IN THE PRIVY COUNCIL

No. 25 of 1968

O N A P P E A L
FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

REDIFFUSION (HONG KONG) LIMITED

v.

THE ATTORNEY GENERAL OF HONG KONG
(for and on behalf of himself and all other
members of the Legislative Council of
Hong Kong)
and
GEOFFREY CATZOW HAMILTON

No. 26 of 1968

THE ATTORNEY GENERAL OF HONG KONG
(for and on behalf of himself and all other
members of the Legislative Council of
Hong Kong)
and
GEOFFREY CATZOW HAMILTON

v.

REDIFFUSION (HONG KONG) LIMITED

JOINT CASE FOR THE RESPONDENTS IN APPEAL
No. 25 of 1968 AND THE APPELLANTS IN APPEAL
No. 26 of 1968

CHARLES RUSSELL & CO.,
Hale Court, 21 Old Buildings,
Lincolns Inn,
LONDON, W.C.2.

Solicitors for the said Respondents and Appellants

IN THE PRIVY COUNCIL

No. 25 of 1968

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

REDIFFUSION (HONG KONG)
LIMITED Appellants

- and -

10 THE ATTORNEY GENERAL OF HONG
KONG (for and on behalf of
himself and all other members
of the Legislative Council of
Hong Kong) First Respondent
and
GEOFFREY CATZOW HAMILTON Second Respondent

No. 26 of 1968

B E T W E E N :

20 THE ATTORNEY GENERAL OF HONG
KONG (for and on behalf of
himself and all other members
of the Legislative Council of
Hong Kong) First Appellant
and
GEOFFREY CATZOW HAMILTON Second Appellant

- and -

REDIFFUSION (HONG KONG)
LIMITED Respondents

JOINT CASE FOR THE RESPONDENTS IN APPEAL
No. 25 of 1968 AND THE APPELLANTS IN
APPEAL No. 26 of 1968

RECORD

pp. 39 and
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1. These are appeals from orders of the Supreme Court of Hong Kong (Hogan, C.J., and Huggins, J.) dated, as to appeal No. 26, the 1st June, 1968, and, as to appeal No. 25, the 7th June, 1968.

pp. 1 and
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2. Both these orders were made in an action commenced by a writ of summons issued on the 10th April, 1968 in the Supreme Court of Hong Kong by Rediffusion (Hong Kong) Ltd. (hereinafter called 'Rediffusion') against Sir David Trench, M.D.I. Gass and D.T.E. Roberts, for and on behalf of themselves and all other members of the Legislative Council of Hong Kong as first Defendants, and Geoffrey Catzow Hamilton as second Defendant. Sir David Trench is the Governor of Hong Kong, Mr. Gass the Colonial Secretary and Mr. Roberts the Attorney General. Mr. Hamilton is the Assistant Colonial Secretary. The reliefs claimed by the writ were, inter alia:

p. 2

a) a declaration that it would not be lawful for the Legislative Council of Hong Kong to pass an Ordinance provisionally entitled 'A Bill to modify the Copyright Act, 1956, in its application to Hong Kong and to make further provision with respect to copyright law in Hong Kong', such Ordinance being ultra vires the Legislative Council, having regard to the United Kingdom Copyright Act, 1956, Section 31(3), and being repugnant to that Act; and,

b) an injunction to restrain the first Defendants, and all other members of the Legislative Council, and the second Defendant from passing the Ordinance and presenting it to the Governor for his assent.

p. 3
p. 3

3. On the 17th April, 1968 the Defendants named in the writ obtained leave to enter conditional appearance, and on the 19th April they entered conditional appearance. On the

10 same day Rediffusion served notice of motion seeking relief by way of interim injunction. On the 1st May, 1968 the Defendants took out two separate summonses. By the first they sought an order for the writ to be set aside for want of jurisdiction. By the second, they sought an order for the writ, alternatively the first relief claimed therein, alternatively the second relief, to be struck out as disclosing no reasonable cause of action. On the 20th May, 1968 Hogan, C.J. directed that the two summonses and the notice of motion should be heard and determined by the Full Court.

RECORD

pp. 25 and 4

20 4. On the 27th, 28th, 29th and 30th May, 1968 the Full Court heard argument on the first summons. On the 1st June, 1968 they gave judgment for Rediffusion and dismissed the summons. It is from this order that appeal No. 26 of 1968 is now brought. On the 3rd, 4th and 5th June the Full Court heard argument on the second summons. On the 5th June, Rediffusion, by leave, amended their writ:

p. 40

a) by substituting the Attorney General of Hong Kong for the three named first Defendants; and

30 b) by adding to their prayer for a declaration an averment that the passing of the Bill would be ultra vires the Legislative Council having regard to the United Kingdom Copyright Act, 1911, Section 27.

p. 5

On the 7th June, 1968 the Full Court gave judgment for the Defendants on this summons and ordered the writ to be struck out. It is from this order that appeal No. 25 of 1968 is now brought.

p. 7

40 5. The Respondents in appeal No. 25, and Appellants in appeal No. 26, are hereinafter called 'the Respondents', or 'the first Respondents' and 'the second Respondent' respectively.

RECORD

6. The relevant statutory provisions, Royal Instructions, and Letters Patent are set out in the Appendix to this Case.

p. 26

7. The origin of the dispute which has led to these two appeals is disclosed in an affidavit, with exhibited letters and documents, sworn by Mr. George Henry Oldridge, the Managing Director of Rediffusion, on the 18th April, 1968. In answer, Mr. Robert William Primrose, the Clerk of Councils, swore an affidavit on the 1st May, 1968, exhibiting the Standing Orders of the Legislative Council of Hong Kong. He stated that drafts of a proposed Order in Council to extend certain provisions of the Copyright Act, 1956 to Hong Kong, and of a proposed Hong Kong Bill to modify the Copyright Act, 1956 in its application to Hong Kong, and to make further provision with respect to copyright law in Hong Kong, had been forwarded to the Secretary of State for comment, but that no comment had been received.

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ls. 3 & 4

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ls. 1-7

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8. It appears, from Mr. Oldridge's affidavit, that Rediffusion is a subsidiary of an English company prominent in the field of distributing sound and television broadcasts by wire. Rediffusion was formed and registered in Hong Kong in 1947. Its business is that of transmitting broadcasts from a distribution station or stations, the signals from which are picked up by a number of strategically placed receiving station and thence transmitted by wire to the receiving sets of such subscribers to the service as can conveniently be served by a receiving station. As to sound broadcasting, the majority of the programmes originate from Rediffusion. As to television broadcasting, all the programmes originate from Rediffusion, it being impracticable in Hong Kong to pick up and relay overseas television broadcasts, and there being, until recently, no Hong Kong television broadcast services.

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p. 66

9. Rediffusion operates under two licences, both due to expire on the 30th April, 1973. The licence for sound broadcasting was issued on the 9th December, 1955 and that for

10 television broadcasting on the 5th March, 1957
Both licences were issued under the provisions
of the Telecommunications Ordinance, now
repealed, but replaced by the Telecommunications
Ordinance, c.106 of the 1966 Edition of the
Laws of Hong Kong. Section 40 of the latter
Ordinance preserves licences issued under the
repealed Ordinance. Rediffusion asserts that
its television licence gives it the exclusive
right to maintain a service to the public of
television programmes, either originated by
Rediffusion or picked up and relayed by
Rediffusion, through a wired network connected
to the receivers of subscribers. This system
of distribution is referred to either as
'relay' (referring to the method of
transmission), or 'C.A.T.V.' (communal antenna
television systems, referring to the picking-up
of a broadcast signal by a communal serial
and transmission thence by wire to television
receivers).

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40 10. By the Television Ordinance, 1964, Hong
Kong set up a Television Authority. The
policy of the Ordinance was to make provision
for licensing companies to broadcast wireless
television and for controlling the standard
of programmes broadcast. In August, 1965,
Rediffusion applied for a licence to broadcast
under this Ordinance, but the application
was not accepted, a licence being granted
instead to another Hong Kong company,
Television Broadcasts, Limited. Rediffusion,
which was planning a substantial extension of
its services in Hong Kong, expected to be
able to transmit, contemporaneously with
their own two programmes, the two programmes
to be put out by Television Broadcasts,
Limited, thus giving the fully equipped
subscriber a choice of one of four simultan-
eously transmitted programmes. They further
expected that neither Television Broadcasts,
Limited nor any other persons would infringe
the exclusivity they claimed to have been
given by their licence by setting up C.A.T.V.
stations. The only exception visualised by
Rediffusion to their asserted exclusivity was

RECORD

where neighbours, living in one building, joined together non-commercially to erect an aerial on the building, intending to feed the signals received by this aerial by wire to their respective receivers.

11. In or about August, 1967 Rediffusion suspected that Television Broadcasts, Limited were operating a C.A.T.V. system serving 150 receiving sets in a large building in Kowloon. This Rediffusion regarded as an infringement of their licence, and they protested to the Hong Kong Government who, it appears, took a contrary view of the effect of the licence. This controversy was overtaken by a later dispute. The law of copyright in Hong Kong is the Copyright Act, 1911. This Act, except Sections 15, 34 and 37, was repealed in the United Kingdom by the Copyright Act, 1956. The latter Act provides, by Section 31, that Her Majesty may by Order in Council direct that any of the provisions of the Act shall extend, inter alia, to any colony; further, that the legislature of the colony to which provisions are thus extended may modify or add to them as may be necessary to adapt them to local circumstances, provided that no such modifications or additions, except insofar as they relate to procedure and remedies, shall be made so as to apply to any work or other subject-matter in which copyright can subsist unless, in the case of a television or sound broadcast, it was made from a place in that colony. These provisions are in similar terms to those contained in Sections 27 and 28 of the Copyright Act, 1911, save that this Act does not contemplate television. The Copyright Act, 1956 introduced an innovation into the law by providing, by Sections 14 and 16(6), that copyright should subsist in a television broadcast, this copyright being quite separate and distinct from any copyright which might subsist in the work which was being broadcast.

12. Rediffusion became aware in 1967 that it was the policy of the Government of Hong Kong

10 to have the appropriate provisions of the Copyright Act, 1956 extended to the Colony by Order in Council, and to introduce a Bill modifying those provisions to meet local circumstances. They were provided with copies of the draft Order in Council and the draft Bill. They asserted that, whereas a re-broadcast of a television programme, the copyright of which vested in the original broadcaster, would be an infringement of that copyright, a simultaneous relay of the programme of another broadcaster, by reason of Section 40(3) of the 1956 Act, would not be an infringement. It was, as stated above, simultaneous relay of Television Broadcasts, Limited's programmes that they planned, and they referred to the position in England and to the implications of the United Kingdom's

20 Protection of Television Broadcasts, 1960. They did not intend to record Television Broadcasts, Limited's programmes for the purposes of re-broadcasting them later. Therefore, if the Order in Council and Bill extended the full provisions of the 1956 Act as they relate to television broadcasts to Hong Kong, the planned activities of Rediffusion would not constitute infringement of broadcast copyright held by Television

30 Broadcasts, Limited. They found, however, that, while the draft Order in Council proposed to extend Sections 14 and 16(6) of the 1956 Act to Hong Kong, it did not extend Section 40(3); further, that the draft Bill, by Clause 2(1), would enlarge the definition of a television broadcast, contained in Section 14 of the 1956 Act, so as to include a broadcast diffused over wires, and by Clause 4(2) it would make television broadcasts

40 diffused by wires subject to broadcast copyright.

p. 89
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13. Rediffusion, felt that, if the Government proposals mentioned in paragraph 12 above became law, and if the Hong Kong Government maintained their view that Rediffusion's television licence did not give the exclusivity

RECORD

which Rediffusion asserted that it did (or passed legislation destroying such exclusivity), then Rediffusion might well find themselves merely as one of several organisations entitled to relay television broadcasts by wire. They also apprehended that, if Television Broadcasts, Limited declined to licence Rediffusion to relay the former's programmes as and when they were being broadcast, then Rediffusion might find themselves as the only one of several licensed relayers unable to transmit Television Broadcasts, Limited's programmes. If this happened, claimed Rediffusion, it could well put them out of business, and cause their heavy financial investment to be thrown away. It was in these circumstances that Rediffusion commenced this action. They asserted that the changes in the scheme of the 1956 Act proposed by the Hong Kong Government were not such modifications or alterations as would be required to meet local circumstances, but changes fundamental to the scheme of the Act, and thus ultra vires the Hong Kong Legislature.

p. 40-64

p. 26

p. 88
l.14

p. 46
ls.15-19

p.56
ls. 4-10

14. The Full Court (Hogan, C.J. and Huggins, J.) gave judgment on the first summons on the 1st June, 1968. The learned Judges outlined the nature of the dispute, as disclosed by Mr. Oldridge's affidavit, and referred to the licences held by Rediffusion, noting that paragraph 17 of the television licence prevented Rediffusion from recording, reproducing, publishing or otherwise disseminating broadcasts save where it was known to be contractually permissible to do so, further, that it formally recorded that the licence conferred no power to infringe any copyright existing in any published programme or other printed matter. They also pointed out that the writ sought only to declare illegal, and restrain, action by the Legislative Council on the draft Bill, it did not seek any relief in regard to the proposed Order in Council. The short question was whether any rule or

10 doctrine compelled them to hold that the Courts had no jurisdiction under any circumstances to grant an injunction against the members of the Legislative Council. The Solicitor General had referred to the instances in which, in the United Kingdom, the Courts had considered interfering with the legislative process, viz. where there was some allegedly wrong step in the legislative process, and where it was
10 alleged that some person or body was acting inequitably in seeking the enactment of a private bill. Although the United Kingdom Legislature was sovereign whereas the Hong Kong Legislature was not, the English authorities indicated, it had been submitted, how slow the Courts ought to be in interfering with the legislative process. Indeed, as to the second instance, although the English Courts had, on occasion, referred to the
20 possible existence of a power to interfere, they had not interfered, and in these circumstances it had been suggested that it would have been better if they had acknowledged that so suspect a jurisdiction did not exist. In Australia, where the State Legislature were non-sovereign, similar doubts had been expressed as to the existence of jurisdiction to interfere with parliamentary process. On the other hand, counsel for Rediffusion had
30 referred to Bribery Commissioners v. Ranasinghe (1965), A.C. 172, where the Judicial Committee had said that a legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulated its power to make law. If the Courts set aside an enactment as being ultra vires and illegal, the, counsel had
40 argued, all steps leading to the passing of such enactment must be regarded as tainted with illegality. If, therefore, a step in the legislative process could lead to an illegality, then, he had submitted, the Courts must have jurisdiction to prevent such step from being taken.

p. 54

15. The learned Judges said that in their view it did not suffice to say, as had been

RECORD

p. 56

said for the Respondents, that no illegality by the Legislative Council was in contemplation, for this did not mean the Courts had no jurisdiction but that there was no occasion to exercise jurisdiction. Although there might be only a very fine distinction between holding that there was no jurisdiction and holding that there was jurisdiction but that no Court was ever likely to give relief under it, the existence of such distinction must be recognised. If the validity of the legislative process could subsequently be examined and pronounced upon, then it seemed to the learned Judges to be illogical to say there was no jurisdiction to pronounce upon its prospective exercise.

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16. The learned Judges then turned to the submission, made on behalf of the Respondents, that the declaration sought was as to a hypothetical and future question, and the Courts would not make declarations on such questions. Assuming that the question raised in the present case was hypothetical and future, they thought that the issue was the same as on the first submission, that is, whether the Courts had no jurisdiction to deal with such questions or there was jurisdiction which, in the discretion of the Court, would but rarely be exercised. They felt that the authorities were not entirely consistent on this point, but, with some hesitation, concluded that there was jurisdiction. The summons was therefore dismissed.

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17. Judgment on the second summons was delivered on the 7th June, 1968. Hogan, C.J. and Huggins, J. said that, as they understood it, the basis of the writ was that the Hong Kong law of copyright was the United Kingdom Copyright Act, 1911; that this law could be altered or modified only in pursuance of Section 27 of that Act, or of Section 31(3) of the 1956 Act as and when the latter was extended to Hong Kong; that the Bill at which the writ struck would purport, when enacted as an Ordinance, to alter and amend the law in a manner not authorised by the United

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ls. 35-43

Kingdom statutes; and that, since the enactment would, to that extent, be void, the passing of the Bill would itself be unlawful. They approached the problem on the basis, conceded only for purposes of argument, that the Bill, if enacted, would conflict with the United Kingdom statute and would, to that extent, be void. Further, they said that, to be struck out, a writ must be such as to be incurable by amendment.

RECORD

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18. It had been submitted on behalf of the Respondents that, contrary to the terms of the writ, the Legislative Council did not pass Ordinances; it passed Bills. Although the passing of a Bill was a necessary preliminary to the enactment of the Bill as an Ordinance, the act of passing a Bill was separate and distinct from the enactment of an Ordinance, and thus free from any taint of invalidity which might attach to the Ordinance. There was

p. 9

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no question of failure to comply with some prerequisite for the passing of the Bill, so that Section 5 of the Colonial Laws Validity Act, 1865, was not applicable. Further, Section 2 of the same Act was not applicable because it caught only repugnant enactments; there could be no repugnancy unless and until a Bill became an Ordinance. The learned

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ls. 9-11

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Judges accepted this argument, and rejected Rediffusion's argument, canvassed on the first summons, that, if the resultant Ordinance was invalid, then all steps leading to the passing of the Ordinance were tainted with this invalidity. They were assisted in reaching their conclusion by the Australian authorities which indicated that the Courts would not interfere with the process of Parliament unless there was an allegation of some failure to observe a statutory requirement. Although this point had been argued on the hearing of the first summons, they felt it had a bearing on reliefs as well as on jurisdiction.

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19. The learned Judges also rejected the similar argument of Rediffusion that, as the Bill in question would be ultra vires the

p.14 ls.
49 & 50 -
p.15 ls.
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RECORD

Legislature, and the Legislative Council was a constituent part of the Legislature, the passing of the Bill by the Legislative Council must be ultra vires the Legislative Council. They questioned whether the Legislative Council was 'a constituent part of' the Legislature. No Bill could be enacted without the consent of the Legislative Council, and to this extent the Legislative Council was part of the Legislature; but the primary function of the Legislative Council was to advise the Governor. The Legislative Council might advise an enactment, knowing it would be invalid if assented to without more, but at the same time advise the Governor to seek to remove any obstacle to assent. It made no difference whether the Legislative Council was a constituent part of the Legislature or not. Invalidity could not be related back. The learned Judges also observed that it was the Legislative Council Rediffusion had chosen to sue, not the Legislature. They therefore struck out the first relief claimed on the writ and added that, since the other reliefs could not stand alone, they also must be struck out. 10

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20. The learned Judges thought it desirable to deal briefly with the two other grounds urged on behalf of the Respondents. As to the first, they held that the issue raised by the writ was so hypothetical that it would be wrong to grant either a declaration or an injunction. They could not conceive of circumstances in which a Court would inhibit either the passing of a Bill, or its presentation for the Governor's assent, on the ground of its contents. As to the second, the learned Judges held that members of the Legislative Council were not officers or servants of the Crown. Under the Crown Proceedings Ordinance, s. 16, therefore, they would not as against the first Respondents strike out the claim for an injunction, but would strike it out as against the second Respondent. 30

p.16
ls.23-31

p.18
ls. 11-18

21. It is respectfully submitted that the Full Court erred in dismissing the first summons. 40

The Legislative Council does not pass Ordinances. It passes Bills, and in so doing merely performs part of the legislative process which culminates in the enactment of Ordinances by the Governor. The Supreme Court has no jurisdiction to interfere with any part of the legislative process. Neither the English nor the Australian cases provide authority for the proposition that the Court has jurisdiction to make a declaration, or issue an injunction, to inhibit the Legislative Council from passing a Bill. Jurisdiction to pronounce upon the validity of an Ordinance when enacted does not lead to the inference that the Court has jurisdiction to pronounce upon the validity of anticipated legislation. The respondents respectfully submit that the reasoning of the learned Judges on the second summons leads to lack of jurisdiction, not merely to a decision on discretion. There can, furthermore, be no jurisdiction to rule in advance on the validity of a bill in its entirety, when it could be invalid only as to severable parts.

22. The Respondents respectfully submit that the learned Judges erred in rejecting the submission that the Court had no jurisdiction because it was being asked to rule upon hypothetical and future questions. The question whether an anticipated Bill not yet presented to the Legislative Council would, if presented, if passed, and if ultimately enacted by the Governor, be invalid is a hypothetical question, upon which the Court has no jurisdiction to pronounce.

23. If, contrary to the Respondents' submission, the Supreme Court had jurisdiction to entertain this action at all, the Respondents respectfully submit that the Full Court was right in striking out the writ for the reasons given in the judgement of the 7th June, 1968. The learned Judges ought, however, in the Respondents' respectful submission, to have held that s. 16 of the Crown Proceedings Ordinance was a bar to an injunction against

RECORD

any of the Respondents, not solely to an injunction against the second Respondent.

24. The Respondents respectfully submit that the order of the Supreme Court of Hong Kong of the 1st June, 1968 was wrong and ought to be reversed, and the order of the 7th June, 1968 was right and ought to be affirmed, and appeal No. 25 ought to be dismissed with costs and appeal No. 26 ought to be allowed with costs, for the following (among other)

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R E A S O N S

1. BECAUSE the Supreme Court has no jurisdiction to interfere with the proceedings of the Legislative Council upon a Bill:
2. BECAUSE the Supreme Court has no jurisdiction to declare a Bill either valid or invalid:
3. BECAUSE Rediffusion are seeking to obtain the ruling of the Court upon a hypothetical 20 question:
4. BECAUSE the injunctions sought by Rediffusion are prohibited by the Crown Proceedings Ordinance, s. 16:
5. BECAUSE the contents of a Bill can never make consideration and passing of the Bill ultra vires the Legislative Council:
6. BECAUSE it is not ultra vires the Legislative Council to consider and pass a Bill repugnant to the Copyright Act, 1911, s. 27 or the Copyright Act, 1956, s. 31: 30
7. BECAUSE of other reasons stated in the judgment of the Supreme Court dated the 7th June, 1968.

J.G. LE QUESNE
GERALD DAVIES

APPENDIX

I N D E X

	<u>Page</u>
Letters Patent	
Royal Instructions	
Copyright Act, 1911	
Copyright Act, 1956	
Colonial Laws Validity Act, 1865	
Crown Proceedings Ordinance	

LETTERS PATENT.

- 10 Passed under the Great Seal of the United Kingdom, Constituting the Office of Governor and Commander-in-Chief of the Colony of Hong Kong and its Dependencies.
- Dated the 14th February 1917 (S.R. & O. 1917, p. 1317) (Proc. No. 3 of 1917)
- (as amended by S.R. & O. 1938 II p. 3449; S.R. & O. 1939 II p. 3573; S.I. 1950 II p. 1545; S.I. 1955 II p. 3185; and, S.I. 1960 III p. 4169).
- 20 I. There shall be a Governor and Commander-in-Chief in and over Our Colony of Hong Kong and its Dependencies (hereinafter called the Colony), and appointments to the said Office shall be made by Commission under Our Sign Manual and Signet.
- II. We do hereby authorize, empower, and command Our said Governor and Commander-in-Chief (hereinafter called the Governor) to do and execute all things that belong to his said
- 30 office, according to the tenour of these Our Letters Patent and of any Commission issued to

him under Our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign Manual and Signet, or by Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony.

V. There shall be an Executive Council in and for the Colony, and the said Council shall consist of such persons as We shall direct by Instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure. The Governor may upon sufficient cause to him appearing suspend from the exercise of his functions in the Council any Member thereof pending the signification of Our pleasure, giving immediate notice to Us through one of Our Principal Secretaries of State. If the suspension is confirmed by Us through one of Our Principal Secretaries of State the Governor shall forthwith by an instrument under the Public Seal of the Colony revoke the appointment of such Member, and thereupon his seat in the Council shall become vacant.

VI. There shall be a Legislative Council in and for the Colony and the said Council shall consist of the Governor and such persons as We shall direct by any Instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure. The Governor may upon sufficient cause to him appearing suspend from the exercise of his functions in the Council any Member thereof pending the signification of Our pleasure, giving immediate notice to Us through one of Our Principal Secretaries of State. If the suspension is confirmed by Us through one of Our Principal Secretaries of State the Governor shall forthwith by an instrument under the Public Seal of the Colony revoke the appointment of such Member, and thereupon his seat in the Council shall become vacant.

VII. The Governor, by and with the advice and consent of the Legislative Council, may make laws for the peace, order, and good government of the Colony.

10 VIII. We do hereby reserve to Ourselves, Our heirs and successors, full power and authority to disallow, through one of Our Principal Secretaries of State, any such law as aforesaid. Every such disallowance shall take effect from the time when the same shall be promulgated by the Governor in the Colony.

IX. We do also reserve to Ourselves, Our heirs and successors, Our and their undoubted right, with the advice of Our or their Privy Council, to make all such laws as may appear necessary for the peace, order and good government of the Colony.

20 X. When a Bill passed by the Legislative Council is presented to the Governor for his assent he shall, according to his discretion, but subject to any Instructions addressed to him under Our Sign Manual and Signet or through one of Our Principal Secretaries of State, declare that he assents thereto, or refuses his assent to the same, or that he reserves the same for the signification of Our pleasure.

30 XI. A Bill reserved for the signification of Our pleasure shall take effect so soon as We shall have given Our assent to the same by Order in Council, or through one of Our Principal Secretaries of State, and the Governor shall have signified such assent by message to the Legislative Council or by proclamation: Provided that no such message shall be issued after two years from the day on which the Bill was presented to the Governor for his assent.

40 XII. In the making of any laws the Governor and the Legislative Council shall conform to and observe all rules, regulations, and directions in that behalf contained in any

Instructions under Our Sign Manual and Signet.

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XX. And we do hereby reserve to Ourselves, Our heirs and successors, full power and authority, from time to time, to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

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ROYAL INSTRUCTIONS.

Passed under the Royal Sign Manual and Signet to the Governor and Commander-in-Chief of the Colony of Hong Kong and its Dependencies.

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Dated the 14th February 1917 (Proc.No. 3 of 1917)

(as amended the 30th April 1948, G.N. 519/38; S.I. 1955 II p. 3190; and S.I. 1964 II p. 3119).

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X. In the execution of the powers and authorities granted to the Governor by Our said recited Letters Patent, he shall in all cases consult with the Executive Council, excepting only in cases which may be of such a nature that, in his judgement, Our service would sustain material prejudice by consulting the Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. In all such urgent cases he shall, at the earliest practicable period, communicate to the Executive Council the measures which he may so have adopted with the reasons therefor.

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XII. The Governor may, in the exercise of the powers and authorities granted to him by Our said recited Letters Patent, act in opposition to the advice given to him by the Members of the Executive Council, if he shall in any case deem it right to do so; but in any such case he shall fully report the matter to Us by the first convenient opportunity, with the grounds and reasons of his action.
10 In every such case it shall be competent to any Member of the said Council to require that there be recorded at length on the Minutes the grounds of any advice or opinion he may give upon the question.

XIII. The Legislative Council of the Colony shall consist of the Governor, the Senior Military Officer for the time being in Command of Our regular troops within the Colony, the persons for the time being lawfully discharging the functions of Colonial Secretary, Attorney-General, Secretary for Chinese Affairs, and Financial Secretary of the Colony and such other persons holding office under the Crown in the Colony, and not exceeding seven in number at any one time, as We may from time to time appoint by any Instructions or Warrants under Our Sign Manual and Signet, or as the Governor, in pursuance of Instructions from Us through one of our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal of the Colony, and all such persons shall be styled Official Members of the Legislative Council, and further of such persons, not exceeding thirteen in number at any one time, as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State, may from time to time appoint by an Instrument under the Public Seal of the Colony, and all such persons shall be styled Unofficial Members of the Legislative Council.
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If any Official Member of the Legislative Council cease to hold office under the Crown in the Colony, his seat in the Council shall thereupon become vacant.

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XIX. The Legislative Council shall not be disqualified from the transaction of business on account of any vacancies among the Members thereof; but the said Council shall not be competent to act in any case unless (including the Governor of the Member presiding) there be present at and throughout the meetings of the Council five Members at the least.

XX. [Revoked]

XXI. (1) The Governor shall, so far as is practicable, preside at meetings of the Legislative Council. 10

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XXII. All questions proposed for debate in the Legislative Council shall be decided by the majority of votes, and the Governor or the Member presiding shall have an original vote in common with the other Members of the Council, and also a casting vote, if upon any question the votes shall be equal.

XXIII. The Legislative Council may from time to time make standing rules and orders for the regulation of their own proceedings, provided such rules and orders be not repugnant to Our said recited Letters Patent, or to these Our Instructions, or to any other Instructions from Us under Our Sign Manual and Signet. 20

XXIV. It shall be competent for any Member of the Legislative Council to propose any question for debate therein; and such question, if seconded by any other Member, shall be debated and disposed of according to the standing rules and orders: 30

Provided always that every ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or directed by him.

XXV. In the passing of Ordinances the Governor and the Council shall observe, as far as practicable, the following Rules -

1. All laws shall be styled "Ordinances", and the enacting words shall be, "enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof."

10 2. All Ordinances shall be distinguished by titles, and shall be divided into successive clauses or paragraphs, numbered consecutively, and to every such clause there shall be annexed in the margin a short summary of its contents. The Ordinances of each year shall be distinguished by consecutive numbers, commencing in each year with the number one.

20 Except in the case of Bills reserved for the signification of Our pleasure, all Ordinances passed by the Legislative Council in any one year shall, if assented to by the Governor, be assented to by him in that year, and shall be dated as of the day on which the assent of the Governor is given, and shall be numbered as of the year in which they are passed. Bills not so assented to by the Governor, but reserved by him for the signification of Our pleasure, shall be dated as of the day and numbered as of the year on and in which they are brought into operation.

30 3. Each different matter shall be provided for by a different Ordinance, without intermixing in one and the same Ordinance such things as have no proper relation to each other; and no clause is to be inserted in or annexed to any Ordinance which shall be foreign to what the title of such Ordinance imports, and no perpetual clause shall be part of any temporary Ordinance.

40 XXVI. The Governor shall not, except in the cases hereunder mentioned, assent in Our name to any Bill of any of the following classes -

1. Any Bill for the divorce of persons joined together in holy matrimony;

2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to himself.

3. Any Bill affecting the Currency of the Colony or relating to the issue of Bank notes:

4. Any Bill establishing any Banking Association, or amending or altering the constitution, powers, or privileges of any Banking Association:

5. Any Bill imposing differential duties: 10

6. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty:

7. Any Bill interfering with the discipline or control of Our forces by land, sea or air:

8. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our subjects not residing in the Colony, or the trade and shipping of Our United Kingdom and its Dependencies, may be prejudiced: 20

9. Any Bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable:

10. Any Bill containing provisions to which Our assent has been once refused, or which have been disallowed by Us: 30

Unless in the case of any such Bill as aforesaid the Governor shall have previously obtained Our instructions upon such Bill through one of Our Principal Secretaries of State, or unless such Bill shall contain a clause suspending the operation of such Bill until the signification of Our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity

exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in Our name to such Bill, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed on Us by Treaty. But he is to Transmit to Us, by the earliest opportunity, the Bill so assented to, together with his reasons for assenting thereto.

- 10 XXVII. Every Bill intended to affect or benefit some particular person, association or corporate body shall contain a section saving the rights of Us, Our heirs and successors, all bodies politic and corporate, and all others except such as are mentioned in the Bill and those claiming by, from, and under them. No such Bill, not being a Government measure, shall be introduced into the Legislative Council until due notice has
20 been given by not less than two successive publications of the Bill in the Hong Kong Government Gazette, and in such other manner as may be required by the Standing Rules and Orders for the time being in force; and the Governor shall not assent thereto in Our name until it has been so published. A certificate under the hand of the Governor shall be transmitted to Us with the Bill signifying that such publication has been made.
- 30 XXVIII. When any Ordinance shall have been passed or when any Bill shall have been reserved for the signification of Our Pleasure, the Governor shall transmit to Us, through one of our Principal Secretaries of State, for Our final approval, disallowance or other direction thereupon, a full and exact copy in duplicate of the same, and of the marginal summary thereof, duly authenticated under the Public Seal of the Colony, and by his own
40 signature. Such copy shall be accompanied by such explanatory observations as may be required to exhibit the reasons and occasion for passing such Ordinance or Bill.

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COPYRIGHT ACT, 1911 (1 & 2 Geo. 5.c.46)

x x x x x x x x x x

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession. 10

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30. (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly. 20

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order. 30

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37. (1) This Act may be cited as the Copyright Act, 1911.

(2) This Act shall come into operation -

- (a) in the United Kingdom, on the first day of July nineteen hundred and twelve or such earlier date as may be fixed by Order in Council;
- 10 (b) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion;
- (c) in the Channel Islands, at such date as may be fixed by the States of those islands respectively;
- 20 (d) in any other British possession to which this Act extends, on the proclamation thereof within the possession by the Governor.

COPYRIGHT ACT, 1956 (4 & 5 Eliz.2.c.74)

x x x x x x x x x x

14. (1) Copyright shall subsist, subject to the provisions of this Act, -

30 (a) in every television broadcast made by the British Broadcasting Corporation (in this Act referred to as "the Corporation") or by the Independent Television Authority (in this Act referred to as "the Authority") from a place in the United Kingdom or in any other country to which this section extends, and

(b) in every sound broadcast made by the Corporation or the Authority from such a place.

(2) Subject to the provisions of this

Act, the Corporation or the Authority, as the case may be, shall be entitled to any copyright subsisting in a television broadcast or sound broadcast made by them; and any such copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the broadcast is made, and shall then expire.

(3) In so far as a television broadcast or sound broadcast is a repetition (whether the first or any subsequent repetition) of a television broadcast or sound broadcast previously made as mentioned in subsection (1) of this section (whether by the Corporation or by the Authority), and is made by broadcasting material recorded on film, records or otherwise,- 10

(a) copyright shall not subsist therein by virtue of this section if it is made after the end of the period of fifty years from the end of the calendar year in which the previous broadcast was made; and 20

(b) if it is made before the end of that period, any copyright subsisting therein by virtue of this section shall expire at the end of that period.

(4) The acts restricted by the copyright in a television broadcast or sound broadcast are -

(a) in the case of a television broadcast in so far as it consists of visual images, making, otherwise than for private purposes, a cinematograph film of it or a copy of such a film; 30

(b) in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds, making, otherwise than for private purposes, a sound recording of it or a record embodying such a recording;

(c) in the case of a television broadcast, causing it, in so far as it consists of 40

visual images, to be seen in public, or, in so far as it consists of sound, to be heard in public, if it is seen or heard by a paying audience;

(d) in the case either of a television broadcast or of a sound broadcast, re-broadcasting it.

10 (5) The restrictions imposed by virtue of the last preceding subsection in relation to a television broadcast or sound broadcast made by the Corporation or by the Authority shall apply whether the act in question is done by the reception of the broadcast or by making use of any record, print, negative, tape or other article on which the broadcast has been recorded..

20 (6) In relation to copyright in television broadcasts, in so far as they consist of visual images, the restrictions imposed by virtue of subsection (4) of this section shall apply to any sequence of images sufficient to be seen as a moving picture; and accordingly, for the purpose of establishing an infringement of such copyright, it shall not be necessary to prove that the act in question extended to more than such a sequence of images.

30 (7) For the purposes of subsection (4) of this section a cinematograph film or a copy thereof, or a sound recording or a record embodying a recording, shall be taken to be made otherwise than for private purposes if it is made for the purposes of the doing by any person of any of the following acts, that is to say, -

- (a) the sale or letting for hire of any copy of the film, or, as the case may be, of any record embodying the recording;
- (b) broadcasting the film or recording;
- 40 (c) causing the film or recording to be seen or heard in public.

(8) For the purposes of paragraph (c) of subsection (4) of this section, a television broadcast shall be taken to be seen or heard by a paying audience if it is seen or heard by persons who either -

(a) have been admitted for payment to the place where the broadcast is to be seen or heard, or have been admitted for payment to a place of which that place forms part, or

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(b) have been admitted to the place where the broadcast is to be seen or heard in circumstances where goods or services are supplied there at prices which exceed the prices usually charged at that place and are partly attributable to the facilities afforded for seeing or hearing the broadcast:

Provided that for the purposes of paragraph (a) of this subsection no account shall be taken -

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(i) of persons admitted to the place in question as residents or inmates therein, or

(ii) of persons admitted to that place as members of a club or society, where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing television broadcasts is only incidental to the main purposes of the club or society.

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(9) The copyright in a television broadcast or sound broadcast is not infringed by anything done in relation to the broadcast for the purposes of a judicial proceeding.

(10) In this Act "television broadcast" means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images, and "sound broadcast" means sounds broadcast

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otherwise than as part of a television broadcast; and for the purposes of this Act a television broadcast or sound broadcast shall be taken to be made by the body by whom, at the time when, and from the place from which, the visual images or sounds in question, or both, as the case may be, are broadcast.

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16. (1) - (5)

10 (6) Where by virtue of this Part of this Act copyright subsists in a sound recording, cinematograph film, broadcast or other subject-matter, nothing in this Part of this Act shall be construed as affecting the operation of Part I of this Act in relation to any literary, dramatic, musical or artistic work from which that subject-matter is wholly or partly derived; and copyright subsisting by virtue of this Part of this Act shall be additional to, and independent of,
20 any copyright subsisting by virtue of Part I of this Act:

Provided that this subsection shall have effect subject to the provisions of subsection (7) of section thirteen of this Act.

(7)

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30 31. (1) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order (including any enactments for the time being in force amending or substituted for those provisions) shall extend, subject to such exceptions and modifications (if any) as may be specified in the Order, to -

- (a) the Isle of Man;
- (b) any of the Channel Islands;
- (c) any colony;

(d) any country outside Her Majesty's dominions in which for the time being Her Majesty has jurisdiction;

(e) any country consisting partly of one or more colonies and partly of one or more such countries as are mentioned in the last preceding paragraph.

(2) The powers conferred by the preceding subsection shall be exercisable in relation to any Order in Council made under the following provisions of this Part of this Act, as those powers are exercisable by virtue of that subsection in relation to the provisions of this Act. 10

(3) The legislature of any country to which any provisions of this Act have been extended may modify or add to those provisions, in their operation as part of the law of that country, in such manner as that legislature may consider necessary to adapt the provisions to the circumstances of that country: 20

Provided that no such modifications or additions, except in so far as they relate to procedure and remedies, shall be made so as to apply to any work or other subject-matter in which copyright can subsist unless -

(a) in the case of a literary, dramatic, musical or artistic work, the author of the work, or, in the case of a sound recording or a cinematograph film, the maker of the recording or film, was domiciled or resident in that country at the time when, or during the period while, the work, recording or film was made, or 30

(b) in the case of a published edition of a literary, dramatic or musical work, the publisher of the edition was domiciled or resident in that country at the date of its first publication, or

(c) in the case of a literary, dramatic, musical or artistic work, or of a sound recording or a cinematograph film or a published edition, it was first published in that country, or

(d) in the case of a television broadcast or sound broadcast, it was made from a place in that country.

10 (4) For the purposes of any proceedings under this Act in the United Kingdom, where the proceedings relate to an act done in a country to which any provisions of this Act extend subject to exceptions, modifications or additions, -

20 (a) the procedure applicable to the proceedings, including the time within which they may be brought, and the remedies available therein, shall be in accordance with this Act in its operation as part of the law of the United Kingdom; but

30 (b) if the act in question does not constitute an infringement of copyright under this Act in its operation as part of the law of the country where the act was done, it shall (notwithstanding anything in this act) be treated as not constituting an infringement of copyright under this Act in its operation as part of the law of the United Kingdom.

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40. (1) Where a sound broadcast or television broadcast is made by the Corporation or the Authority, and a person, by the reception of that broadcast, causes a sound recording to be heard in public, he does not thereby infringe the copyright (if any) in that recording under section twelve of this Act.

40 (2) Where a television broadcast or sound broadcast is made by the Corporation or

the Authority, and the broadcast is an authorised broadcast, any person who, by the reception of the broadcast, causes a cinematograph film to be seen or heard in public shall be in the like position, in any proceedings for infringement of the copyright (if any) in the film under section thirteen of this Act, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast. 10

(3) Where a television broadcast or sound broadcast is made by the Corporation or the Authority, and the broadcast is an authorised broadcast, any person who, by the reception of the broadcast, causes a programme to be transmitted to subscribers to a diffusion service, being a programme comprising a literary, dramatic or musical work, or an adaptation of such a work, or an artistic work, or a cinematograph film, shall be in the like position, in any proceedings for infringement of the copyright (if any) in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation or film in any programme caused to be transmitted by him to subscribers to that service by the reception of the broadcast. 20

(4) If, in the circumstances mentioned in either of the two last preceding subsections, the person causing the cinematograph film to be seen or heard, or the programme to be transmitted, as the case may be, infringed the copyright in question, by reason that the broadcast was not an authorised broadcast, - 30

(a) no proceedings shall be brought against that person under this Act in respect of his infringement of that copyright, but 40

(b) it shall be taken into account in assessing damages in any proceedings against the Corporation or the Authority, &

as the case may be, in respect of that copyright, in so far as that copyright was infringed by them in making the broadcast.

10 (5) For the purposes of this section, a broadcast shall be taken, in relation to a work or cinematograph film, to be an authorised broadcast if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

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COLONIAL LAWS VALIDITY ACT, 1865
(28 & 29 Vict. c. 63)

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20 2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

30 4. No colonial law passed with the concurrence of or assented to by the governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorizing such governor to

concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last-mentioned instrument.

5. Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.

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CROWN PROCEEDINGS ORDINANCE.
(c.300. Laws of Hong Kong, 1966 Edition)

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2. (1)

(2) In this Ordinance, except in so far as the context otherwise requires, or it is otherwise expressly provided, the following expressions have the meanings hereby respectively assigned to them, that is to say -

.....

"officer" in relation to the Crown, includes any servant of the Crown.

.....

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16. (1) In any civil proceedings by or against the Crown the Court shall, subject to the provisions of this Ordinance, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require :

Provided that -

10 (a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subject be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

20 (b) in any proceedings against the Crown for the recovery of land or other property the Court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the Plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

30 (2) The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

No. 25 of 1968
IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :
REDIFFUSION (HONG KONG) LIMITED

v.

THE ATTORNEY GENERAL OF HONG KONG
(for and on behalf of himself and
all other members of the Legislative
Council of Hong Kong)
and
GEOFFREY CATZOW HAMILTON

No. 26 of 1968

THE ATTORNEY GENERAL OF HONG KONG
(for and on behalf of himself and
all other members of the Legislative
Council of Hong Kong)
and
GEOFFREY CATZOW HAMILTON

v.

REDIFFUSION (HONG KONG) LIMITED

JOINT CLERK FOR THE RESPONDENTS
IN APPEAL No. 25 of 1968
AND THE APPELLANTS IN APPEAL
No. 26 of 1968

CHARLES RUSSELL & CO.,
Hale Court, 21 Old Buildings,
Lincolns Inn,
LONDON, W.C.2.

Solicitors for the said Respondents
and Appellants