12, 1970

(12)

No. 25 of 1968.

In the Privy Council.

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

REDIFFUSION (HONG KONG) LIMITED
(Plaintiffs) - - *Appellants*

AND

THE ATTORNEY GENERAL OF HONG KONG for and on behalf of himself and all other members of the Legislative Council of Hong Kong
(First Defendant) *First Respondent*

GEOFFREY CATZOW HAMILTON
(Second Defendant) *Second Respondent*

RECORD OF PROCEEDINGS

Sydney Morse & Co.,
Alder House,
Aldersgate Street
London, E.C.1.
Solicitors for the Appellants.

Charles Russell & Co. Hale Court
21, Old Buildings, Lincoln's Inn,
London, W.C.2.
Solicitors for the First Respondent and the Second Respondent.

Printed by South China Morning Post, Limited, Commercial Printing Division, Hong Kong.

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(First Defendant) — *First Respondent*

GEOFFREY CATZOW HAMILTON
(Second Defendant) — *Second Respondent*

RECORD OF PROCEEDINGS

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Alder House
Aldersgate Street
London, E.C.1.
Solicitors for the Appellants.

Charles Russell & Co.,
37, Norfolk Street,
Strand, London, W.C.2.
Solicitors for the First Respondent and the Second Respondent.

No. 25 of 1968.

In the Privy Council.

ON APPEAL

FROM THE FULL COURT OF HONG KONG

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AND

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(First Defendant) *First Respondent*

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(Second Defendant) *Second Respondent*

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(First Defendant) *First Respondent*

GEOFFREY CATZOW HAMILTON
(Second Defendant) *Second Respondent*

RECORD OF PROCEEDINGS

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 1.
Writ of Summons

No. 1

WRIT OF SUMMONS

Action No. 507 of 1968

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION.

Between Rediffusion (Hong Kong) Limited Plaintiffs

and

Sir David C. C. Trench K.C.M.G., M.C.,
M.D.I.Gass C.M.G., J.P.,
D. T. E. Roberts O.B.E., Q.C., J.P.,
for and on behalf of themselves and all other members of the Legislative Council of Hong Kong First Defendants

Geoffrey Catzow Hamilton Second Defendant

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

To: Sir David C. C. Trench K.C.M.G., M.C., M.D.I.Gass C.M.G., J.P., D. T. E. Roberts O.B.E., Q.C., J.P. all of Central Government Offices, Garden Road, Hong Kong, for and on behalf of themselves and all other members of the

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 1. Writ of Summons *(continued)*

Legislative Council of Hong Kong, First Defendants, and to Geoffrey Catzow Hamilton of Central Government Offices aforesaid, Civil Servant, Second Defendant.

We command you that within 8 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of Rediffusion (Hong Kong) Limited of Rediffusion House, Gloucester Road, Hong Kong and take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence.

WITNESS The Honourable Sir Ivo Rigby, Acting Chief Justice of Our said Court, the 10th day of April 1968.

(L. S.)

(Sd.) E. S. Haydon,
Registrar.

Note:— This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

Directions for Entering Appearance.

The Defendants may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

INDORSEMENT OF CLAIM

The Plaintiffs claim:—

1. 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 of Hong Kong having regard to the terms of Section 31 (3) of the United Kingdom Copyright Act 1956 as extended (or proposed to be extended) to Hong Kong and repugnant to the provisions of that Act as so extended (or proposed to be so extended).

2. An injunction to restrain the First Defendants and each of them and every other member of the Legislative Council of Hong Kong and the Second Defendant by themselves their respective servants or agents or otherwise howsoever from passing the said Ordinance and from presenting it to the Governor of Hong Kong for his assent.

3. Further or other relief.

4. Costs.

(Sd.) BRUTTON & CO.
Solicitors for the Plaintiffs.

This writ was issued by Brutton & Co. of Windsor House, First Floor, Des Voeux Road Central, Hong Kong, Solicitors for the said Plaintiffs whose address is at Rediffusion House, Gloucester Road, Hong Kong.

No. 2

ORDER GIVING FIRST AND SECOND DEFENDANTS LEAVE TO ENTER CONDITIONAL APPEARANCE

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 2. Order Giving Defendants Leave to Enter Conditional Appearance

BEFORE MR. REGISTRAR HAYDON OF SUPREME COURT IN CHAMBERS

ORDER

UPON hearing Counsel for the 1st and 2nd Defendants and upon reading the affidavit of Gilbert Charles Hogg filed herein on the 16th day of April, 1968 IT IS ORDERED that the Defendants do have leave to enter a conditional appearance in this action within 8 days hereof and that the time under Order 12 Rule 7 (2) of the Rules of the Supreme Court, 1967 for the Defendants to apply to the Court for an order under rule 8 thereof be limited to 14 days.

DATED THIS 17TH DAY OF APRIL, 1968

C. H. Koh
Assistant Registrar.

No. 3

CONDITIONAL APPEARANCE

No. 3. Conditional Appearance

Please enter a conditional appearance for Sir David C. C. Trench, K.C.M.G., M.C., M. D. I. Gass, C.M.G., J.P., D. T. E. Roberts, O.B.E., Q.C., J.P., for and on behalf of themselves and all other members of the Legislative Council of Hong Kong and Geoffrey Catzow Hamilton, the 1st and 2nd Defendants in this Action, without prejudice to an application to set aside the writ.

Dated the 19th day of April, 1968.

(Sd.) GILBERT C. HOGG

Counsel for the 1st and 2nd Defendants, whose address for service is Attorney General's Chambers, Central Government Offices, Hong Kong.

This appearance is to stand as unconditional unless the defendants apply within 14 days to set aside the writ and obtain an order to that effect.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 4.
First and Second Defendants Summons

No. 4.

SUMMONS OF FIRST AND SECOND DEFENDANTS TO STRIKE OUT WRIT OF SUMMONS AND RELIEFS CLAIMED THEREIN, UNDER ORDER 18 RULE 19 OF THE RULES OF THE SUPREME COURT

Let all parties concerned attend before the Judge in Chambers, at the Supreme Court, Hong Kong, on Monday, the 27th day of May, 1968, at 10 o'clock in the fore-noon on the hearing of an application on the part of the Defendants for an Order —

(a) that the writ of summons herein be struck out upon the grounds that the said writ discloses no reasonable cause of action in that the said writ seeks reliefs designed to prevent members of the Legislative Council from proceeding with a lawful part of the legislative process of Hong Kong; and further and in the alternative,

(b) that the first relief claimed in the indorsement on the writ of summons herein be struck out upon the grounds that the said first relief discloses no reasonable cause of action, in that the said first relief sought is a declaration as to hypothetical and future questions; and further and in the alternative,

(c) that the second relief claimed in the indorsement on the writ of summons herein be struck out upon the grounds that it discloses no reasonable cause of action in that the said second relief sought is an injunction the granting of which is prohibited under section 16 of the Crown Proceedings Ordinance."

Dated the 1st day of May, 1968.

This summons was taken out by G. C. Hogg of Legal Department, Central Government Offices, Victoria, Hong Kong, Counsel for the First and Second Defendants.

To: Messrs. Brutton & Co.,

Solicitors for the Plaintiffs,

101 Windsor House,

Des Voeux Road Central,

Hong Kong.

No. 5.

AMENDED WRIT OF SUMMONS

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 5. Amended Writ of Summons

Amended as to Indorsement of Claim the 5th day of June 1968 under Order 20 Rule 1.

Amended as to representation pursuant to Order of the Full Court the 5th day of June 1968.

(Sd.) S. H. Mayo

Assistant Registrar.

1968, No. 507

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION.

Between	REDIFFUSION (HONG KONG) LIMITED	Plaintiffs
	and	
	The Attorney General of Hong Kong, for and on behalf of ***himself*** and all other members of the Legislative Council of Hong Kong	First Defendant
	GEOFFREY CATZOW HAMILTON	Second Defendant

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

To: ***The Attorney General of Hong Kong*** of Central Government Offices, Garden Road, Hong Kong, for and on behalf of ***himself*** and all other members of the Legislative Council of Hong Kong, First Defendant, and to Geoffrey Catzow Hamilton of Central Government Offices, aforesaid, Civil Servant, Second Defendant.

We command you that within 8 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of Rediffusion (Hong Kong) Limited of Rediffusion House, Gloucester Road, Hong Kong and take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 5. Amended Writ of Summons

(continued)

WITNESS The Honourable Sir Ivo Rigby, Acting Chief Justice of Our said Court, the 10th day of April, 1968.

(L. S.)

E. S. Haydon,
Registrar.

Note:—This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

Directions for Entering Appearance.

The Defendants may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Victoria, Hong Kong, or (2) by sending them to the Registry by post.

INDORSEMENT OF CLAIM

The Plaintiffs claim:—

1. 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 of Hong Kong having regard to the terms of ***Section 27 of the United Kingdom Copyright Act 1911 and of*** Section 31 (3) of the United Kingdom Copyright Act 1956 as extended (or proposed to be extended) to Hong Kong and repugnant to the provisions of ***those Acts*** as so extended (or proposed to be so extended).

2. An injunction to restrain the First Defendant and every other member of the Legislative Council of Hong Kong and the Second Defendant by themselves their respective servants or agents or otherwise howsoever from passing the said Ordinance and from presenting it to the Governor of Hong Kong for his assent.

3. Further or other relief.

4. Costs.

(Sd.) Brutton & Co.
Solicitors for the Plaintiffs.

This writ was issued by Brutton & Co. of Windsor House, First Floor, Des Voeux Road Central, Hong Kong. Solicitors for the said Plaintiffs whose address is at Rediffusion House, Gloucester Road, Hong Kong.

No. 6.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 6. Order of Full Court

ORDER OF FULL COURT MADE ON FIRST AND SECOND DEFENDANTS SUMMONS UNDER ORDER 18 RULE 19

BEFORE THE FULL COURT THE HONOURABLE SIR MICHAEL HOGAN, C.M.G., CHIEF JUSTICE AND THE HONOURABLE MR. JUSTICE HUGGINS, IN CHAMBERS.

ORDER

UPON hearing Counsel for the Plaintiffs and Counsel for the Defendants, IT IS ORDERED that the writ of summons herein be struck out and that the costs of the application be the Defendants. Certificate for two Counsel. AND IT IS FURTHER ORDERED that the costs of the application of the Defendants under Order 12 Rule 8 be the Plaintiffs. Certificate for two Counsel.

DATED THIS 7TH DAY OF JUNE, 1968.

S. H. Mayo,
Assistant Registrar.

No. 7.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19

RULING OF FULL COURT MADE ON FIRST AND SECOND DEFENDANTS SUMMONS UNDER ORDER 18 RULE 19

Coram: Hogan, C. J.
Huggins, J.
— 7 JUNE 1968

RULING

These proceedings began in open court on May 27th because we then had before us not only two Summonses but a Notice. Motions are normally heard in open court and, at the time, it seemed that it might be desirable to hear these three applications together, although Summonses are normally dealt with in Chambers.

There was also a question as to whether under our new rules the possibility of a Full Court sitting in Chambers which was recognized in the older practice still prevailed.

In the upshot, it was thought desirable to deal separately with the Summons and the Motion and attention was drawn to the fact that as the Summonses would presumably have been heard in Chambers if taken by a single judge the order putting them before the Full Court should not result in a departure from the normal practice of taking Summonses in Chambers.

Last week, we heard the first of these Summonses filed by the defendants, which requested us to set aside the Writ through lack of jurisdiction.

On Saturday last we gave our ruling on that Summons in favour of the plaintiffs and our reasons for it and indicated, at the time, that we proposed to make the ruling and the reasons available for publication in the Law Reports and otherwise.

We then heard argument on the second Summons which asked us to strike out the endorsement on the Writ or, alternatively, part of it and we indicated that we would propose to give our ruling on that Summons in open court if it had the effect of finally disposing of the action. We have now adjourned to open

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19 *(continued)*

court for that purpose but before proceeding to our decision and the reasons for it, we would mention that since the hearing began application has been made to replace by the Attorney General the representatives originally named as first defendants and this has been allowed. Although the application was said to have been prompted by an observation coming from a member of the Bench, the court would not wish it to be taken as expressing the view that the Attorney General can, in these proceedings, properly be sued by the name of his office. This question was not fully argued before us when we allowed the amendment, which was not opposed by the defendants.

We now proceed to deal with the Summons to strike out.

In the form in which it was originally filed, the Writ which we are asked to strike out sought 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 the copyright law in Hong Kong". The declaration was sought on the grounds that such an Ordinance would be ultra vires the Legislative Council of Hong Kong "having regard to the terms of Section 31 (3) of the United Kingdom Copyright Act 1956 as extended (or proposed to be extended) to Hong Kong and repugnant to the provisions of that Act as so extended (or proposed to be so extended)." The Writ also sought consequential relief in the form of an injunction and unspecified "further or other relief."

Whilst the Writ remained in this form, the claim for relief rested, in effect, on the contention that the Bill to which it referred contains or would contain provisions which, when enacted in the form of an Ordinance, would conflict with and be repugnant to the law contained in the United Kingdom Copyright Act 1956, as extended to Hong Kong, and that, because of this repugnancy and conflict, the Ordinance would be void and inoperative under the terms of the Colonial Laws Validity Act 1865 and that, consequently, the passing of the Bill from which that Ordinance emerged or resulted would be an unlawful act.

In the course of argument question was raised as to the extent, if any, to which the 1956 Copyright Act could be regarded as currently operative in Hong Kong and, presumably because of this, the plaintiffs amended, as they were entitled to do under Order 20 rule I, the endorsement on the Writ so as to insert the words "Section 27 of the United Kingdom Copyright Act 1911" before the reference to Section 31 (3) of the 1956 Act and replace the words "that Act" by "those Acts".

As we understand it, the basis of the Writ, as amended, is that the copyright law in force in Hong Kong is the law as prescribed in the 1911 Act of England; that this law can only be altered or modified in pursuance of the powers conferred by Section 27 of the 1911 Act and Section 31 (3) of the 1956 Act as and when the latter is extended to Hong Kong; that the Bill at which the Writ is striking would purport, when enacted as an Ordinance, to alter and amend that law in a manner not authorized by the United Kingdom statutes and that since the enactment would, to that extent, be void, the passing of the Bill would itself be unlawful.

We are not concerned on this Summons with any question as to whether the terms of the Bill in question, if enacted as an Ordinance, would conflict with the substantive provisions of the 1911 Act or even the 1956 Act, if and when it applies. The Solicitor General has conceded for the purposes of this Summons that we may proceed on the assumption that the Bill, if it becomes an Ordinance,

would so conflict and would, to the extent of such conflict, be void. But he maintains that the introduction of a reference to the 1911 Act makes no difference to the grounds and arguments on which he relies for his application under 0.18 r.19 that the Writ or, alternatively, portions of it be struck out.

The grounds stated in the Summons read as follows:—

(a) that the writ of summons herein be struck out upon the grounds that the said writ discloses no reasonable cause of action in that the said writ seeks reliefs designed to prevent members of the Legislative Council from proceeding with a lawful part of the Legislative process of Hong Kong; and further and in the alternative,

(b) that the first relief claimed in the indorsement on the writ of summons herein be struck out upon the grounds that the said first relief discloses no reasonable cause of action, in that the said first relief sought is a declaration as to hypothetical and future questions; and further and in the alternative,

(c) that the second relief claimed in the indorsement on the writ of summons herein be struck out upon the grounds that it discloses no reasonable cause of action in that the said second relief sought is an injunction the granting of which is prohibited under section 16 of the Crown Proceedings Ordinance.

There is no real dispute as to the principles upon which an order to strike out may be made under 0.18 r.19. The rule is "only to be applied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the court": **Nagle** v. **Feilden**[1]. We are concerned only with what appears on the face of the writ and affidavit evidence is not admissible: 0.18 r.19 (2). A case is said not to be "plain and obvious" where it "raises a question of general importance or serious question of law" (**Dyson** v. **Attorney General**[2]), but this means not merely that the question is important but that it is also one which is capable of, and ought to have, full argument: where the answer to the question, though important, is too clear to deserve argument the action may be struck out: **Vacher & Sons Ltd.** v. **London Society of Compositors**[3]. Where it is sought to strike out a writ as distinct from a pleading it behooves the court to be particularly careful before applying this summary remedy: **Electrical Development Company of Ontario** v. **Attorney General for Ontario**[4]. The procedure under this rule must not be used to resurrect the abolished procedure of demurrer. That was a very technical form of procedure based upon the old rules of pleading. Nevertheless we incline to the view that in every case where a pleading may properly be struck out under the rule, as not showing a sufficient cause of action, it would have been demurrable under the old practice. One must, however, go further: it is now open to the court to permit amendment, which would not have been allowed on demurrer. If such amendment will save the pleading the summary remedy is not available. The Court must be satisfied that the action is doomed to failure from the start so that no possible injustice can result if the action is stopped in limine.

Is this a plain and obvious case? The defendants say that it is. The contention put forward by the Solicitor General is, in short, (a) that the Legislative Council, which derives its existence and powers from the Letters Patent and Royal Instructions does not pass Ordinances at all and in effect that

(1) (1966) 2 Q.B. 633. (2) (1911) 1 K.B.D. 410. (3) (1913) A.C. 107. (4) (1919) A.C. 687.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19 *(continued)*

we are bound to treat the writ as though the words "pass a Bill" were substituted for the words "pass an Ordinance": (b) that the passing of a Bill which, if assented to by the Governor, would become an Ordinance — and an Ordinance repugnant to an Imperial statute applicable in Hong Kong — is not ultra vires the Legislative Council. In other words, it is immaterial that the acts of the Legislative Council in relation to the Bill are necessary steps towards the enactment of the Bill: those acts are to be considered as separate and distinct from the act of enactment and unaffected by any invalidity which may subsequently appear. There is, he said, no question of failing to comply with some statutory prerequisite or requirement for the passing of the Bill, and so no question arises under Section 5 of the Colonial Laws Validity Act; section 2 of the Act on which the plaintiffs must rely strikes only at the enacted law. It reads as follows:—

> "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.".

From this it is apparent, the Solicitor General said, that the conflict which would make the Ordinance void and ineffective could only arise as and when the law was made, i.e. as and when the Bill was assented to by the Governor and became an Ordinance; up to that point there could be no conflict because the Bill and the statute are not things of a like kind; consequently, the conflict contemplated by the Colonial Laws Validity Act could not arise between them.

Attention was directed, briefly, to the possibility that a Bill might contain some provisions that would be in conflict and some that would not, but, for the purpose of his argument, the Solicitor General was content to let it be assumed that the whole contents of the Bill in question would, if it became an Ordinance, be in conflict.

At the head of his interesting argument to the contrary, counsel for the plaintiffs put the propositions that the copyright law in force in Hong Kong could only be altered or modified in specified ways of which the Ordinance in question was not one and that consequently the anterior steps leading up to the enactment of that Ordinance would in themselves be unlawful; put more simply, that the Bill leading to the Ordinance would be tainted meat which the Legislative Council should not partake of or help to cook by passing it or giving it a first, second and third reading; that the subsequent invalidity would relate back to the proceedings in the Legislative Council and that therefore it is ultra vires the Legislative Council to pass and to present for the Governor's assent any Bill which would be invalid if assented to. To put the argument in a slightly different form, he said that the enactment of such a Bill would be ultra vires the Legislature, that the Legislative Council is a constituent part of the Legislature and that therefore the passing of the Bill by the Legislative Council would be ultra vires the Legislative Council.

We will return in a moment to the argument expressed in this latter form but, first, it is desirable to notice the main authorities on which plaintiffs' counsel relied to support his propositions, although, as some have already been noted in more detail when dealing with the earlier summons, they may now be mentioned more briefly.

He placed reliance on the principle endorsed by the Privy Council in the case of **The Bribery Commissioners** v. **Pedrick Ranasinghe**[5], an appeal from Ceylon. The respondent in that case had been convicted and sentenced by the Commissioners, who had been appointed by the Governor General on the advice of the Minister of Justice. The conferment of judicial powers on these Commissioners was alleged to be invalid on the ground that, under the Ceylon Constitution, such powers could only be given to judicial officers appointed by the Judicial Service Commission. One side maintained that the statute authorizing their appointment was a valid amendment of the Constitution. The other side argued that it had not been enacted in accordance with the special procedure required for an amendment of the Constitution. In the course of their judgment the Privy Council, whilst distinguishing the matter before them from that which came under consideration in the Australian appeal to the Privy Council in **McCawley** v. **The King**[6], quoted from the opinion in the earlier case a passage which read:

> "The Legislature of Queensland is the master of its own household, except in so far as its powers have in special cases been restricted. No such restriction has been established, and none in fact exists, in such a case as is raised in the issues now under appeal."

The Board in the Ceylon case went on to say:

> "The passage just quoted . . . . commends itself to the Board in the present case, that a legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law."

That principle is not, we think, contested in our case. The contention is that no conditions have been contravened.

Another Australian case on which plaintiffs' counsel relied is **Attorney General for New South Wales** v. **Trethowan**[7], which was also concerned more with the manner and form of the legislative process. The Constitution Act 1902 of New South Wales was amended in 1929 by the addition of a section 7A, which provided that no Bill for abolishing the Legislative Council (or repealing the section itself) should be presented for the Royal Assent until it had been approved by a majority of electors voting on a submission to them made in accordance with the section. Since the Acts of 1902 and 1929 were Acts of the local legislature, they were confined, so far as legislative power was concerned, by the Colonial Laws Validity Act. Without complying wth the requirements of section 7A both Houses passed Bills to repeal the section and abolish the Legislative Council. Although other questions were canvassed in the lower courts, the appeal to the Privy Council was limited to the question "whether the Parliament of New South Wales has power to abolish the Legislative Council of the State, or to alter its constitution or powers, or to repeal section 7A of the Constitution Act, 1902, except in the manner provided by the said section 7A". In holding that Bills could not lawfully be presented until the requirements of that section had been complied with, the Privy Council relied on section 5 of the Colonial Laws Validity Act, 1865, which provides that:

> "every representative legislature shall, in respect to the colony under its jurisdiction, have . . . . full power to make law respecting the constitution, powers and procedure of such legislature; provided their such laws shall have

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(5) (1965) A.C. 172. (6) (1920) A.C. 691. (7) 44 C.L.R. 394. at 425.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19 *(continued)*

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."

The question in issue was whether, when a legislative power is given subject to compliance with a prescribed manner and form, that power exists only when the manner and form is complied with. The Privy Council endorsed the view that, unless the prescribed manner and form was complied with, the legislation would be ultra vires by virtue of Section 5 of the Colonial Laws Validity Act.

That, of course, is not the section in question in the present case, nor is it really contended that manner and form have not been met. The question in issue here is not merely whether Section 2 of the Colonial Laws Validity Act, which deals with the content of the legislation and not with the manner and form of its enactment, will operate to invalidate a law which may emerge from, or as a result of, a legislative process in Hong Kong but whether it will also operate to invalidate, and render (retrospectively) unlawful, steps taken at an earlier stage when the contents of the proposed legislation are in the form of a Bill, prior and leading up to its enactment.

Counsel for the plaintiffs argued that for the pnrpose of the present proceedings it was immaterial whether the alleged defect was attributable to a faulty step or failure in a particular part of the legislative process or to the contents of the legislation itself. We find difficulty, however, in accepting this argument and Section 2 and Section 5 of the Colonial Laws Validity Act seem to emphasize the difference between these two types of defect. It may also be noted here that Section 7A in the Constitution Act of New South Wales expressly prohibited the presentation of the legislation in question until it had been approved by a majority of electors. This, it may be thought, goes further than merely invalidating the subsequent enactment.

The Writ in our case does not suggest that there is a positive prohibition which is being or is about to be violated, as in the **Trethowan**[7] case, nor is it suggested that there is failure or will be failure to comply with a particular procedure, form or manner which alone will give validity to the step which is being taken and the enactment which will follow it.

The legislation on which the plaintiffs rely purports not to prescribe, limit or control the action of which the plaintiffs complain but merely to render ineffective the measure or law which will emerge or result if, at a later stage, the Governor exercises the power vested in him by the constitution and takes the step of assenting to the measure which has been the subject of advice and consent by the Legislative Council but which, up to that moment of assent, does not purport and, indeed, could not purport to be anything more than a proposal for legislation which the Governor may or may not accept.

As an illustration of the distinction which we believe exists between a Bill and an Ordinance, we put to counsel for the plaintiffs the position which could arise if, when a Bill had been passed by the Legislative Council and presented to the Governor for Assent, it was discovered that it conflicted with the substance of a United Kingdom statute applicable to Hong Kong and, as a result of making representations or otherwise, the statute was amended by United Kingdom legislation so as to be no longer in conflict with the contents of the Hong Kong Bill

(7) 44 C.L.R. 394

and, thereafter, the Governor assented to the Hong Kong Bill. To the question whether the Ordinance which resulted would or would not be invalid because the Bill for it had been passed when the potential for conflict still existed, counsel indicated that the answer depended on whether the amending United Kingdom legislation expressly or by implication validated the Hong Kong legislation. We should have thought that the correct answer would be that if, at the moment when the Hong Kong Bill became an Ordinance, there was no repugnancy between the Imperial legislation and the Ordinance because the conflicting provisions of the Imperial Act no longer applied, the Hong Kong enactment would be valid and effective without any need for an express or implied validation.

It seems to us that the difference between the subject matter of the **Trethowan**[7] case and the **Ranasinghe**[5] case and the subject matter of the present proceedings emerges clearly from the passages and circumstances just mentioned and renders them less relevant to the point in issue. More relevant in its subject matter would appear to be the case of **Hughes and Vale Proprietary Ltd.** v. **Gair**[8] which is probably better known for the question there raised by the Chief Justice, Sir Owen Dixon, as to the validity and limits of the decision in the earlier **Trethowan**[7] case; but it also contained a statement by him, with which the other judges of the Australian High Court agreed, that "An application for an injunction restraining the presentation of a Bill for the Royal Assent is,

> "not unprecedented but it is at least very exceptional. We do not think it should be granted on this occasion or later or in any case."

The basis on which the court was asked to intervene was, apparently, that the content of the Bill was objectionable in that it sought in one state to regulate inter-state trade; it was not a case where there was a failure to comply with any particular step. This would seem to be borne out by the reference to the case in the Article at 71 L.Q.R. at p.340.

Returning to the less relevant field of cases where the alleged illegality flows from failure to take a prescribed step in the legislative process, there are, we think, certain general statements of value in the lengthy, and in some ways difficult, Australian case of **Clayton and Others** v. **Heffron and Others**[9]. The principal ground of alleged invalidity was based on the absence of certain contacts between the two houses of Parliament and the absence of power in the Governor to convene a joint sitting of the two houses which, it was contended, must precede any submission of the legislation in question to a referendum. Declarations were sought as to failure to fulfil the conditions precedent to such submission and injunctions to restrain the holding of the referendum. The main weight of the majority decision of the High Court of Australia fell on the issue whether the alleged deviations from procedure invalidated any resulting "statute" but there are passages in the judgment of the majority which illustrate the distinction which we see between an enactment having the force of law and a Bill or the substance of a Bill which, prior to the assent of the Governor, is not law but merely a proposed law or measure undergoing the process involved in the production of legislation. Having referred to the concession made by the defence in the suit before them for the purpose of securing a decision on the constitutional questions raised, the majority said:—

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(5) (1965) A.C. 172.
(7) 44 C.L.R. 394.
(8) 90 C.L.R. 203.
(9) 105 C.L.R. 214: (1961) Australian Argus Law Report.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19

(continued)

"Upon the basis of this concession the Supreme Court entertained the suit and considered all the points submitted on behalf of the plaintiffs against the holding of the referendum. There is an ambiguity about the expression 'unconstitutional for the Bill to proceed to a referendum', but it seems almost certain that it was meant to cover only such a want of constitutional authority or such a defect of constitutional procedure as would result in its being impossible that the Bill should become a valid law even if approved by a majority of the electors voting at the proposed referendum. Even so, (if the concession is given full effect) the Court in acting upon the concession must go beyond its function of deciding whether an Act of Parliament assented to by the Crown does not go beyond the legislative power of the Parliament so that it cannot form part of the law of the land and must enter upon an inquiry into the lawfulness and regularity of the course pursued within the Parliament itself in the process of legislation and before its completion. It is an inquiry which according to the traditional view courts do not undertake. The process of law-making is one thing: the power to make the law as it has emerged from the process is another. It is the latter which the court must always have jurisdiction to examine and pronounce upon. Of course the framers of a constitution may make the validity of a law depend upon any fact, event or consideration they may choose, and if one is chosen which consists in a proceeding within Parliament the courts must take it under their cognizance in order to determine whether the supposed law is a valid law: but even then one might suppose only after the law in question has been enacted and when its validity as law is impugned by someone affected by its operation.

It is not easy to escape the impression that if we had been considering the validity of a statute actually adopted in purported pursuance of s.5B of the Constitution Act and assented to by the Crown, some of the points taken in the present suit in support of the plaintiffs' case would have been seen in a truer perspective and put on one side as matters belonging to the legislative process which could not be entertained as grounds for invalidating a statute duly authenticated as enacted by the Legislative Assembly and approved by the electors under s.5B and assented to by the Governor."

As we read the judgment, the majority held that they would not inquire into the procedure in Parliament or at least that they would not do so unless there was some allegation of a failure to observe a statutory requirement: such a statutory requirement would be part of the general law of the land, while the courts would recognize the right of Parliament to adopt any procedure it thought fit so long as it did not conflict with the general law.

Whilst the Australian cases we have mentioned are, of course, not binding on us they serve to illustrate the problem now before us and are persuasive both in the principles they recognised and endorsed and in their illustration of the approach adopted by the Australian courts to the question of interference with a non-sovereign legislature. Whilst some of the passages we have mentioned were pressed upon us in connection with the argument on jurisdiction, we do not regard them as necessarily and solely referable to jurisdiction. They have, we think, a bearing on the question whether the relief, which we have held lies within our jurisdiction, should be granted in the circumstances of the present case.

We turn back then to consider the plaintiffs' argument expressed in the form that, as the enactment of the Bill in question would be ultra vires the Legis-

lature and as the Legislative Council is a constituent part of the Legislature, therefore, the passing of the Bill by the Legislative Council would be ultra vires the Legislative Council. This argument rests on the assumption that the Legislative Council is part of the Legislature in Hong Kong and, at once, it must be said that the action has not been brought against the Legislature but against the members of the Legislative Council. The Legislature in Hong Kong is "the Governor, by and with the advice and consent of the Legislative Council": "Letters Patent Article VII. The Governor has a discretion either to declare or to withhold his assent, a discretion which is subject to instructions from the Principal Secretaries of State. The enacting words are prescribed by Clause XXV(1) of the Royal Instructions and are as follows:—

> "enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof."

This is a form slightly different from the wording of the Letters Patent and different also from the form used in relation to acts of the Imperial Parliament —

> "Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same."

The form of words which appears in the Letters Patent is traditional and when applied to the enactment of an Imperial statute is entirely grammatical. When applied to the granting of legislative power to a dependent Legislature the grammar is perhaps questionable. An ordinance in Hong Kong is not enacted "by" the Legislative Council nor does the Governor make laws "by" the Legislative Council. However, we think the time honoured form of words is used to convey the meaning that the Legislative Council, although not in the same position as Parliament, is nonetheless a participant in the legislative process and as such is a part of "the Legislature". In Hong Kong there is no definition of "Legislature" as there is for example in Section 3 of the Constitution Act 1902 of New South Wales, but the Legislative Council plays a part in the legislative process in that no ordinance may be passed without its consent. But even assuming that it is a constituent part of the Legislature and not merely a purely advisory body but a body whose decisions are (to use the Solicitor General's phrase) "powerfully permissive", it does not, in our view, follow that it is necessarily ultra vires the part to advise what would be ultra vires the whole. The Legislative Council is concerned to advise the Governor what is desirable in the interest of public policy and one may readily conceive of a matter upon which the Legislative Council, which prima facie should be closer to public opinion and the domestic problems of the Colony than Her Majesty's advisers in England, would think it desirable that an ordinance should be enacted which was ultra vires the local Legislature. We see no reason why the Legislative Council should not pass a Bill accordingly and ask the Governor to seek the necessary power to enable him to assent or to seek the removal of any obstacle to assent. That may not be an ideal way of achieving the desired end but we do not see that it involves any illegality. No repugnancy could arise until the Governor assented to a Bill which was ultra vires the Legislature to pass. We see no justification for relating back to the proceedings in the Legislative Council any invalidity which may subsequently affect an enacted Bill. One would indeed hesitate to apply to the Legislative Council the rules of the criminal law relating to principals in the second degree and accessories before the fact, or the doctrine of trespass ab initio.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19

(continued)

We hold that the relief requested in the first paragraph of the endorsement on this Writ cannot be granted because it is not, in our view, "unlawful" for the Legislative Council of Hong Kong to pass a Bill that contains provisions which, if and when the Bill is assented to and becomes an ordinance, will be in conflict with the provisions of the Copyright Act of 1911 and such provisions of the 1956 Act as may apply in Hong Kong. Whilst the provisions of the ordinance would, in such circumstances, be void and inoperative in Hong Kong, as a result of Section 2 of the Colonial Laws Validity Act, the actions of the Legislative Council in entertaining such a Bill and giving it a first, second and third reading would not, in themselves, be unlawful though they might well be a waste of time.

For these reasons we would strike out the first paragraph of the endorsement and it is clear that if the first paragraph is struck out as affording no ground of action, the relief prayed in the second and third paragraphs could not be granted. Consequently, they should also be struck out.

In conclusion on this aspect of the case, we would add that we rest our decision on the constitutional basis that there would be nothing unlawful in the Legislative Council's doing what is complained of and we do not concern ourselves with the motive of the plaintiffs. The summons alleges that the reliefs were "designed" to interfere with the legislative process. Nothing has been said which leads us to believe that this suggestion could be established but it is sufficient that the reliefs would so interfere and, more important, that there is no legal justification why the court should intervene.

The conclusion we have reached on the first ground of this Summons makes it unnecessary to deal with the other two grounds but it may be desirable if, as we understand is likely, this matter is to be taken to a higher tribunal that we should endeavour to deal very briefly with them although the virtual vacuum created by our finding on the first ground makes it difficult to assess and determine the precise nature of the hypothesis which would underlie the second ground. Nevertheless, we think it may be helpful to indicate briefly how we would have approached this issue if we had thought that the passing of a Bill by the Legislative Council could be "unlawful" on the grounds stated in the Writ.

In the case of **Hughes and Vale Proprietary Ltd.** v. **Gair**[8], already mentioned, the High Court of Australia dealt very forcefully with a claim to an injunction which was sought on grounds similar to those in respect of which a declaration and injunction are sought in the present instance, when they said:—

> "We do not think it should be granted on this occasion or later or in any case".

We do not think we would be prepared to go quite so far. Moreover we appreciate that judicial pronouncements on the extent to which the courts will regard the presence of a hypothetical element as a bar to relief have been closely identified with or related to the historical reluctance of the courts to give judgments that were merely declaratory without the accompaniment of any other relief: a reluctance which is tending to melt before new currents of legal opinion and under the impact of new rules of court which make declaratory judgments more readily available. It may be that, in such circumstances, the limits which the courts have hitherto imposed on themselves or observed in regard to dealing with hypothetical issues may be somewhat relaxed. Nevertheless, we are satisfied that

(8) 90 C.L.R. 203.

we would go beyond the limits which the courts have hitherto observed if, on the grounds set out in the Writ, we were to make, whether in the exercise of discretion or otherwise, the declaration sought by the plaintiffs and that it would be wrong to make it or to issue the injunction they request.

We would be disposed to re-echo the words of Lord Justice Cohen in dealing with an analogous question in the case of **Re Barnato** (10) where he said:—

> "Counsel for the plaintiffs and counsel for the beneficiaries submitted that it was not really a question whether or not this was the type of case in which the court could entertain proceedings against the Crown, but was really a question of discretion. I do not think that is true, but, even if it were true, I am by no means satisfied that we ought to allow the proceedings to go on if it were abundantly clear as, in my opinion, it is in the present case, that the court would not make a declaration after the case had been heard."

We appreciate the distinction drawn by counsel for the plaintiffs between a case where, as in Barnato's[10] case, the hypothetical nature of the issue depended on possible action by the person claiming relief and a case where the hypothesis was that some other person would act in a particular way. Wo do not think that that distinction is material since the basis of the dictum was that the action was manifestly doomed to failure from the start. We merely say that, as at present advised, we cannot conceive of circumstances in which a court would be willing to grant a declaration against the Legislative Council which would inhibit either the passing of a Bill or its presentation for the Governor's assent on the ground of its contents.

We come finally to the contention that the claim to injunctions should be struck out upon grounds that the proceedings are either against the Crown or against officers of the Crown and the effect of granting an injunction would be to give relief against the Crown which could not have been obtained in proceedings against the Crown. The contention that the case falls within sub-section (1) of Section 16 of the Crown Proceedings Ordinance has been touched upon earlier. The Solicitor General argues thus: the Sovereign has delegated the power to legislate for the Colony to the Governor "by and with the advice and consent of the Legislative Council"; the Governor is appointed as an instrument of the prerogative power and the Legislative Council is created as an instrument for helping the Governor to make law; therefore the Legislative Council would be itself exercising a prerogative power and is a part of the Crown. We have already considered the constitutional position of the Legislative Council but although we think the council is properly to be regarded as part of the Legislature we do not think it follows that the members of the Legislative Council are themselves the Crown within the meaning of the statute. In **Attorney General for New South Wales** v. **Trethowan** (7) one has an example of some members of a Legislative Council suing for relief against other members of that Legislative Council. Is it to be said that that was an action by the Crown against the Crown? Yet if the Legislative Council as part of the Legislature is the Crown, it would seem to follow that every member of the Legislative Council, as part of such part, must be the Crown in relation to his acts as a member. Nor are we persuaded that the part played by the Legislative Council in the legislative process is the exercise of a prerogative power. The task committed to it is to

(10) (1949) 1 A.E.R. 515 at 520.

(7) 44 C.L.R. 394.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 7. Ruling of the Full Court made on first and Second Defendants Summons under Order 18 Rule 19

(continued)

give the Governor advice and consent and the giving of such advice and consent is not a function of the prerogative: the Crown has no prerogative to advise and authorize itself.

The matter can be looked at in another way. In **Metropolitan Meat Industry Board v. Sheedy** (11) the question was whether a debt due to the Board from a company in liquidation was:—

> "one due to the Crown, so that it falls within the prerogative right of the Crown to priority of payment as against the general creditors of the debtor. If it does so this can only be on the footing that the prerogative of the Sovereign extends to a body such as the appellant Board."

The board was the creature of statute and not of the prerogative but for our purpose that is irrelevant and the important issue was whether what the board was doing was an exercise of the prerogative. It was decided that because the powers conferred upon the board were "given to it to be exercised at its own discretion and without consulting direct representatives of the Crown" it ought not to be held that the board were acting mainly, if at all, as servants of the Crown acting in its service. Equally we think the Legislative Council, and the members of the Council as such, cannot be said to be servants of the Crown or otherwise caught by the definition of "officer" in Section 2 (2) of the Ordinance and that, in this connection, there is no material distinction between "servant" and "officer". Even if one regarded the function of the Legislative Council as being more than the giving of advice and consent and as being the making of laws the same reasoning would preclude the Council's being regarded as servants of the Crown.

Does the case then fall within sub-section (2) of section 16 of the Ordinance? It has not, as we understand it, been seriously contended by the Solicitor General that the defendant is, for the purposes of this action, in any different position from an Unofficial Member of the Legislative Council who does not hold an office of profit under the Crown. He is sued as a councillor but it is said that in such capacity he is an officer of the Crown in that he is one of the "working and speaking parts" of an instrument set up under the prerogative. We find difficulty in accepting this argument. "An officer of the Crown" must, as it seems to us, be a person who holds office under the Crown and there is, we think, significance in the distinction drawn in Clause 13 of the Royal Instructions between those who are to be styled "Official Members" of the Legislative Council and those who are to be styled "Unofficial Members". The Clause prescribes that the former, apart from the ex-officio members, shall be "other persons holding office under the Crown in the Colony". It is not expressly provided that those styled "Unofficial Members" shall be persons who do not "hold office under the Crown in the Colony" although the style itself may imply such a distinction. What is more significant is that an Official Member who shall "cease to hold office under the Crown in the Colony" vacates his seat upon the Council under the provisions of the second paragraph of Clause 13 and, if he holds office under the Crown by virtue of his membership of the Council, the paragraph would be meaningless. The same phrase does not necessarily have the same meaning in different pieces of legislation but we see no reason to think that a different connotation was intended here.

(11) 1927 A.C. 899 at 902.

This leads us to the conclusion that members of the Legislative Council as such are not officers of the Crown by virtue of their membership and that is enough to defeat the application under the third paragraph of the summons. It is further argued for the plaintiffs that the order asked would not have the effect of giving relief against the Crown. This, we think, is more questionable. The consent of the Legislative Council is a condition precedent to the making of laws in the Colony and the granting of an injunction against the Legislative Council would effectively prevent the exercise of the legislative power. Assuming we are wrong in holding that members of the Legislative Council are not officers of the Crown and again assuming that the Crown includes the legislature for the purposes of the Ordinance, we would hold that the case falls within Section 16 (2). As it is, against the first defendants we would not strike out the second relief claimed in the Writ on the ground set out in paragraph (c) of the summons.

That leaves the claims against the second defendant. We think we may and should take judicial notice of the fact that he is the Deputy Colonial Secretary. He is not sued as a member of the Legislative Council and in so far as relief is claimed to prevent the passing of a bill or ordinance it could not be granted against him. What is apparently sought against him is an injunction to prevent him, either as a private citizen or as an officer of state, from conveying a bill from the Legislative Council and presenting it to the Governor for his assent. The grounds for claiming such relief are the same as those which have already been considered in relation to members of the Legislative Council and we think the claim against him must fail for substantially the same reasons as the claims against the first defendants. To the extent the he is an officer of state, there is however an additional ground that he is an officer of the Crown within the meaning of Section 16 (2) of the Crown Proceedings Ordinance and an injunction could not be granted against him. Nevertheless a declaration could have been made if it had been appropriate. To the extent that the second defendant might be sued as a private citizen it is inconceivable that the injunction asked for would be granted against him. As against the second defendant, therefore, we would make an order striking out the second relief claimed.

In conclusion, we would emphasize that the effect of this ruling is only to indicate that the present proceedings are, in our view, premature and questionable in form. If ever a Bill of the nature indicated in the Writ comes to be enacted into law and to conflict with the United Kingdom legislation extended to Hong Kong, the plaintiffs, in the words used by the Chief Justice of Australia in the **Hughes and Vale Proprietary Ltd. v. Gair** case (8) will have their remedy and, if they think fit to apply, the courts would not be slow to intervene when a case has been made out.

(Sd.) Michael Hogan

(Sd.) Alan Huggins

(8) 90 C.L.R. 203.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 8.
Petition of Plaintiffs for leave to appeal to the Privy Council

No. 8.

PETITION OF PLAINTIFFS FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL

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

The Humble Petition of the abovenamed Plaintiff, Rediffusion (Hong Kong) Limited.

Respectfully Sheweth:—

1. That this action was brought by Your Petitioner, the above named Plaintiff against Sir David Trench, K.C.M.G., M.C., M. D. I. Gass, C.M.G., J.P., D. T. E. Roberts, O.B.E., Q.C., J.P., for and on behalf of themselves and all other members of the Legislative Council of Hong Kong, First Defendants, and against Geoffrey Catzow Hamilton, Second Defendant, (hereinafter together called "the Defendants") by Writ of Summons dated the 10th day of April 1968 claiming the following relief:—

Rules 2 and 3 of the Hong Kong (Appeal to Privy Council) Order in Council, 1909.

1. 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 of Hong Kong having regard to the terms of Section 31 (3) of the United Kingdom Copyright Act 1956 as extended (or proposed to be extended) to Hong Kong and repugnant to the provisions of that Act as so extended (or proposed to be so extended).

2. An injunction to restrain the First Defendants and each of them and every other member of the Legislative Council of Hong Kong and the Second Defendant by themselves their respective servants or agents or otherwise howsoever from passing the said Ordinance and from presenting it to the Governor of Hong Kong for his assent.

3. Further or other relief.

4. Costs.

2. By Notice of Motion filed herein on the 19th day of Arpil 1968 Your Petitioner sought the following relief:—

An Order until judgment in this action or until further order restraining the First Defendants and each of them and every other member of the Legislative Council of Hong Kong and the Second Defendant by themselves their respective servants or agents or otherwise howsoever from passing 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" and from presenting it to the Governor of Hong Kong for his assent or for such further or other order as to the Court may seem proper.

3. By a Summons filed herein on the 1st day of May 1968 (hereinafter called "the First Summons") the Defendants applied for the following relief under Order 12, Rule 8 of the Rules of the Supreme Court 1967:—

An Order –

(a) that the writ of summons herein be set aside upon the grounds that the said writ seeks reliefs outside the jurisdiction of this Honourable Court, namely reliefs designed to prevent members of the Legislative Council from proceeding with a lawful part of the legislative process of Hong Kong; and further and in the alternative

(b) that the writ of summons herein be set aside upon the grounds that the said writ seeks reliefs outside the jurisdiction of this Honourable Court, namely –

(i) in that the said writ seeks a declaration as to hypothetical and future questions to which declaration the Plaintiffs have no right; and

(ii) in that the said writ seeks an injunction the granting of which is prohibited under section 16 of the Crown Proceedings Ordinance.

4. By a further Summons also filed herein on the 1st day of May 1968 (hereinafter called "the Second Summons") the Defendants applied for the following relief under Order 18, Rule 19 of the Rules of the Supreme Court 1967:–

An Order –

(a) that the writ of summons herein be struck out upon the grounds that the said writ discloses no reasonable cause of action in that the said writ seeks reliefs designed to prevent members of the Legislative Council from proceeding with a lawful part of the legislative process of Hong Kong; and further and in the alternative,

(b) that the first relief claimed in the indorsement on the writ of summons herein be struck out upon the grounds that the said first relief discloses no reasonable cause of action, in that the said first relief sought is a declaration as to hypothetical and future questions; and further and in the alternative,

(c) that the second relief claimed in the indorsement on the writ of summons herein be struck out upon the grounds that it discloses no reasonable cause of action in that the second relief sought is an injunction the granting of which is prohibited under section 16 of the Crown Proceedings Ordinance.

5. On the 14th day of May, 1968, the Solicitor General of Hong Kong representing the Defendants applied for a direction from the Honourable the Chief Justice under Section 26 of the Supreme Court Ordinance, Cap. 4, that the First Summons and the Second Summons be determined at first instance by the Full Court on the grounds that the said Summonses showed that the subject-matters thereof were of considerable significance and seemed eminently suitable for determination at first instance by the Full Court. On the 20th day of May, 1968, the Honourable the Chief Justice pursuant to Section 28 of the Supreme Court Ordinance, Cap. 4, directed that the First Summons, the Second Summons, and the above-mentioned Notice of Motion should be heard before the Full Court.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 8. Petition of Plaintiffs for leave to appeal to the Privy Council *(continued)*

6. The First Summons came on for hearing before the Full Court of Hong Kong in Chambers consisting of The Honourable the Chief Justice, Sir Michael Hogan, C.M.G., and the Honourable Mr. Justice Alan Huggins, Puisne Judge, on the 27th, 28th, 29th and 30th days of May 1968 and on the 1st day of June 1968 the First Summons was dismissed by the Full Court.

7. The Second Summons came on for hearing before the same Full Court of Hong Kong in Chambers on the 3rd, 4th and 5th days of June 1968.

8. On the 5th day of June 1968 the said Writ of Summons was amended: —

(i) as to representation of the Defendants by Order of the Full Court under Order 15, Rule 12 of the Rules of the Supreme Court 1967 (with consequential amendments) as follows: —

BETWEEN

REDIFFUSION (HONG KONG) LIMITED — Plaintiffs

and

THE ATTORNEY GENERAL OF HONG KONG

for and on behalf of ***himself*** and all other members of the Legislative Council of Hong Kong — First Defendant

GEOFFREY CATZOW HAMILTON — Second Defendant

(ii) as to the endorsement of claim under Order 20, Rule 1 of the Rules of the Supreme Court 1967 as follows:—

1. 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 of Hong Kong having regard to the terms of ***Section 27 of the United Kingdom Copyright Act 1911 and of*** Section 31 (3) of the United Kingdom Copyright Act 1956 as extended (or proposed to be extended) to Hong Kong and repugnant to the provisions of ***those Acts*** as so extended (or proposed to be so extended).

2. An injunction to restrain the First Defendant and every other member of the Legislative Council of Hong Kong and the Second Defendant by themselves their respective servants or agents or otherwise howsoever from passing the said Ordinance and from presenting it to the Governor of Hong Kong for his assent.

3. Further or other relief.

4. Costs.

9. On the 7th day of June 1968 an Order was made by the Full Court in open court on the Second Summons that the said Writ of Summons be struck out on the grounds set out in paragraph (a) of the Second Summons.

10. Your Petitioner feels aggrieved by the said Order of the Full Court for striking out said Writ of Summons and desires to appeal therefrom.

11. The questions involved in the Appeal are such that by reason of their great general and public importance or otherwise they ought to be submitted to Her Majesty in Council for decision.

12. Your Petitioner therefore prays: —

(1) That this Honourable Court will be pleased to grant Your Petitioner leave to appeal from the said Order of this Honourable Court striking out the said Writ of Summons, to Her Majesty the Queen in Privy Council.

(2) That this Honourable Court may make such further or other Order in the premises as may seem just. And Your Petitioner will ever pray, etc.

Dated at Hong Kong, this 11th day of June, 1968.

(Sd.) D. A. L. WRIGHT
Counsel for the above named Petitioner

(Sd.) BRUTTON & CO.
Solicitors for the above named Petitioner

This Petition is filed by Messrs. BRUTTON & CO., of Windsor House, 12 Des Voeux Road Central, Hong Kong.

It is intended to serve this Petition on the Solicitor General of Hong Kong as representing the present Defendants.

No. 9

AFFIDAVIT OF RICHARD FREDERICK GEORGE DENNIS

I, RICHARD FREDERICK GEORGE DENNIS, of Windsor House, Des Voeux Road Central, Victoria, Hong Kong, Solicitor, hereby make oath and say as follows: —

1. I am the Solicitor for the above-named Plaintiffs, Rediffusion (Hong Kong) Limited and as such I have the conduct and management of this action.

2. The statements made in the Petition filed herein on even date for leave to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court delivered in these proceedings on the 7th day of June 1968 are to the best of my knowledge information and belief true in substance and in fact.

SWORN at the Courts of Justice, Victoria, Hong Kong, this 11th day of June 1968.) (Sd.) R. F. G. DENNIS

Before me,
(Sd.) CHAN CHEUK WING
A Commissioner for Oaths.

This Affidavit is filed on behalf of the Plaintiffs.

In the Supreme Court of Hong Kong Original Jurisdiction.

No. 10. Order of Full Court Giving Provisional Leave for the Plaintiffs to Appeal to the Privy Council

No. 10.

ORDER OF FULL COURT GIVING PROVISIONAL LEAVE FOR THE PLAINTIFFS TO APPEAL TO THE PRIVY COUNCIL

BEFORE THE FULL COURT (THE HONOURABLE SIR MICHAEL HOGAN, C.M.G. CHIEF JUSTICE AND THE HONOURABLE MR. JUSTICE HUGGINS) IN COURT

Dated the 20th day of June, 1968.

ORDER GIVING PROVISIONAL LEAVE TO APPEAL

Upon hearing Counsel for the Plaintiffs and Counsel for the Defendants and upon reading the Petition of the Plaintiffs filed herein on the 11th day of June 1968 and the Affidavit of Richard Frederick George Dennis filed herein on the 11th day of June 1968 IT IS ORDERED THAT leave be granted to the Plaintiffs to appeal to Her Majesty the Queen in Her Privy Council against the Order of the Full Court herein dated the 7th day of June 1968 conditional upon the Plaintiffs within fourteen days from the date hereof entering into good and sufficient security for the sum of $10,000.00 either by payment in cash or provision of security to the satisfaction of the Registrar of this Court for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Defendants in the event of the Plaintiffs not obtaining an order granting them final leave to appeal or of the Appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Plaintiffs to pay the Defendants' costs of the Appeal (as the case may be). IT IS ALSO ORDERED THAT the Plaintiffs prepare and dispatch to England the record of these proceedings within a period of three months from the date hereof.

Liberty to apply generally.

(L. S.)

(Sd.) S. H. Mayo
Assistant Registrar

No. 11. Undertaking of Appellants Solicitors as to Security for costs of Appeal

No. 11

UNDERTAKING OF APPELLANTS SOLICITORS AS TO SECURITY FOR COSTS OF APPEAL

We, Sydney NG QUINN, Richard Frederick George DENNIS and David SZETO, Partners of Brutton & Co., Solicitors of Windsor House, Hong Kong, hereby undertake on behalf of ourselves to pay to the Attorney General such sum not exceeding $10,000.00 as may be adjudged due to the above named First and Second Defendants (Respondents) in the event of Rediffusion (Hong Kong) Limited's appeal to Her Majesty in Council being dismissed for non-prosecution or in the event of Her Majesty in Council ordering Rediffusion (Hong Kong) Limited to pay the Attorney General's costs of the appeal.

DATED the 28th day of June, 1968.

(Sd.) S. Ng-Quinn

(Sd.) R.F.G. Dennis

(Sd.) David Szeto

No. 25 ... of 1968.

In the Privy Council.

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

REDIFFUSION (HONG KONG) LIMITED
(Plaintiffs) — *Appellants*

AND

THE ATTORNEY GENERAL OF HONG KONG for and on behalf of himself and all other members of the Legislative Council of Hong Kong
(First Defendant) — *First Respondent*

GEOFFREY CATZOW HAMILTON
(Second Defendant) — *Second Respondent*

RECORD OF PROCEEDINGS

Sydney Morse & Co.,
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