

HONG KONG / JUDGMENT

YIP TING CHUNG v. THE QUEEN

COURT

Court of Appeal

DECIDED

26 May 1981

CASE / FILE NUMBER

CACC410/1981

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bjbj CACC000410/1981 IN THE SUPREME COURT Criminal Appeal 1981 No. 410 BETWEEN YIP TING CHUNG Appellant THE QUEEN Respondent

Coram: Liu, J. in Court. Date of Judgment: 26th May 1981

JUDGMENT

The appellant appeals against sentence. In the later part of March 1981, the appellant caused to be excavated without authority an earth path, 9 ft. wide over a distance of 1.6 km. The mud path was allegedly cut for easy transportation of the appellant's farm produce from Yuen Long to Tuen Mun. An application for permission to excavate had been refused. Nevertheless the appellant proceeded to implement his scheme. Reinstatement costs were said to be in the region of \$93,000. The extent and scope of such unauthorised excavation wantonly pursued in full knowledge of the illegality reflected the appellant's utter irresponsibility and want of consideration. The excavation has caused instability to the topographical structure, endangering farm land in the valley floor of Yuen Long and Lung Kwu Sheung Tan. The maximum fine for an offence of this nature is a \$5,000 fine and 6 months' imprisonment. The appellant was a first offender, not a hardened criminal. He is 67 and has the misfortune of being in charge of a daughter suffering from mental disability. It must also be recognized that there is no likelihood of repetition and that the Crown may institute proceedings against the appellant for reimbursement of the reinstatement cost. However, I am in entire agreement with the learned Magistrate that this offence of the appellant is "very close indeed to the worst possible case envisaged by the section". Everything that can possibly be said has been said and said with considerable eloquence on behalf of the appellant, but in all these circumstances the learned Magistrate's sentence can in no way be said to be manifestly excessive. It remains for me to order (1) appeal dismissed and (2) sentence affirmed. (B. Liu) Judge of the High Court Representation: Mr. A.A. Hoosen instructed by Hoosen & Co. for Appellant. Mr. F. Whitehouse, counsel for Respondent. PAGE PAGE PAGE -

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