

The Chinese Legal Tradition

Imperial Chinese Law

The following item is a complete translation of the official record of a decision by the Board of Punishments, the highest legal organ of the Ch'ing Dynasty (1644-1911). This case graphically illustrates many of the principal features of traditional Chinese law as well as the social mores and extra-legal institutions which played an important role in social control in the imperial era. This case displays clearly many aspects of Ch'ing legal procedure and key principles of substantive legal doctrine.

You may find it instructive to attempt to analyze the case in the same manner as you would a case decided in a United States court. What are the legal issues? Who are the parties? How did the case reach the Board of Punishments? What is the governing law? What role, if any, does precedent play? Do there appear to be any established rules of statutory construction? Do any strict rules of procedure or evidence limit the discretion of the judicial authorities? What similarities do you note between the role of the judge in old China and the contemporary United States? What differences? Why? What is the ultimate purpose of the Ch'ing proceeding — to determine the facts and provide remedies in strict accordance with the law? Or simply to effect a compromise arrangement between the parties in order to restore social harmony? Or rather does the decision suggest the preeminence of the interests of the broader society, or perhaps the state, over the rights and interests of the immediate parties to the dispute?

1. In Re Hsü Chung-wei

Po-an hsin-pien 2:24-31b

Chekiang Province

1780 Memorandum from Chekiang Department, Board of Punishments

We [the Board of Punishments] have received a report from Wang Tan-wang, the governor of Chekiang, concerning a homicide case in which Hsü Yun-wu, the father of the deceased, Hsü Chung-shih, privately settled the case for money: the coroner was bribed to cover up the wounds, and the district magistrate wantonly treated human lives as weeds.

According to the report, Sung Shang-p'ei and Hsü Chung-shih were residents of I-wu district and had for some time lived harmoniously as neighbors. During the Yung-cheng period [1722-1735], Sung Shang-p'ei's grandfather paid seven silver taels for a mortgage¹ on a house owned by Sung Yung-liu: Sung Yung-liu and his nephew, Sung Chao-shou, continued to occupy the house on a rental basis.² In the 38th year of Ch'ien-lung [1773], Sung Chao-shou sold the house for nineteen silver taels to Hsü Chung-shih's father, Hsü Yün-wu. The latter paid one-half of the purchase price in advance and agreed to pay the balance when the house was vacated.

Learning of the transaction, Sung Shang-p'ei went to ask Hsü Yün-wu to notify him when Hsü was ready to pay the balance so that he [Sung] could deduct the amount still owed to him on the mortgage.

In the second month of the forty-second year of Ch'ien-lung [March 9-April 7, 1777], Sung Chao-shou vacated the house and Hsü Yün-wu paid over the balance of the purchase price, but failed to notify Sung Shang-p'ei of the transaction. Sung Shang-p'ei then demanded that Hsü pay the mortgage debt for Sung Chao-shou, but Hsü Chung-shih flatly refused to comply with this demand. Sung Shang-p'ei thereupon proceeded to lock up the house.

On the first day of the third month [April 8, 1777], Hsü Chung-shih requested two family heads from the Sung clan, Sung Chung-shu and Sung Yung-tse, to come and mediate the dispute and persuade Sung Shang-p'ei himself to go to Sung Chao-shou and demand payment of the mortgage debt. This suggestion was refused by Sung Shang-p'ei.

Hsü Chung-shih became very angry and went the same evening to the house in dispute, knocked off the lock, and took it to Sung Shang-p'ei's house to argue with him and a fight ensued. Sung Chung-shu and others arrived and urged them to stop fighting. They pulled Hsü Chung-shih back, but he began cursing Sung Shang-p'ei, who picked up a piece of firewood and, running up from behind, beat Hsü Chung-shih in the lower left back. The latter turned around and lunged toward Sung Shang-p'ei, but lost his footing and fell to the ground, injuring his lower left jaw. Sung Shang retreated and stood in front of his own gate. Hsü Chung-shih then crawled to his feet and ran to beat Sung Shang-p'ei, but the latter grabbed Hsü's queue and, holding his head down, beat him with the piece of firewood on the left and right shoulders.

Sung Chung-shu and others took away the piece of firewood and led and urged Sung Shang-p'ei to go back into the gate. Hsü Chung-shih again ran after Sung Shang-p'ei and seized his queue. Sung Shang-p'ei turned around and with his hand grabbed Hsü Chung-shih's foot, causing him to fall backwards into an open ditch. Sung Shang-p'ei also lost his footing and fell forward, his outstretched hands knocking Hsü Chung-shih's head against the corner of the wall, causing numerous injuries to Hsü's skull.

Sung A-hou came up at once and, with the aid of Sung Chung-shu and others, helped Hsü Chung-shih to his feet and led him outside the [Sung family] gate, where he lay upon the ground unable even to speak.

Hsü Yün-wu wanted to go to the district magistrate to report the matter and request an investigation, but Sung Chung-shu and Sung Yung-tse persuaded him instead to take his son home and call for a doctor to come and heal the wounds. Unexpectedly, on the second day of the month [April 9, 1777, the day following the fight], Hsü Chung-shih died of his serious wounds.

Sung Shang-p'ei, fearing punishment, asked Hsü Yün-wu's nephew, Chu Sheng-chiu, to act as a go-between in arranging a private settlement. Sung Shang-p'ei promised that he would pay to Hsü Yün-wu fifteen silver taels and that he would also take care of burial clothes and the coffin. He earnestly implored Hsü Yün-wu secretly to bury his son and not report the death to the authorities. He also promised to pay twenty silver taels to Chu Sheng-chiu to thank him [for serving as a go-between]. Chu Sheng-chiu proposed the settlement and Hsü Yün-wu accepted. On the third day of the month [April 10] Sung Tsung-ch'ang, the local constable (tipao), heard of the death and went to investigate. Hsü Yün-wu fabricated a story, saying that he did not want to report the death to the authorities because his son had committed suicide by taking poison after being cursed and driven off by him for stealing his money. Sung Tsung-ch'ang mistakenly believed this to be the truth, so he reported to the district magistrate that the death was caused by taking poison; he also requested that the magistrate come and examine the body.

Sung Shang-p'ei heard that the constable had reported the case to the magistrate and, fearing that the examination would reveal the wounds, he again consulted with Chu Sheng-chiu. The latter conceived the idea of asking Hsü Yün-wu to submit a petition requesting that the examination be waived,³ and he also suggested bribing the coroner. Sung Shang-p'ei thereupon gave 2.2 silver taels to Chu Sheng-chiu

and asked him falsely to tell the coroner, Huang Wen-kuang, that Hsü Chung-shih had taken poison after being beaten up by his father; Sung also asked Chu to give the money to the coroner to get the latter to cover up the wounds. Huang Wen-kuang agreed to do as he was asked.

Chu Sheng-chiu also wrote a petition asking for waiver of the examination of the body, and gave it to Hsü Yün-wu, instructing him to make up the corpse so it would appear as if the deceased actually did die from taking poison. He also instructed Hsü Yün-wu to request Hsü Yün-fa and other neighbors jointly to give false testimony.

On the fifth day of the month [April 12], Hsü Yün-wu hurried to present the waiver request to the district magistrate, Huang Yüan-wei, who was already enroute to conduct the examination. However, the magistrate was unwilling to cancel the examination.

When the magistrate's party arrived at the place where the corpse had been placed, it was already dusk. The coroner had clearly observed that death had resulted from wounds [and not from taking poison]. But, since the flaps of the tent where the corpse was placed were closed, visibility was very poor. Moreover, the hair of the deceased was long and the wounds were small and thus not very noticeable. The coroner also was able to fool Huang Yüan-wei because the latter was near-sighted so the coroner called out that the deceased had died from taking poison.

Huang Yüan-wei, seeing that foamy water was coming out of the corpse's mouth, believed it to be true that the deceased had taken poison, so without carefully examining the body, he hastily filled out the forms and reported the case to his superiors.

Afterwards, Sung Shang-p'ei paid four silver taels to Huang Wen-kuang and he also paid in full the sums which he had promised to Hsü Yün-wu and Chu Sheng-chiu.

On the seventeenth day of the sixth month [July 21, 1777], Hsü Chung-shih's younger brother, Hsü Chung-wei, returned home from another district. The day after he learned that his brother had died after being beaten and that his father had accepted money to settle the matter privately, he went into the city with the intention of lodging an accusation [against Sung Shang-p'ei]. He inquired about the incident from Mao Yung-ch'ing, a granary clerk with whom he was acquainted, and informed Mao of his intent to bring charges. Mao was eager to serve as mediator so he urged Hsü Chung-wei not to lodge an accusation. Mao also notified Sung Shang-p'ei, who agreed to pay fifty silver taels [to settle the matter]. Hoping to get a portion of that sum for himself, Mao Yung-ch'ing went to look for Hsü Chung-wei to get him to agree to accept Sung Shang-p'ei's offer, Hsü Chung-wei pretended to agree and then they parted.

Then, Hsü Chung-wei met another acquaintance named Ts'ao Hsien-ch'ing, to whom he related the above story. He also asked Ts'ao to draft for him an accusation against Sung Shang-p'ei. Ts'ao Hsien-ch'ing declared that if Hsü wished to avoid having his father charged with unlawful acceptance of a bribe,⁴ the only thing he could do would be to accuse the district magistrate of altering the case record and of making a false report. Ts'ao also suggested that Mao Yung-ch'ing, who stopped Hsü Chung-wei from lodging an accusation, should be identified as the person responsible for privately settling a reported offense.⁵ And if Hsü Chung-wei was afraid that he might be punished for false accusation⁶ if Sung Shang-p'ei should refuse to admit beating the deceased, Hsü need only run away so that the case would remain unconcluded.

Hsü Chung-wei sent 600 copper cash to Ts'ao Hsien-ch'ing and let him fabricate an accusation document; Hsü then [took the document] and went to the provincial judicial commissioner to make his accusation. Ts'ao Hsien-ch'ing went with him, hoping to take advantage of the opportunity to trick more money out of Hsü.

After Chu Sheng-chiu learned of Hsü Chung-wei's plans, he and Sung Shang-p'ei discussed the matter and decided to give fifty silver taels to Ts'ao Hsien-ch'ing to induce him to make some suggestions [as to how Sung might successfully defend himself against Hsü Chung-wei's accusation].

Ts'ao Hsien-ch'ing advised Chu Sheng-chiu to tell Hsü Yün-wu to stick to his testimony to the effect that his son had taken poison, to curse his other son, Hsü Chung-wei, and to scare the latter into not testifying by threatening to commit suicide.

When the magistrate, Huang Yüan-wei, summoned the parties for interrogation, Hsü Chung-wei did not dare to confront and argue with his father. Also fearing that if the magistrate decided that his accusation was groundless he would be punished for making a false accusation, he took the opportunity to run away when his guard, Ma Chin, stepped out of the room.

Since the flight of Hsü Chung-wei left no one who could be examined regarding the truth of the accusation, Huang Yüan-wei submitted a report to his superiors requesting a stay in the proceedings pending the capture of Hsü. [His request was apparently approved.]

Later, a cousin⁷ of the deceased, Hsü Jih-te, having tried unsuccessfully to borrow money from Sung Shang-p'ei, followed the example of Hsü Chung-wei and drew up an accusation which he brought to the governor's yamen, where he lodged the accusation [charging Sung Shang-p'ei with killing Hsü Chung-shih]. Your servant [the governor] endorsed the accusation with an instruction to the prefect [who possessed jurisdiction over I-wu district] to summon

the parties for interrogation. Instead, the prefect sent the case down to the I-wu district magistrate. Hsü Jih-te's elder brother, Hsü Jih-ch'uan, heard that Hsü Jih-te was placed in detention⁸ by the magistrate, so he became anxious and lodged an appeal.

Your servant notes that in this case there was first received from the said district magistrate a report that the death was caused by taking poison, but relatives of the deceased have subsequently submitted repeated accusations charging that he was beaten to death. The discrepancy between these two versions of the facts was so great that it was necessary further to investigate and interrogate in order to determine the correct facts. Only in this way was it possible to avoid making an erroneous judgment. The offenders were all brought to the provincial capital and tried by officials specially appointed to handle the case.

There was subsequently received a communication from Huang Yüan-wei, stating that he had apprehended Hsü Chung-wei and was having him delivered to the provincial capital. In addition, officials who were sent to I-wu district to investigate discovered that Hsü Chung-shih had, indeed, died from wounds. They then submitted a detailed report to the governor on their questions and the testimonies of the witnesses.

The said district magistrate, Huang Yüan-wei, was impeached and dismissed from his official position.⁹ At his trial, Huang admitted that his handling of the case was indeed just as has been stated above.

In a memorial submitted to the emperor, the governor of Chekiang recommended: that Sung Shang-p'ei be sentenced to strangulation after the assizes in accordance with the applicable general provision;¹⁰ that Huang Wen-kuang be sentenced to deportation; that Ts'ao Hsien-ch'ing, Hsü Yün-wu, Chu Sheng-chiu, and Huang Yuan-wei each be sentenced to penal servitude; and that Mao Yung-ch'ing and the others be sentenced, as appropriate, either to wearing of the cangue or to blows of the heavy bamboo.

Sung Shang-p'ei should be sentenced to strangulation after the assizes, as the said governor appropriately recommended in his memorial, under the general provision which prescribes such a punishment for offenders who kill someone in a fight, regardless of whether the fatal blow is struck with the hand, the foot, a metal blade, or some other instrument.¹¹ And after the autumn assizes Sung Shang-p'ei should be executed.

Since the said governor stated that Hsü Yün-wu, the father of the deceased, privately settled the homicide of his son and received fifty silver taels, or 49.6 Treasury taels¹² even though it was his second son, Hsü Chung-wei, who lodged the accusation commencing the case, nevertheless he did not report the matter of his father's unlawful receipt of money;¹³ thus [the governor recommended that] Hsü Yün-wu be sentenced to 100 blows of the heavy bamboo and three years of penal

servitude in accordance with [the special provision] governing cases where a relative of the deceased accepts pecuniary consideration to settle privately a homicide case,¹⁴ the actual punishment being calculated by reference to the general provision on twisting the law, resulting in a punishment of 100 blows of the heavy bamboo and a banishment of 2000 li for those who receive between forty-five and fifty silver taels to twist the law,¹⁵ but with a one degree reduction in punishment for offenders who are not salaried officials.¹⁶

Although the charge made by the brother of the deceased, Hsu Chung-wei, to the effect that the district magistrate had altered the case record and submitted a false report, was at the trial proved to be groundless, his accusation that his older brother was beaten to death by Sung Shang-p'ei was true, so the governor recommended that Hsu Chung-wei be exempted from punishment in accordance with the general provision [which stipulates that where more than one accusation is made by the same person, if the lesser charge is proven false, and the greater is proven true, the accuser shall be exempted from punishment].¹⁷

The above related sentences recommended by the said governor are all in compliance with the statutes governing the respective offenses committed by the persons involved in this case. From the standpoint of the express provisions of the code, the governor's recommendations

are neither too severe nor too lenient. However, this is a criminal case involving father and son and elder and younger brother. It cannot be compared with the ordinary case where two parties accuse one another. We must carefully balance law with compassion so that we can act in accord with proper human relationships, giving due consideration to both gratitude and propriety. Only by so doing can we adequately further the ^{paramount goal} of educating the people and enlightening them on the purpose of punishments.

We note that there is a general provision which stipulates that whoever voluntarily surrenders after committing an offense shall be exempted from punishment.¹⁸ Furthermore, where a relative, who shares with an offender the legal privilege of mutual concealment of offenses, reports for the offender, it shall be considered as if the offender himself had voluntarily surrendered. Moreover, the official interlinear commentary states that where family juniors accuse their seniors, the senior shall be exempted from punishment under the principle of voluntary surrender, while the junior shall be punished under the general provisions on violation of an obligation owed toward one's family senior.¹⁹ Also, where a son violates the obligation he owes toward his father by accusing him of committing an offense, the son shall be punished with 100 blows of the heavy bamboo

and three years of penal servitude, even though the accusation is found to be true. ²⁰

In the present case, Hsü Yün-wu accepted money to settle privately the case of the homicide of his eldest son. Subsequently, when his second son, Hsü Chung-wei, returned home and discovered that his elder brother had suffered an unjust death and that his father had accepted money to settle the case, he went to the office of the provincial judicial commissioner to lodge an accusation. Although there was no language in the accusation document stating that his father had unlawfully accepted money, he must have known full well that as soon as the case came to trial, the truth about his father's offense would become known. This is not different from reporting his father's offense. Thus, his father's being sentenced [by the governor] to heavy bambooing and penal servitude is truly the result of the accusation brought by Hsü Chung-wei.

Although by righting the wrong suffered by his brother, the offender [Hsü Chung-wei] has fully satisfied the obligation arising from the relationship between brothers, the violation of the obligation owed toward his family senior which he has committed by causing his father to be sentenced to penal servitude is especially serious. If he cannot bear the unjust death of his elder brother, how does he have the heart to make his own father endure the hardship of being sent away from his home to do penal servitude?

If this matter were to be handled as recommended by the governor, not only would the father feel bitter toward Hsü Chung-wei; moreover the latter would never have a moment's peace of mind, thinking of what he had done to his father.

Therefore, the sentence recommended by the governor should be revised, exempting Hsü Yün-wu from punishment and sentencing Hsü Chung-wei to 100 blows of the heavy bamboo and three years of penal servitude, according to the general provision which stipulates that where a family junior accuses a family senior of committing an offense, the senior shall be exempted from punishment in accordance with the law on voluntary surrender, and the accusing junior shall be punished instead.²¹ In this way, not only will the offender [Hsü Chung-wei] be fully satisfying the obligation he owes to his elder brother; moreover, he will in no way be remiss in showing the gratitude which a son owes to his father.

As for Ts'ao Hsien-ch'ing, he began by helping Hsü Chung-wei to accuse Sung Shang-p'ei and to fabricate the story that the district magistrate had altered his report. This act alone implicated many innocent people and already constitutes the offense of being overly litigious. In addition, Ts'ao then helped Sung Shang-p'ei

counsel Hsü Yün-wu steadfastly to maintain that his son [Hsü Chung-shih] had taken poison and to pretend that he wanted to commit suicide, in order to frighten his son

[Hsü Chung-wei] into running away to hide. Ts'ao Hsien-ch'ing unlawfully received money from both sides by switching his allegiance and by stirring up trouble. This is indeed cunning and deceitful trouble-making.

We note that there is a special provision which stipulate that habitual litigation tricksters who stir up trouble among ignorant country folk and practice intimidation and fraud shall be sentenced to military banishment under the special provision governing scoundrels who stir up trouble and cause disturbances.²² Although this special provision contains a clause expressly governing the situation present in this case, the said governor [ignored this provision and] recommended that Ts'ao Hsien-ch'ing be punished for the offense of extortion and that his punishment be calculated according to the amount of the property which he acquired unlawfully.²³ The recommended sentence is not in accord with the circumstances of the case. Ts'ao Hsien-ch'ing's sentence should be revised and he should be punished with military banishment at the most distant malarial regions of Yunnan or Kweichow, in accordance with the special provision above cited.

The cases of the other offenders should all be concluded in accordance with the following recommendations made by the said governor in his memorial: the coroner Huang Wen-kuang accepted a bribe to cover up the wounds on the corpse and not report the true cause of death.

His misconduct almost resulted in the actual killer slipping out of the net of the law. His conduct is in no way different from the offense of deliberately freeing a guilty offender.²⁴

Aside from his minor offense of accepting a bribe of six silver taels, which can be disregarded,²⁵ it is proper to sentence Huang Wen-kuang under the general provision which stipulates that whoever deliberately acquits an offender who is guilty of a capital offense shall be granted a one degree reduction in punishment if the person he unlawfully allowed to go free is recaptured.²⁶ Thus, he should be given a one degree reduction from Sung Shang-p'ei's punishment of strangulation; namely, Huang Wen-kuang should be sentenced to 100 blows of the heavy bamboo and a banishment of 3000 li. However, his punishment should be increased to being sent as a slave of the soldiers in Heilungchiang.²⁷

Chu Sheng-chiu accepted money to arrange a private settlement [of a homicide case]. First, he paid a little more than forty-nine silver taels to Hsü Yün-wu [on behalf of Sung Shang-p'ei]. Later, he collaborated with Ts'ao Hsien ch'ing and paid to him [for Sung Shang-p'ei] forty-five silver taels. In both cases, he should be sentenced to

the same punishment as that incurred by the person accepting the bribe.²⁸ He should be sentenced according to the general provision which prescribes a punishment of 100 blows of the heavy bamboo and

a banishment of 2000 li for the offense of accepting a bribe of forty-five taels²⁹ leading to the twisting of the law, with a one degree reduction for non-salaried officials;³⁰ namely, Chu Sheng-chiu should be sentenced to 100 blows of the heavy bamboo and three years of penal servitude.

The granary clerk, Mao Yung-ch'ing, knowing that Hsü Chung-wei intended to lodge an accusation, became hopeful that he might be able to share in some money and urged Hsü not to lodge the accusation. He should be given eighty blows of the heavy bamboo for a serious infraction of the general provision governing the offense of doing what ought ^{not} to be done.³¹ He should in addition be sentenced to two months wearing of the cangue.³²

The local constable, Sung Tsung-ch'ang, did not make an accurate investigation and misleadingly reported that the deceased had died from taking poison. Sung Chung-shu and Sung Yung-tse [the original mediators of the mortgage debt dispute] clearly knew that Sung Shang-p'ei had bribed

[Hsü Yün-wu] to settle privately his son's homicide; nevertheless, they concealed the truth and did not report it to the authorities. All of them acted improperly. They should all be sentenced together with Sung Chao-shou, who by not paying his mortgage debt triggered the dispute and the ensuing violence, to eighty blows of the heavy bamboo, for a serious infraction of the provision governing the offense of doing what ought not to be done.

Hsü Jih-te, a remote cousin of the deceased, Hsü Chung-shih, followed the example of the latter's brother, Hsü Chung-wei, in presenting an accusation [against Sung Shang-p'ei]. Although his accusation, that Sung Shang-p'ei had beaten Hsü Chung-shih to death, was true, nevertheless, it is improper that he should have intervened in the case and have submitted an accusation simply because Sung Shang-p'ei had refused his request for a loan. Thus, he should be punished with eighty blows of the heavy bamboo for a serious infraction of the provision governing the offense of doing what ought not to be done..

Hsü Jih-ch'uan became worried and filed an appeal because his younger brother, Hsü Jih-te, was being held in detention and could not obtain a release. He can be forgiven for being anxious. Charges should thus be dropped against him and Ma Chin, the original guard [for Hsü Chung-wei, at the time Hsü escaped] who upon investigation

was found not to have received any money [to allow Hsü to escape].

It is proper to sentence the impeached and dismissed district magistrate, Huang Yüan-wei, under the general provision ³³ governing cases where a magistrate

through error acquits a guilty person, giving him the usual five degree reduction from the punishment due the acquitted offender, plus an additional one degree reduction where the offender is recaptured, resulting in a cumulative reduction of six degrees from the punishment of strangulation and a final sentence for Huang Yüan-wei of sixty blows of the heavy bamboo and one year of penal servitude.

All of the bribe money should be confiscated by the government from those offenders who received such money.

Sung Chao-shou should pay up the seven silver taels mortgage debt [contracted by his grandfather] to Sung Shang-p'ei and possession of the house should be given to Hsü Yün-wu.

[The above memorial from the Board of Punishments was submitted on the tenth day of the twelfth month of the forty-fourth year of Ch'ien-lung [January 16, 1780]]

On the twelfth day of the same month, [January 18] there was received the following imperial rescript: "Sung Shang-p'ei should be strangled as was proposed [by the Board]; let him be detained in jail and executed after the autumn assizes. Let the rest of the offenders be handled in accordance with the [Board's] proposal."

Footnotes

1. The term used here for the transaction between Sung Shang-p'ei's grandfather and Sung Yung-liu is tien, which could mean either a mortgage-pledge, with the mortgagor remaining in possession of the mortgaged property, or a mortgage-sale, with possession going immediately to the mortgagee. In his excellent book entitled Chinese Family and Commercial Law (Shanghai, 1921), Sir George Jamieson describes the latter type of tien as follows: "tien, generally translated mortgage, is more like a sale than the transaction we call a mortgage. The money advanced is always nearly if not quite up to the real cost, the mortgagee enters on possession and takes all the rents and profits. No interest is stipulated for. It only differs from an absolute sale in that the mortgagee is bound on receipt of the original price to reconvey. So long as he remains in possession he is clothed with all the rights and duties of an ordinary land-owner." Id., 86.
 2. The original mortgage made by Sung Yung-liu to Sung Shang-p'ei's grandfather was apparently intended to be a mortgage-pledge and not a mortgage-sale, since possession of the house was retained by the owner-mortgagor, Sung Yung-liu. The "rent" which he and
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his successor, Sung Chao-shou, paid to the mortgagee and his successors was obviously in the nature of interest on the money loan. The fact that Sung Shang-p'ei demanded only the return of the seven

tael loan and not possession of the house lends

further support to the interpretation that Sung

Shang-p'ei's rights were limited to a money claim and he did not have the right to immediate possession of the house.

3. According to a special provision in the code section entitled Chien-yen shih-shang pu-i-shih (Incorrect report of the examination of the body and wounds in homicide cases), when a suicide by hanging or drowning is involved, the examination of the corpse may be waived if the relatives so desire, provided there exists no reason for suspicion. 1964 Taiwan reprint 5:3690; Philastre II, 700, Decree 1. Apparently, Chu Sheng-chiu and Sung Shang-p'ei hoped that the magistrate would consider suicide by poison to be analogous to suicide by drowning or hanging and would consequently waive the examination of the corpse.
4. According to a general provision in the code section entitled Tsu-chang wei-jen sha ssu-ho (Privately settling the homicide of one's family senior), if a father privately settles the homicide of his son, he should be punished with eighty blows of the heavy bamboo; but if pecuniary consideration is involved in the settlement, the father should be deemed guilty of

theft of an amount equal to the sum received in settlement. 1964 Taiwan reprint 4:2631; Staunton 322; Boulais 584, sec. 1340.

In 1767, a special provision was adopted which superseded part of the above general provision. See Ta-ch'ing lü-li an-yü 57:68. In the new provision, the father's acceptance of^a pecuniary consideration was no longer equated with theft; it was instead equated with the offense of an official accepting a bribe for the purpose of twisting the law (wang-fa tsang). This offense is governed by a general provision in the code section entitled Kuan-li shou-ts'ai (Officials and clerks accepting bribes). 1964 Taiwan reprint 4:3047; Staunton 379; Boulais 654, sec. 1517. Under this special provision, the punishment for accepting in settlement a sum between forty-five and fifty taels would be 100 blows of the heavy bamboo and a banishment of 2000 li. 1964 Taiwan reprint 4:3051. However, since Hsü Yün-wu was not a salaried official (yu-lu-jen), he would be eligible for a one degree reduction, resulting in a punishment of 100 blows of the heavy bamboo and three years of penal servitude. Id.

5. See the code section entitled Ssu-ho kung-shih

(Privately settling a reported offense). 1964 Taiwan

reprint 4:3305; Staunton 415; Boulais 699, sec. 1642.

The maximum punishment for this offense is fifty blows of the light bamboo. However, the offense of privately

settling homicide cases or sex offenses is not covered

by the Ssu-ho kung-shih general provisions. Since

such offenses were considered especially destructive

of public order and morality, their private settlement

was punished more severely by separate provisions in the

sex offense and homicide statutes. For example, the

punishment for private settlement of a homicide case

varied between bambooing and banishment, depending upon

the relationship between the homicide victim and the

person unlawfully settling the case. For a non-relative,

such as Mao Yung-ch'ing, the punishment would be sixty blows

of the heavy bamboo. See 1964 Taiwan reprint

2635; Staunton 322-3; Boulais 583-4, sec. 1340-341.

26. See the code section entitled Hu-kao (False accusation),

1964 Taiwan reprint 4:2951-2. According to a general

provision in that section, when a person is falsely

accused of a capital offense and the execution of the

death sentence against the innocent person has not yet

been carried out, the false accuser shall be punished

with one hundred blows of the heavy bamboo and a ban-

ishment of 3000 li. Also see Staunton 364; Boulais 638,

sec. 1474.

7. His relationship to the deceased is Wu-fu tsu-hsiung, an "elder brother" outside the circle of mourning relationships. [Actually, he is a distant cousin].
8. In criminal cases, it was common to detain the accuser as well as the accused person himself. See the code section entitled Yüan-kao-jen shih-i pu-fang-hui (Failure to release plaintiffs after a trial in concluded); 1964 Taiwan reprint 5:3579-3580; Staunton 445.
9. To guide the actions of civil and military officials at every level of the bureaucracy, Ch'ing China relied upon comprehensive and detailed rules which governed every aspect of the officials' public and private life. These rules were published in a compendium entitled Liu-pu ch'u-fen tse-li (Disciplinary regulations for the Six Boards), which not only stipulated the standard of performance required for every task, but also prescribed the exact punitive sanction ^{for every deviation} which result from ^{any particular action} any particular action. The disciplinary sanctions ranged from a forfeiture of one month's salary to permanent dismissal from office and relegation to commoner status. The usual procedure for imposing such sanctions upon an errant official was for his superior to impeach him in a memorial addressed to the emperor. If the offender held the position of taotai or prefect or a higher post, no action could be taken

against him prior to receipt of approval from the emperor. Impeachment alone could not lead to a sentence of penal servitude, banishment, or the death penalty. However, if an official's transgression was serious, the ultimate disciplinary sanction of permanent dismissal and relegation to commoner status might not be considered sufficient punishment. In such a case, the offending official would be subjected to criminal sanctions only after being first impeached and subjected to the maximum disciplinary sanctions. The discussion contained in this footnote is largely derived from an informative and stimulating forthcoming book by Thomas A. Metzger, entitled Some Legal Aspects of Bureaucratic Organization in China under the Ch'ing. For legal provisions pertaining to the interaction between the impeachment process and the criminal process, see 1964 Taiwan reprint 1:259-271; Staunton 9-11; Boulais 37-42, sec. 63-71.

10. Found in the code section entitled Tou-ou chi ku-s'ü-jen (Killing in a fight and killing with intent). 1964 Taiwan reprint 4:2497; Staunton 311; Boulais 559, sec. 1263.
11. Id.
12. L.S. Yang, Money and Credit in China (Cambridge, 1952)

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13. This is a reference to VS-GP 2, which stipulates that when a family junior accuses his senior, the senior shall be exempted from punishment. 1964 Taiwan reprint 1:445; Staunton 27; Boulais 68, sec. 116. Also see English translation, page 3, supra. In this case, however, since the son did not reveal the amount of unlawfully acquired property which his father accepted, the governor was of the opinion that the father should still be punished for receiving a bribe to settle privately the homicide of his son. See id., where it is provided that "... where the voluntary surrender is untrue or incomplete... the offender shall be punished... for the amount of unlawfully acquired property which he failed to acknowledge having taken."
14. Ta-ch'ing lü-li an-vü 57:69-6.
15. 1964 Taiwan reprint 4:3051; Staunton 381; Boulais 655, sec. 1519.
16. 1964 Taiwan reprint 4:3047, 3054; Staunton 379; Boulais 654, sec. 1517. The term wu-lu-jen is therein defined as "those persons who either receive no salary, or a salary amounting in value to less than one stone [160 pounds of British weight] of rice per month."
17. Found under the code section entitled Wu-kao (False accusation). 1964 Taiwan reprint 4:2952; Staunton 366; Boulais 639, sec. 1477.
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18. VS-GP 1.
19. VS-GP 2.
20. 1964 Taiwan reprint 4:2995, under the code section entitled Kan-ming fan-i (Violation of an obligation owed toward one's family senior); Staunton 371; Boulais 644, sec. 1495.
21. VS-GP 2. See especially the official interlinear commentary, which provides that the accusing junior shall be punished under the general provisions on violation of an obligation owed toward one's family superior (Kan-ming fan-i). Cited in note 20, supra.
22. Taiwan reprint 4:3029-30; Bodde 413-417, especially 415.
23. 1964 Taiwan reprint 3:2165, and 2059 under the code section entitled K'ung-ho ch'ü-ts'ai (Extortion). According to this general provision, the offender should be punished one degree more severely than in ordinary cases of theft of the same amount. Therefore, the governor recommended punishing Ts'ao Hsien-ch'ing with [one and a half] years of penal servitude [plus seventy blows of the heavy bamboo]. Staunton 284 and 288; Boulais 504 and 522, sec. 1119 and 1166.
24. Here, the Board uses the term ku-ch'u (deliberately to acquit), apparently referring to the code section entitled Kuan-ssu ch'u-ju jen-tsui (Pronouncing an

unduly light or unduly heavy sentence), 1964 Taiwan reprint 5:3598; Staunton 447; Boulais 716-7, sec. 1682-1685.

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25. This is apparently an implied reference to the general provision in the code section entitled Liang-tsui chü-fa i chung-lun (Concurrence of offenses) which stipulates that an offender who commits two or more separate offenses shall be punished only for that offense incurring the most severe punishment. 1964 Taiwan reprint 1:461; Staunton 29; Boulais 84, sec. 153.
26. 1964 Taiwan reprint 5:3588; Staunton 488; Boulais 717, sec. 1685.
27. It is not clear why the punishment was increased. To be sent to the frontiers as a slave for soldiers is an aggravated form of banishment, but the code does not contain a discussion of the circumstances warranting such an increase. For the laws relating to banishment and penal servitude, see generally the code section entitled T'u-liu ch'ien-hsi ti-fang (The place where an offender serves a sentence of penal servitude or banishment). 1964 Taiwan reprint 1:565-640; Staunton 44-45; Boulais 23, sec. 195-196.
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28. The Board is here applying a special provision found under the code section entitled Yu-shih i-ts'ai ch'ing-ch'iu

(Offering a bribe); 1964 Taiwan reprint 4:3081. This special provision takes precedence over the general provision under the code section entitled Kuan-li shou-ts'ai (Officials or clerks accepting bribes), which provides that offenders who mediate and transmit bribes shall be punished one degree or two degrees less than the bribe-takers, depending on whether or not the offender is a yu-lu-jen (salaried official), id., 4:3047.

29. According to the general provision under the Kuan-li shou-ts'ai section, the punishment for accepting bribes is calculated according to a scale provided by the code. When the sum involved is over forty-five but under fifty silver taels, the punishment of one hundred blows of the heavy bamboo and a banishment of 2000 li. Note 4, supra. In other words, Chu Sheng-chiu's two offenses incur the same punishment. In accordance with the statute on concurrence of offenses, he should be given only one of the two punishments. See note 25, supra.

30. 1964 Taiwan reprint 4:3051; Staunton 379.

31. 1964 Taiwan reprint 4:3331; Staunton 419; Boulais 704, sec. 1656. Bodde, 159, 215 and 440-442.

32. In cases having aggravating circumstances, it was not uncommon for Ch'ing judges to impose one or two months wearing of the cangue in addition to the punishment prescribed by statute. Bodde, 95-96. For two other examples of the exercise of judicial discretion in imposing the cangue, see id., 277 and 472.

33. 1964 Taiwan reprint 5:3588; Staunton 448; Boulais 717 sec. 1684-1685.

Hsu Chung-wei Case

Hsu Yun-wu	Father
Hsu Chung-shih	Corpse (elder brother)
Hsu Chung-wei	Hero (younger brother)
Sung Yung-liu	Owner - mortgagor - borrower
Sung Zhao-shou	SYL's nephew - mortgagor - borrower
Sung Shang-p'ei	Lender-mortgager's grandson; killer
Sung Chung-shu	Erstwhile mediator of civil dispute
Sung Yung-tse	Erstwhile mediator of civil dispute
Sung A-hou	Minor role at fight scene
Sung Tsung-ch'ang	"Ti p'ao" (constable)
Chu Sheng-chiu	Hsu Yun-wu's nephew, mediator of homicide
Huang Wen-kuang	Coroner
Huang Yuan-wei	District magistrate
Mao Yung-ch'ing	Granary clerk; go-between
Ts'ao Hsien-ch'ing	"Litigation stick"
Hsü Jih-te	Frustrated borrower, cousin of corpse
Hsü Jih-ch'uan	Elder brother of Hsü Jih-te
Ma Chiu	Guard at hearing on Hsü Chung-wei, accusation filed with judicial commission
Wang Tan-wang	Governor of Chekiang

Catalogue of Statutes Cited

1. Waiver of magistrate's examination [fn 3, p. 21]
2. Privately settling family member's homicide case [fn 4, p. 21]
3. Privately settling a reported offender [fn 5, p. 23]
4. False accusation [fn 6, p. 23]
5. Pre-trial detention of accuser [fn 8, p. 24]
6. Killing in a fight [fn 10, p. 25]
7. Voluntary surrender law [fn 13, p. 26]
8. Violation of obligation toward family senior [fn 20, p. 27]
9. Extortion [fn 23, p. 27]
10. Pronouncing incorrect sentence [fn 25, p. 28]
11. Bribery [fn 28, pp. 28-29]

Below are some of the interesting points illustrated by the Hsu Chung-wai case; it has everything but a ching k'ung (appeal to a capital office).

Legal Aspects:

1. Property law -- mortgage and sale subject to mortgage
 2. Property disputes -- not submitted to court
 3. Unsuccessful mediation by family leaders
 4. Homicide during a fight
 5. Suppression of report to the authorities
 6. Use of go-between to settle homicide privately
 7. Investigation by tipao who believes false story of suicide
 8. Report by tipao to magistrate who is asked to come see body
 9. Bribery of coroner to hide the wounds
 10. Go-between writes petition requesting waiver of inquest; denied
 11. Nearsighted magistrate submits erroneous report
 12. Brother of deceased learns of death and settlement and proceeds to lodge an accusation.
 13. Yamen granary clerk seeks to prevent filing of accusation so he can serve as mediator and make a profit.
 14. Enter a litigation stick who drafts accusation re homicide; also charges magistrate submitted false report
 15. Accusation directly presented to provincial judicial commissioner
 16. Original go-between bribes accuser's litigation stick to advise defendant how to defend against the charge stick accepts so now he is chief counsel to both parties
 17. Accuser, afraid to confront own father, runs away during court inquiry re his accusation
 18. Another accusation presented against the killer
 19. Governor steps in and clears up the case
 20. Criminal sentencing: killer; go-between; mediators; litigation stick; tipao; coroner; magistrate; both accusers
- Note: Confucian twist -- the wrongdoing father gets off scot-free by virtue of vol. surrender laws, whereas the son, who was the chief instrument of justice, is punished for making an implied criminal accusation vs. his father
21. Adjudication of civil rights and liabilities.