

~~MA 7-12~~ 6, 1952
FEDERATION OF MALAYA

UNIVERSITY OF LONDON
28th December 1949. W.C.1.

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INSTITUTE OF ADVANCED
LEGAL STUDIES

15255

The Right Honourable A. Creech Jones, P.C., M.P.,
Secretary of State for the Colonies,
Church House,
Great Smith Street,
London, S.W.1.

We, the undersigned Rulers of the Malay States, which together with the State and Territory of Johore and the Settlements of Penang and Malacca, comprise the Federation of Malaya, are greatly perturbed at the judgment recently given in the Court of Appeal, Singapore (Civil Appeal 7/1949), in the Case in which Major-General His Highness Sir Ibrahim, Sultan of Johore, was the Appellant. In that Case two out of the three Judges of Appeal held, in effect, that His Highness is not an Independent Sovereign, and is not therefore in a position to claim immunity from Civil Proceedings in the Courts, a decision which, if allowed to stand, appears to apply equally to all of us.

We submit that our constitutional position does not depend on legal Judgments but is determined by the exercise of the prerogative of His Majesty the King.

The main purpose of the State Agreements, which were made on 21st January 1948 with us severally and with His Highness the Sultan of Johore, was to restore us all the sovereignty which had been surrendered by the several Agreements made with Sir Harold MacMichael. In consequence, we were all able to make immediately thereafter and on the same day the Federation of Malaya Agreement, 1948, by exercising the sovereignty so restored to us all.

Each of the separate State Agreements contains the definite provision that our prerogative, power and jurisdiction within our several States shall be those which we possessed on 1st December 1941; and this provision in each case bears the side-note "Sovereignty of the Ruler" and was executed with that side-note on the document. Also, section 155 of the Federation of Malaya Agreement 1948, expressly provides that that Agreement shall not affect our sovereignty and jurisdiction in our States.

It seems to us incredible that these undertakings could have been designed to conceal any sinister infringement of our sovereignty. During the negotiations, which led to the making of all these Agreements, we were assured again and again that our sovereignty was being restored to us and that as a result we were entering into what was described as a kind of partnership with His Majesty in the creation of the Federation of Malaya.

Twice in the past unequivocal certificates of the independent sovereignty of Malay Rulers have been given by your predecessors, once in 1894 in the case of *Mighell v. the Sultan of Johore* and once in 1924 when the Duff Development Company sued the State of Kelantan.

In the case which has led to this letter it has been decided by the Court of Appeal that neither your letter of 9th June 1946, nor that of 12th November 1948 has given an unequivocal answer to the query whether the Sultan of Johore is, or is not, an independent Ruler.

We are advised that our status, which is a matter of profound importance not only to us but to our humblest subjects, would be put beyond doubt at once, and in justice to ourselves ought so to be put, by the exercise of the prerogative of His Majesty the King and the issue of a clear and unequivocal statement that His Majesty's Government has since 1st February 1948 recognized each and every one of the nine Malay States comprised within the Federation of Malaya as independent States and that their respective Rulers are the Sovereign Rulers thereof.

*to us but it is
very much to
our concern*

The subject-matter of the litigation in which His Highness the Sultan of Johore is now involved is naturally not of the slightest concern that in that litigation the question of his sovereignty, and so of our own, should have been left to the decision of Courts in Singapore and now to that of the Judicial Committee of the Privy Council. In order to put a stop to this, it is our earnest request that His Majesty's Government through you will issue at once to His Highness the Sultan of Johore a clear and unequivocal statement that Johore is an independent State and that His Highness is the Sovereign Ruler of Johore, so that it may be produced before the Judicial Committee and put the matter to an end, thus allaying the consternation of ourselves and our people. In other words, it is our request that the statement to be issued should follow the lines of that which was issued in 1924 in the case of Kelantan.

Sgd.

UNDANG OF THE LUAK OF SUNGEI UJONG.

Sgd.

UNDANG OF THE LUAK OF JELEBU.

Sgd.

UNDANG OF THE LUAK OF JOHOL.

Sgd.

UNDANG OF THE LUAK OF REMBAU.

Sgd.

ABU BAKAR ABDULLAH
HIS HIGHNESS THE SULTAN OF THE STATE OF PAHANG

Sgd.

ABDUL RAHMAN
HIS HIGHNESS THE YANG DI-PERTUAN BESAR OF THE
STATE NEGRI SEMBILAN.

Sgd.

ALAM SHAH
HIS HIGHNESS THE SULTAN OF THE STATE OF
SELANGOR.

Sgd.

BADLISHAH
HIS HIGHNESS THE SULTAN OF THE STATE OF KEDAH.

Sgd.

S. PUTRA JAMALULLIL
HIS HIGHNESS THE RAJA OF PERLIS.

Sgd.

IBRAHIM
HIS HIGHNESS THE SULTAN OF THE STATE OF
KELANTAN.

Sgd.

ISMAIL
HIS HIGHNESS THE SULTAN OF THE STATE OF
TRENGGANU.

Sgd.

RAJA YUSOF
HIS HIGHNESS THE SULTAN OF THE STATE OF PERAK.

Enc. No. (22A) in MBJ. (H.H. Sultan) 10/49.

KING'S HOUSE,
KUALA LUMPUR,
MALAYA.

26th May 1950.

YOUR HIGHNESSES,

In your letter of the 28th December 1949 you expressed anxiety lest the Agreements of 1948 may possibly conceal some sinister infringement of your sovereignty. I would assure you that there is no foundation whatever for this apprehension. No claim is made that His Majesty has any authority in relation to the States other than that provided for by the terms of the Agreements of 1948. His Majesty's Government fully recognize that so far as you are concerned you have, as laid down under Clause 15 of the respective State Agreements, the prerogatives, powers and jurisdiction within your respective States that you possessed on the 1st December 1941, subject of course, as the clause itself provides, to the 1948 Agreements into which each of you willingly entered with His Majesty after full negotiation.

2. The question now at issue before the courts, however, is whether the Sultan of Johore is immune from jurisdiction, and this may be affected by the fact that he, like the other Rulers, in setting up the Federation in concert with His Majesty has conferred upon the central Federal authorities, in which all the Rulers have a part, powers and functions in respect of his State.

3. You refer in your letter to the certificates given in the cases of *Mighell v. the Sultan of Johore* and *Duff Development Company v. the State of Kelantan*, but those certificates were given before the Federation was established. In these circumstances my conclusion is that the issue as to what effect, if any, the establishment of the Federation has on the question of immunity is one which should be left to the courts to decide.

4. I trust that you will consider what I have said above adequately meets the point of view which you expressed in your letter.

I have the honour to be,
Your Highnesses,

Your most obedient, humble servant,
Sgd. JAMES GRIFFITHS.

Their Highnesses the Rulers of the States of Pahang,
Negri Sembilan, Selangor, Kedah, Perlis,
Kelantan, Trengganu and Perak.

SECRET

FEDERATION OF MALAYA

14th August, 1950.

The Right Honourable James Griffiths, P.C., M.P., etc.,
 Secretary of State for the Colonies,
 Church House,
 Great Smith Street,
 London, S.W.1.

We have given our most careful consideration to the contents of your letter to us of 26th May, 1950, and regret to inform you that it has served only to strengthen the disquietude which caused us to write to you our letter of 28th December, 1949.

2. The second and third paragraphs of your letter require answer by us and we state in the next paragraph of this letter what we understand to be the legal position.

3. It is perfectly true that at the time when the certificates were given in the cases of *Mighell v. the Sultan of Johore* and *Duff Development Company v. State of Kelantan* there was no Federation of Malaya and it is also true that in setting up that Federation His Majesty and we ourselves conferred certain powers and functions upon the central Federal authorities but that does not affect the question of our sovereignty in our States any more than it does that of His Majesty in the two Settlements. If our sovereignty is affected, then so must be that of His Majesty. The answer, however, would seem to be that which was stated by Viscount Finlay in the *Duff Development* case at p. 814 in the report of the case in *Law Reports, 1924 Appeal Cases*, and it is as follows :—

“ The question was put as to the status of the ruler of Kelantan. It is obvious that for sovereignty there must be a certain amount of independence, but it is not in the least necessary that for sovereignty there should be complete independence. It is quite consistent with sovereignty that the sovereign may in certain respects be dependent upon another Power ; the control, for instance, of foreign affairs may be completely in the hands of a protecting Power, and there may be agreements or treaties which limit the powers of the sovereign even in internal affairs without entailing a loss of the position of a sovereign Power.”

Viscount Cave, at pp. 807–808 of the report, set out the law in the same way and said : “ No doubt the engagements entered into by a State may be of such a character as to limit and qualify, or even to destroy, the attributes of sovereignty and independence : *Wheaton*, 5th ed., p. 50 ; *Halleck*, 4th ed., p. 73 ; and the precise point at which sovereignty disappears and dependence begins may sometimes be difficult to determine. But where such a question arises it is desirable that it should be determined, not by the Courts, which must decide on legal principles only, but by the government of the country, which is entitled to have regard to all the

circumstances of the case. Indeed, the recognition or non-recognition by the British Government of a State as a sovereign State has itself a close bearing on the question whether it is to be regarded as sovereign in our Courts."

Sir Thomas Inskip, Attorney-General, in his speech to the Court, at p. 803 of the report, said: "As between the King and another State it is for His Majesty to say whether he will treat that State as a sovereign State, as is illustrated by the States of Borneo and Sarawak: see Anson's Law and Custom of the Constitution, 3rd ed., vol. ii, p. 92. Sovereignty is not inconsistent with considerable restrictions on the freedom of the State to administer its own affairs: Vattel (English ed., 1834), Book i, c. i, s. 4."

Viscount Cave, at pp. 805, 806 of the report, said: "First, it was argued that the Government of Kelantan was not an independent sovereign State, so as to be entitled by international law to the immunity against legal process which was defined in *The Parliament Belge*. It has for some time been the practice of our Courts, when such a question is raised, to take judicial notice of the sovereignty of a State, and for that purpose (in any case of uncertainty) to seek information from a Secretary of State; and when information is so obtained the Court does not permit it to be questioned by the parties."

Viscount Finlay, at p. 813 of the report, said: "It is settled law that it is for the Court to take judicial cognizance of the status of any foreign Government. If there can be any doubt on the matter the practice is for the Court to receive information from the appropriate department of His Majesty's Government, and the information so received is conclusive;" and again: "It has long been settled that on any question of the status of any foreign power the proper course is that the Court should apply to His Majesty's Government, and that in any such matter it is bound to act on the information given to them through the proper department. Such information is not in the nature of evidence; it is a statement by the Sovereign of this country through one of his Ministers upon a matter which is peculiarly within his cognizance."

Lord Dunedin, at p. 820 of the report, said: "It seems to me that once you trace the doctrine for the freedom of a foreign sovereign from interference by the Courts of other nations to comity, you necessarily concede that the home sovereign has in him the only power and right of recognition."

It is, therefore, clear that the status of any foreign State is peculiarly a matter for His Majesty and that, if there is any doubt, the Court must ask information from the appropriate Secretary of State.

4. Following the usual practice, the British Court in Singapore applied twice to the Secretary of State for the Colonies for the necessary information and upon neither occasion received any unequivocal answer, upon which state of affairs some of the learned Judges commented. It now seems clear to us that you wish to leave it to the Privy Council to pronounce upon the question of our sovereignty. We are not interested in what any British Court may think and we do not believe that it is the proper function of a British Court to decide upon the matter.

5. We ask you once more to tell us in plain language whether His Majesty does or does not recognize us as independent foreign sovereigns; and, if your answer is not satisfactory, we shall have to inform our subjects

and make this correspondence public. The Malayan Union was dissolved and the Federation and State Agreements were made upon the perfectly plain understanding that the sovereignty which we possessed immediately prior to the Japanese conquest of our territories was being recognised as subsisting. We made those Agreements with His Majesty on the footing of sovereignty in our own States and we could have made them on no other footing. The powers which were conferred by us on the Federation derived from our status, of independent sovereign rulers and were not intended to and did not in any way abrogate that status.

If His Majesty's Government refuses to assure us as to our sovereignty, we can only regard it as a breach of faith.

- Sgd. M. KASSIM
UNDANG OF THE LUAK OF SUNGEI UJONG.
- Sgd. SHAHMARUDDIN
UNDANG OF THE LUAK OF JELEBU.
- Sgd. AB. MANAP
UNDANG OF THE LUAK OF JOHOL.
- Sgd. D. A. IPAP
UNDANG OF THE LUAK OF REMBAU.
- Sgd. ABU BAKAR BIN ABDULLAH. (In Malay)
HIS HIGHNESS THE SULTAN OF THE STATE OF
PAHANG.
- Sgd. T. ABDUL RAHMAN
HIS HIGHNESS THE YANG DI-PERTUAN BESAR OF THE
STATE NEGRI SEMBILAN.
- Sgd. TENGKU ALAM SHAH. (In Malay)
HIS HIGHNESS THE SULTAN OF THE STATE OF
SELANGOR.
- Sgd. T. BADLISHAH
HIS HIGHNESS THE SULTAN OF THE STATE OF KEDAH.
- Sgd. S. PUTRA JAMALULLAIL
HIS HIGHNESS THE RAJA OF PERLIS.
- Sgd. IBRAHAM
HIS HIGHNESS THE SULTAN OF THE STATE OF
KELANTAN.
- Sgd. ISMAIL
HIS HIGHNESS THE SULTAN OF THE STATE OF
TRENGGANU.
- Sgd. ISMAIL
HIS HIGHNESS THE REGENT OF THE STATE OF JOHORE.
- Sgd. R. A. RASHID
HIS HIGHNESS THE REGENT OF THE STATE OF PERAK.

COPY

COLONIAL OFFICE,
THE CHURCH HOUSE,
GREAT SMITH STREET,
S.W.1.

1st February 1951.

YOUR HIGHNESSES,

In your letter of the 14th August 1950, you express dissatisfaction with the terms of my letter of the 26th May concerning your sovereignty. I regret that this should be so, but in the light of the comments in paragraph 4 of your letter, I think that the terms of my letter were not sufficiently clear. Although it is an incontrovertible fact that the Agreements of 1948 have altered the pre-war position of your States, nevertheless His Majesty's Government regard Your Highnesses as independent Sovereigns in so far as your relations with His Majesty are concerned, and, save as provided in the Agreements of 1948, independent Sovereign Rulers in your several States.

I hope that you will regard this explanation as satisfactory, but if you feel obliged to publish this correspondence I should have no objection.

I have the honour to be,
Your Highnesses,

Your most obedient humble servant,
(Sgd.) JAMES GRIFFITHS.

Their Highnesses the Rulers of the Malay States.