In the Privy Council.

No. 45 of 1950.

31380

ON APPEAL FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE

IN THE MATTER of a JAPANESE DECREE made in O.S. No. 24 of 2605 (A.D. 1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th of June, 1945.

AND

IN THE MATTER of the JAPANESE JUDGMENTS and CIVIL PROCEEDINGS ORDINANCE, 1946.

BETWEEN

THE SULTAN OF JOHORE ... ... *Appellant*

AND

ABUBAKAR, TUNKU ARIS BENDAHARA AND OTHERS *Respondents*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

In the Privy Council.

No. 45 of 1950.

ON APPEAL FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE

Singapore Originating Summons No. 23 of 1947.

IN THE MATTER of a JAPANESE DECREE made in O.S. No. 24 of 2605 (A.D. 1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th of June, 1945

AND

IN THE MATTER of the JAPANESE JUDGMENTS and CIVIL PROCEEDINGS ORDINANCE, 1946

BETWEEN

THE SULTAN OF JOHORE ... ... *Appellant*

AND

1. ABUBAKAR, TUNKU ARIS BENDAHARA
2. HERBERT WALTER COWLING
3. GEORGE HERBERT GARLICK ... ... *Respondents.*

RECORD OF PROCEEDINGS

No. 1.

Amended Originating Summons.

In the High Court of the Colony of Singapore.

No. 1. Amended Originating Summons, 14th April 1947.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
ISLAND OF SINGAPORE.

Originating Summons No. : 23 of 1947.

In the Matter of a Japanese decree made in O.S. No. 24 of 2605 (1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th day of June 1945.

and

In the Matter of the Japanese Judgments and Court Proceedings Ordinance 1946.

LET ALL PARTIES CONCERNED attend before the Judge in Chambers at the Court House at Singapore on Monday the 12th day of May 1947 at the hour of 11 o'clock in the forenoon on the hearing of an application on the part of (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore ; (ii) John Laycock of No. 55 Still Road, Singapore, Advocate and Solicitor ; and (iii) George Herbert Garlick of

In the High Court of the Colony of Singapore.

No. 1. Amended Originating Summons, 14th April 1947—*continued.*

Garlick Avenue, Holland Road, Singapore, Medical Practitioner, being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (i.e. 1945 A.D.) and made in Originating Summons No. : 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore) for an order that such Decree be set aside wholly or that the Applicants be at liberty to appeal against the whole of such Decree on the following grounds, namely

(i) That the following necessary parties did not appear personally in the proceedings leading up to such Decree, namely, the Applicants and H.H. Ungku Fatimah of Johore but that if any of them were represented in such proceedings at all (which is denied) they were represented by a person appointed by some Japanese Authority and such person so appointed did not appear on the hearing when the said Decree was made.

(ii) That the said Decree was based on principles unknown to the existing laws of the Colony ; and

(iii) That the said Decree was erroneous and bad in law and that the costs of and incidental to these proceedings may be taxed on the Higher Scale and be paid by the Respondents to these proceedings.

(*sic* see Amending Order page 24)

(iv) *The said Henry Walter Cowling, Abubakar, Tunku Aris Bendahara of the State and Territory of Johore and George Herbert Garlick made this application as Trustees of a Deed of Settlement dated the 28th day of June* 1944 *and made between Abubakar bin Sultan Ibrahim Tunku Aris Bendahara of the State of Johore of the 1st part, Ungku Fatimah (otherwise known as Unku Ara) wife of Tunku Abubakar of the second part and S. H. Shirazee, Tan Chin Tuan and John Laycock of the third part.*

Dated this 14th day of April, 1947.

Sd. TAN THOON LIP,
F. *Registrar.*

This Summons was taken out by Messrs. Chan, Laycock & Ong of Nunes Buildings, Malacca Street, Singapore, Solicitors for the above-named Abubakar, Tunku Aris Bendahara of the State and Territory of Johore, John Laycock and George Herbert Garlick.

Note :—If the Respondent does not attend either in person or by his Solicitor at the place and time above mentioned (or at the place above mentioned at the time mentioned in the indorsement hereon) Such Order may be made and proceedings taken as the Judge may think just and expedient.

Note :—Where entry of appearance is required and appearance shall be entered within eight days from the date of service.

Amended this 28th day of May, 1947 pursuant to Order of Court herein dated 19th day of May, 1947.

Sd. TAN THOON LIP,
F. *Registrar.*

In the High Court of the Colony of Singapore.

No. 2. Affidavit of Abubakar, 14th April, 1947.

No. 2

Affidavit of Abubakar.

I, ABUBAKAR, of Johore, Tunku Aris Bendara of the State and Territory of Johore, make oath and say as follows :—

1.—The Applicants in this Originating Summons are the following persons namely :—

Name	Description	Place of Residence	Interest in the Proceedings
1. Abubakar of Johore	Government Officer	No. 12A Freeman Road, Kuala Lumpur.	A person deriving interest (in the events which have happened) under the Conveyance and Settlement set aside by the Japanese decree in question in these proceedings.
2. John Laycock	Advocate & Solicitor	No. 55 Still Road, Singapore.	Trustees of the whole beneficial interest in the property particularised in paragraph 3(a) hereof under the New Settlement recited in paragraph 3(f) hereof.
3. George Herbert Garlick	Medical Practitioner	Garlick Avenue, Holland Road, Singapore.	

2.—The date of the decree which the applicants desire to have wholly set aside and particulars of the proceedings in which it was made are as follows :—

Date of Decree.—18th June 1945.

Proceedings in which it was made.—O.S. No. 24 of (1945 A.D.) in the Japanese Court of the Judge at Syonan instituted.

In the matter of Order 52 Rule 5 of the Rules of the Supreme Court, 1934

and

In the matter of a Deed of Gift and Settlement dated 1st December 1903 in favour of Inche Rugiah the late Sultanah of Johore, deceased.

and

In the matter of a Deed of Gift, Settlement and Trust (dated the 22nd December 1926) in favour of Tunku Zahrah binte Tunku Abubakar, deceased, and Ibrahim Ibni Abubakar, Sultan of Johore.

In the High Court of the Colony of Singapore.

No. 2. Affidavit of Abubakar. 14th April 1947—*continued.*

Between

His Highness Sultan Ibrahim Johore ... ... Plaintiff

and

The Custodian of Enemy Property, Syonan .... Defendant.

3.—A Statement of the circumstances which led to the passing of the decree is as follows :—

(1) By an Indenture of Conveyance dated the 1st December 1903 and made between Ibrahim, Sultan of Johore of the one part and Rugiah (otherwise spelt Rogayah) Sultanah of Johore of the other part the said Ibrahim, Sultan of Johore, conveyed unto the said Sultanah Rogayah all the following lands and hereditaments namely :—

(i) All that piece of land situated in the District of Geylang in the Island of Syonan (then called Singapore), containing an area of 112,993 square feet whereof the boundaries and dimensions and abuttals are more particularly delineated and coloured in the plan drawn on an Indenture dated the 1st day of September, 1897 (Registered in Volume CV No. 192) and made between Mary Anne Esther Dunman and others of the one part and Saul Jacob Nathan of the other part with messuage or dwelling house erected thereon and known as No. 84 Grove Road, Geylang together with all easements thereto.

(ii) All that piece of land situated in the District and Island aforesaid containing an area of 86,025 square feet whereof the boundaries and dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September, 1897 (Registered in Volume CV No. 192) and made between Mary Anne Esther Dunman and others of the one part and Thaddeus Paul of the other part with the messuage or dwelling house erected thereon and numbered 77, Meyer Road, Syonan (then called Singapore) formerly numbered as No. 86, Geylang Road.

To Hold the same unto the said Sultanah Rogayah her heirs and assigns forever. These lands and hereditaments are hereinafter referred to as " the said lands." A copy of this Conveyance is hereto annexed and marked " T.A.B. No. 1." This Deed is hereinafter referred to as " the Conveyance." Upon the execution of the said Conveyance Sultanah Rogayah became the absolute owner of the said lands both in law and in equity.

(2) Sultanah Rogayah died on the 8th day of March 1926 at Johore Bahru intestate.

(3) Letters of Administration of the estate of the said Sultanah Rogayah were on the 19th day of July 1926 granted by the Supreme Court of the Straits Settlements, Settlement of Singapore to myself in Probate No. 159 of 1926 in that Court. A copy of those Letters of Administration

is hereto annexed and marked " T.A.B. No. 2." As the only child of the said Sultanah Rogayah, I was entitled on her intestacy to three one-fourth shares of her estate and therefore to three one-fourth shares of the said lands and the said Sultan Ibrahim as her husband was entitled to one-fourth share of her estate and therefore to one-fourth share of the said lands.

(4) By an Indenture of Settlement dated the 22nd day of December 1926 and made between myself of the one part and the said Sultan Ibrahim of the other part (hereinafter called " the First Settlement ") for the considerations therein mentioned all the said lands were settled both by Sultan Ibrahim and myself upon the Trusts therein declared namely upon Trust for my eldest daughter Tunku Zahrah binte Tunku Abubakar during her life and after her decease upon Trust for her issue living at her decease if more than one in equal share per stirpes and in default of such issue on trust for the persons entitled to share in her estate according to Mohamedan Law, if she had died intestate and unmarried. A copy of the First Settlement is hereto annexed and is marked " T.A.B. No. 3."

(5) The said Tunku Zahrah binte Tunku Abubakar died on the 1st day of March 1939 intestate, an infant and unmarried and in accordance with the First Settlement the beneficial interest in the lands and hereditaments then vested in myself as the father of the said Tunku Zahrah and in Ungku Fatimah, my wife, as the mother of the said Tunku Zahrah, we being the heirs of the said Tunku Zahrah according to Mohamedan Law, my share as the father of the deceased being 5/6 and Ungku Fatimah's share as the mother of the deceased being 1/6. Letters of Administration of the estate of the said Tunku Zahrah were on the 23rd January 1940 granted to myself as the father of the said Tunku Zahrah by the High Court of the Straits Settlements, Settlement of Singapore, in Probate No. 9 of 1940. A copy of the said Letters of Administration is hereto annexed and is marked " T.A.B. No. 4."

(6) By an Indenture of Settlement dated the 28th June 1944 and made between Abubakar bin Sultan Ibrahim, that is to say myself of the first part, Ungku Fatimah (my wife) of the second part and S. H. Shirazee, Tan Chin Tuan and John Laycock of the third part (hereinafter called " the New Settlement ") for the valuable considerations therein mentioned both I and my said wife Ungku Fatimah settled all our estates rights titles and interests claims and demands of in and to the state of the said Tungku Zahrah whether moveable or immoveable and whether in the State of Johore or in the Straits Settlements To HOLD the same unto the said S. H. Shirazee, Tan Chin Tuan and John Laycock upon the trusts and subject to the powers and provisions thereinafter declared and contained concerning the same. A copy of the New Settlement is hereto annexed and is marked " T.A.B. No. 5."

(7) As the result and by virtue of the New Settlement, the whole beneficial interest of and in the said lands became vested in the said S. H. Shirazee, Tan Chin Tuan and John Laycock as Trustees upon the Trusts declared by the New Settlement. Stated shortly these were trusts

In the High Court of the Colony of Singapore.

No. 2. Affidavit of Abubakar, 14th April 1947—*continued.*

to pay the income of the settled property to H.H. Tunku Abubakar and Ungku Fatimah during their joint lives and to the survivor of them after the death of either and after the death of the survivor of them upon trust to sell the settled property and to divide the proceeds among the children of H.H. Tunku Abubakar and Ungku Fatimah named in the New Settlement, males taking twice the share of females.

(8) By a Deed of Appointment of New Trustee dated the 12th April 1947 and made between myself Tunku Abubakar of the 1st part the said Tan Chin Tuan of the second part the said John Laycock of the 3rd part and George Herbert Garlick of the 4th part the said G. H. Garlick was appointed to be a New Trustee of the New Settlement in place of the said S. H. Shirazee to act jointly with the said John Laycock and the said Tan Chin Tuan retired and was discharged from the trusts of the New Settlement And it was declared that all the property moveable and immoveable then subject to the trusts of the New Settlement forthwith vested in the said John Laycock and G. H. Garlick for all the estate and interest formerly vested in the said S. H. Shirazee, Tan Chin Tuan and John Laycock or any of them and as Trustees of the New Settlement and as joint tenants for the purposes and upon the Trusts thereof. A copy of the said Deed of Appointment of New Trustee is hereto annexed and is marked "T.A.B. No. 6."

(9) In the year 1945 Sultan Ibrahim of Johore commenced proceedings in the Japanese Court of the Judge at Singapore in Originating Summons No. 24 of 2605 (1945 A.D.) in that Court. Those proceedings are particularised in paragraph 2 of this affidavit and I ask leave to refer to the Court file on such proceedings. The only defendant to that Originating Summons was the Japanese Custodian of Enemy Property in Singapore Upon the record is a written authority signed by the Japanese Custodian authorising Mr. Katayama to be his representative for the purpose of the said Originating Summons but it appears on the Court records that in point of fact the said Mr. Katayama was not present at the hearing of the said case, and his presence was dispensed with by the Court. No attempts were ever made either to serve any of the proceedings on me, or Mr. Shirazee or on Mr. Tan Chin Tuan or on the said John Laycock or my wife or on any of my children and none of such parties was ever in any way before the Court in these proceedings.

(10) The effect of the order or decree made by the said Japanese Court in the said proceedings on the 18th day of June 1945 particularised in paragraph 2 hereof would be, if it were a valid and binding and effective order or decree (which is denied), that all the deeds acts in the law and events hereinbefore specified would be void and of no effect and the whole of the said lands and hereditaments would belong both in law and equity to Ibrahim Sultan of Johore absolutely.

4.—The Said order passed by the said Japanese Court on the 18th day of June 1945 was passed ex parte and in the absence of all parties other than the Applicant in those proceedings.

5.—No execution has issued upon and under the said Decree and the same has not been registered in the Registry of Deeds in Singapore. Since the Applicant in those proceedings namely Sultan Ibrahim of Johore was himself the Trustee of the said lands at the time of the passing of the said decree no executor or other form of consequential action upon the said decree was necessary to give effect to the same.

6.—The other relevant circumstances which the present Applicants desire to bring to the notice of this Honourable Court appear from the Court file of proceedings in the said Japanese Court.

7.—I am advised and verily believe that the Order which was made by the said Japanese Court on the 18th day of June 1945 was bad in law and substantially unjust on the merits of the case and is liable to be set aside wholly under the Japanese Judgments and Court Proceedings Ordinance 1946 on the following grounds namely :—

(i) That the following necessary parties did not appear personally in the proceedings leading up to such Decree, namely, the Applicants and H.H. Ungku Fatimah of Johore but that if any of them were represented in such proceedings at all (which is denied) they were represented by a Person appointed by some Japanese Authority and such person so appointed did not appear on the hearing when the said Decree was made ;

(ii) That the said Decree was based on principles unknown to the existing laws of the Colony ; and

(iii) That the said Decree was erroneous and bad in law.

Affirmed at Singapore this 14th day of April, 1947 } Sd. ABUBAKAR OF JOHORE.

Before me,

Sd. C. H. SMITH,
A Commissioner for Oaths, etc.

No. 3.
" T.A.B.1 "—Deed.

Stamp $141/-
24.11.03.

THIS INDENTURE made the First day of December One thousand nine hundred and three (1903) Between His Highness Ibrahim the Sultan of Johore Knight Commander of the Most distinguished Order of Saint Michael and Saint George (hereinafter called the said Sultan) of the one part and Inche Rugiah the wife of the said Sultan of the other part,

In the High Court of the Colony of Singapore.

No. 3.
" T.A.B.1." Deed, 1st December 1903—*continued.*

WHEREAS the said Sultan is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described. NOW THIS INDENTURE WITNESSETH that in consideration of the natural love and affection which the said Sultan bears to the said Inche Rugiah the said Sultan hereby conveys unto the said Inche Rugiah. Firstly all that piece of land situate in the District of Geylang in the Island of Singapore containing an area of 112,993 square feet whereof the boundaries dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September 1897 (registered in volume CV No. 192) and made between Mary Anne Esther Dunmen Ellen Dunmen Charles James Lacey and Robert Dunmen of the one part and said Jacob Nathan of the other part Together with the messuage or dwelling house erected thereon and known as No. 84 Grove Estate Geylang Singapore Together also with all easements thereto Secondly all that piece of land situate in the District and Island aforesaid containing an area of 86,025 square feet whereof the boundaries dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September 1897 (registered in Volume CV No. 192) and made between Mary Anne Esther Dunmen Ellen Dunmen Charles James Lacey and Robert Dunmen of the one part and Thaddeus Paul of the other part Together with the messuage or dwelling house erected thereon and numbered 86 Geylang Road, Singapore and which said two pieces of land hereinbefore mentioned form portion of the larger piece of land comprised in Government Grant No. 91 dated the 14th September 1869 to Thomas Dunman To Hold the same into the said Inche Rugiah forever and it is hereby declared that for the purpose of stamping this document the hereditaments hereby conveyed shall be deemed to be of the value of Dollars Twenty three thousand five hundred ($23,500/–).

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by His Highness the said Ibrahim in the presence of :— } Sd. IBRAHIM. (L.S.)

Sd. ROWLAND ALLEN,
Solicitor, Singapore.

On this First day of December A.D. 1903 before me ROLAND ALLEN a Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared His Highness Ibrahim who of my own personal knowledge I know to be the identical person whose " Ibrahim " is subscribed to the above written instrument and acknowledged that he had voluntarily executed this instrument.

Witness my hand and seal,

Sd. ROWLAND ALLEN. (L.S.)

In the High Court of the Colony of Singapore.

No. 4.
" T.A.B.2 "
L/A,
19th July
1926.

No. 4.

" T.A.B.2."

GRANT OF LETTERS OF ADMINISTRATION.

IN THE SUPREME COURT OF THE STRAITS SETTLEMENTS.
SETTLEMENT OF SINGAPORE.

Probate
1926, No. 159

BE IT KNOWN that the date hereunder written Letters of Administration of all the singular the moveable and immoveable property of Her Highness Inche Rugiah late Sultana of Johore, late of Passir Plangi, Johore, etc.

Sworn at
Gross $170,000.00
Debts Nil

Nett $170,000.00

Deceased, who died on the 8th day of March 1926 at Passir Plangi aforesaid ..... Intestate, locally situate within the jurdisdiction of the said Supreme Court, were granted to His Highness Tunku Abu Bakar the only lawful son .....of the said Intestate, he having been first sworn well and faithfully to administer the same by paying her just debts and distributing the residue of such estate and effects according to law.

Dated the 19th day of July 1926.

Date of issue
5th August, 1926.

Sd. TAN HOCK ANN.
Dy. *Registrar.*

Sd. TAN HOCK ANN,
Dy. *Registrar*

In the High Court of the Colony of Singapore.

No. 5.
" T.A.B.3 "
Deed, 22nd December 1926.

No. 5.

" T.A.B.3."

Stamp $340/–.
23.12.26.

THIS INDENTURE is made the twenty second day of December One thousand nine hundred and twenty-six between His Highness Tunku Abubakar of Johore (hereinafter called " Tungku Abubakar ") of the one part and His Highness Sir Ibrahim Sultan of the State and Territory of Johore Grand of the Most Distinguished Order of Saint Michael and Saint George (hereinafter called " His Highness the Sultan ") of the other part.

Whereas Her Highness Inche Rugiah Sultana of Johore died intestate on the 8th day of March 1926 being then seised in fee simple of the hereditaments described in the Schedule hereto free from incumbrances And Whereas the said Sultana left surviving her husband His Highness the Sultan and one child only Tungku Abubakar and no other child and according to Mohamedan Law the said Tungku Abubakar is entitled to three-fourths of the deceased's estate and His Highness the Sultan to one-fourth. And Whereas Letters of Administration of the said Sultana estate were on the 8th day of March 1926 granted by the Supreme Court of the Straits Settlements of Singapore to Tungku Abubakar the only lawful son of the intestate And Whereas Tungku Abubakar and His Highness the Sultan desired to settle the said hereditaments on the trusts hereinafter declared and it has been agreed that the said hereditaments shall be conveyed to His Highness the Sultan as Trustee of the Settlements.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the covenants by His Highness the Sultan hereinafter contained the said Tungku Abubakar so far as regards three equal fourth parts of the said hereditaments as settlor hereby conveys and as to the entirety of the said premises as the personal representative of the said Sultana hereby conveys to His Highness the Sultan ALL the hereditaments described in the Schedule hereto TO HOLD to His Highness the Sultan Upon the trusts hereinafter declared And His Highness the Sultan hereby declared that he will stand possessed of the entirety of the said hereditaments upon trust for the eldest daughter named Tunku Zahrah binte Abubakar of the said Tungku Abubakar during her life and so that while under converture she shall not have power to anticipate the same and after her decease upon trust for her issue living at her decease if more than one in equal shares per stirpes and in default of such issue in trust for the persons entitled to share in her according to Mohamedan Law if she had died intestate and unmarried And IT is hereby declared that it shall be

lawful for His Highness or other the trustee or trustees for the time being of these presents to sell the said hereditaments or any part thereof or any immoveable property for the time being subject to the trusts of these presents by public auction or private contract at such price and on such terms and conditions as he or they shall think fit and in the event of any sale the net proceeds shall be vested in the purchase of immoveable property in the Colony of the Straits Settlements or in the State of Johore being freehold or of a like manner or leasehold having not less than Sixty (60) years to run or in any investments authorised by the law of the said Colony or of the State of Johore for the investment of trust funds and it is also hereby declared that His Highness the Sultan or other the trustee or trustees for the time being of these presents may let or demise the said hereditament or any immoveable property for the time being subject to the trusts of these presents from month to month or for any term of years and shall receive the rents and profits thereof and may thereout or out of any capital moneys spend moneys on the repair or improvement construction or reconstruction of any buildings or in the improvement of the property and generally manage any such immoveable property as if the trustee or trustees was absolute owner.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE above referred to.

1.—All that piece of land situate in the District of Geylang in the Island of Singapore containing an area of One hundred and twelve thousnad nine hundred and ninety-three (112,993) square feet whereof the boundaries dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September 1897 (Registered in Volume CV No. 192) and made between Mary Anne Esther Dunman, Ellen Dunman Charles James Lacey and Robert Dunman of the one part and Saul Jacob Nathan of the other part formerly having the messuage or dwelling house erected thereon and known as No. 84 Grove Road, Geylang, Together also with all easements thereto.

2.—All that piece of land situate in the District and Island aforesaid containing an area of Eighty-six thousand and twenty-five (86,025) square feet whereof the boundaries dimensions and abuttals are more particularly delineated red in the plan drawn on an Indenture dated the 1st day of September 1897 (Registered in Volume CV No. 192) and made between Mary Anne Esther Dunman, Ellen Dunman, Charles James Lacey and Robert Dunman of the one part Thaddeus Paul of the other part Together with the messuage or dwelling house erected thereon and numbered 77 Meyer Road, Singapore.

In the High Court of the Colony of Singapore.

No. 5.
" T.A.B.3 "
Deed,
22nd
December
1926—
continued.

Which said two pieces of land hereinbefore mentioned form portion of the larger piece of land comprised in Government Grant No. 91 dated the 14th September 1869 to Thomas Dunman.

Signed Sealed and Delivered by the above-named TUNGKU ABUBAKAR in the presence of :

Sd. ABUBAKAR OF JOHORE. (L.S.)

Sd. C. V. MILES,
Solicitor, Singapore.

Signed Sealed and Delivered by above named His Highness Sir Ibrahim Sultan of Johore in the presence of

Sd. IBRAHIM. (L.S.).

Sd. C. V. MILES.

On this 22nd day of December A.D. 1926 before me CHARLES VALENTINE MILES a Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared TUNGKU ABUBAKAR of Johore is subscribed to the above written instrument and acknowledged that he had voluntarily executed this instrument.

Witness my hand and seal.

Sd. C. V. MILES. (L.S.).

On this 22nd day of December A.D. 1926 before me CHARLES VALENTINE MILES a Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared His Highness Sir Ibrahim who of my own personal knowledge I know to be the identical person whose name " Ibrahim " is subscribed to the above written instrument and acknowledged that he had voluntarily executed this instrument.

Witness my hand and seal.

Sd. C. V. MILES. (L.S.).

Registered on the 29th December 1926 at 2.18 p.m. in Volume DCLXXXII Page 713 No. 180.

Sd. W. BARTLEY,
Dy *Registrar of Deeds.*

In the High Court of the Colony of Singapore.

No. 6.
" T.A.B.4 "
L/A,
23rd January 1940.

No. 6.

" T.A.B.4."

Stamps 25 cts.
30.1.47.

Probate No. 9 of 1940.

GRANT OF LETTERS OF ADMINISTRATION.

IN THE SUPREME COURT OF THE STRAITS SETTLEMENTS,
SETTLEMENTS OF SINGAPORE.

Probate.
1940 No. 9.
(L.S.).

Sworn at Gross	$200,000.00
Debts	77,201.30
Net	$122,793.70

In the estate of Tunku Zahara binte Tunku Abubakar otherwise known as Tunku Molek, decd.

BE IT KNOWN that at the date hereunder written Letters of Administration of all and singular the moveable and immoveable property of Tunku Zaharah binte Tunku Abubakar otherwise known as Tunku Molek. late of Johore Bahru ..... deceased, who died on the 1st day of March, 1939, at Johore Bahru aforesaid .....

Intestate, locally situate within the jurisdiction of the said Supreme Court, were granted to His Highness Tunku Abubakar, Tunku Aris Bendaharah of Johore as the lawful father and one of the next of kin .....

of the said Intestate, he having been first sworn well and faithfully to administer the same by paying her just debts and distributing the residue of such estate and effects according to Law.

Dated the 23rd day of January 1940.

Date of issue
14th November, 1940.

Sd. MURRAY M. JACK,
Registrar.

Sd. MURRAY M. JACK,
Registrar.

" This Grant is made upon the condition that no portion of the assets " shall be distributed or paid during War to any beneficiary or creditor

In the High Court of the Colony of Singapore.

No. 6.
" T.A.B.4 "
L/A,
23rd
January
1940—
continued.

" who is a national (wherever he resides) of any State at War with His " Majesty, or to any one on his behalf, or to or on behalf or any person " resident in such State, of whatever nationality he may be, without the " express sanction of the Crown acting through the Colonial Secretary ; " and if any distribution or payment is made contrary to this condition in " addition to any other consequences the Grant will be revoked. Applica- " tion for payment of any sum to any person to whom payment is prohibited " by the above condition should be made to the Colonial Secretary, " Government Offices, Singapore."

" State " includes any territory in actual occupation by an enemy of His Majesty.

Examined
Sd. Illegible.

Office Copy
Sd. Illegible
Ag. Registrar.

Examined
Sd. YAHYA A. RAHMAN.

Office Copy
Sd. MURRAY M. JACK,
Registrar.

(Seal of the
Supreme Court,
Colony of Singapore).

No. 7.
" T.A.B.5 "
Deed,
28th June
1944.

No. 7.

" T.A.B.5."

THIS INDENTURE made this twenty-eight day of June 1944 between Abu Bakar bin Sultan Ibrahim Tunku Aris Bendahara of the State of Johore hereinafter called Tunku Abu Bakar of the first part.

Ungku Fatimah (otherwise known as Ungku Ara) wife of Tunku Abu Bakar (hereinafter called Unku Fatimah) of the second part and S. H. Shirazie formerly of Singapore and now temporarily of Bombay, Government Officer ; Tan Chin Tuan formerly of Singapore and now temporarily of Bombay, Banker; and John Laycock formerly of Singapore and now temporarily of Bombay, Advocate and Solicitor hereinafter called the Trustees of the third part.

WHEREAS Tunku Zahara otherwise known as Tunku Molek the eldest daughter of Tunku Abu Bakar and Ungku Fatimah died on the 1st day of March 1939 at Johore Bahru, intestate, a spinster.

AND WHEREAS the said Tunku Zahara was at the time of her death entitled to certain immoveable property situate at Katong, Singapore, commonly known as " Katong Grange," under and by virtue of an Indenture of Settlement made in or about the year 1926 whereby the same was settled upon her.

No. 7. "T.A.B.5" Deed, 28th June 1944—*continued.*

AND WHEREAS the said Tunku Zahara at the time of her death was also entitled to certain immoveable property in the State of Johore under and by virtue of a number of trust deeds whereby the said immoveable property was settled upon her.

AND WHEREAS the heirs of the said Tunku Zahara according to the law of the State of Johore relating to intestate succession in the case of Mohammedans and also according to the law of the Straits Settlements applicable in her case were her father Tunku Abu Bakar and her mother Ungku Fatimah.

AND WHEREAS Tunku Abu Bakar as one of the heirs of Tunku Zahara became entitled on the death of Tunku Zahara to five-sixths of all her estate moveable and immoveable both in the State of Johore and in the Straits Settlements and Ungku Fatimah as one of heirs of Tunku Zahara similarly became entitled to one-sixth of the estate of the said Tunku Zahara both in the State of Johore and in the Straits Settlements.

AND WHEREAS Tunku Abu Bakar and Ungku Fatimah have agreed with each other to settle their respective shares of and in the estate of the said Tunku Zahara upon the trusts and in the manner hereinafter set out.

AND WHEREAS the Trustees have agreed to act as Trustees of the settlement.

1.—NOW THIS INDENTURE WITNESSETH that in consideration of the assignment and transfer by Tunku Abu Bakar contained in Clause 2 hereof Ungku Fatimah hereby assigns and transfers unto the Trustees all the estate right title interest claim and demand (whatsoever the same may be) of her Ungku Fatimah of in and to the estate of the said Tunku Zahara whether moveable or immoveable and whether in the State of Johore or in the Straits Settlements.

2.—AND THIS INDENTURE ALSO WITNESSETH that in consideration of the assignment and transfer by the said Ungku Fatimah contained in Clause 1 hereof the said Tunku Abu Bakar hereby assigns and transfers unto the Trustees all the estate right title interest claim and demand (whatsoever the same may be) of him Tunku Abu Bakar of in and to the estate of the said Tunku Zahara whether moveable or immoveable and whether in the State of Johore or in the Straits Settlements.

3.—TO HOLD both the share of Ungku Fatimah in the said estate of Tunku Zahara and also the share of Tunku Abu Bakar in the said estate of Tunku Zahara unto the Trustees upon the trusts and with and subject to the powers and provisions hereafter declared and contained of and concerning the same that is to say.

4.—Upon trust to sell call in and convert into money the same or such part thereof as shall not consist of money with full power to postpone such sale calling in or conversion for so long as they shall in their absolute discretion think fit and to hold the net proceeds of such sale calling in or

In the High Court of the Colony of Singapore.

No. 7. "T.A.B.5" Deed, 28th June 1944—*continued.*

conversion as well as any ready monies upon trust to invest the same in any form of investment allowed by the law of the Straits Settlements for the investment of trust funds with full power to vary and transpose the same at their discretion. These capital monies are hereafter referred to as the settled estate.

5.—Upon further trust to receive and get in the income of the settled estate and to pay thereout all necessary and proper outgoings and to hold the same in trust for Tunku Abu Bakar and Ungku Fatimah jointly during their joint lives and upon the death of either of them upon trust for the survivor of them for his or her life.

6.—And after the death of the survivor of Tunku Abu Bakar and Ungku Fatimah upon trust to divide the settled estate amongst and between all those of the following named children of Tunku Abu Bakar and Ungku Fatimah, namely, Tunku Maimunah (Chantek); Tunku Fatimah (Manis); Tunku Azizah; Tunku Aisah; Tunku Suleiman; and Tunku Zubeidah: as shall be living at the death of the survivor of Tunku Abu Bakar and Ungku Fatimah. The shares in which the settled estate shall be divided amongst the said named children shall be such that a male shall take twice the share of a female.

7.—If any of the said named children of Tunku Abu Bakar and Ungku Fatimah shall predecease the survivor of Tunku Abu Bakar and Ungku Fatimah and shall die leaving a child or children who shall survive the survivor of Tunku Abu Bakar and Ungku Fatimah then such last mentioned child or children (being a grandchild or grandchildren of Tunku Abu Bakar and Ungku Fatimah) shall take (and if more than one divided amongst them in a similar manner, males taking twice the share of females but otherwise equally) the shares which his her or their parent or parents would have taken of and in the settled estate if such parent had survived the survivor of Tunku Abu Bakar and Ungku Fatimah.

8.—If all the named children of Tunku Abu Bakar and Ungku Fatimah shall die without attaining a vested interest in the capital of the settled estate and if there shall be no grandchild being a child of any of the said named children of Tunku Abu Bakar and Ungku Fatimah who shall attain a vested interest in the settled estate then the Trustees shall hold the settled estate upon trust for the person who shall be the next Sultan of Johore after Sultan Ibrahim and the present Tungku Mahkota Ismail of Johore for his own use absolutely.

9.—But if there shall be no Sultan of Johore after the present Sultan Ibrahim and after the present Tunku Mahkota and if all the foregoing trusts shall fail then the Trustees shall hold the settled estate upon trust for all the nephews and nieces of Tunku Abu Bakar in equal shares *per capita*

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED BY and between the parties hereto as follows :—

10.—The power of appointing new trustees of these presents shall be vested in Tunku Abu Bakar during his lifetime.

11.—The Trustees shall be entitled to charge and be paid a reasonable and proper remuneration for their time and trouble for acting as such trustees in accordance with the law of the Straits Settlements such remuneration to be by way of a commission at the rate of 5% on all moneys received by them and further any Trustee being a solicitor accountant or other professional man shall also be entitled to charge and be paid all reasonable and proper charges for all work done by him as he might properly have made had he been employed by the Trustees and had he himself not been a Trustee under these presents.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by the said Tunku Abu Bakar in the presence of : Sd. ABU BAKAR OF JOHORE. (Seal)

Sd. OSCAR H. BROWN,
Chief Presidency Magistrate, Bombay.

(Seal of Presidency,
Magistrate's Court, Bombay).

Signed Sealed and Delivered by the said Ungku Fatimah in the presence of : The mark and seal X of Ungku Fatimah. (Seal) (R.T.P.)

Sd. OSCAR H. BROWN,
Chief Presidency Magistrate, Bombay.

(Seal of Presidency,
Magistrate's Court, Bombay).

Signed Sealed and Delivered by the said S. H. Shirazie in the presence of : Sd. S. H. SHIRAZIE. (Seal)

Signed Sealed and Delivered by the said Tan Chin Tuan in the presence of : Sd. TAN CHIN TUAN. (Seal)

Sd. Illegible.

Signed Sealed and Delivered by the said John Laycock in the presence of : Sd. J. LAYCOCK. (Seal)

Sd. OSCAR H. BROWN,
Chief Presidency Magistrate, Bombay.

Seal of
Presidency,
Magistrate's
Bombay.

In the High Court of the Colony of Singapore.

No. 8.

"T.A.B.6."

No. 8. "T.A.B.6" Deed, 12th April 1947.

COPY

Original stamped with $10/-
Sd. Woon Chow Tat
f. Commissioner of Stamps
Singapore 12.4.1947.

Singapore Stamp Office 12.IV.47

Stamp Office 50 cents Singapore

THIS DEED is made the 12th day of April 1947 :

Between His Highness Tungku Abubakar Tungku Aris Bendahara of Johore (hereinafter called "Tunku Abubakar") of the first part Tan Chin Tuan of Singapore Banker of the Second part John Laycock of Singapore Advocate and Solicitor of the third part and George Herbert Garlick of Singapore Medical Practitioner of the fourth part.

Whereas by an Indenture of Conveyance dated the 1st day of December 1903 made between H. H. Ibrahim the Sultan of Johore of the one part and Inche Rugiah (or Rogayah) the wife of the said Sultan of the other part (registered in the Registry of Deeds in Singapore in Volume CCXIX No. 9) the lands and hereditaments more particularly described in the Schedule hereto (which are hereinafter referred to as "the said lands") were conveyed to the said Inche Rugiah in fee simple.

And Whereas the said Inche Rugiah died on the 8th day of March 1926 at Pasir Plangi, Johore, intestate.

And Whereas Letters of Administration of the estate of the said Inche Rugiah locally situate within the jurisdiction of the Supreme Court of the Straits Settlements were on the 19th day of July 1926 granted to Tunku Abubakar as the only lawful son of the said Intestate by the said Supreme Court of the Straits Settlements, Settlement of Singapore.

And Whereas by an Indenture dated the 22nd day of December 1926 and made between Tungku Abubakar of the one part and H. H. Sir Ibrahim Sultan of the State and Territory of Johore of the other part (registered in the Registry of Deeds in Singapore in Volume DCLXXXII No. 180) after reciting that the said Sultana Rugiah had left her surviving her husband the said Sultan of Johore and one child only namely Tungku Abubakar and that according to Mohamedan Law Tungku Abubakar was entitled to three-fourths of the estate of the said Sultana Rugiah deceased and the said Sultan of Johore to the other one-fourth of her said estate the said Tungku Abubakar so far as regarded three equal fourth parts of the said hereditaments as Settlor thereby conveyed and as to the entirety of the said premises as the personal representative of the said Sultana Rugiah thereby conveyed to the said Sultan of Johore All the said lands To Hold the same upon

Trusts thereinafter declared AND the said Sultan of Johore thereby expressly declared that he would stand possessed of the entirety of the said lands Upon Trust for the eldest daughter named Tungku Zaharah binte Abubakar of Tungku Abubakar during her life and after her decease Upon Trust for her issue living at her decease if more than one in equal shares *per stirpes* and in default of such issue in trust for the person entitled to share in her estate according to Mohamedan Law as if she had died intestate and unmarried.

AND WHEREAS the said Tungku Zaharah binte Tunku Abubakar otherwise known as " Tungku Molek " died on the 1st day of March 1939 at Johore Bahru an infant intestate and unmarried and Letters of Administration of her estate locally situate within the jurisdiction of the Supreme Court of the Straits Settlements were on the 23rd day of January 1940 granted to Tungku Abubakar as the lawful father and one of the next-of-kin of the said Tungku Zaharah deceased.

AND WHEREAS the persons entitled to share in the estate of the said Tungku Zaharah according to Mohamedan law upon her death intestate and a spinster were her father Tungku Abubakar who was entitled to 5/6 of her said estate and her mother Ungku Fatimah (sometimes known as " Ungku Aru ") who was entitled to 1/6 of her said estate.

AND WHEREAS by an Indenture dated the 28th day of June 1944 and made between Tungku Abubakar of the first part the said Ungku Fatimah of the second part and S. H. Shirazee, Tan Chin Tuan and John Laycock (thereinafter called " the Trustees ") of the third part the said Tungku Abubakar for the considerations therein mentioned thereby assigned and transferred unto the Trustees ALL the estate right title interest claim and demand (whatsoever the same might be) of him the said Tungku Abubakar of in and to the estate of the said Tungku Zaharah whether moveable or immoveable and whether in the State of Johore or in the Straits Settlements and for the consideration therein mentioned the said Ungku Fatimah Thereby Assigned And Transferred unto the Trustees All the estate right title interest claim and demand (whatsoever the same might be) of her the said Ungku Fatimah of in and to the estate of the said Tungku Zaharah whether moveable or immoveable and whether in the State of Johore or in the Straits Settlements To Hold both the share of Tungku Fatimah in the said Estate of Tungku Zaharah and also the share of Tungku Abubakar in the said estate of Tungku Zaharah unto the Trustees upon the Trusts and with and subject to the powers and provisions thereafter declared and contained of and concerning the same and by the said Indenture it was declared that the Power of Appointing New Trustees of that Indenture was vested in Tungku Abubakar during his lifetime.

AND WHEREAS the said S. H. Shirazee has remained out of the Colony of Singapore for more than 12 months and in fact he has never returned either to the Colony of Singapore or to the Malayan Union since the British re-occupation of Malaya.

In the High Court of the Colony of Singapore.

No. 8.
" T.A.B.6 "
Deed,
12th April
1947—
continued.

AND WHEREAS the said Tan Chin Tuan is desirous of retiring and of being discharged from all the trusts of the said Indenture of the 28th day of June 1944.

AND WHEREAS the said Tungku Abubakar is desirous of appointing the said George Herbert Garlick to be a Trustee of the said Indenture of the 28th day of June 1944 in place of the said S. H. Shirazee but it is not at present proposed to appoint a New Trustee in place of the said Tan Chin Tuan.

NOW THIS DEED WITNESSETH as follows :—

1.—For effectuating the above mentioned desire and in exercise of the power for this purpose conferred upon him by the said Indenture of the 28th day of June 1944 and the ordinance in that behalf and of all other powers if any him thereon to enabling the said Tungku Abubakar hereby appoints the said George Herbert Garlick to be a trustee of the said indenture of the 28th day of June 1944 in place of the said S. H. Shirazee who has remained out of the Colony of Singapore for upwards of 12 months and to act jointly with the said John Laycock for all the purposes of the said Indenture of the 28th day of June 1944.

AND THIS DEED ALSO WITNESSETH that the said Tan Chin Tuan hereby declares that he is desirous of being discharged from All the Trusts of the said Deed of the 28th day of June 1944.

AND the said Tungku Abubakar and the said John Laycock hereby consent to the discharge of the said Tan Chin Tuan from all the Trusts of the said Indenture of the 28th day of June 1944 and to the vesting in the said John Laycock and George Herbert Garlick alone of all the property subject to the trusts of that Indenture.

AND the said Tungku Abubakar and the said John Laycock do and each of them doth hereby respectively declare that all the property moveable and immoveable whatsoever and wheresoever and of any nature or kind soever now subject to the trusts of the said Indenture of the 28th day of June 1944 shall forthwith vest in the said John Laycock and G. H. Garlick for all the estate and interest formerly vested in the said S. H. Shirazee, Tan Chin Tuan and John Laycock or any of them and as Trustees of the said Indenture of the 28th day of June 1944 and as joint tenants for the purposes and upon the trusts thereof.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first abovewritten.

Signed Sealed and Delivered by His Highness Tungku Abubakar, Tungkuaris Bendahara in the presence of :

Sd. ABUBAKAR OF JOHORE. (L.S.)

Sd. F. A. BRIGGS,
Advocate & Solicitor,
Singapore.

Signed Sealed and Delivered by Tan Chin Tuan in the presence of :— } Sd. TAN CHIN TUAN. (L.S.).

Sd. S. J. CHAN,
Advocate & Solicitor,
Singapore.

Signed Sealed and Delivered by John Laycock in the presence of :— } Sd. JOHN LAYCOCK. (L.S.)

Sd. S. J. CHAN,
Advocate & Solicitor,
Singapore.

Signed Sealed and Delivered by George Herbert Garlick in the presence of :— } Sd. G. H. GARLICK. (L.S.)

Sd. S. J. CHAN,
Advocate & Solicitor,
Singapore.

No. 9.

Summons in Chambers.

No. 9.
Summons
in
Chambers,
16th April
1947.

LET ALL PARTIES CONCERNED attend before the Judge in Chambers at the Court House at Singapore on Friday the 18th day of April 1947 at the hour of 11.00 o'clock in the forenoon on the hearing of an application on the part of (i) Abubakar, Tunku Ans Bendahara of the State and Territory of Johore : (ii) John Laycock of No. 55, Still Road, Singapore, Advocate and Solicitor ; and (iii) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, Medical Practitioner, being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (1945 A.D.) and made in Originating Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore) for directions as to service of the Originating Summons in these proceedings under Rule 5 of the Japanese Judgments and Civil Proceedings (Procedure) Rules, 1947, and that the costs of and incidental to this application be costs in the cause.

Dated this 16th day of April 1947.

Entered No. 206/47.

Clerk Sd. W. YUN CHUN.

By Order,

Sd. TAN THOON LIP,
f. *Registrar.*

In the High Court of the Colony of Singapore.

No. 10.

Affidavit of Abubakar.

No. 10. Affidavit of Abubakar, 16th April 1947.

I, ABUBAKAR of Johore, TUNKU ARIS BENDAHARA of the State and Territory of Johore, made oath and say as follows :—

1.—I am one of the Applicants in this Originating Summons.

2.—The only person who appears to be adversely affected by the result of the application made in this Originating Summons if the application is successful, is His Highness Sultan Ibrahim of Johore the Plaintiff in the Originating Summons No. 24 of 2605 (1945 A.D.) in the Japanese Court of the Judge at Syonan. It is the decree in that O.S. No. 24 of 2605 made in favour of the said Sultan of Johore which is sought to be wholly set aside in these present proceedings.

3.—The following persons will be affected by the result of the application made in the Originating Summons if the application is unsuccessful namely :—

(i) The applicants ;

(ii) Ungku Fatimah otherwise known as Ungku Aru the wife of myself the said Tunku Abubakar.

4.—The following children of myself the said Tunku Abubakar and Ungku Fatimah namely :—

(a) Tunku Maimunah	(f)	(d) Tunku Aisah	(f)
(b) Tunku Fatimah	(f)	(e) Tunku Suleiman	(m)
(c) Tunku Azizah	(f)	(f) Tunku Zubaidah	(f)

5.—The said Sultan of Johore is at present living in London at the Grosvenor House Hotel. I verily believe that the said Sultan has attorneys in Malaya appointed under one or more Powers of Attorney namely :—

Dato Haji Mohamed Said, Johore Bahru.
Tunku Ahmad and Mohamed Ismail, Advocate and Solicitor, Singapore and Johore Bahru.

Tunku Ahmad is at present away from Malaya on a holiday and I do not know his present address which changes from time to time. Dato Haji Mohamed Said and Mr. Mohamed Ismail are available and can readily be served at any time.

6.—My wife Ungku Fatimah is at present living at No. 10, Cornwall Gardens, London, and can easily be served there.

7.—My daughter Tunku Maimunah is at present living at No. 10, Cornwall Gardens, London, and she can easily be served there. She is of full age.

8.—My other children namely Azizah, Aisah, Suleiman and Zubaidah are at present at school in England. They are all infants. They all go back to No. 10, Cornwall Gardens, London, at the School holiday times to stay with their mother my said wife and that is their permanent address in London.

Affirmed to at Singapore this 16th day of April, 1947. } Sd. ABUBAKAR OF JOHORE.

Before me,

Sd. C. H. SMITH,
A Commissioner for Oaths, etc.

No. 11.

Summons in Chambers.

LET ALL PARTIES CONCERNED attend before the Judge in Chambers at the Court House at Singapore on Monday the 19th day of May 1947, at the hour of 11 o'clock in the forenoon on the hearing of an application on the part of (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore; (ii) John Laycock of No. 55, Still Road, Singapore, Advocate and Solicitor; and (iii) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, Medical Practitioner, being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (1945 A.D.) and made in Originating Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore) for an order *firstly* that the Originating Summons in these proceedings be amended by adding the following words after paragraph 3 of the grounds of application set out in the said Originating Summons namely :—

> " The said John Laycock and George Herbert Garlick made this " application as Trustees of a Deed of Settlement dated the " 28th day of June 1944 and made between Abubakar bin Sultan " Ibrahim Tunku Aris Bendahara of the State of Johore of the " 1st part, Ungku Fatimah (otherwise known as Ungku Ara) wife " of Tunku Abubakar of the second part and S. H. Shirazee, " Tan Chin Tuan and John Laycock of the third part."

and secondly that this Honourable Court do extend the time within which the application which is made in and by this Originating Summons to set

In the High Court of the Colony of Singapore.

No. 11. Summons in Chambers, 13th May 1947—*continued.*

aside the Japanese decree dated the 18th day of June 2605 (i.e. 1945 A.D.) referred to in the said Originating Summons may be made up to the 30th day of June 1947, or to such other time as this Honourable Court may think fit to appoint, And that the costs of and incidental to this application may be costs in the cause.

Dated this 13th day of May 1947.

Entered No. 250/47.
Clerk. Sd. W. YUN CHUN.

Sd. TAN THOON LIP,
f. *Registrar.*

This Summons is taken out by Messrs. Chan. Laycock & Ong, of Nunes Building, Malacca Street, Singapore, Solicitors for the abovenamed Applicant.

No. 12. Order of Court, 19th May 1947.

No. 12.

Order of Court.

Before the Honourable the CHIEF JUSTICE in Chambers.

Upon the application of (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore ; (ii) John Laycock and (iii) George Herbert Garlick made by way of Summons in Chambers No. 250 of 1947 this day and Upon reading the Originating Summons herein and the affidavit of H. H. Tunku Abubakar of Johore sworn on the 14th day of April 1947 and filed herein on the same day and the further affidavit of H. H. Tunku Abubakar of Johore sworn on the 16th day of April 1947 and filed herein on the same day and Upon hearing the Solicitor for the Applicants THIS COURT DOTH ORDER firstly that the Originating Summons in these proceedings be amended by adding the following words after paragraph 3 of the grounds of application set out in the said Originating Summons namely :—

> " The said John Laycock and George Herbert Garlick made
> " this application as Trustees of a Deed of Settlement dated the
> " 28th day of June 1944 and made between Abubakar bin Sultan
> " Ibrahim Tunku Aris Bendahara of the State of Johore of the
> " 1st part, Ungku Fatimah (otherwise known as Unku Ara)
> " wife of Tunku Abubakar of the second part and S. H. Shirazee,
> " Tan Chin Tuan and John Laycock of the third part,"

and secondly that this Court do extend the time within which the application which is made in and by this Originating Summons to set aside the Japanese decree dated the 18th day of June 2605 (i.e. 1945 A.D.) referred to in the

said Originating Summons may be made up to the 30th day of June 1947 AND THIS COURT DOTH LASTLY ORDER that the costs of and incidental to this application be costs in the cause.

Dated this 19th day of May, 1947.

By the Court

Sd. TAN THOON LIP,
f. *Registrar*.

No. 12. Order of Court, 19th May 1947—*continued*.

No. 13.

No. 13. Appearance 21st June 1947.

Appearance for H. H. Ungku Fatimah and Tungku Maimimah Abubakar.

To the Registrar.

Enter an appearance for H. H. Ungku Fatimah and Tungku Maimimah Abubakar persons served with the Originating Summons herein.

Dated this 21st day of June 1947.

Sd. DREW & NAPIER,
Solicitors for H. H. UNGKU FATIMAH and TUNGKU MAIMIMAH ABUBAKAR.

The address of service is Nos. 33/35 Chartered Bank Chambers Singapore.

No. 14.

No. 14. Order of Court, 30th June 1947.

Order of Court.

Before the Honourable the CHIEF JUSTICE in Chambers.

UPON the application of (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore; (ii) John Laycock of No. 55, Still Road, Singapore, Advocate and Solicitor; and (iii) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, Medical Practitioner, being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (1945 A.D.) and made in Originating Summons No. 24 of 2605 (1945) by the

In the High Court of the Colony of Singapore.

No. 14. Order of Court, 30th June 1947— *continued.*

Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore) made by way of Summons in Chambers entered No. 206/47 being restored for hearing this day And Upon Dr. C. H. Withers-Payne on behalf of the Applicants applying for leave to amend the said Summons in Chambers IT WAS ORDERED that the same be amended by adding between the words " for " and " directions " appearing in the twelfth line thereof the following prayer, that is to say : " leave to issue a Concurrent " Originating Summons or Summonses and to serve the same or notice " of the same on any Respondent out of the jurisdiction of this Honourable " Court and for " And Upon the said Summons as amended coming on for hearing And Upon reading the affidavit of Abubakar, Tunku Aris Bendahara of the State and Territory of Johore, sworn to and filed herein on the 16th day of April, 1947 and the affidavit of John Laycock sworn to and filed herein on the 19th day of June, 1947 and Upon hearing Dr. C. H. Withers-Payne on behalf of the Applicants IT IS ORDERED that the Applicants be at liberty to issue a Concurrent Originating Summons and to serve notice of the same on H. H. the Sultan of Johore at present living in London at the Grosvenor House Hotel or elsewhere in the United Kingdom AND IT IS FURTHER ORDERED that notice thereof be served upon Dato Haji Mohamed Said and Mohamed Ismail, both of Johore Bahru, the attorneys of H. H. the Sultan of Johore AND IT IS FURTHER ORDERED that the time for H. H. the Sultan of Johore to enter an appearance be within forty (40) days after service AND IT IS LASTLY ORDERED that the costs of and incidental to this application be costs in the cause.

Dated this 30th day of June, 1947.

Sd. TAN THOON LIP,
Dy. *Registrar.*

No. 15. Summons in Chambers, 9th August 1947.

No. 15.

Summons in Chambers.

LET ALL PARTIES Concerned appear before the Judges in Chambers on Friday the 15th day of August, 1947 at the hour of 10.30 o'clock in the forenoon on the hearing of an application on the part of (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore (ii) John Laycock of No. 55 Still Road, Singapore, Advocate and Solicitor and (iii) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore medical practitioner, being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (1945 A.D.) and made in Originating Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the

Japanese Court of the Judge at Singapore) for an order that further directions may be given for service of the notice of the Concurrent Originating Summons herein, and that the costs of and incidental to this application may be costs in the cause.

In the High Court of the Colony of Singapore.

No. 15. Summons in Chambers, 9th August 1947— *continued.*

Dated this 9th day of August, 1947.

By Order

Sd. TAN THOON LIP,
f. *Registrar.*

Entered No. 434/47.
Clerk. Sd. Illegible.

This Summons is taken out by Messrs. Chan, Laycock & Ong of Nunes Building, Malacca Street, Singapore, Solicitors for the Applicants above named.

To Messrs. Drew & Napier, Solicitors for H. H. Ungku Fatimah and Tungku Maimimah Abubakar.

No. 16.

Affidavit of Wee Chin Wah.

No. 16. Affidavit of Wee Chin Wah, 9th August 1947.

I, WEE CHIN WAH, of No. 6, Lorong Serai, off Bencoolen Street, Singapore, make oath and say as follows :—

1.—I am the Court Clerk to Messrs. Chan, Laycock & Ong, solicitors for the Applicants herein.

2.—By an Order of Court made herein and dated the 30th day of June, 1947, it was ordered, *inter alia* (a) that the Applicants be at liberty to issue a Concurrent Originating Summons and to serve notice of the same on H. H. the Sultan of Johore at present living in London at the Grosvenor House Hotel or elsewhere in the United Kingdom and (b) that notice thereof be served upon Dato Haji Mohamed Said and Mohamed Ismail, both of Johore Bahru, the attorneys of H. H. the Sultan of Johore, I ask leave to refer to the said Order of Court.

3.—Pursuant to the said Order of Court, Messrs. Chan, Laycock & Ong on the 26th day of July, 1947, forwarded to the Registrar, Supreme Court, Johore Bahru, two Notices, in duplicate, with a request that one copy of each of the said Notices be served upon the said Dato Haji Mohamed Said and Mohamed Ismail, both of Johore Bahru, and to return the other copy of each of the said Notices with indorsements of such service. A

In the High Court of the Colony of Singapore.

No. 16. Affidavit of Wee Chin Wah, 9th August 1947—*continued.*

similar notice in duplicate, was also on the 26th day of July, 1947, sent by Messrs. Chan, Laycock and Ong to their agents in London, Messrs. Peacock & Goddard, with a similar request for service to be effected on H. H. the Sultan of Johore.

4.—On the 1st day of August, 1947, Messrs. Chan, Laycock & Ong received a letter dated 30th day of July, 1947, from the Assistant Registrar, Supreme Court, Johore Bahru, returning the said two Notices, sent to him unserved together with an affidavit by one Kassim bin Mustapha, Process-server of the Supreme Court, Johore Bahru. According to the said affidavit of Kassim bin Mustapha, it would appear that the said Dato Haji Mohamed Said and Mohamed Ismail had refused to accept service of the said Notices. The said two Notices, in duplicate, and the said affidavit of Kassim bin Mustapha, are now produced and shown to me and marked " *W.C.W. No.* 1 *and No.* 1*a*," " *W.C.W. No.* 2 *and No.* 2*a* " and " *W.C.W. No.* 3 " respectively.

5.—To the best of my knowledge, information and belief Messrs. Chan, Laycock & Ong, have not yet received any information from their said agents in London as to whether service of the said Notice on H. H. the Sultan of Johore has been effected or not.

Sworn to at Singapore the 9th day of August, 1947 } Sd. WEE CHIN WAH.

Before me,

Sd. Illegible,
A Commissioner for Oaths, etc.

No. 17. Order of Court, 15th August 1947.

No. 17.

Order of Court.

Before the Honourable the CHIEF JUSTICE in Chambers

UPON the application of (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore ; (ii) John Laycock of No. 55 Still Road, Singapore, Advocate and Solicitor ; and (iii) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, Medical Practitioner, being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (1945 A.D.) and made in Originating Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore) made by way of Summons in Chambers entered

No. 434/47 this day and UPON reading the affidavit of Wee Chin Wah sworn to and filed herein on the 9th day of August, 1947 and the exhibits therein referred to and Upon hearing the solicitors for the Applicants and for H. H. Ungku Fatimah and Tungku Mainmunah and other persons served with the Originating Summons herein IT IS ORDERED that the Order of Court made herein on the 30th day of June, 1947, be varied by providing that service of the Originating Summons herein on H. H. the Sultan of Johore be effected as follows (i) by serving notice of the Concurrent Originating Summons issued pursuant to the said Order of Court upon H. H. the Sultan of Johore at present living in London at the Grosvenor House Hotel or elsewhere in the United Kingdom in accordance with the said order and (ii) by serving notice of the said Concurrent Originating Summons together with a sealed copy of this Order by sending the same by prepaid registered post in a cover addressed to Dato Haji Mohamed Said and Mohamed Ismail, both of Johore Bahru, the attorneys of H. H. the Sultan of Johore AND IT IS FURTHER ORDERED that the further consideration of this Summons be adjourned with liberty to all parties to apply as they may be advised AND IT IS LASTLY ORDERED that the costs of and incidental to this application be costs in the cause.

Dated this 15th day of August, 1947.

Sd. TAN THOON LIP.
Dy. *Registrar.*

No. 18.

Notice to Mohamed Ismail.

To : Mohamed Ismail,
Johore Bahru

TAKE NOTICE that (1) Abubakar, Tungku Aris Bendahara of the State and Territory of Johore ; (2) John Laycock of No. 55 Still Road, Singapore, Advocate and Solicitor ; and (3) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, Medical Practitioner, have commenced a suit against His Highness, Sir Ibrahim, Sultan of Johore in Our High Court at Singapore by Originating Summons dated the 14th day of April 1947 in which Summons application is made by them as being persons aggrieved by the Japanese Decree dated the 18th day of June 2605 (i.e. 1945 A.D.) and made in Originating Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore) for an Order that such Decree be set aside wholly or

In the High Court of the Colony of Singapore.

No. 18. Notice to Mohamed Ismail, 15th August 1947— *continued.*

that the applicants be at liberty to appeal against the whole of such Decree on the following grounds, namely ;

(i) That the following necessary parties did not appear personally in the proceedings leading up to such Decree, namely, the applicants and H.H. Ungku Fatimah of Johore but if any of them were represented in such proceedings at all (which is denied) they were represented by a person appointed by some Japanese Authority and such person so appointed did not appear on the hearing when the said Decree was made ;

(ii) That the said Decree was based on principles unknown to the existing laws of the Colony ; and

(iii) That the said Decree was erroneous and bad in law and that the costs of and incidental to these proceedings may be taxed on the higher scale and be paid by the Respondents to these proceedings ;

(iv) That the said John Laycock and George Herbert Garlick made this application as Trustees of a Deed of Settlement dated the 28th day of June 1944 and made between Abubakar bin Sultan Ibrahim, Tungku Aris Bendahara of The State and Territory of Johore of the 1st part Ungku Fatimah (otherwise known as Ungku Ara) wife of Tungku Abubakar of the second part and S. H. Shirazee, Tan Chin Tuan and John Laycock of the third part.

And His Highness, Sir Ibrahim, Sultan of Johore is required within forty (40) days after the receipt of this notice to defend the said suit by causing an appearance to be entered for him to the said suit ; and, in default of his so doing, such Order may be made and proceedings taken as the Judge may think just and expedient.

His Highness, Sir Ibrahim, Sultan of Johore may appear to the said Originating Summons by entering an appearance personally or by His Solicitor at the Registry of the Supreme Court at Singapore. Before His Highness, Sir Ibrahim, Sultan of Johore can be heard in Chambers he must enter such appearance in the said Registry.

The 15th day of August, 1947.

By Order of the Court,

(L.S.)

Sd. TAN THOON LIP,
Dy. *Registrar.*

No. 19.

Affidavit of James Soh.

In the High Court of the Colony of Singapore.

No. 19. Affidavit of James Soh, 29th August 1947.

I, JAMES SOH, of No. 596A Upper Serangoon Road, Singapore, make oath and say as follows :—

1.—I am Court Clerk to Messrs. Chan, Laycock & Ong, of Nunes Building, Malacca Street, Singapore, Solicitors for the Applicants herein.

2.—That I did serve Dato Haji Mohamed Said and Mohamed Ismail both of Johore Bahru, the attorneys of H.H. the Sultan of Johore with a Notice of the Concurrent Originating Summons in this action and a true copy of the Order of Court dated the 15th day of August 1947, by posting the same at the General Post Office at Singapore on Thursday the 28th day of August, 1947 at 2.05 o'clock in the afternoon, in a prepaid letter or envelope addressed to each of the said Dato Haji Mohamed Said and Mohamed Ismail both at Johore Bahru pursuant to the said Order of Court dated the 15th day of August, 1947.

3.—That I did on the 28th day of August, 1947, indorse on the office copy of the said Notice and the said Order of Court the day of the month and the week of the said service on the said Dato Haji Mohamed Said and Mohamed Ismail respectively.

Sworn to at Singapore this 29th day of August 1947. } Sd. JAMES SOH.

Before me,

Sd. Illegible.
A Commissioner for Oaths, etc.

No. 20.

Affidavit of John Laycock.

No. 20. Affidavit of John Laycock, 24th September 1947.

I, JOHN LAYCOCK, of No. 55 Still Road, Singapore, Advocate and Solicitor, make oath and say as follows :—

1.—I am one of the Applicants in this Originating Summons.

2.—I ask leave to refer to the Order of Court made in these proceedings on the 15th day of August, 1947 and to the previous Order of Court made in these proceedings of the 30th day of June 1947.

3.—Pursuant to those two Orders of Court, two sealed copies of Notices were sent by my firm, Messrs. Chan, Laycock & Ong to our London Agents,

In the High Court of the Colony of Singapore.

No. 20. Affidavit of John Laycock, 24th September 1947—*continued.*

Messrs. Peacock and Goddard on the 26th day of July 1947 for service upon the Sultan of Johore who was then residing in England.

4.—The copy letter hereto annexed and marked "J.L. No. 1" is a copy of the letter written by my firm's said London Agents on the 1st day of August, 1947 to my said firm relating to service of the said Notice upon the said Sultan of Johore.

5.—The copy cable hereto annexed and marked "J.L. No. 2" is a copy of the cable by which my said firm replied to our London Agents, Messrs. Peacock and Goddard, on the 11th August, 1947.

6.—The copy letter hereto annexed and marked "J.L. No. 3" is a copy of a further letter received by my said firm from their said London Agents on the 7th August, 1947.

7.—The copy letter hereto annexed and marked "J.L. No. 4" is a copy of a further letter dated the 18th day of August 1947, from our London Agents to my said firm stating that the service upon the said Sultan of Johore could not be effected in London and the reasons therefor.

8.—I verily believe that the said Sultan of Johore has deliberately avoided service of the Notice of the said Originating Summons in the said proceedings and that he had done all he could to avoid such service.

9.—I also ask leave to refer to the affidavit of Wee Chin Wah sworn to at Singapore on the 9th day of August, 1947 and filed in these proceedings on the 9th day of August, 1947 and to the affidavit of James Soh sworn and filed in these proceedings on the 29th day of August, 1947.

10.—I am informed and verily believe that the two copies of the said Notice of the Originating Summons in these proceedings having been duly delivered to the addressses by registered post have both been handed personally to the Sultan and I know that they have been in his actual physical possession and I know that he has consulted Mr. Roland Braddell about the same and I know that he had also consulted the Dato Mentri Besar of Johore, Dato Onn bin Jaffar about the same.

11.—I am well aware that the whole of these proceedings are well within the knowledge of the said Sultan of Johore already although he has not yet been personally served with the copy of the Originating Summons herein.

Sworn to at Singapore this 24th day of September, 1947 } Sd. J. LAYCOCK.

Before me,

Sd. NAZIR MALLAI,
A Commissioner to take Oaths, etc.

In the High Court of the Colony of Singapore.

No. 21.
" J.L.1 "
Letter from Peacock & Goddard to Chan, Laycock & Ong, dated 1st August 1947.

No. 21.

" J.L.1."

Peacock & Goddard.

6, Alford Street,
Park Lane, London, W.1.
1st August, 1947.

Dear Sirs,

Estate of Sultana Rogayah decd.

We have received your letter of the 26th July and enclosures. We have written to His Highness the Sultan of Johore asking for an appointment to serve him with the Notice but he has referred us to his Solicitors Messrs. E. F. Turner & Sons who inform us that His Highness knows nothing about this matter and suggest it will be better for it to await his return to Johore for which country he is leaving in a few days time so that his Local Advisers may ascertain exactly what is involved in the proceedings and advise him accordingly.

We have offered to supply Messrs. Turner & Sons with a copy of the Notice so that their client can at once instruct his Local Advisers to accept service and thus save the delay of the matter remaining in abeyance until his return to Johore, and we have also asked them to let us know the date when their client proposes to leave England and the approximate date of his arrival in Johore.

It seems fairly clear that His Highness does not wish to be served with the Notice personally and in the circumstances we shall be glad to have your instructions whether we are to endeavour to effect personal service of the Notice upon him.

Yours faithfully,
(Sd.) PEACOCK & GODDARD.

Air Mail.

Messrs. Chan, Laycock & Ong,
Nunes Building,
Malacca Street,
Singapore.

No. 22.
" J.L.2 "
Cable from Chan, Laycock & Ong, dated 11th August 1947.

No. 22.

" J.L.2."

11th August 1947.

NLT

Ovology, Audley, London.
Sultana Rogayah Deceased.

We have always known Sultan Johore will do everything possible to dodge service Please disregard all normal politeness and serve him any possible way.

LEGES.

Sd. Chan, Laycock & Ong.

In the High Court of the Colony of Singapore.

No. 23.
" J.L.3 "
Letter from Peacock & Goddard to Chan, Laycock & Ong. dated 7th August 1947.

No. 23.

" J.L.3."

Peacock & Goddard.

6, Aldford Street,
Park Lane, London, W.1.
7th August, 1947.

Dear Sirs,

Estate of Sultana Rogayah decd.

With further reference to our letter of the 1st August we have today received a letter from Messrs. E. F. Turner & Son in which they say :—

" We understand that our client has already left this country and " that His Highness is expected to arrive in Johore early next " month.

" In the circumstances it therefore appears that nothing further " can be done in London."

In the circumstances we thought it advisable to make an enquiry at Grosvenor House and we find that His Highness is still staying there but we were not able to ascertain if and when he is leaving. We are therefore retaining the two sealed copies of the notice until we hear from you with your instructions.

Yours faithfully,

Sd. PEACOCK & GODDARD.

Air Mail.

Messrs. Chan, Laycock & Ong,
Nunes Building,
Malacca Street,
Singapore.

No. 24.
" J.L.4 "
Letter from Peacock & Goddard to Chan, Laycock & Ong. dated 18th August 1947.

No. 24.

" J.L.4."

Peacock & Goddard.

6, Alford Street,
Park Lane, London, W.1.
18th August, 1947.

Dear Sirs,

Estate of Sultana Rogayah decd.

We duly received your cable in this matter and as requested at once instructed our Agent to do everything possible to effect service upon the Sultan of Johore. We regret to say however that we have this morning received a letter from our Agent in which he writes as follows :—

No. 24.
"J.L. 4"
Letter from Peacock & Goddard to Chan, Laycock & Ong, dated 18th August 1947—*continued.*

"I beg to inform you that I have been unable to serve the Notice "in this matter, because the Sultan of Johore left the hotel "yesterday morning, and is returning to Singapore by the "s.s. *Oranje* (a Dutch vessel) where he is expected to arrive in "about 4 weeks time. It sailed from Southampton. I return the "Notice and copy."

In the circumstances it will now be necessary to take steps to serve the Sultan on his arrival at Singapore and we therefore return to you the Notice and the copy thereof so that this can be done.

Yours faithfully,

Sd. PEACOCK & GODDARD.

Messrs. Chan, Laycock & Ong,
Nunes Building,
Malacca Street,
Singapore.

No. 25.

No. 25.
Conditional Appetional by Sisson & Delay for H.H. Sir Ibrahim. dated 8th October 1947.

Conditional Appearance by Sisson & Delay for H.H. Sir Ibrahim.

To the Registrar.

Enter conditional appearance for His Highness Sir Ibrahim the Sultan of Johore without prejudice to an application to set aside the Orders of Court dated the 30th June 1947 and 15th August 1947, the concurrent Originating Summons, service of notice thereof and all proceedings thereunder and for a stay of further proceedings, in this Originating Summons.

Dated this 8th day of October, 1947.

Sd. SISSON & DELAY.

Solicitors for His Highness Sir Ibrahim the Sultan of Johore.

The address of His Highness Sir Ibrahim the Sultan of Johore is Istana Passir Plangie, Johore Bahru.

His address for service is at the office of Messrs. Sisson & Delay, French Bank Building, Singapore, Advocates and Solicitors.

In the High Court of the Colony of Singapore.

No. 26.

Summons in Chambers.

No. 26. Summons in Chambers 11th October 1947

Let all parties concerned appear before the Judge in Chambers on Friday the 17th day of October 1947 at 10.30 a.m. o'clock in the forenoon on the hearing of an application on the part of His Highness, Sir Ibrahim, The Sultan of Johore, that the Orders of this Honourable Court dated the 30th June 1947 and 15th August 1947 and filed herein on the 3rd July 1947 and 26th August 1947 respectively and all proceedings thereunder including service of the Originating Summons herein pursuant to the said Order of the 15th August 1947 may be set aside and that all further proceedings herein may be stayed as against His Highness, Sir Ibrahim, The Sultan of Johore, on the ground that this Honourable Court has no jurisdiction over His Highness, Sir Ibrahim, The Sultan of Johore, who is a Sovereign Ruler.

Dated this 11th day of October, 1947.

By Order,

No. 564/47.
Sd. Illegible.

Sd. TAN THOON LIP,
Dy. *Registrar.*

This summons is taken out by Messrs. Sisson & Delay Solicitors for His Highness, Sir Ibrahim, The Sultan of Johore.

To

(1) Abubakar, Tungku Aris Bendahara,
(2) John Laycock,
(3) George Herbert Garlick.

And to their Solicitors, Messrs. Chan, Laycock & Ong.

No. 27.

No. 27.

Affidavit of John Laycock. 21st November 1947.

Affidavit of John Laycock.

I, JOHN LAYCOCK, of Singapore, Advocate and Solicitor, make oath and say as follows :—

1.—On the 4th November 1947 my firm of Messrs. Chan, Laycock & Ong wrote a letter to H. E. the Governor of Singapore requesting H.E. the Governor of the Colony of Singapore to issue a formal certificate to the Chief Justice of this Honourable Court certifying for the purpose of these proceedings whether His Highness Sir Ibrahim Sultan of Johore is or is not now an independent sovereign ruler.

No. 27.
Affidavit of John Laycock, 21st November 1947—*continued.*

2.—On the 7th November 1947 my said firm received a formal acknowledgment of their said letter of the 4th November 1947 from the Private Secretary to H.E. the Governor of Singapore.

3.—On Saturday the 8th November 1947 I personally in Kuala Lumpur informed Mr. E. D. Shearn Counsel for H.H. the Sultan of Johore of the application for the said Certificate and we both then agreed that the hearing of the Summons in Chambers No. 564 of 1947 should stand over until the Certificate was received. The question whether the application ought not to be made by the Court itself rather than by a party was then mentioned and discussed. On my return to Singapore on or about the 10th November I personally informed Mr. K. Seth of Messrs. Sisson & Delay of my discussion with Mr. E. D. Shearn and the arrangement made with him.

4.—My said firm has now received from the Private Secretary to H.E. the Governor of Singapore the following letter dated 17th November 1947 namely :

> Gentlemen :
>
> Further to my letter to you of the 7th November 1947, I am directed by His Excellency the Governor to inform you that he is advised that the practice in matters of this nature is for the Court to apply to His Majesty's Government through the proper channels for the information required and that such an application by the Court would presumably be made at the instance of the parties concerned.
>
> I am, Gentlemen, Your obedient Servant,
>
> Sd. W. N. WALKER,
> Private Secretary to Governor, Singapore.

5.—The Applicants in these proceedings now respectfully request the Court to make an application to H.E. the Governor of Singapore for a Certificate on the lines of the certificate given in Duff Development Co. Ltd. *v.* State of Kelantan 1924 A.C. 797 certifying whether or not H.H. Sir Ibrahim Sultan of Johore is or is not now an independent sovereign ruler.

Sworn to at Singapore this 21st day of November 1947 | Sd. J. LAYCOCK.

Before me,

Sd. NAZIR A. MALLAL,
A Commissioner to take Oaths, etc.

In the High Court of the Colony of Singapore.

No. 28.

Affidavit of C. F. J. Ess.

No. 28. Affidavit of C. F. J. Ess, 10th March 1949

I, CUTHBERT FRANCIS JOSEPH ESS, No. 36A, Orchard Road, Singapore, Advocate & Solicitor, make oath and say as follows :—

1.—From about 1931 up to the fall of Singapore I was the Deputy Registrar of the Supreme Court, Singapore, Straits Settlements. The Registrar, Mr. Murray Jack, was interned by the Japanese together with all the Judges on the surrender of Singapore in 1942.

2.—When the Japanese occupied Singapore in 1942, I was requested by the Japanese Military Administration to arrange for the re-opening of the Courts which had closed on the fall of the Colony.

3.—In or about the month of May, 1942, the Courts re-opened and I was appointed Registrar of the Japanese High Court which was then known as the Syonan Kotohoin.

4.—The old staff of the former Supreme Court of the Straits Settlements except the Europeans who had escaped from Singapore or had been interned by the Japanese, were reappointed to the position which they had previously held.

5.—Raja Musa bin Raja Haji Bot was appointed judge of the said Syonan Kotohoin. He had previously been a judge of the Supreme Court of the Federated Malay States and had subsequently been appointed Professor of Law at Raffles College.

6.—Sometime in the year 1943 Mr. Murugaso Velu Pillai was also appointed a judge of the said Syonan Kotohoin. He was an Advocate & Solicitor of the Supreme Court of the Straits Settlements admitted in Singapore in the year 1912 and he was also an Advocate & Solicitor of Johore.

7.—The said Raja Musa bin Raja Haji Bot died at the end of 1943 and I was appointed as a judge of the said Syonan Kotohoin in his place.

8.—On my appointment as a judge, Mr. Tan Thoon Lip took over my duties as the Registrar of the said Syonan Kotohoin.

9.—The practice and procedure of the said Syonan Kotohoin was identical with the practice and procedure of the former Supreme Court of the Straits Settlements both in civil and criminal matters, except (i) that as regards criminal matters the procedure was slightly altered by a ruling to the effect that before an accused or an appellant could be acquitted the Japanese criminal judge had to be consulted. A few amendments were made to the criminal law under which some new offences were created and some punishments for old offences were varied, (ii) that the former heading of all proceedings in the Courts was changed from " In the Supreme Court of the

Straits Settlements, Settlement of Singapore," to " In the Syonan Kotohoin, Syonan."

In the High Court of the Colony of Singapore.

No. 28. Affidavit of C. F. J. Ess. 10th March 1949—*continued.*

10.—Apart from those slight amendments the criminal law was unaltered. Civil law and civil procedure was left completely unaltered in so far as it affected British subjects except for the formal heading of the proceedings mentioned in the last paragraph hereof. However, in a case in which one or both of the parties were Japanese, the Japanese Judge was the only judge who had jurisdiction to try the case. In such a case the Japanese would adopt as far as I am aware, the Japanese procedure and the Japanese civil law.

Sworn at Singapore this 10th day of March, 1949 } Sd. C. F. J. ESS.

Before me,

Sd. YAHYA A. RAHMAN,
A Commissioner for Oaths.

No. 29.

Written Judgment of Gordon Smith, J.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949—

Coram : GORDON SMITH, J.

This is a Summons in Chambers No. 564/1947 dated 11th October, 1947, arising out of the above Originating Summons which was filed on the 14th April previously. Considerable difficulty had been experienced in the service of the Originating Summons and eventually a conditional appearance was filed on the 8th October 1947 on behalf of His Highness Sir Ibrahim the Sultan of Johore but which was without prejudice to an application to set aside the Originating Summons and all proceedings therein. This Summons in Chambers asks for the above relief on the ground " that the Honourable Court has no jurisdiction over His Highness Sir Ibrahim the Sultan of Johore who is a sovereign ruler."

Eventually this Summons was adjourned into Open Court for argument and was heard on the 15th to 18th March 1949 inclusive. During the course of the argument the following authorities were referred to at length :

Mighell v. *Sultan of Johore*, 1894, 1 *Q.B.* 149.
Stathum v. *Stathum*, 1912 *P.* 92.
Duff Development Co. Ltd. v. *Kelantan Government* 1924 *A.C.* 797.
Pahang Consolidated Co. Ltd. v. *State of Pahang*
1931/32 *Vol.* 2 *M.L.J.* 247.
1931/32 *P.C.* 2 *M.L.J.* 390.

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949—*continued.*

Hereafter I refer to these four cases respectively as the Johore Case, the Baroda Case, the Kelantan Case and the Pahang Case.

Foster v. *Venture Globe Syndicate Ltd.*, 1900 1 *Ch.*
Republic of Bolivia Exploration Syndicate, 1914, 1 *Ch.* 139.
Suarez v. *Suarez*, 1 *Ch.* 176.
The Jupiter, 1924 *Prob.* 236.
Luther v. *Sagor*, 1921, 1 *K.B.* 456.
1921, 3 *K.B.* 532.
Strousberg v. *Republic of Costa Rica*, 44 *L.T.* 199.
The Annette, 1919 *Prob.* 111.
Taylor v. *Best*, 139 *E.R.* 201.
In re Gourju's Will Trusts, 1943 *Ch.* 24.

The following text books were also referred to :—

2 Hails. 10, paras. 10 to 13.
11 Hails. pp. 10 to 17.
Keith's Constitutional Law, pp. 553, 555, 558.
Oppenheim : International Law, 6th Ed. pp. 175 & 255.
Dicey's Conflict of Laws, 5th Ed. pp. 192 *et. seq.*
Anson's Law of Custom & Constitution, 4th Ed. Vol. II, 106.
Westlake's Private International Law, 7th Ed. p. 266.
Webber's Effect of War on Contracts, 2nd Ed. p. 219.
Schwarzenberger : International Law, Vol. I, p. 79.
Salmond's Jurisprudence, 7th Ed. p. 157 and Appendix V.

Local Enactments referred to were :—

Ordinance 37 of 1946, Japanese Judgments and Civil Proceedings Ordinance, which came into force on 15th January 1947.
Malayan Union Order in Council, 1946, dated 27th March 1946, which came into force on 1st April, 1946.
Federation of Malaya Order in Council, 1948, dated 26th January 1948, which came into force on 1st February 1948.

There were also the various agreements to be read in conjunction with these Orders in Council which will be referred to later.

Before considering these authorities it is necessary to refer to the claim set out in the originating Summons and the facts. This Originating Summons prays, on behalf of the Applicants Abubakar Tungku Aris Bendahara, the second son of His Highness, and two other Trustees, namely, H. W. Cowling and G. H. Garlick, being the persons aggrieved by a Japanese Decree dated 18th June 2605 (1945) and made in Originating Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at Syonan-to (being the Japanese Court of the Judge at Singapore), praying for an Order that such Decree be set aside wholly or that the Applicants be at liberty to appeal against the whole of such Decree on the grounds therein set forth. I am not concerned with the merits of this Originating Summons at the present

time, but from the affidavits filed in support some of the following facts appear to be relevant :

(1) In 1903 His Highness by an Indenture of Conveyance conveyed to the then Sultanah of Johore, Rugiah, in fee simple two properties situate in the Island of Singapore ;

(2) In 1926 Rugiah died intestate and Letters of Administration were granted by the Supreme Court of the Straits Settlements to Tungku Abubakar, who was entitled under the intestacy to three-fourths of her estate, His Highness as her husband, being entitled to one-fourth.

(3) On 22nd December 1926 by Indenture of Settlement made between His Highness and Tungku Abubakar these two properties were conveyed to His Highness upon the Trusts therein declared and His Highness declared that he would stand possessed of the property upon trust, for the eldest daughter of the said Tungku Abubakar during her life and after her decease upon Trust for any of her issue living at her decease. The beneficial interest in this Trust property is now vested in the Applicants to the Originating Summons as Trustees.

(4) By an Originating Summons dated 3rd May 2605 (1945) His Highness applied to the Court at Singapore and swore a long affidavit in support, in accordance with the Rules of Court, asking for construction of the terms of these two indentures. His Highness was the plaintiff in the suit and the Custodian of Enemy Property, Syonan, the defendant. There was no appearance by the defendant and the matter was argued *ex parte*. Judgment was delivered on the 18th June 1945, the effect of which was incorporated in a formal Order of Court of the same date, ruling that the two Deeds were invalid and that the two properties mentioned reverted to His Highness as the sole beneficial owner thereof.

As I have said, I am not concerned with the merits or otherwise of this Japanese judgment. When this present Summons in Chambers came on for hearing it was adjourned in the first instance, in order that information might be obtained from His Majesty's Secretary of State for the Colonies, the question asked being " whether His Highness the Sultan of Johore is or is not an independent sovereign ruler." In due course the Secretary of State replied by letter dated 9th June, 1948. The contents of this letter was communicated to the parties concerned and they made a request for further information upon the question " Whether His Highness was an independent sovereign ruler at the time which is material to these proceedings in 1947, before the Agreements of 1948 came into force." This request was forwarded by the Judge in a letter dated 6th July 1948 and in due course a further reply dated 12th November 1948 was received.

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949— *continued.*

As these two letters containing this information are of paramount importance on the questions arising before me, I set them out verbatim in an Appendix to this judgment. At the hearing before me, at the conclusion of Mr. Shearn's address for the Applicants to this Summons, I summarised in a condensed form the main and material submissions he had made which were :—

(1) that irrespective of whatever the status of His Highness may or may not have been prior to 1948, that is, when the Federation of Malaya was constituted on 1st February 1948, His Highness is now a sovereign ruler, and being so, the proceedings could not continue ;

(2) that at no time had there been any waiver of his privileges as such sovereign ruler ;

(3) that the proceedings under this Originating Summons are new proceedings and are separate and distinct to, although connected with the Japanese Originating Summons No. 24 of 1945, to which I have referred above.

Mr. Shearn expressed his concurrence with the terms of these submissions as so formulated.

It will be noted that the original request made by the Judge to the Secretary of State was whether His Highness was " an independent sovereign." The question of such independence will be discussed hereafter.

The *Johore* Case, *Baroda* Case, *Pahang* Case and in particular the *Kelantan* Case, were all referred to at length during the argument and it is necessary to consider these cases in some detail.

The *Johore* Case was decided in 1893 by Wills, J., whose judgment was confirmed by the Court of Appeal subsequently and has been cited with approval and followed in subsequent cases. It also concerns the status of the present Applicant, who is the same Sultan of Johore now as at that time. The letter from the Colonial Office is not set out verbatim but enclosed a copy of the 1885 Treaty and stated that Johore was an independent State ; that the defendant was the present sovereign ruler thereof ; that the relations between the Sultan and Her Majesty were relations of alliance and not of suzerainty and dependence ; it referred to the Sultan having raised and maintained armed forces, organised a postal system, dispensed justice, founded orders of knighthood, conferred honours and " generally speaking, exercised without question the usual attributes of a sovereign ruler."

Wills, J., stated : " It is true, as appears from the copy of the treaty " annexed to that letter, that he has bound himself not to exercise some of " the rights of a sovereign ruler except in certain particular ways : but that " does not deprive him of his character as an independent sovereign."

It is clear, therefore, that in 1893 His Highness was regarded not only as a sovereign ruler but as an independent sovereign ruler.

The *Baroda* Case was somewhat similar and followed the principle laid down in the *Johore* Case. The certificate from the India Office in that case is set out at p. 95 of the report from which it appears that the Gaekwar of Baroda had been recognised as a ruling chief under the suzerainty of His Majesty, that "the British Government does not regard or treat His "Highness' territory as being part of British India or His Majesty's "dominions, and it does not regard or treat him or his subjects as subjects "of His Majesty." "But, though His Highness is thus not independent, "he exercises as ruler of his State various attributes of sovereignty, "including internal sovereignty, which is not derived from British law but "is inherent in the ruling chief of Baroda, subject however to the suzerainty "of His Majesty the King of England and to the exercise by the Govern-"ment of India of such of the rights as have by treaty, usage or otherwise "passed to and are exercised by the suzerain such as . . ." (setting out various specified matters).

I next come to the *Kelantan* Case decided in the House of Lords in 1924 by an extremely strong House, the judgments of all the learned law lords being referred to at length and in some considerable detail. Again, the principles laid down in the *Johore* Case were approved and followed. It was held

"(1) that the statement in the letter as to the sovereignty of Kelantan "and its rulers was not intended to be qualified by the terms of the "agreement, and that the letter was conclusive;

"(2) (by Viscount Cave, Viscount Finlay, Lord Dunedin and Lord "Sumner; Lord Carson dissenting) that the Government of "Kelantan had not submitted to the jurisdiction of the Court for "the purpose of the proceedings to enforce the award, either by "assenting to the arbitration clause or by applying to the Court "to set aside the award."

The reply to the requisite inquiry by Master Jelf from an Under Secretary of State for the Colonies is set out on pp. 806/7 of the report and enclosed copies of the relevant treaties. It is stated "that Kelantan is an "independent state and that His Highness the Sultan . . . is the present "ruler thereof"; that the "present relations between His Majesty the "King and the Sultan of Kelantan which are those of friendship and "protection are regulated by an agreement signed on the 22nd October 1910." A copy of such agreement was enclosed; that "His Majesty the "King does not exercise or claim any rights of sovereignty or jurisdiction "over Kelantan," and the reply went on to specify that the Sultan in Council made laws, dispensed justice, conferred titles of honour "and "generally speaking exercises without question the usual attributes of "sovereignty."

I now pass on to the *Pahang* Case. At p. 391 of the Privy Council Appeal report Lord Tomlin sets out a summary of the constitutional position in Pahang and stated "(1) The Sultan of Pahang is an absolute ruler in "whom resides all legislative and executive power, subject only to the

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949— *continued.*

" limitations which he has from time to time imposed upon himself in the " circumstances hereinafter mentioned." Lord Tomlin then proceeded to enumerate these circumstances, namely (a) the agreement in 1888 to administer the country with the advice of a British Resident, (b) the establishment of a State Council, (c) the Federation in 1895 of the four Malay States by Treaty, but such Treaty did not curtail any of the powers of the Ruler of the State of Pahang, within his State and (d) the agreed Constitution in 1909 of a Federal Council with legislative powers, but again, nothing in the agreement was intended to curtail any of the powers or authority held by any of the Rulers in their respective States. The Constitution of such Federal Council was varied from time to time by agreement between His Majesty the King and the Rulers but with the proviso that nothing therein was intended to curtail the powers then held by the Rulers in their respective States or to alter the relations then existing between the States and the British Empire as established by previous Treaties.

This case was quoted by Mr. Shearn as having some relevance to the position of His Highness *vis a vis* the Malayan Union and the Federation of Malaya Orders in Council and agreements therefor, in view of the delegated legislative and other powers. One thing that appears to be quite settled is that the reply by or on behalf of a Minister of State (whether of the Foreign Office, Colonial Office or Board of Trade) in reply to a formal enquiry by the Court as to the status of a Ruler, and whether that Ruler is a Foreign Sovereign or Foreign Government or whether such Ruler is of a Protectorate or Protected State or is under suzerainty, such reply is conclusive. I now turn to the replies emanating from the Colonial Office and which are set out in full in the Appendix to this judgment. Letter dated the 9th June 1948 signed by Mr. Creech Jones.

In paragraph 2 His Highness is recognised as the Ruler of the State and " as such he exercises attributes of sovereignty." Paragraphs 3, 4, 5, 6 and 7 are factual statements dealing with the Federation of Malaya Agreement 1948 and the Johore Agreement 1948 and analyses the contents of these agreements. Paragraph 8 states " The independence of the State of Johore and the sovereignty of its Ruler, as recognised in the case of Mighell *v.* the Sultan of Johore, to which reference is made in the communication under reply, are thus subject to the limitations consequent upon fresh rights and obligations under the Agreements of 1948 and generally upon the position of that State as a member of the Federation of Malaya."

The further letter, dated the 12th November 1948 and signed by Lord Listowel, deals mainly with the position of His Highness under the Malayan Union Order in Council 1946 and the agreements therefor (The Johore Agreement is dated the 20th October 1945). But it is to be noted that the 2nd paragraph of this letter commences " Before the 20th October 1945 His Majesty had no jurisdiction in Johore." This paragraph then goes on to refer to the original agreement of 1885, the agreement of 1914 and the Constitution enacted in 1895 and various supplements. It will be observed that by the Agreement of 1914 His Highness had agreed to receive an accredited British Adviser whose advice he was obliged to ask and act upon

" on all matters affecting the general administration of the country and " on all questions other than those touching Malay Religion and Custom." This, in effect, is in similar terms to the undertaking or agreement by the Sultan of Kelantan and which was in existence and subsisting at the time the Kelantan case was decided by the House of Lords.

Paragraph 4 of this letter refers to the agreement of the 20th October 1945 by which His Highness agreed that His Majesty *should have full power and jurisdiction within the State and Territory of Johore* and that the subsisting agreements (i.e. of 1885 and 1914) should be preserved *save and in so far as they are inconsistent with this new agreement or with such future constitutional arrangements for Malaya as might be approved by His Majesty.*

In paragraph 5, the letter then goes on to refer in some detail to the Malayan Union Order in Council and then in paragraphs 12 and 13 states as follows :—

" *The Constitution of the State of Johore.*

" In general, the existing laws were preserved by the Malayan " Union Order in Council subject, however, to the provisions of " the Order itself. One of the existing laws was the Constitution " of the State of Johore which therefore continued in force except " so far as its provisions were inconsistent with the Order. The " precise extent to which the particular provisions of the Constitu- " tion were preserved by the Malayan Union Order in Council, " being a matter of legal interpretation, is one upon which the " Secretary of State feels that it would not be proper for him to " pronounce. His Majesty's Government, however, recognize " that the Sultan of Johore possessed sufficient sovereignty in " and over Johore to enable him to make on behalf of himself and " his successors in the Sultanate the Johore Agreement, 1948, " providing for the future government of Johore as a Member of " State of the Federation of Malaya.

" It will be observed, therefore, that under both the provi- " sions of the Order in Council which came into operation and the " permanent regime which never took effect, the position of " Johore as an independent State and the sovereign powers of the " Sultan were materially affected by the incorporation of the State " in the Malayan Union and generally by the situation brought " about by the Agreement of the 20th October, 1945 ; but that " the State retained its identity and the Sultan continued to " possess certain attributes of sovereignty."

I would emphasize the words " the precise extent to which the " particular provisions of the constitution were preserved by the Malayan " Union Order in Council, being a matter of legal interpretation, is one upon " which the Secretary of State feels that it would not be proper for him to " pronounce," and again " the position of Johore as an independent State " and the Sovereign powers of the Sultan were materially affected by the

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949—*continued.*

" incorporation of the State in the Malayan Union and generally by the " situation brought about by the Agreement of the 20th October 1945." I agree entirely with the latter statement—but it does not answer the question asked by the Court and which question the Court was entitled to ask and entitled to receive an answer. Any such answer would have been accepted by the Court as conclusive, instead of which there are long factual statements and an equivocal answer to the question put. The burden of answering the question is, therefore, cast on this Court, anyhow in the first instance.

Having regard to the terms of the agreement of the 20th October 1945 and of the subsequent Malayan Union Order in Council, I have no hesitation in saying that, in my opinion, His Highness had thereby abandoned, or acquiesced in the abandonment of, his position and status of an independent Sovereign Ruler. The first recital to the Malayan Union Order in Council shews this as also does the second recital. A Governor and Commander-in-Chief to be appointed by His Majesty is provided for, and in whom the chief executive power is vested, in the name of and on behalf of His Majesty. His Majesty appoints the Chief Justice and other Judges, and land grants are to be made in His Majesty's name, and even the power of pardon is vested in the Governor and not in the Sultans. The order reserved power to His Majesty to legislate for the Union and to disallow any legislation passed by the legislature of the Union, and in this and many other respects follows the usual form of Orders in Council enacted for Colonies annexed to the Crown as part of its dominions.

I hold, therefore, that prior to the 20th October 1945 His Highness was an independent Sovereign Ruler with the usual attributes of sovereignty but subject to the provisions of the 1885 and 1914 Agreements. I am fortified in this opinion not only by the authorities I have quoted but also by Clause 15 of the subsequent agreement dated the 21st January 1948 to be referred to hereafter.

I hold further that subsequent to the 20th October and during the subsistence of the Agreement of the 20th October 1945 His Highness was not such an independent Sovereign Ruler.

It is necessary, however, to consider what His Highness' position was during the Japanese occupation. On this point there is no evidence before me that his status was changed. Throughout the Japanese proceedings in Originating Summons No. 24 of 2605 (1945) including the judgment and formal Order of Court thereon, he was referred to as His Highness the Sultan of Johore. In this connection I would quote from Schwarzenberger at page 129 :—

> " In the absence of an authoritative pronouncement on this " point by either of the International Courts, the law, as it stands, " appears to be best formulated in Borel's award in the *Ottoman* " *Debt Arbitration* (1925). Whatever may be the effects of occupa- " tion of a territory by the adversary before the re-establishment " of peace, it is certain that this occupation alone does not " juridically create transfer of sovereignty."

Again, Oppenheim, p. 519, paragraph 237 :—

" Conquered enemy territory, although actually in possession " and under the sway of the conqueror, remains legally under the " Sovereignty of the enemy until through annexation it comes " under the sovereignty of the conqueror."

For these brief reasons, and this point was not argued before me, I hold that there was no change in the status of His Highness during the Japanese Occupation.

The foregoing however does not conclude the matter of His Highness's status, as one of Mr. Shearn's submissions was that it is his present status today that is material and that because of such status, these proceedings cannot continue.

The Malayan Union Order in Council 1946 was cancelled and revoked by the Federation of Malaya Order in Council 1948 which is dated the 26th January 1948 and which came into force on the 1st February following. The reasons for such revocation are set out in the recitals to such Order and, as stated in the 7th recital, it was because it had been represented to His Majesty that fresh arrangements should be made for the government and administration of the Malay States in conjunction with the Settlements. The ninth recital refers to new individual State Agreements with the Rulers of each State and to a comprehensive and combined agreement between His Majesty and all the Rulers, referred to as the Federation Agreement. All these agreements are set out in Schedules to the Order. The respective State Agreements are, in effect, uniform but I am only concerned with the Johore Agreement and the Federation Agreement, which latter, in accordance with Section 5 of the Order in Council, has the force of law throughout the Federation.

All such agreements are dated the 21st January 1948 and antedate the Order in Council and necessarily so, as they are the basis and authority for the new and subsequent Order in Council. The fourth recital of the Johore Agreement states that it is expedient to provide for the constitutional development of the State of Johore under the protection of His Majesty and for its future government.

Under Clause 3 (1) His Majesty has complete control of defence and external affairs of the State and under Sub-Clause (2) His Highness undertakes to refrain from entering into any Treaty or taking part in political matters with any foreign State. Clause 4 is similar in terms to what was contained in the 1914 Agreement as regards a British Adviser.

Under Clause 9 His Highness undertakes to govern the State in accordance with the provisions of a written Constitution which shall be in conformity with this Agreement and the Federation Agreement.

Clause 14 (1) revokes the previous agreement of the 20th October 1945 and under sub-clause (2) previous treaties and other agreements are preserved, in so far as they are not inconsistent with this Agreement and the Federation Agreement.

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949— *continued.*

Clause 15 is of paramount importance and I therefore set it out verbatim as follows :—

> " The prerogatives, power and jurisdiction of His Highness " within the State of Johore shall be those which His Highness " the Sultan of Johore possessed on the first day of December 1941, " subject nevertheless to the provisions of the Federation Agree- " ment and this Agreement."

The marginal note to this clause is " Sovereignty of the Ruler." Nothing could be plainer or less ambiguous and the clause means what it says, i.e. subject to the agreements, His Highness is re-instated in all the prerogatives, power and jurisdiction that he possessed on the 1st December 1941. I have already held that at that date (and subsequently thereto) he was an independent Sovereign Ruler until the Agreement of the 20th October 1945 took away such status, which by Clause 14 of this Agreement is cancelled and revoked.

It remains to be seen whether there is anything in this Agreement or the Federation Agreement or the Federation Order in Council which limits or abrogates such status.

As regards Clause 4 of this Johore Agreement referring to a British Adviser, there was a somewhat similar provision in the Kelantan Treaty dated 22nd October 1910, i.e. long before the Kelantan case decided that the Sultan was an independent Sovereign Ruler. Somewhat similarly as regards Pahang, in the Treaty of 1887, followed in 1895 by the Federal Treaty by a more specific but similar provision. This was long before the *Pahang* Case decided that the Sultan was an absolute Ruler. In the one case, Kelantan was one of the Unfederated States and in the other case, Pahang was one of the Federated Malay States and both Sultans were held to be Sovereign Rulers.

As regards the Federation Agreement, Mr. Laycock went through it clause by clause in order to illustrate that His Highness had divested himself of his sovereignty by entering into such agreement. But the third recital in referring to the State Agreements says that such agreements were entered into " for the purpose of ensuring that power and jurisdiction shall " be exercised by their several Highnesses in their several States." I agree that one of the objects of the agreement was to establish a Federation with a strong central government and that there should be a common form of citizenship. It is to be noted that the former Settlements of Penang and Malacca (parts of a Colony, not a Protectorate) also were included in this Federation and one cannot help but ask oneself the question as to whether His Majesty had divested himself of his sovereignty in these two Settlements by being a party to this Agreement ? I think not, and see Clause 154 of the Agreement which says that nothing in the agreement shall affect the powers of His Majesty or Imperial Parliament to make laws for the defence or the external affairs of the Federation or shall affect His Majesty's sovereignty and jurisdiction in and over the Settlements. A clear distinction is here made between the former Malay States and Settlements. Similarly, and as a counterpart of the preceding Clause, Clause 155 of the

Agreement says that " Save as expressed herein this Agreement shall not " affect the sovereignty and jurisdiction of Their Highnesses the Rulers in " their several States." Also, further, safeguards against invasion of the Rulers' collective and individual sovereignty and jurisdiction without their own assent either individually or collectively as regards the Federation through the Conference of Rulers, are clearly expressed in many clauses of the Agreement. In particular, see Clause 6 providing that the Agreement (which has the force of law) cannot be amended without the prior approval of His Majesty *and* the Conference of Rulers. I do not think that it is necessary for me to go through the Agreement clause by clause or the Federation Order in Council section by section, as I have said sufficient to indicate that, in my opinion, there is nothing in either which takes away the sovereignty or jurisdiction of the Sultans individually within their States, or collectively in the Federation, although strictly speaking I am only concerned with His Highness and the State of Johore.

It only remains to make a few remarks on Sovereignty and Protectorates, on this part of the submission. The mere fact that one Sovereign Ruler or Sovereign State concludes Treaties with a more powerful Sovereign Ruler or Sovereign State and thereby undertakes to perform, or refrain from performing, any particular acts, does not, in my opinion, necessarily involve an abandonment of sovereignty although the total independence of such Sovereign Ruler or Sovereign State may thereby be limited in a greater or lesser degree. Such appears to be the position of the Rulers of the Malay States which latter I myself would now describe as Protectorates and which are not full Sovereign States. In paragraph 65 at page 115 Dr. Oppenheim says " All States which are under the suzerainty or under " the protection of another State, or are members of a so-called Federal " State, belong to this group " and he goes on to say " Their monarchs enjoy " the privileges which, according to the Law of Nations, the Municipal " Laws of the different States must grant to the monarchs of foreign States. " No other explanation of these and similar facts can be given except " that these not-full sovereign States are in some way or another " International Persons and subjects of International Law. Such imperfect " International Personality is, of course, an anomaly, but the very existence " of States without full sovereignty is an anomaly in itself." I think that this aptly describes the status of the Malay States and their Rulers and I therefore, to this first submission is that His Highness is a Sovereign Ruler and he is entitled to the privileges and prerogatives usually accorded to such a Sovereign Ruler and which by international comity induces every Sovereign State to respect the independence and dignity of every other Sovereign State. I would, however, add that in the exercise of such privileges and prerogatives he has, particularly in regard to the administration and executive Government in the State of Johore, limited himself in the exercise of these privileges and prerogatives as appears in the Johore Agreement of the 21st January 1948, the Federal Agreement of the same date and the subsequent Federation of Malaya Order in Council 1948, dated the 27th January 1948.

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949—*continued.*

This, however, does not conclude the matter and it remains for me to consider the remaining submissions. The second submission was that at no time had there been any waiver by His Highness of his privileges as such Sovereign Ruler. The final submission was that these proceedings are new proceedings and are separate and distinct to, although connected with, the Japanese proceedings in 1945.

Although these two submissions require separate answers, they can be considered together.

I have already referred in some detail to the Originating Summons No. 24 of 1945 taken out by His Highness not long before the Japanese regime ended and to the judgment thereon. It is somewhat of a coincidence that the formal Order of Court dated 22.6.45 on this judgment is signed by the same individual, as Assistant Registrar then, as signed the present Originating Summons 23/1947 dated 14.4.47.

Putting the points briefly there are, whether His Highness has, by waiving his privileges and prerogatives and submitting himself to the jurisdiction of the Court in 1945 (he was himself the Applicant), such waiver and submission continues in and applies to these present proceedings ? And are the present proceedings a continuation of those 1945 proceedings and in the same Court ?

In the first place, although Originating Summons 24 of 2605, i.e. 1945, is headed " In the Court of the Judge at Syonan " yet it is entitled " In the matter of Order 52 Rule 5 of The Rules of the Supreme Court, 1934."

Although the Japanese may have called the Court by a slightly different name, there is no evidence or information before me that they passed any amending legislation whatsoever either altering the name of the previous High Court or making any alteration in its constitution, jurisdiction or powers or its procedure and I understand that such Court, certainly in its Civil jurisdiction, carried on exactly the same as prior to the surrender, with many of the same personnel employed as previously. The Judge who gave the decision was previously a practising advocate of the Colony and was appointed to be a Judge by the Japanese and similar appointments had been made prior to the surrender and have been made since the re-occupation. In my opinion, the High Court continued to function as formerly during the occupation and it is exactly the same High Court that is continuing to function today.

Secondly, is this present Originating Summons a new proceeding separate and distinct to, although connected with, the Japanese Originating Summons ? In this connection Ordinance 37 of 1946 which came into force on the 15th January 1947, is of paramount importance. Its short title is " the Japanese Judgments and Civil Proceedings Ordinance, 1946 " and the long title reads " An Ordinance to make provision with regard to judgments, orders and decrees of Japanese Courts *and for the carrying on of proceedings instituted in such Courts* during the period of Japanese occupation."

In Section 2 " appropriate Court " is defined as follows :—

> " ' appropriate Court ' means in relation to proceedings in, " or decrees of, any Japanese Court which exercised or purported

" to exercise the original or appellate civil jurisdiction, any of the " Courts of the Colony having jurisdiction in the proceedings in " question under the Courts Ordinance ; "

" ' Japanese Court ' means any court set up or continued . . . " in the Colony by the Japanese, exclusive of criminal Courts."

Section 3 (1) reads as follows :—

" Any party to the proceedings in which a Japanese decree " was made or given or any person aggrieved by such decree may, " within three months from the commencement of this Ordinance, " or within such extended time as the appropriate Court may " allow, apply in the prescribed manner to the appropriate Court " for an order.

" (a) that such decree be set aside either wholly or in " part ; or

" (b) that the applicant be at liberty to appeal against " such decree."

The marginal note to Section 4 reads " Carrying on proceedings of Japanese Courts," and the section provides for the carrying on of proceedings pending at the cessation of the Japanese Occupation in the appropriate Court. Mr. Shearn argued that the present Applicants were not parties to the Japanese Originating Summons and that the Japanese Custodian was not made a Defendant to represent them and that therefore this present Originating Summons is a new proceeding. It is true they were not named as Defendants but one must assume that the Custodian was named as a Defendant to represent persons interested in the subject matter of the application, in accordance with the Rules of Court. If he was not supposed to represent them—who did he represent and why was he made a party ? In actual fact he neither entered an appearance nor took any part whatsoever in the proceedings, which, as I have said, were argued *ex parte*.

I have studied the authorities quoted by Mr. Shearn on this part of his submission, namely the *Strousberg* case, *Gourju Will Trust* case, and Webber p. 219, none of which do I consider supports his submission on the present facts, but the *Kelantan* case is relevant. In this case there had been an Arbitration and an Award, all of which was extra judicial, as arbitration is a specific and statutory method of settling disputes without recourse to the Courts. It is true that the Kelantan Government had attempted to have the Award set aside and had failed to do so, even in the House of Lords and the Award was confirmed. It was argued in the House of Lords that by such attempts the Sultan had waived his sovereignty, firstly by assenting to the Arbitration and secondly by applying to the Court to have the Award set aside. Lord Cave at pp. 809 and 810 gives his reasons for rejecting this argument as do all the other Law Lords, except Lord Carson, who gave a dissenting judgment in this respect at pp. 833–835. The crux of the point was whether in a subsequent application by the successful party to the Arbitration to have the Award made an Order of Court, so that such

In the High Court of the Colony of Singapore.

No. 29. Written Judgment of Gordon Smith, J., dated 7th April 1949 - *continued.*

Award could be enforced by way of execution, such latter application was a new proceeding. The Sultan claimed privilege and his prerogative and objected to the jurisdiction of the Court to hear this application, and the point was whether he had waived such privilege and prerogative by assenting to and being a party to the earlier Arbitration and subsequent application to set the Award aside. The Award by itself, although confirmed by the highest Tribunal in the land, was not an Order of Court for payment of the compensation awarded, and there was no effective method of enforcing it, except by an application to have such Award made an Order of Court. One can well understand the Government or Sultan objecting to having its or his own property levied upon by way of execution. It was held by a majority of the Law Lords that such application was a new proceeding to which the Sultan has not assented or waived his prerogative. In his dissenting judgment on this point, Lord Carson's remarks are illuminating and I believe that it is a well known fact that the " palpable injustice " to which he refers was remedied many years later, by an *ex gratia* payment of compensation in respect of the amount awarded under the Arbitration proceedings.

The facts and circumstances of the *Kelantan* Case are very different to those in this present case, and in my opinion it is Ordinance 37 of 1946 that is the conclusive factor. It is to be noted also that one of the reliefs asked for is that the Applicants may be at liberty to appeal against the whole of such Japanese Decree.

This is in accordance with Section 3 (i) of the Ordinance and follows paragraph (b) thereof. The Applicants are certainly persons " aggrieved by such decree " and as such are entitled to make the application under the Ordinance.

I have, necessarily, had to go into all these matters at considerable length, and it may therefore be advisable to summarize my conclusions briefly. These are :—

(1) That the status of His Highness the Sultan of Johore, prior to the 20th October 1945, was that of an independent Sovereign Ruler limited only as set out in the Agreements of 1885 and 1914, which did not affect such Sovereignty.

(2) That in consequence of the Agreement made by him with His Majesty on the 20th October 1945 and the subsequent Malayan Union Order in Council 1946 His Highness thereby lost his former status of being an Independent Sovereign Ruler. That any attributes of Sovereignty that remained to him were courtesy prerogatives and privileges accorded to him by His Majesty, at His Majesty's discretion or as set out in the Malayan Union Order in Council.

(A) That in consequence of the Agreements dated the 21st January 1948, which revoked such prior Agreement, and the Federation of Malaya Order in Council 1948, which came into force on the 1st February 1948 and revoked the Malayan

Union Order in Council, His Highness, thereafter, regained his former status of a Sovereign Ruler but that such Sovereignty is limited, as set out in such Agreements and Order in Council. That subject thereto and as such Sovereign Ruler, His Highness is entitled to the immunities, privileges and prerogatives usually accorded by the comity of nations to a Sovereign Ruler and he is not subject to the jurisdiction of this Court, unless he has submitted to such jurisdiction.

(B) That His Highness submitted himself to the jurisdiction of this Court in presenting the Originating Summons in 1945 and obtaining a decree thereon.

(C) That this present Originating Summons No. 23 of 1947 is not a new proceeding but a continuation of such earlier proceedings as authorised by Ordinance 37 of 1946.

It follows, therefore, that, in my opinion, this Originating Summons can and should continue in view of such waiver and submission to the jurisdiction of this Court. This Summons to set aside the same and stay all proceedings thereunder is therefore dismissed with costs. I certify for two counsel.

Sd. F. GORDON-SMITH,
Judge, Supreme Court.

Singapore, 7th April, 1949.

No. 30.

Letter from Secretary of State for the Colonies to Brown, J.

Colonial Office,
Church House,
Great Smith Street,
London, S.W.1.

9th June, 1948.

Sir,

I have the honour to refer to your letter of the 21st November, 1947, in the matter of Originating Summons No. 23 of 1947, and to state as follows.

2.—Johore is a State in the Federation of Malaya. His Majesty's Government recognises His Highness, Major-General Sir Ibrahim Ibni Almarhum Almarhum Sultan Abubakar, D.K., S.P.M.J., G.C.M.G., G.B.E.,

In the High Court of the Colony of Singapore.

No. 30. Letter from Secretary of State for the Colonies to Brown, J., 9th June 1948—*continued.*

G.C.O.G. (I) Sultan of Johore as the ruler of the State. As such he exercises attributes of sovereignty.

3.—The position of the State of Johore as a member of the Federation of Malaya is governed by the Federation of Malaya Agreement, 1948, made between His Majesty the King and the Rulers of the several States in the Federation, which contains *inter alia*, provisions to the following effect. Legislative power of a wide range of subjects is conferred upon a federal legislature consisting of a High Commissioner (appointed by His Majesty) and the Rulers of the member States (including the Sultan of Johore) acting with the advice and consent of a federal Legislative Council (the residual legislative power being vested in the legislatures of the States, and Settlements comprising the Federation). The Executive authority of the Federation is substantially vested in the High Commissioner. A federal court of unlimited jurisdiction is established and appeals therefrom lie to His Majesty in Council. Judges are appointed by the High Commissioner in the name of His Majesty and of the Rulers of the member states of the Federation. The Agreement provides for a federal citizenship ; at the same time it specifically recognises the continuance of the status of subjects of the Ruler of any of the States. Amendment of the Federation Agreement cannot be effected without the concurrence of His Majesty and of either the Rulers of the States or the Conference of Rulers of which they are all members.

4.—Under the Johore Agreement, 1948, made between His Majesty and His Highness the Sultan, His Highness undertakes to accept the advice of a British Adviser on all matters connected with the government of the State other than the Muslim religion and the custom of the Malays.

5.—By the Federation of Malaya Agreement, 1948, it is provided that in State matters laws are to be made by the Council of State and require the assent of His Highness. The Executive authority in State matters is vested in His Highness as also is the power of pardon in the case of any person convicted by any court within the state.

6.—The relations between His Majesty and the Sultan of Johore are regulated by the two Agreements already referred to (the Johore Agreement, and the Federation Agreement) and, in so far as they are not inconsistent with the aforementioned Agreements, by two Agreements dated, respectively, the 11th December, 1885, and the 12th May, 1914. (The Agreement of 1914 made provision very similar to that made by the Johore Agreement, 1948, regarding a British Adviser to the Sultan). Under the Agreements of 1948, His Majesty has complete control of the defence and external affairs of the Federation and of the State, and the Federation Agreement contains a saving of the power of His Majesty and the United Kingdom Parliament to make laws relating to these matters. His Majesty undertakes to protect the State from external attack, and His Highness undertakes that, without the knowledge and consent of His Majesty's Government, he will not

make any treaty, enter into any engagement, deal in or correspond on political matters with, or send envoys to, any foreign State.

7.—It is provided by the Johore Agreement, 1948, that His Highness's prerogatives, power and jurisdiction within the State shall, subject to the provisions of that Agreement and the Federation of Malaya Agreement, 1948, be those which His Highness possessed on the 1st December, 1941, and, by the Federation of Malaya Agreement, 1948, that save as expressed therein that Agreement shall not affect the sovereignty and jurisdiction of the Rulers in their several States.

8.—The independence of the State of Johore and the sovereignty of its Ruler, the Sultan, as recognised in the case of Mighell *v.* the Sultan of Johore, to which reference is made in the communication under reply, are thus subject to the limitations consequent upon fresh rights and obligations under the Agreements of 1948, and generally upon the position of the State as a member of the Federation of Malaya.

9.—Copies of the four Agreements referred to above are enclosed.

I have the honour to be, Sir,

Your most obedient humble servant,

Sd. A. CREECH JONES.

The Honourable Mr. Justice T. A. Brown.

No. 31.

Letter from Secretary of State for the Colonies to Brown, J.

Colonial Office,
Church House,
Great Smith Street, S.W.1.
12th November, 1948.

Sir,

I have the honour to refer to the final paragraph of your letter on the 6th July, 1948, in the matter of Originating Summons No. 23 of 1947, and to state as follows.

Before the 20th October, 1945, His Majesty had no jurisdiction in Johore. The relations between His Majesty and the Sultan were regulated by two Agreements, the one dated the 11th December, 1885 (which is referred to in the case of Mighell *v.* Sultan of Johore (1894) 1.Q.B. 149) and the other dated the 12th May, 1914. The Status of the State of Johore and of its Ruler. The Sultan was, therefore, the same as at the time of the decision of the Court of Appeal in the aforementioned case except that, by the Agreement of 1914, the Sultan had agreed to receive an accredited British Adviser whose advice

In the High Court of the Colony of Singapore.

No. 31. Letter from Secretary of State for Colonies to Brown, J., 12th November 1948 *continued.*

he was obliged to ask and act upon "on all matters affecting the general administration of the country and on all questions other than those touching Malay religion and custom." Subject to that Agreement, the Internal affairs of the State were regulated by a Constitution enacted in 1895 and various supplements.

The Constitution contained provisions regulating the succession to the Sultanate and empowering the Sultan, who was declared to be " the fountain of honours," to create Orders and Honours. It provided for a Council of Ministers whose function was to assist the Sultan, a Council of State with administrative authority and exercising legislative power with the approval of the Sultan, and an Executive Council over which the Sultan presided, and whose advice he was not obliged to accept. The Prime Minister was appointed by the Sultan and other Ministers were appointed by him with the approval of the Council of Ministers or by the Council of Ministers with the approval of the Sultan. Any Minister could be dismissed by the Sultan. The Council of State consisted of Ministers and other members appointed by the Sultan with the advice of the Council of Ministers. Members of the Executive Council were appointed by the Sultan.

On the 20th October, 1945, an Agreement was made by Sir Harold MacMichael on behalf of His Majesty the King with the Sultan of Johore. The Agreement granted to His Majesty " full power and jurisdiction within the State and territory of Johore." It also preserved the existing Agreements save in so far as they were inconsistent with its terms or with such future constitutional arrangements for Malaya as might be approved by His Majesty.

In exercise of the jurisdiction vested in him by the Agreement of the 20th October, 1945, His Majesty made provision for the government of Malaya in the Malayan Union Order in Council, 1946, and in Royal Instructions dated the 27th March, 1946. Part of this Order came into operation on the 1st April, 1946, and it was provided that the remainder of the Order should be brought into operation on a later date or later dates. In fact the remainder had not been brought into operation on the 1st February 1948 when the whole Order was revoked by the Federation of Malaya of Malaya Order in Council, 1948. The Royal instructions came into operation on the 1st April, 1946, but, to the extent that the Order itself never came fully into operation, they were never fully effective, and they too were revoked on the 1st February, 1948.

In assessing the effect of the Malayan Union Order in Council, 1946, it appears desirable to consider separately :—

(a) those provisions which were intended to be permanent and were brought into operation ;
(b) those which, though intended to be permanent, were not brought into operation ;
(c) those which were transitional and, having been brought into operation, were intended in due course to be superseded by the provisions mentioned in (b) above ;
(d) the provisions of the Johore Constitution so far as it remained in force.

(a) *Permanent provisions in operation.*

A Union of the Malay States (including Johore) and the Settlements of Malacca and Penang was established and it was provided that they should be administered and governed together under a Governor of the Union appointed by His Majesty. The prerogative power of pardon throughout the Union was vested in the Governor. It was provided that the Chief Justice of the Supreme Court of the Union should be appointed by His Majesty or by the Governor on His Majesty's instructions and that the judges should be appointed in the same way as the Chief Justice or in such other way as might be provided either by regulations made by the Governor or by law made under the Order. The Order reserved to His Majesty full power to legislate by Order in Council for the peace order and good government of the Union. The Order was subject to amendment or revocation by His Majesty.

(b) *Permanent provisions never in operation.*

If these provisions had taken effect, the general executive power in the Union would have been exercised by the Governor, who would have been advised by an Executive Council consisting of the Chief Secretary, the Attorney General and the Financial Secretary, together with seven other members to be appointed by His Majesty or in pursuance of His Majesty's instruction. The general legislative power in the Union would have been vested in the Governor acting with the advice and consent of a Legislative Council consisting of the Governor, ex-officio members, and official and unofficial members appointed by the Governor on the instructions of the King. Legislative powers for the State of Johore, in Matters declared to be of a purely local nature or under powers delegated by the Legislative Council of the Union, would have been vested in a State Council consisting of the Resident Commissioner, ex-officio members, nominated official and unofficial members appointed by the Governor and elected members. The State Council would also have had such powers of local administration as might be prescribed by law of the Union or as might be allocated to it by the Governor in Council. Any laws passed by the State Council would have required the assent of the Governor or the King; would have been liable to repeal or amendment by the Union Legislature; and would have been void, without formal repeal, if repugnant to the laws of the Union Legislature.

The Sultan of Johore would have had the power, with the advice of an Advisory Council (consisting of himself as President and members appointed by him), to make laws for the State of Johore relating solely to matters of Muslim religion and not involving the imposition, collection or remission of any tax or tithe. A Bill approved by this Sultan's Advisory Council would, before it could be assented to by the Sultan, have required the approval of the Council of Sultans, a body consisting of the Governor as President, the Rulers of the component States of the Union and three ex-officio members.

In the event of any conflict between a law made by the Sultan with the advice of his Advisory Council and a law of the Legislative Council of the

In the High Court of the Colony of Singapore.

No. 31. Letter from Secretary of State for Colonies to Brown, J., 12th November 1948— *continued.*

Union or State Council of Johore, the provisions of the latter would have prevailed.

(c) *Transitional provisions in operation.*

As a temporary expedient, an Advisory Council for the Union was set up consisting of the Chief Secretary, the Attorney General, the Financial Secretary and such other members as might be appointed by the Governor. Pending the establishment of the Legislative Council the Governor had the power to legislate for the peace, order and good government of the Union but was first obliged to consult the Advisory Council. The Governor was not required to accept the Council's advice nor, in the exercise of general executive power, to seek its advice.

(d) *The Constitution of the State of Johore.*

In general, the existing laws were preserved by the Malayan Union Order in Council subject, however, to the provisions of the order itself. One of the existing laws was the Constitution of the State of Johore which therefore continued in force except so far as its provisions were inconsistent with the Order. The precise extent to which the particular provisions of the Constitution were preserved by the Malayan Union Order in Council, being a matter of legal interpretation, is one upon which the Secretary of State feels that it would not be proper for him to pronounce. His Majesty's Government, however, recognise that the Sultan of Johore possessed sufficient sovereignty in and over Johore to enable him to make on behalf of himself and his successors in the Sultanate the Johore Agreement, 1948, providing for the future government of Johore as a Member State of the Federation of Malaya.

It will be observed, therefore, that under both the provisions of the Order in Council which came into operation and the permanent regime which never took effect, the position of Johore as an independent State and the sovereign powers of the Sultan were materially affected by the incorporation of the State in the Malayan Union and generally by the situation brought about by the Agreement of the 20th October, 1945; but that the State retained its identity and the Sultan continued to possess certain attributes of sovereignty.

Copies of the four Agreements mentioned above were included in my previous letter of the 7th June.

I have the honour to be, Sir,
Your most obedient humble servant,

Sd. LISTOWEL,
For the Secretary of State for the Colonies.

The Honourable Mr. Justice T. A. Brown.

No. 32.

Order of Court.

In the High Court of the Colony of Singapore.

No. 32. Order of Court. 7th April 1949.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
ISLAND OF SINGAPORE.

Originating Summons No. : 23 of 1947. (L.S.)

In the Matter of a Japanese decree made in O.S. No. 24 of 2605 (1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th day of June 1945.

and

In the Matter of the Japanese Judgments and Civil Proceedings Ordinance 1946.

BEFORE THE HONOURABLE MR. JUSTICE GORDON SMITH.

IN OPEN COURT.

UPON the application of His Highness, Sir Ibrahim, The Sultan of Johore, made by way of Summons in Chambers entered No. 564 of 1947 coming on for hearing on the 15th, 16th, 17th and 18th days of March, 1949 AND UPON reading the Agreed Bundle AND UPON hearing what was alleged by Mr. E. D. Shearn and Mr. K. A. Seth of Counsel for the Applicant, by Mr. J. Laycock and Mr. Denis Murphy of Counsel for (i) Abubakar, Tunku Aris Bendahara of the State and Territory of Johore (ii) Henry Walter Cowling and (iii) George Herbert Garlick (hereinafter called the Respondents) by Dr. C. H. Withers-Payne of Counsel for H.H. Ungku Fatimah and Tunku Maimunah Abubakar and by Mr. K. Gould of Counsel for the children of Tunku Abubakar aforesaid IT WAS ORDERED that the same should stand for Judgment and upon the same standing for Judgment this day THIS COURT DOTH ORDER that the said Summons be dismissed with costs to be taxed and paid by the Applicant AND THIS COURT DOTH CERTIFY for two Counsel to be allowed to the Respondents.

Dated this 7th day of April, 1949.

By the Court,

Sd. HUGH SHEPHERD.
Dy. *Registrar.*

In the High Court of the Colony of Singapore.

No. 33.

Notice of Appeal.

No. 33. Notice of Appeal, 25th April 1949.

TAKE NOTICE that His Highness Major General Sir Ibrahim Sultan of Johore, Respondent to the Originating Summons herein will appeal at the next Court of Appeal in the Colony of Singapore against so much of the judgment of the Honourable Mr. Justice Gordon Smith given on the 7th day of April 1949 herein as relates to the following matters :—

(a) That His Highness the Sultan submitted himself to the jurisdiction of this Court in presenting the Originating Summons in 1945 and obtaining a decree thereon ;

(b) That this present Originating Summons No. 23 of 1947 is not a new proceeding but a continuation of such earlier proceedings as authorised by Ordinance No. 37 of 1946 ;

(c) That the Summons in Chambers dated the 11th day of October 1947 be dismissed with costs.

Dated the 25th day of April, 1949.

SISSON & DELAY,
Solictors for the above-named
His Highness Major General
Sir Ibrahim Sultan of Johore.

To the Registrar,
Supreme Court, Singapore.

To Chan Laycock & Ong, Solicitors for the Applicants Abubakar, Tunku Aris Bendahara of the State and Territory of Johore, George Herbert Garlick and H. W. Cowling.

No. 34.

Memorandum of Cross Appeal.

No. 34. Memorandum of Cross Appeal, 12th July 1949.

(1) Abubakar Tunku Aris Bendahara of the State and Territory of Johore ; (2) Henry Walter Cowling ; and (3) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, the applicants to the Originating Summons herein, cross appeal to the Court of Appeal in Singapore against the Judgment of the Honourable Mr. Justice Gordon Smith delivered on the 7th day of April, 1949, dismissing with costs the application of the Appellant made by way of Summons in Chambers No. 564 of 1947 and dated the 11th day of October, 1947, on the grounds following :—

1. The learned trial Judge was wrong in law in not holding that the only question before the Court was one of construction of the two letters from the Colonial Office contained in the Memorandum of Appeal at pages 152 and 158.

2. The learned Judge was wrong in law in holding that as the said letters gave the appellant no sovereign rights, it was the learned Judge's duty to interpret other documents.

3.—The learned Judge was wrong in law in not holding that the said letters were conclusive and that he could not go behind the said letters.

4.—The learned Judge was wrong in law in holding that the said letters did not answer the question put by the Court.

5.—The learned Judge was wrong in law in holding that the material date for the determination of the status of Sultan was the date of trial of these proceedings.

6.—The learned Judge was wrong in law in not holding that the date of the issue of the Summons was the material date for the determination of the status of the Sultan.

7.—The learned Judge was wrong in law in holding that the appellant was a sovereign ruler at the date of the Judgment.

8.—The learned Judge was wrong in law in holding that the Appellant was not subject to the jurisdiction of the Courts unless he waived his privileges.

Dated this 12th day of July, 1949.

CHAN, LAYCOCK & ONG,
Solicitors for the above-named
Abubakar, Tunku Aris Bendahara of the State and Territory of Johore ; Henry Walter Cowling : & George Herbert Garlick.

No. 35.

Further Memorandum of Cross Appeal.

(1) Abubakar Tunku Aris Bendahara of the State and Territory of Johore ; (2) Henry Walter Cowling ; and (3) George Herbert Garlick of Garlick Avenue, Holland Road, Singapore, the Applicants to the Originating Summons herein, cross appeal to the Court of Appeal in Singapore against the Judgment of the Honourable Mr. Justice Gordon Smith delivered on the 7th day of April, 1949, dismissing with costs the application of the Appellant made by way of summons in Chambers No. 564 of 1947 and dated the 11th day of October, 1947, on the additional ground following :—

In the High Court of the Colony of Singapore.

No. 35. Further Memorandum of Cross Appeal. 13th July 1949—*continued.*

1.—That the learned judge did not decide the question whether the material date for the determination of the status of the Sultan was the date of the trial of these proceedings or the date of service upon him of the Statement of Claim or if not what was the material date.

2.—Paragraphs 5 and 6 of the Memorandum of Appeal will not be proceeded on.

Dated this 13th day of July, 1949.

CHAN, LAYCOCK & ONG,
Solicitors for the above-named
Abubakar Tunku Aris Bendahara of the State & Territory of Johore; Henry Walter Cowling and George Herbert Garlick.

No. 36. Letter from Secretary of State for the Colonies to the Appellant, 13th July 1949

No. 36.

Letter from Secretary of State for the Colonies to the Appellant.

Colonial Office,
The Church House,
Great Smith Street,
London, S.W.1.
13th July, 1949.

Your Highness,

I am directed by Mr. Secretary Creech Jones to refer to Your Highness' conversation with him yesterday, in which he undertook to let you have a formal letter confirming his comments in regard to Your Highness' status.

Mr. Creech Jones has been furnished with a copy of the Judgment of the Supreme Court of Singapore on the 7th April, 1949, in which Mr. Justice Gordon Smith found that you enjoy your former status of a sovereign Ruler. This is taken to mean that you are an independent sovereign (subject to the limitations mentioned by the Judge). His Majesty's Government of course accept this ruling.

I am, Your Highness,

Your obedient servant,

Sd. J. HIGHAM.

Major General
His Highness,
Sir Ibrahim,
G.C.M.G., G.B.E.,
Sultan of Johore.

No. 37.

Letter from the Appellant's Solicitors to Secretary of State for the Colonies.

No. 37. Letter from the Appellant's Solicitors to Secretary of State for the Colonies, 13th July 1949.

E. F. Turner & Sons,
115, Leadenhall Street,
London, E.C.3.

13th July, 1949.

The Rt. Hon. The Secretary of State
for the Colonies,
Church House,
Gt. Smith Street, S.W.1.

Sir,

Our client, H.H. The Sultan of Johore, has handed to us your letters to him of the 11th and 13th instant, with reference to his status as an Independent Sovereign. We regret that neither of these letters conforms with what is required by the Sultan's Legal Representatives in Malaya in connection with the pending Proceedings between himself and his Son, Tungku Abu Bakar. Your letters merely state that His Majesty's Government accept the ruling given in the Court of First Instance in Singapore to the effect that His Highness enjoys his former status of a Sovereign Ruler, but they do not state what the view of His Majesty's Government would be in the event of that decision being upset by a Higher Court.

We have always understood that in cases like this a Ruler is entitled to ask from the Secretary of State for the Colonies, not a statement of facts from which some Judge or other draws his deductions, but an unqualified statement of the view which His Majesty's Government themselves hold with regard to the question of status. A letter in this latter form is always accepted by the Courts as final and conclusive, and not open to appeal.

In view of the fact that an Appeal in the Proceedings in which His Highness is interested is expected to be heard on the 18th instant, may we beg that a further letter may be supplied, stating His Majesty's Government's own view with regard to His Highness's status, so that we may cable a copy out to Malaya, in the hope that it may be accepted by the Judiciary there.

We are, Sir,

Your obedient servant,

Sd. E. F. TURNER & SONS.

No. 38. Letter from Secretary of State for the Colonies to the Appellant's Solicitors, 18th July 1949.

No. 38.

Letter from Secretary of State for the Colonies to the Appellant's Solicitors.

Colonial Office,
The Church House,
Great Smith Street,
London, S.W.1.
18th July, 1949.

Gentlemen,

I am directed by Mr. Secretary Creech Jones to refer to your letter of the 13th July and to state as follows :—It is agreed that in cases such as the present, the practice is for the Court to ask the Secretary of State for a statement regarding the Ruler's status, but not for such a statement to be requested by, or supplied to, the Ruler himself. You will also appreciate that a Secretary of State is not obliged to return an answer of the kind you seek and indeed that, if he thought fit, he would be entitled to decline to answer the question put by the Court.

In the present case, in response to an inquiry received from the Court, the Secretary of State returned a reply in the form which he considered most appropriate in the circumstances. The question of the Sultan's status has now been decided by the Court, and Mr. Creech Jones is not prepared to add anything to his letter of the 11th July and that from this Department dated the 13th July.

With regard to the last paragraph of your letter and the reference in the first paragraph to the proceedings pending in the Singapore Courts, I am to invite your attention to the last sentence of Mr. Creech Jones's letter of the 11th July.

I am, etc.,

Sd. O. H. MORRIS.

Messrs. E. F. Turner & Sons.

No. 39.

Letter from the Appellant's Solicitors to Secretary of State for the Colonies.

No. 39. Letter from the Appellant's Solicitors to Secretary of State for the Colonies, 18th July 1949.

E. F. Turner & Sons,
115, Leadenhall Street,
London, E.C.3.

18th July, 1949.

Urgent and Important.

Immediate Delivery.

The Rt. Hon. The Secretary of State
for the Colonies,
Church House,
Gt. Smith Street, S.W.1.

Sir,

Further to our letter of the 13th instant with reference to the status of our Client, The Sultan of Johore, we beg to inform you that we have received a cable this morning from His Highness's Counsel in Kuala Lampur, to whom we had sent your letter of the 11th instant. This cable reads as follows :—

> "Sultan Johore hearing Appeal Twenty-fifth July Stop Respondents raising issue Sultan's Sovereignty consequently Creech Jones wrong Sovereignty no longer in issue Stop Unequivocal recognition Sovereignty before Twenty-fifth July most helpful Shearn."

In the interests of justice therefore, may we beg for an immediate reply to our letter of the 13th instant in the form of an unequivocal certificate as to His Majesty's Government's view of our Client's Sovereignty.

We are, Sir,

Your obedient servants,

Sd. E. F. TURNER & SONS.

In the Court of Appeal of the Colony of Singapore.

No. 40. Motion Paper, 21st July 1949.

No. 40.

Motion Paper.

Mr. E. D. Shearn of Counsel for His Highness Sir Ibrahim, Sultan of Johore, the Appellant, moves for leave to produce and read, in addition to the evidence produced below, the following evidence, namely :—

The Affirmation of Wan Abdul Rahim bin Ngah made on the 21st day of July, 1949, and the exhibits thereto.

Dated this 21st day of July, 1949.

Sd. SISSON & DELAY.
Solicitors for His Highness Sir Ibrahim, Sultan of Johore.

No. 41. Affirmation of Dato Haji Mohamed Said, 21st July 1949.

No. 41.

Affirmation of Dato Haji Mohamed Said.

I, DATO HAJI MOHAMED SAID of No. 10 Jalan Dato Dalam, Johore Bahru, affirm and say as follows :—

1.—I am the Private Secretary to His Highness Sir Ibrahim, Sultan of Johore, who is the Appellant in the proceedings now pending before this Honourable Court.

2.—Since the hearing in the month of March 1949 of the Summons in Chambers dated the 11th day of October 1947 a letter dated the 11th day of July 1949 signed by the Right Honourable Mr. A. Creech Jones, Secretary of State for the Colonies, has been received by the Appellant and such letter refers to the present status of the Appellant and is relevant on the question of whether or not His Majesty's Government recognises the Appellant as an independent Sovereign.

3.—Prior to the hearing of the said Summons in Chambers the Appellant to my knowledge endeavoured to obtain a letter concerning his status from the Secretary of State for the Colonies but he was not successful in so doing.

Affirmed at Singapore this 21st day of July, 1949 } Sd. HAJI MOHAMED SAID.

Before me,

Sd. C. H. SMITH,
A Commissioner for Oaths.

No. 42.

In the Court of Appeal of the Colony of Singapore.

No. 42. Affirmation of Wan Abdul Rahim Bin Ngah. 21st July 1949.

Affirmation of Wan Abdul Rahim Bin Ngah.

I, WAN ABDUL RAHIM BIN NGAH of 73 Jalan Trus, Johore Bahru, affirm and say as follows :—

1.—I am an assistant to Dato Haji Mohamed Said who is the Private Secretary to His Highness Sir Ibrahim, Sultan of Johore, the Appellant in the proceedings now pending before this Honourable Court.

2.—The document now produced and shown to me marked " A " is a true copy of a letter dated the 28th day of June 1949 written by the Appellant to the Right Honourable the Secretary of State for the Colonies, and the document now produced and shown to me marked " B " is the original of a reply dated the 11th day of July 1949 from the Secretary of State for the Colonies to that letter.

Affirmed at Singapore this 21st day of July, 1949 } Sd. WAN ABDUL RAHIM BIN NGAH.

Before me,

Sd. C. H. SMITH,
A Commissioner for Oaths.

No. 43.

No. 43. " A." Letter from the Appellant to the Secretary of State. 28th June 1949.

" A." Letter from the Appellant to the Secretary of State.

Enclosure X.

28th June, 1949.

The Rt. Hon. The Secretary of State
for the Colonies,
Church House,
Great Smith Street, S.W.1.

Dear Mr. Creech Jones,

On the 9th June, 1948, you wrote to the Hon. Mr. Justice T. A. Brown, of Singapore, with regard to my status as an Independent Sovereign Ruler, in connection with certain proceedings taken in my country. That letter was, unfortunately, couched in very vague terms, and merely stated facts known to everybody, but without expressing any opinion as to their effect upon my position.

It is extremely important that I should now have a letter, or certificate, from you stating in unequivocal terms that, under the existing Agreements

In the Court of Appeal of the Colony of Singapore.

with His Majesty, I am an independent Ruler, and recognized as such by His Majesty. There can, I take it, be no question about this, and I shall be grateful if you can let me have such a letter as I require, at your earliest convenience.

An appeal from the Proceedings in Johore is due to come on for hearing about the 18th July next, and it is vital that my legal advisers should have the letter in their hands before that date.

Sincerely yours,

Sd. IBRAHIM.

No. 43. "A" Letter from the Appellant to the Secretary of State 28th June 1949—*continued.*

No. 44.

"B." Letter from the Secretary of State to the Appellant.

Enclosure Y.

Colonial Office,
The Church House,
Great Smith Street, S.W.1.
11th July, 1949.

No. 44. "B." Letter from the Secretary of State to the Appellant, 11th July 1949.

Your Highness,

Thank you for your letter of the 28th June. I had waited for your arrival in this country to reply to your letter of the 3rd April on the subject of Your Highness' status.

Your Highness will know that on the certificate which I gave to the Court Mr. Justice Gordon Smith found that you enjoy your former status of a sovereign Ruler. This seems clearly to mean that you are an independent sovereign (subject to the limitations mentioned by the Judge) and His Majesty's Government, of course accept the ruling. I trust that Your Highness will now regard the matter as satisfactorily settled. I am informed that the only matter which is now *sub judice* in the lawsuit in which Your Highness is concerned is the question whether Your Highness had submitted to the jurisdiction of the Court, so that the question of your sovereignty appears to be no longer an issue in the proceedings.

Yours sincerely,

Sd. A. CREECH JONES.

Major General
His Highness
Sir Ibrahim,
G.C.M.G., G.B.E.,
Sultan of Johore.

No. 45.

No. 45. Letter from Secretary of State to Appellant's Solicitors, 27th July 1949.

Letter from Secretary of State to Appellant's Solicitors.

Colonial Office,
The Church House,
Great Smith Street,
London, S.W.1
27th July, 1949.

Gentlemen,

I am directed by Mr. Secretary Creech Jones to refer to your letter of the 18th July and to say that in response to his enquiry the Malayan authorities have telegraphed that, since they last reported the position to the Colonial Office, the Respondents have filed a cross-appeal on the question of sovereignty. Mr. Creech Jones regrets the misunderstanding which was responsible for the last sentence of his letter on the 11th July to His Highness the Sultan of Johore and the final paragraph of the letter of the 18th July from this Department to yourselves. I am to state, however, that the first and second paragraphs of this Department's letter of the 18th July are unaffected by this information.

I am, Gentlemen,

Your obedient servant,

Sd. O. H. MORRIS.

Messrs. E. F. Turner and Sons.

No. 46.

No. 46. Letter from Chief Justice Singapore, to Secretary of State, 29th July 1949.

Letter from Chief Justice, Singapore, to Secretary of State.

29th July, 1949.

Sir,

I have the honour to refer to your letter of the 9th June, 1948, addressed to the Honourable Mr. Justice Brown and to a letter dated the 12th November, 1948, signed by Lord Listowel on your behalf also addressed to the Honourable Mr. Justice Brown.

2.—These letters refer to Originating Summons No. 23 of 1947 in which Originating Summons it became necessary for a pronouncement by the High Court of the Colony of Singapore to be made as to the status of His Highness the Sultan of Johore.

3.—Since the receipt of the last mentioned letter the summons taken out on behalf of His Highness the Sultan came for hearing before the Honourable Mr. Justice Gordon Smith and he held that :

In the Court of Appeal of the Colony of Singapore.

No. 46. Letter from Chief Justice, Singapore, to Secretary of State, 29th July 1949—*continued.*

" (A) That in consequence of the Agreements dated the 21st " January, 1948, which revoked such prior Agreement, and the " Federation of Malaya Order in Council, 1948, which came into " force on the 1st February, 1948, and revoked the Malayan Union " Order in Council, His Highness, thereafter, regained his former " status of a Sovereign Ruler but that such Sovereignty is limited, " as set out in such Agreements and Order in Council. That subject " thereto and as such Sovereign Ruler, His Highness is entitled to " the immunities, privileges and prerogatives usually accorded " by the comity of nations to a Sovereign Ruler and he is not subject " to the jurisdiction of this Court, unless he has submitted to such " jurisdiction."

" (B) That His Highness submitted himself to the jurisdiction of " this Court in presenting the Originating Summons in 1945 and " obtaining a decree thereon."

" (C) That this present Originating Summons No. 23 of 1947 is " not a new proceeding but a continuation of such earlier proceed- " ings as authorised by Ordinance 37 of 1946."

" It follows, therefore, that, in my opinion, this Originating " Summons can and should continue in view of such waiver and " submission to the jurisdiction of this Court."

Note—In paragraph (A) " the Agreements dated the 21st January, 1948 " means the Federation of Malaya Agreement, 1948, and the Johore Agreement of the same date ; and " such prior Agreement " means the Agreement between His Majesty's Government and the State of Johore dated 20th October, 1945.

4.—His Highness the Sultan of Johore lodged an appeal against the decisions set out in the paragraphs lettered respectively (B) and (C) above and the Respondents to the appeal challenged the finding of the Honourable Mr. Justice Gordon Smith, set out in paragraph (A) above.

5.—During the hearing of the appeal two letters, copies of which are attached hereto and marked X and Y (*see* " *A* " *and* " *B* " *at pp.* 67 *and* 68) written by His Highness the Sultan to you and by you to His Highness the Sultan, were placed before the Court and read by Counsel for His Highness the Sultan.

6.—You will appreciate that in view of the challenge by the Respondents referred to in paragraph 4 of this letter, the question of sovereignty remains *sub judice.*

7.—Counsel for His Highness the Sultan submitted that the contents of letter Y mean that His Majesty's Government recognizes His Highness as an independent sovereign.

Counsel for the Respondents disputed this and suggested that in order to clarify the position the President of the Court of Appeal should address a further letter to you.

8.—Accordingly, as President of the Court of Appeal, I have the honour to invite an answer to the following question :

Does your letter Y of the 11th July, 1949, mean that His Majesty's Government recognizes His Highness the Sultan of Johore as an independent sovereign ?

9.—The hearing of the appeal, which has already taken three days, is adjourned pending a reply to this letter, and I should be grateful for an early reply so that the hearing can be resumed not later than the first week in September.

I have the honour to be, Sir,

Your most obedient humble servant,

Sd. C. M. MURRAY-AYNSLEY,
Chief Justice, Singapore.
President, Court of Appeal, Singapore.

The Right Honourable
The Secretary of State for the Colonies,
Colonial Office,
London, S.W.1.

Through His Excellency
The Governor of Singapore.

No. 47.

Letter from Secretary of State to Chief Justice, Singapore.

The Church House,
Great Smith Street,
London, S.W.1.
20th August, 1949.

Sir,

I have the honour to refer to your letter of the 29th July, and to state as follows :

Subsequent to my letter of the 11th July, there was further correspondence regarding the status of His Highness, and I enclose copies of a letter addressed to him on the 13th July, and four letters dated respectively the 13th, 18th, 18th and 27th July, which passed between His Highness's Solicitors and the Colonial Office.

On the 9th May, I was informed that His Highness the Sultan of Johore had lodged an appeal in these proceedings, but that the time for

In the Court of Appeal of the Colony of Singapore.

No. 47. Letter from Secretary of State to Chief Justice, Singapore, 20th August 1949—*continued.*

lodging appeals had expired on the 28th April, and that there was no Cross-Appeal on the question of sovereignty. I concluded therefore that that question could no longer be *sub judice*. It was only on the 23rd July that (in response to a telegraphic enquiry made by myself on receipt of the letter of the 18th July from His Highness's solicitors), I was informed officially that a cross appeal on the question of sovereignty had been filed. It will be appreciated, therefore, that my letter of the 11th July to HisHighness the Sultan was written under a misapprehension. It was not intended to convey more than that His Majesty's Government accepted the decision of the Court, which I believed was not being further contested, and the letter was not intended to affect the decision of any higher court before whom the question might come on appeal.

I have the honour to be, Sir,
Your most obedient, humble servant,
Sd. A. CREECH JONES.

The Honourable
The Chief Justice,
Singapore.

No. 48. Judgment: 1st November 1949.

No. 48.

Judgment.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
ISLAND OF SINGAPORE.
IN THE COURT OF APPEAL.

Civil Appeal No. 7 of 1949 Originating Summons No. 23 of 1947

In the Matter of a Japanese Decree made in O.S. No. 24 of 2605 (1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th day of June 1948

and

In the Matter of the Japanese Judgments and Civil Proceedings Ordinance 1946.

This Appeal coming on for hearing on the 25th, 26th and 28th days of July 1949, and 19th and 20th days of September, 1949, before The Honourable Mr. Charles Murray Murray-Aynsley, Chief Justice of the Colony of Singapore, The Honourable Sir Harold Curwin Willan, Chief Justice of the Federation of Malaya and The Honourable Mr. Laman Evan Cox Evans, Judge, in the presence of Messrs. E. D. Shearn and K. A. Seth of Counsel for His Highness, Sir Ibrahim, The Sultan of Johore, the Respondent-Appellant and of Mr. Denis Murphy of Counsel for Abubakar, Tungku Aris Bendahara of the State and Territory of Johore, Henry Walter Cowling and George Herbert Garlick and the Applicants-Respondents and upon reading the record and upon hearing what was alleged by Counsel for both parties THIS COURT DID ORDER that the said Appeal should stand for Judgment and the same standing for Judgment this day in the presence of Mr. K. A. Seth and

Mr. Denis Murphy Counsel as aforesaid THIS COURT DOTH ORDER that the Appeal of the Respondent-Appellant be dismissed with costs to be taxed and paid by the Respondent-Appellant to the Applicants-Respondents AND LASTLY THIS COURT DOTH ORDER that the sum of $500 paid into Court by the Respondent- Appellant as security for costs of the Appeal be paid out to the Applicants-Respondents or their Solicitors Messrs. Chan, Laycock & Ong on account of costs payable to them.

Dated this 1st day of November 1949.

Entered this 7th day of November 1949 at 2.30 p.m. Pages 370 and 371 in Volume XII.

Sd. TAN THOON LIP,
Dy. *Registrar.*

No. 49.

Grounds of Judgment of Murray-Aynsley, C.J., Singapore.

Coram : MURRAY-AYNSLEY, C.J., S.
WILLAN, C.J., F.M.
EVANS, J.

The circumstances which bring this matter before the Court are explained in the judgment appealed against. It is not, I think, necessary to set them out at length. The first question is whether the status of the appellant is such as to oust the jurisdiction of this Court. If that question is answered in the affirmative, the other question arises as to whether he has submitted to the jurisdiction.

In order to obtain information on the first point letters were addressed to the Secretary of State for the Colonies. The answers thereto are set out in the record. It is conceded that the terms of the answers are not such as to constitute an answer in the affirmative as were the answers in the cases of Mighell *v.* Sultan of Johore (1894) 1 Q.B.D. 149, and Duff Development Co. *v.* Kelantan Government (1924) A.C. 797. It was argued on behalf of the respondents that unless the appellant, on whom lies the burden of establishing his status, can produce evidence of recognition of his status by His Majesty's Government he has not discharged that burden. That means that the question of status cannot be ascertained by the examination of treaties or constitutions or such documents, that it is not a question of the powers and authority of the person whose status is examined but the extent to which it is recognized by His Majesty. And of that recognition a statement made on behalf of His Majesty is the only form which the Court will notice judicially.

Since the *Kelantan* case the affirmative proposition that a recognition of sovereignty by His Majesty's Government is conclusive is fully established. It has to be established that the converse proposition that the Courts cannot

In the Court of Appeal of the Colony of Singapore.

No. 49. Grounds of Judgment of Murray-Aynsley, C.J., Singapore, 1st November 1949—*continued.*

treat any government as sovereign and independent unless it is so recognized by His Majesty's Government is also law. I should have thought that as a matter of reason and expediency that must be the case. It is also, in my opinion, supported by authority. Among the older cases the City of Berne *v.* The Bank of England (9 Ves. Jun. 347) seems to me to be entirely in point ; so does Thompson *v.* Barclay (6 L.J., O.S., Ch. 93). In the former Lord Eldon said that it was extremely difficult to say, a judicial Court can take notice of a Government, never authorized by the Government of the country. In the latter Shadwell, V.C., said " the courts cannot acknowledge them till the government of the country has recognized them." It appears to me that it can make no difference whether it is the recognition of a new government set up by a revolution or the recognition of the status of an established government. The authority to the contrary is Yrisarri *v.* Clement (2 C. & P. 101). This was only a nisi Prius case and in my opinion cannot be regarded as law in so far as it purports to decide that the Courts can treat a body as a government of a country when not so recognized by His Majesty's Government. Roche, J., ignored it though it was cited. I think he was right.

The modern practice in this matter dates from *Mighell's* case. There Lord Esher said at p. 158, " When once there is an authoritative certificate " of the Queen through her minister of state as to the status of another " sovereign, that in the Courts of this country is decisive."

Kay, L.J., said, at p. 162, " Proceeding as it does from the office of " one of the principal secretaries of state, and purporting to be written by " his direction, I think it must be treated as equivalent to a statement by " Her Majesty herself, and, if Her Majesty condescends to state to one of " her Courts of Justice, that an individual cited before it is an independent " sovereign, I think that statement must be taken as conclusive."

In *Forster* v. *Globe Venture Syndicate*, (1900) 1 Ch. 811, Farwell, L.J., reasoned in the same way. Since then all these cases have been decided in this way and with the possible exception of *Statham* v. *Statham*, (1911), P.p. 92, no case has occurred in which a plea of this kind to the jurisdiction has been allowed except on the strength of a letter from the Secretary of State or of a statement in the face of the Court by the law officers of the Crown. It appears to me that logically a statement that, as in the present case, does not amount to an unqualified affirmative or negative answer should, for this purpose, be treated as negative. There is authority in this sense. In the *Annette*, (1919) P. at p. 111, Hill, J. said " I am asked to infer from that that " it has been informally recognized as a sovereign state. I do not think that " I ought to draw that conclusion. I must be satisfied before I can recognize " the Provisional Government of Northern Russia as a sovereign state, " for the purposes of this case, that the British Government so recognize it. " I am not satisfied."

Luther v. *Sagor* is I think the most valuable case. When heard at first instance by Roche, J., as he then was (1921, 1 K. B., 456) the converse

proposition with which I am dealing was relevant, and it was fully considered by that learned Judge. He sets out the matter clearly (p. 474) " the attitude " proper to be adopted by a Court of this country with regard to foreign " governments or powers I understand to be as follows: (1) if a foreign " government is recognized by the Government of this country the Courts " of this country may and must recognize the sovereignty of that foreign " government and the validity of its acts (see *Republic of Peru* v. *Dreyfus* and " the cases there cited); (2) if a foreign government, or its sovereignty, is " not recognized by the Government of this country the Courts of this " country either cannot, or at least need not, or ought not, to take notice of, " or recognize such foreign government or its sovereignty. This negative " proposition is, I think, also established and recognized by the judgment " of Kay, J. in *Republic of Peru* v. *Dreyfus*, 38 Ch.D. 348."

Earlier he had said at p. 473, " The proper source of information as " to a foreign power, its status and sovereignty, is the sovereign of this " country through the Government. . . . At all events, even if I were " entitled to look elsewhere for information I am certainly not bound to " do so." The learned Judge considered the earlier authorities and cited the American case of *Gelston* v. *Hoyt*, (1818) 3 Wheat. 246, in which the following words occur, " No doctrine is better established than that it belongs exclu- " sively to Governments to recognize new States in the revolutions that " may occur in the world." He concluded: " on these materials I am not " satisfied that His Majesty's Government has recognized the Soviet " Government as the Government of a Russian Federative Republic or of any " sovereign state or power." This case is, like the *Annette*, of great help in the present case because in both those cases information had been sought from a Government Department and in both cases an inconclusive answer had been given.

I must deal briefly with *Statham* v. *Statham*. There there was no certificate. Use was made of a certificate (given in another proceeding) as defining the status of the person cited, the Gaekwar of Baroda. The Judge, besides considering the certificate, considered the history of Baroda. In the end the Judge held that the Gaekwar of Baroda was not subject to the jurisdiction. The reasons for so doing are not clear. But the decision appears to be considered by the Judge to be in conformity with the certificate. To me it appears that if the Judge purported to decide in accordance with the certificate he was wrong, because the certificate says " though His Highness is thus not independent." I should have thought that independence was essential. If he purported to decide otherwise than by the certificate he was wrong also.

Consideration was given to this matter in the *Kelantan* case. It should be noted that there was in that case a conclusive certificate so that discussion on this point was obiter. There seems to have been a great divergence of opinion among the Lords who heard the case. Lord Sumner gave most space to the matter and his opinion is clearly contrary to the one I have formed. I must therefore give serious consideration. However, the other Lords do

In the Court of Appeal of the Colony of Singapore.

No. 49. Grounds of Judgment of Murray-Aynsley, C.J., Singapore, 1st November 1949—*continued.*

not seem to have agreed. He says, at p. 824: " It is the prerogative of the " Crown to recognize or to withhold recognition from States or chiefs of " States, and to determine from time to time the status with which foreign " powers are to be deemed to be invested. This being so, a foreign ruler, " whom the Crown recognizes as a sovereign, is such a sovereign for the " purposes of an English Court of Law, and the best evidence of such " recognition is the statement duly made with regard to it in His Majesty's " name. Accordingly where such a statement is forthcoming no other " evidence is admissible or needed." If the first part of the passage is correct I should have thought that such a statement would of necessity have been the only possible evidence. Later he says at p. 825: " I conceive that, if " the Crown declined to answer the inquiry, as in changing and difficult " times policy might require it to do, the Court might be entitled to accept " secondary evidence in default of the best . . ." It is submitted that in case of status (as distinct of boundaries which Lord Sumner seems to have had chiefly in mind) no other evidence is possible, because as he had said earlier, it is evidence of recognition by His Majesty's Government that is needed, not evidence of authority on the part of the ruler.

Lord Cave said at p. 808: " 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; and the precise " point at which sovereignty disappears and dependence begins may some- " times 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 a sovereign in our Courts." I should have thought that recognition or non-recognition was the only question and that, once it is conceded that the Crown can decide the question on other than legal principles, then it is clearly not a question that the Courts can decide on legal principles. No one has ever ventured to set out the legal principles on which the matter may be decided. I think the reason for the absence of authority as to the point at which sovereignty is lost by a protective alliance or by merger in a federation is that it is not a legal question at all but a political one.

Lord Findlay said, at p. 813: " 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. The judgment of Farwell, J. in *Foster* v. *Globe Venture Syndicate* seems to me to be a perfectly accurate " statement of the law and practice on this point. There are a great many " matters of which the Court is bound to take judicial cognizance, and " among them are all question as to the status . . . of foreign powers. In

" all matters of which the Court takes judicial cognizance the Court may " have recourse to any proper source of information. 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." Later he said (p. 814), " We are asked to say that it is for the Court and for " this House in its judicial capacity to decide whether these restrictions " were such that the Sultan had ceased to be a sovereign. We have no power " to enter into any such inquiry." Further he said at p. 816 : " But, as I " have said, the question is not for us at all ; it has been determined for us " by His Majesty's Government, which in such matters is the appropriate " authority by whose opinion the Courts of His Majesty are bound to " abide." It is to be noted that Lord Findlay expressly approved the judg- " ment of Farwell, J., which had been criticised by Lord Sumner.

Lord Dunedin, at p. 720, 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."

Lord Carson said, at p. 830 : " Indeed, it is difficult to see in what " other way such a question could be decided without creating chaos and " confusion, the more especially so when we consider that ' many states, " ' regarded as sovereign, do not exercise the right of self-government " ' entirely independent of other States, but have their sovereignty limited " ' and qualified in various degrees, either by the character of their internal " ' constitution, by stipulations of unequal treaties of alliance, or by treaties " ' of protection or of guarantee made by a third power.' And, in truth, it " is the recognition of the status of the Government which must be the main " element to determine this question ; the only proper evidence of which " can be supplied by the officer representing the Crown."

Considering the present case in the light of this, it must be observed that until 1945 the rulers of Johore were immune from the jurisdiction of British Courts ; the same degree of recognition had been granted to Kelantan. Presumably it would also have been granted to the other Unfederated States. The matter had never arisen in the case of any of the Federated States.

Since then the status of Johore and of its ruler has been changed twice. The first time in 1945, the second time in 1948. I think that we are only concerned with the latter, but having regard to the views I have expressed of the position of the Courts in this matter the result is the same in either case. But in any event the slightest examination of the treaties and Orders in Council that have been made in 1945 and since will show that the changes have been of such a character that earlier recognition does not necessarily imply recognition now.

In the Court of Appeal of the Colony of Singapore.

No. 49. Grounds of Judgment of Murray-Aynsley, C.J., Singapore, 1st November 1949—*continued.*

That is sufficient to dispose of the matter. Certain other matters have been raised in argument. One point taken is that as this is in substance a claim to land within the jurisdiction the question of immunity does not arise. There is no English authority on the point. The matter has been debated by theoretical writers. It seems that if suits for land within the jurisdiction do not form an exception grave difficulties might arise. But the present case is only incidentally concerned with land, and therefore not within the exception, if such an exception exists.

In view of what I have said on the question of sovereignty it is not necessary for me to go into the question of waiver. But as this Court is not unanimous I think that it is desirable that I should express my views on this point.

It must be considered whether the appellant, though exempt from the jurisdiction, had nevertheless voluntarily submitted to it. The submission in this case, if any, is by the institution of proceedings in the Japanese Court. For this it is necessary to consider what constitutes a submission. The simplest case is where an appearance is entered without protest. There must be an actual submission. An agreement to submit is not enough, nor can there be submission by estoppel or by conduct other than conduct before the Court to which the submission is made.

Where the foreign sovereign has taken proceedings the person sued can take all steps open to a litigant in ordinary cases, e.g. under the old procedure he could institute ancillary proceedings by way of a bill for discovery. If he is unsuccessful at first instance he can, I assume, appeal. I assume further that he can proceed by motion for a new trial under Order 37.

The matters alleged by the respondents in the present case are matters which would have constituted a defence to the original proceedings ; it is not therefore necessary to explore the difficult question as to the extent to which a defendant in such a case can proceed by counterclaim.

The matter has, I think correctly, been put forward on behalf of the Appellant in the form of three propositions ; that there must be identity of parties, indentity of Court, identity of proceedings. The absence of any one of these three would be decisive.

As regards parties, the defendant in the Japanese proceedings was the Japanese custodian of enemy property who allowed judgment to be given in favour of the present Appellant without any opposition. His attitude is explained by the following passage in the judgment of the Japanese judge : " His Excellency the Mayor of Syonan was represented by his Deputy " Custodian of Enemy Property and the attitude which he takes is this : " in his view, this is a *prima facie* enemy property and as such the Custodian " can dispose of it in any manner that he thinks fit and proper." That is, the property was regarded as loot which the Japanese Government could give away to whom they chose. There was no question of representation of the absent owners. The Respondents would not be bound.

As regards the identity of the Court, it should be noted that there have been established in this city three distinct Courts. Before the Japanese conquest there was the Supreme Court of the Straits Settlements. During

the period of their occupation the Japanese purported to annex the Settlement of Singapore and treated it as Japanese territory. They established a court which took the place of the existing Supreme Court but it was a Japanese Court and the proceedings were in the name of the Emperor of Japan. None of the previous Judges functioned. The Japanese appointed a Japanese Judge and several others. The old procedure was followed and in some cases also the existing law. In the proceedings under review the existing law of the Straits Settlements was deliberately not applied.

After the re-occupation and a period of military rule a third Court was established. By the Singapore Order in Council a Supreme Court of Singapore was created. By Clause 44 it was provided as follows :—

> All proceedings (other than proceedings in the Prize Court) commenced before the 15th day of February, 1942, in any Court of Justice in or having jurisdiction in, the territory comprised in the Colony may be carried on in like manner as nearly as may be, as if this Order and the Act of 1946 had not been made or passed but in the corresponding Court of the Colony, and any such proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of the Act of 1946 and of this Order.

It will be seen that there was no analogous provision with regard to proceedings before the Japanese Court. It was only by reason of special statutory provision in the Japanese Judgments and Civil Proceedings Ordinance that the new Supreme Court could take any cognizance of Japanese judgments except possibly as foreign judgments.

By that Ordinance Japanese proceedings were not adopted *en masse*. A certain validity was given in individual cases on application being made.

In these circumstances I am unable, in spite of the views of the learned Judge who tried the case at first instance, to consider the present Supreme Court as the same Court as that which functioned during the Japanese occupation.

The third proposition enunciated on behalf of the Appellant is that the proceedings must be the same. These proceedings are of a special character based on status, i.e. section 3(1) of the Ordinance above mentioned. Apart from that statute these proceedings could not have been taken at all. It should be noted that it enables "any person aggrieved . . . to apply." This is the present case. It seems to me that this must be as far as the present Court is concerned a new proceeding. Before an application is made there is nothing before the Court at all. It seems to me to be as new as proceedings to enforce a foreign judgment. It it were to be regarded as a continuation of existing proceedings statutory provision to that effect would have to be made. I do not think that this turns on any technicality such as the fact that by the rules made under the Order the Respondents had to proceed by originating summons, or the fact that they effected service on the Appellant and not on the solicitor on the record of the Japanese proceedings.

In the Court of Appeal of the Colony of Singapore.

No. 49. Grounds of Judgment of Murray-Aynsley, C.J., Singapore, 1st November 1949—*continued.*

On the assumption that these three propositions represent an accurate view of the law I do not consider that there has been any submission by the Appellant to the jurisdiction.

I should like to call attention to a point of practice. It is clear from Order 55 r. 7 that unless the Respondent to an appeal wishes to have the decision of the Court below varied he is not obliged to give any notice of a cross appeal. He is nevertheless entitled to support the decision on grounds other than those given in the judgment appealed from. Some difficulty seems to have been caused by certain observations in the case of *Lee Quee Siew* v. *Lim Hock Siew* (3 S.S.L.R. at p. 85). If the Judges there intended to lay down anything to the contrary we consider that their ruling is no longer law. Appeal dismissed with costs.

Sd. C.M. MURRAY-AYNSLEY,
Chief Justice, Singapore.

True copy.

Singapore, 1st Novr., 1949.

Sd. A. F. FERNANDEZ,
Private Secretary to the Chief Justice, Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949.

No. 50.

Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya.

Cor : MURRAY-AYNSLEY, C.J., Singapore ; WILLAN, C.J., Fed. of Malaya ; EVANS, J.

This is an appeal from the decision of Gordon Smith J. on a summons in chambers to set aside and stay proceedings brought against His Highness the Sultan of Johore (hereinafter in this judgment referred to as " the Sultan ") in the High Court of the Colony of Singapore, on the ground that the Sultan is a sovereign ruler.

The facts are as follows :—

(1) On the 1st December, 1903, the Sultan by an Indenture of Conveyance, conveyed to his wife (described in that Indenture as Inche Rygiah) two pieces of land situate in the Island of Singapore.

No. 50.
Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949—
continued.

(2) In 1926 Inche Rugiah died intestate and letters of administration to her estate were granted by the Supreme Court of the Straits Settlements to Tungku Abubakar, son of the Sultan and Inche Rugiah. Tunkgu Abubakar, as her son, was entitled under the intestacy to three-fourths of her estate, and the Sultan, as her husband, to the remaining one-fourth.

(3) On the 22nd of December, 1926, by an Indenture of Settlement made between the Sultan and Tungku Abubakar, these two pieces of land were conveyed to the Sultan upon the trusts therein declared, and the Sultan declared that he would stand possessed of the property upon trust for the eldest daughter of the said Tungku Abubakar during her life, and after her decease upon trust for any of her issue living at her decease. By various deeds these lands became vested in three trustees—Tungku Abubakar, Henry Walter Cowling and George Herbert Garlick (hereinafter in this judgment referred to as " the Trustees ").

(4) During the Japanese occupation of Malaya, when none of the Trustees was present in Malaya, the Sultan applied by Originating Summons No. 24 of 2605 (1945 A.D.) dated the 3rd of May 2605, to the Court of a Judge at Syonan (Singapore) asking for the construction of the terms of the two Indentures dated the 1st December, 1903, and the 22nd December, 1926, more particularly as to whether such Indentures had been properly and lawfully executed since the parties thereto were Mohammedans, and whether, according to Mohammedan law, such Indentures were " bad and void." In the event of such Indentures being declared invalid the Sultan asked for an order that the two pieces of land should revert to him.

The Japanese Custodian of Enemy Property was cited as defendant to that application, but he did not appear at the hearing, which was *ex parte*.

(5) That application was heard on the 18th of June, 2605, by an Advocate and Solicitor of the Supreme Court of the Straits Settlements, who had been appointed a Judge by the Japanese Military Authorities as the Occupying Power. He declared in his judgment that the said two Indentures were invalid and ordered that the land should revert to the Sultan as sole beneficial owner thereof.

(6) The Sultan extracted that Court order and registered it against the two pieces of land during the Japanese occupation.

(7) On the 14th April, 1947, the Trustees applied in the High Court of the Colony of Singapore by Originating Summons No. 23 of 1947 under the Japanese Judgments and Civil Proceedings Ordinance, 1946, for an order that the decree obtained by the Sultan during the Japanese Occupation be set aside or, alternatively, that they should be allowed to appeal against that decree on the grounds that—

(*a*) the necessary parties did not appear personally in the proceedings leading up to that decree and that the Trustees were represented by a person appointed by some Japanese Authority and that such person did not appear on the hearing of those proceedings ;

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J. Federation of Malaya, 1st November 1949—*continued.*

(*b*) such decree is based on principles unknown to the existing laws of the Colony of Singapore ; and

(*c*) such decree is erroneous and bad in law.

(8) On the 11th October, 1947, the Sultan applied by summons in chambers to set aside all proceedings and stay all further proceedings on the Originating Summons filed by the Trustees on the ground that he is a sovereign ruler and therefore not subject to the jurisdiction of the Court of the Colony of Singapore.

(9) That Summons in Chambers was heard in open Court by Gordon Smith, J., who delivered judgment on the 7th April, 1949, and held :—

(*a*) That the Sultan is a sovereign ruler and, as such, is not subject to the jurisdiction of the Supreme Court of the Colony of Singapore, unless he had submitted to such jurisdiction.

(*b*) That the Sultan did submit to the jurisdiction of that Court by presenting Originating Summons No. 24 of 2605 and obtaining a decree thereon because Originating Summons No. 23 of 1947, filed by the Trustees, is not a new proceeding, but a continuation authorised by the Japanese Judgments and Civil Proceedings Ordinance, 1946, of the proceedings commenced by Originating Summons No. 24 of 2605, filed by the Sultan.

(10) The Sultan appealed against finding (*b*), and on the hearing of the appeal the Trustees, as Respondents to the appeal, contended that finding (*a*) is wrong.

Accordingly, the two points for decision in this appeal are :—

(A) Is the Sultan a sovereign ruler and, as such, immune from the jurisdiction of the Supreme Court of the Colony of Singapore ?

(B) If the answer to question (A) is in the affirmative has the Sultan waived his privileges as a sovereign ruler ?

On the hearing of the appeal, Mr. Shearn, with him Mr. Seth, appeared for the Sultan, and Mr. Murphy for the Trustees.

After the appeal had been filled by the Sultan, the Trustees gave notice of cross-appeal regarding the finding by Gordon Smith J., that the Sultan is a sovereign ruler. Such notice purported to be given under 0.55 r. 7 of the Rules of the Supreme Court, which reads :—

" 7. (1) It shall not be necessary for a respondent to give " notice of appeal, but if a respondent intends, upon the hearing " of an appeal, to contend that the decision of the Court below " should be varied, he shall, within ten clear days before the sitting " of the Court of Appeal, give notice of cross-appeal, specifying the " grounds thereof, to the appellant, and any other party who may " be affected by such notice, and shall file a copy of such notice, " accompanied by copies thereof for the use of the Judges of the " Court of Appeal.

" (2) If he fails to give such notice within the time prescribed, " he shall not be allowed, except by leave of the Court, to contend " on the hearing of the appeal that the decision of the Court below " should be varied ; but the Court may in its discretion, and subject " to terms as to costs, adjournment or otherwise, hear any such " contention."

Mr. Murphy stated that notice of cross-appeal had only been given on account of the decision in *Lee Quee Siew* v. *Lim Hock Siew*, 3 S.S.L.R. 80, which decided under section 8 of the Straits Settlements Civil Appeals Ordinance, 1893—similar in terms to O.55 r. 7—that if a respondent desired to support the judgment of a Court of first instance on legal grounds which the Court below decided in favour of the appellant, the respondent must give notice by way of cross-appeal to the appellant.

Both Mr. Shearn and Mr. Murphy agreed that where a respondent desires to support a decision of the Court below on a ground which has been decided in favour of the appellant, such respondent can do so without filing any notice of cross-appeal because he would not be seeking to vary the *decision* of the Court below. That being so it was open to the Trustees to submit to this Court, irrespective of any cross-appeal, that the decision of Gordon-Smith J. could be supported on the ground that the Sultan is not a sovereign ruler.

In my view the decision in the case of *Lee Quee Siew* v. *Lim Hock Siew* (supra) is not good law and should not be followed.

Before discussing the two questions (A) and (B) set out above, it is necessary to describe the recent constitutional changes which have taken place in Singapore.

Prior to the Japanese occupation of Malaya Singapore was part of the Straits Settlements, and its Court of record was known as the Supreme Court (that is the Court of Appeal and the High Court) of the Straits Settlements.

The Japanese occupied Singapore and the rest of Malaya from February, 1942, to the beginning of September, 1945. This was followed by a period when Singapore and the rest of Malaya were administered by a British Military Administration.

On the 1st April, 1946, a separate and new Colony was created by the Singapore Colony Order in Council, 1946. That Colony is known as the Colony of Singapore. By section 14 of the Order in Council the Supreme Court of the Colony of Singapore was established, and that is the Court which has been functioning in the Colony of Singapore since the 1st April, 1946.

The connecting link between proceedings in the former Supreme Court of the Straits Settlements and those in the Supreme Court of the Colony of Singapore is supplied by section 44 of the Order in Council which reads :—

" All proceedings (other than proceedings in the Prize Court) " commenced before the 15th day of February, 1942, in any Court

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949—*continued.*

" of Justice in or having jurisdiction in, the territory comprised in " the Colony may be carried on in like manner as nearly as may be, " as if this Order and the Act of 1946 had not been made or passed, " but in the corresponding Court of the Colony and any such " proceeding may be amended in such manner as may appear " necessary or proper in order to bring it into conformity with the " provisions of the Act of 1946 and of this Order."

As regards the Court which pronounced the decree in favour of the Sultan during the Japanese occupation, Gordon Smith J. found that " it is exactly the same Court that is continuing to function today." In other words, he found that the High Court functioning in Singapore during the Japanese occupation is exactly the same Court as the High Court of the Colony of Singapore. He came to this conclusion because, to use his own words :—

" Although the Japanese may have called the Court by a " slightly different name, there is no evidence or information before " me that they passed any amending legislation whatsoever either " altering the name of the previous High Court or making any " alteration in its constitution, jurisdiction or powers or its pro- " cedure, and I understand that such Court, certainly in its civil " jurisdiction, carried on exactly the same as prior to the surrender, " with many of the same personnel employed as previously. The " Judge who gave the decision was previously a practising Advocate " of the Colony and was appointed to be a Judge by the Japanese, " and similar appointments had been made prior to the surrender " and have been made since the re-occupation."

Admitting all those facts stated I am unable to agree with the finding thereon.

When a country is occupied, the Occupying Power imposes his will in place of the legitimate Government. In Hall's International Law, 6th edition, the learned author, at page 465, states :—

" On occupying a country an invader at once invests himself " with absolute authority ; and the fact of occupation draws with " it as of course the substitution of his will for previously existing " law whenever such substitution is reasonably needed, and also " the replacement of the actual civil and judicial administration " by military jurisdiction."

Again, at page 471 of the same work, the following passage appears :—

" It has been seen that the authority of the local civil and " judicial administration is suspended as of course as soon as " occupation takes place."

The Japanese Military Authorities interned all the Judges of the Supreme Court of the Straits Settlements and replaced them by their own appointees. But, admitting all the facts stated by Gordon Smith J. in his judgment, the High Court which functioned in Singapore during the Japanese

Occupation was the Court of the Occupying Power—i.e. a Japanese Court, which functioned under the will of that Occupying Power, and, in my opinion it is not the same Court as the High Court of the Colony of Singapore. I have thought it convenient to state this at the beginning of this judgment before I come to deal with the two questions (A) and (B) set out above.

As regards question (A), that is whether the Sultan is a sovereign ruler and, as such, immune from the jurisdiction of the Supreme Court of the Colony of Singapore, I must first make reference to certain correspondence with His Majesty's Secretary of State for the Colonies.

Prior to the hearing of the Summons in Chambers dated the 11th October, 1947, the Judge in the Court below enquired from the Secretary of State whether the Sultan was or was not an independent sovereign ruler. As a result of that enquiry two letters in reply were received from the Secretary of State, the first dated the 9th June, 1948, and the second dated the 12th November, 1948. These two letters are set out in extenso in an Appendix to the judgment of Gordon Smith J. It is sufficient to say that neither of those two letters gives an unequivocal answer to the question put.

On the 28th June, 1949, when this appeal was pending, the Sultan himself wrote the following letter to the Secretary of State :—

" Dear Mr. Creech Jones,

" On the 9th June, 1948, you wrote to the Hon. Mr. Justice T. A. Brown, of Singapore, with regard to my status as an Independent Sovereign Ruler, in connection with certain Proceedings taken in my country." (This is obviously a mistake—the proceedings were taken in the Colony of Singapore). " That " letter was unfortunately couched in very vague terms, and " merely stated facts known to everybody, but without expressing " any opinion as to their effect upon my position.

" It is extremely important that I should now have a letter, " or certificate, from you stating in unequivocal terms, that, " under existing Agreements with His Majesty, I am an independent Ruler, and recognised as such by His Majesty. There can, " I take it, be no question about this, and I shall be grateful if " you can let me have such a letter as I require at your earliest " convenience.

" An appeal from the Proceedings in Johore " (*sic*) " is due " to come on for hearing about the 18th July next, and it is vital " that my Legal Advisers should have the letter in their hands " before that date.

" Sincerely Yours,

" Sd. IBRAHIM."

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949— *continued.*

The Sultan received the following reply from the Secretary of State for the Colonies, dated the 11th July, 1949 : –

" Your Highness,

" Thank you for your letter of the 28th June. I had waited " for your arrival in this country to reply to your letter of the " 3rd April on the subject of your Highness's status.

" Your Highness will know that on the certificate which I " gave to the Court Mr. Justice Gordon Smith found that you " enjoy your former status of a sovereign ruler. This seems " clearly to mean that you are an independent sovereign (subject " to the limitations mentioned by the Judge), and His Majesty's " Government, of course, accept the ruling. I trust that Your " Highness will now regard the matter as satisfactorily settled. " I am informed that the only matter which is now *sub judice* in " the lawsuit in which Your Highness is concerned is the question " whether Your Highness has submitted to the jurisdiction of the " Court, so that the question of your sovereignty appears to be no " longer an issue in the proceedings.

" Yours Sincerely,

" Sd. A. CREECH JONES."

At the hearing of this appeal Mr. Shearn read these two letters and claimed that the reply from the Secretary of State for the Colonies showed conclusively that His Majesty's Government recognised the Sultan as an independent sovereign.

Mr. Murphy disputed this and suggested, that in order to clarify the position, this Court should address an inquiry to the Secretary of State for the Colonies. Mr. Shearn did not object to this course. Accordingly this appeal was adjourned for the President of the Court to make this inquiry, which he did by letter dated the 29th July, 1949, addressed to the Secretary of State for the Colonies containing the following question :—

" Does your letter Y of the 11th July, 1949, mean that His " Majesty's Government recognises His Highness the Sultan of " Johore as an independent sovereign ? "

On the 20th August, 1949, the Secretary of State replied to the question in the following terms :—

" Sir,

" I have the honour to refer to your letter of the 29th July, " 1949, and to state as follows :—

" Subsequent to my letter of the 11th July, there was further " correspondence regarding the status of His Highness and I " enclose copies of a letter addressed to him on the 13th July, and

" four letters dated respectively the 13th, 18th, 18th and 27th " July, which passed between His Highness's solicitors and the " Colonial Office.

" On the 9th May, I was informed that His Highness the " Sultan of Johore had lodged an appeal in these proceedings, but " that the time for lodging appeals had expired on the 28th April, " and that there was no cross-appeal on the question of " sovereignty. I concluded therefore that that question could no " longer be *sub judice*. It was only on the 23rd July that (in " response to a telegraphic enquiry made by myself on receipt of " the letter of the 18th July from His Highness's solicitors) I was " informed officially that a cross-appeal on the question of sover- " eignty had been filed. It will be appreciated, therefore, that my " letter of the 11th July to His Highness the Sultan was written " under a misapprehension. It was not intended to convey more " than that His Majesty's Government accepted the decision of " the Court, which I believed was not being further contested, and " the letter was not intended to affect the decision of any higher " Court before whom the question might come on appeal.

" I have, etc.,

" Sd. A. CREECH JONES."

Accordingly this Court is in the same position as Gordon Smith J. was in the Court below, i.e. that there is no unequivocal answer from His Majesty's Government as to the status of the Sultan.

The first point I must deal with on this question of sovereignty is the contention of Mr. Murphy that Gordon Smith J. was wrong in holding that the material time when the status of the Sultan should be determined is when the proceedings brought by him objecting to the jurisdiction of the Court (the Summons in Chambers dated the 11th October, 1947) were heard in the Court below on the 15th to 18th March, 1949. Mr. Murphy argued that the learned trial Judge should have determined the status of the Sultan on the 28th August, 1947, the date on which the Originating Summons of the 14th April, 1947, filed by the Trustees, was served.

The significance and importance of this is that on the 1st February, 1948, there was a change in the constitution of the territory now known as the Federation of Malaya. Prior to that date this territory was known as the Malayan Union (of which the State of Johore was a part) established under the Malayan Union Order in Council, 1946. On the 1st February, 1948, the Malayan Union Order in Council, 1946, was revoked by the Federation of Malaya Order in Council, 1948, and from that date the State of Johore became a part of the Federation of Malaya established by Clause 3 of the Federation of Malaya Agreement, 1948.

Mr. Murphy stated that he could not produce any authority exactly in point, but relied mainly on the following two passages from the judgments

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949— *continued.*

in *Mighell* v. *Sultan of Johore*, (1894) 1 Q.B. 149. The first, at page 155, reads :—

> " If anything turned upon the question of fact, I should say " that it was not shewn that in August, 1893, when this writ was " issued, he was here otherwise than as a sovereign prince."

The second, at pages 163 and 164, reads :—

> " The passage cited from Vattel by Lopes L.J., is emphatic " on this very point, and shows that the time at which immunity " is to be waived must be when an action is brought against a " foreign sovereign, and when it is brought to the attention of the " Court by reason of its judicial knowledge or from other informa- " tion that the person sued is a foreign sovereign. I should put it " thus : the foreign sovereign is entitled to immunity from civil " proceedings in the Courts of any country, unless upon being sued " he actively elects to waive his privilege and to submit to the " jurisdiction."

Mr. Shearn, on the other hand, cited the case of *In re the Republic of Bolivia Exploration Syndicate Limited* (1914), 1 Ch. 139. At page 155, Astbury J. explains the meaning of the second passage in *Mighell* v. *Sultan of Johore*, set out above, and also explains a passage from the judgment of Lopes L.J. at page 161 of the same case. The explanation given by Astbury J. reads :—

> " Lopes L. J. said ' In my judgment the only mode in which a " ' sovereign can submit to the jurisdiction is by a submission in " ' the face of the Court, as, for example, by appearance to a writ.' " He does not, of course, mean by mere appearance, but by " appearance and subsequent proceedings. Kay L. J. said ' The " ' foreign Sovereign is entitled to immunity from civil proceedings " ' in the Courts of any other country, unless upon being sued he " ' actively elects to waive his privilege and to submit to the " ' jurisdiction.' "

In my view the emphasis is on the words " unless upon being sued he actively elects to waive his privilege and to submit to the jurisdiction."

How can it be said in this case that the Sultan did that ? The facts are that he took active steps to claim that he was an independent sovereign immune from the jurisdiction of the Court of the Colony of Singapore, by taking out a summons in chambers disputing such jurisdiction when he had been served with the Originating Summons filed by the Trustees.

Further, reverting to the second passage from the judgment in *Mighell* v. *Sultan of Johore* set out above, I would draw particular attention to the following part of that passage—

> " shews that the time at which immunity is to be waived must be " when an action is brought against a foreign sovereign, and when " it is brought to the attention of the Court by reason of its judicial

" knowledge or from other information that the person sued is a " foreign sovereign."

In this case it was brought to the attention of the Court that the Sultan was claiming to be a sovereign when the papers, that is the Summons in Chambers filed by the Sultan, were sent from the Supreme Court Registry to the trial Judge for him to hear and determine this matter. Therefore the trial Judge's attention was brought to bear on it at that time and not earlier.

To hold, as Mr. Murphy wishes me to do, would mean, as instanced by Mr. Shearn, that if an action was commenced against the Crown Prince of a country whilst he was Crown Prince, and, prior to the hearing of the action he succeeded to the throne of that country on the death of the previous sovereign ruler, he would not be able to claim privilege from the jurisdiction of the Court as a sovereign ruler. This would be contrary to the comity of nations.

In my view this particular question is put beyond doubt by the decision in the case of *Aksionairnoye Obschestvo A. M. Luther* v. *James Sagor and Co.*, (1921) 3 K.B. 532. That was an appeal against the decision of Roche J., reported at (1921) 1 K.B. 456, who held that on the materials supplied to him by His Majesty's Government he was not satisfied that that Government recognised the Government of the Soviet Republic. At the hearing of the appeal preferred against that decision further materials were produced before the Court of Appeal showing that after the decision of Roche J. and before the hearing of the appeal His Majesty's Government did recognise the Government of the Soviet Republic. On that ground the Court of Appeal reversed the decision of Roche J. That case is fatal to the argument put forward by Mr. Murphy.

As regards the materials on which the Court should decide whether the Sultan is a sovereign ruler or not, Mr. Murphy contended that the Court is not entitled to go beyond the letters addressed by the Secretary of State for the Colonies to the Court below and to this Court—i.e. the three letters already referred to dated the 9th June, 1948, the 12th November, 1948, and the 20th August, 1949. His argument was that since in none of those letters has the Secretary of State for the Colonies stated unequivocally that His Majesty's Government recognises the Sultan as a sovereign ruler—which is true—the Court has no power to go outside those letters. In short, Mr. Murphy's contention was that if there is no conclusive certificate showing recognition by His Majesty's Government, the Court has no power to decide the question.

Although the Federation Agreement, 1948, and the Johore Agreement, 1948, are mentioned in, and copies thereof enclosed with, the first letter from the Secretary of State for the Colonies dated the 9th June, 1948, Mr. Murphy argued that the Court is not entitled to look at those Agreements in deciding this question of sovereignty.

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949— *continued.*

In support of his arguments Mr. Murphy referred to the following passage from the judgment of Lord Esher, M.R. in *Mighell* v. *Sultan of Johore*, (1894) 1 Q.B. 149, at page 158 :—

" The first point taken was that it was not sufficiently shewn " that the defendant was an independent sovereign ruler. There " was a letter written on behalf of the Secretary of State for the " Colonies, on paper bearing the stamp of the Colonial Office, and " which clearly came from the Secretary of State for the Colonies " in his official character. He is in colonial matters the adviser " of the Queen, and I think the letter has the same effect for the " present purpose as a communication from the Queen. It was " argued that the Judge ought not to have been satisfied with " that letter, but to have informed himself from historical and " other sources as to the status of the Sultan of Johore. It was " said that Sir Robert Phillimore did so in the case of The Charkieh. " I know he did ; but I am of opinion that he ought not to have " done so ; that, when once there is the authoritative certificate " of the Queen through her minister of state as to the status of " another sovereign, that in the Courts of this country is decisive."

Mr. Murphy also referred to the following passage from the judgment in *Aksionairnoye Obschestvo A. M. Luther* v. *Sagor*, (1921) 1 K.B. 456, at pages 473 and 474 :—

" The proper source of information as to a foreign power, its " status and sovereignty, is the Sovereign of this country through " the Government : *Mighell* v. *Sultan of Johore* ; *Foster* v. *Globe* " *Venture Syndicate*. In the case of The Charkieh Sir Robert " Phillimore had recourse to other sources of information in order " to determine a question arising in the year 1873 as to the status " and sovereignty of the Khedive of Egypt, but in the opinion of " Lord Esher, expressed in his judgment in *Mighell* v. *Sultan of* " *Johore*, this course was wrong. At all events, even if I were " entitled to look elsewhere for information I am certainly not " bound to do so, and in this case I know of no other sources of " information available to which I can safely or properly resort.

" I therefore propose to deal with the case upon the informa- " tion furnished by His Majesty's Secretary of State for Foreign " Affairs. The attitude proper to be adopted by the Courts of this " country with regard to foreign governments or powers I under- " stand to be as follows : (1) If a foreign government is recognised " by the Government of this country the Courts of this country may " and must recognise the sovereignty of that foreign government " and the validity of its acts : see *Republic of Peru* v. *Dreyfus* " and the cases there cited. (2) If a foreign government, or its " sovereignty, is not recognised by the Government of this country " the Courts of this country either cannot, or at least need not, " or ought not, to take notice of, or recognise such foreign govern-

" ment or its sovereignty. This negative proposition is, I think, " also established and recognised by the judgment of Kay J. in " *Republic of Peru* v. *Dreyfus.*"

Mr. Shearn, in replying to the contention advanced by Mr. Murphy, relied principally on the opinion of Lord Sumner in *The Duff Development Company Limited* v. *Kelantan Government*, (1924) A.C. 797. The following passage appears in that opinion, at pages 823, 824 and 825 :—

" The status of foreign communities and the identity of the " high personages who are the chiefs of foreign states, are matters " of which the Courts of this country take judicial notice. Instead " of requiring proof to be furnished on these subjects by the " litigants, they act on their own knowledge or, if necessary, obtain " the requisite information for themselves. I take it that in so " doing the Courts are bound, as they would be on any other issue " of fact raised before them, to act on the best evidence and, if " the question is whether some new State or some older State, " whose Sovereignty is not notorious, is a sovereign State or not, " the best evidence is a statement, which the Crown condescends " to permit the appropriate Secretary of State to give on its behalf ". . . Accordingly where such a statement is forthcoming no other " evidence is admissible or needed. . . . There may be occasions " when for reasons of State full, unconditional or permanent " recognition has not been accorded by the Crown, and the answer " to the question put has to be temporary if not temporising, or " even when some vaguer expression has to be used. In such cases " not only has the Court to collect the true meaning of the com- " munication for itself, but also to consider whether the statements " as to sovereignty made in the communication and the expres- " sions ' sovereign ' or ' independent ' sovereign used in the legal " rule mean the same thing. Best, C.J. says in *Yrisarri* v. *Clement* " that recognition is conclusive, but, if there is no recognition yet " given, the independence becomes a matter of proof. I conceive " that, if the Crown declined to answer the inquiry, as in changing " and difficult times policy might require it to do, the Court might " be entitled to accept secondary evidence in default of the best " subject, of course, to the presumption that, in the case of a new " organisation, which has de facto broken away from an old State, " still existing and still recognised by His Majesty, the dominion " of the old State remains unimpaired until His Majesty is pleased " to recognise the change."

It should be noted that in that part of his opinion Lord Sumner approved of the judgment of Best, C.J. in *Yrisarri* v. *Clement*, 172 E.R. 101. At page 102 Best, C.J. said :—

" If a foreign state is recognised in this country, it is not " necessary to prove that it is an existing state ; but if it is not so " recognised, such proof becomes necessary."

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949—*continued.*

Mr. Shearn also cited the case of *Statham* v. *Statham and the Gaekwar of Baroda*, (1912) P. 92, where the judge did not restrict his inquiries to the certificate from the India Office. Mr. Murphy suggested that case had been over-ruled but could produce no authority for that suggestion.

Reverting to the first case cited by Mr. Murphy—*Mighell* v. *Sultan of Johore*—there was in that case a conclusive certificate from the Secretary of State for the Colonies that the then Sultan of Johore was an independent sovereign ruler. That case decided that once there is such a conclusive certificate the Court is bound by it, and it is not an authority for the contention put forward by Mr. Murphy.

As regards the case of The Charkieh, L.R. 4 A. & E. 59, mentioned in the passage set out above from the judgment in *Mighell* v. *Sultan of Johore* (*supra*) cited by Mr. Murphy, that case is explained by Lord Sumner in the Duff Development case (*supra*) at page 825 as follows :—

> " In the Charkieh the Foreign Office returned a definite and " unambiguous answer that the Crown had never recognised the " Khedive Ismail or his predecessors as sovereigns, but only as " provincial authorities, albeit hereditary ones, who derived their " authority and status from the Sultan of Turkey. This was con- " clusive, and hence it is that Brett M.R. indicated his opinion " that the further inquiries made by Sir R. Phillimore were un- " necessary. In the present case there is a precise and sufficient " statement as to the status of the Sultan of Kelantan, as recog- " nised by His Majesty, with nothing ambiguous about it."

Mr. Shearn pointed out, and I agree with him, that the case of *Aksionairnoye Obschestvo A. M. Luther* v. *Sagor* (*supra*) cited by Mr. Murphy, is one of a series of cases which may be termed " revolutionary cases " and deals with conditions in which a new state takes the place of an old state (the old state having been formerly recognised as a sovereign state) and the question of recognition of such new state. On this Roche J. said, in that case, at pages 475 and 476 :—

> " On the general proposition the Courts of the United States " appear to take the same view as our Courts. The Supreme Court " in *Gelston* v. *Hoyt* laid down the law as follows : ' No doctrine " ' is better established than that it belongs exclusively to govern- " ' ments to recognise new States in the revolutions which may " ' occur in the world ; and until such recognition, either by our " ' own Government, or the Government to which the new State " ' belonged, Courts of Justice are bound to consider the ancient " ' state of things as remaining unaltered.' "

I conclude that none of the cases cited by Mr. Murphy is an authority for the proposition that where the certificate from a Secretary of State is not conclusive the Court is precluded from looking to other evidence. In my view such a proposition is negatived by the opinion of Lord Sumner to

which I have already made reference, and I propose to follow that opinion. Accordingly this contention of Mr. Murphy fails.

Having disposed of those two preliminary points raised by Mr. Murphy, I now come to consider whether the Sultan is or is not an independent sovereign.

At page 115 of Oppenheim's International Law, 6th edition, the following statements appear :—

> " A State in its normal appearance does possess independence " all round, and therefore full sovereignty. Yet there are States " in existence which do not possess full sovereignty, and are there- " fore named not-full sovereign States. All States which are under " the suzerainty or under the protectorate of another State, or are " member-States of a so-called Federal State, belong to this group ". . . That they cannot be full, perfect and normal subjects of " international law there is no doubt. But it is wrong to maintain " that they have no international position whatever, and can never " be members of the Family of Nations at all. . . . Their monarchs " enjoy the privileges which, according to the Law of Nations, " the Municipal Laws of the different States must grant to the " monarchs of foreign States. No other explanation of these and " similar facts can be given except that these not-full sovereign " States are in some way or another international Persons and sub- " jects of International Law. Such imperfect International " Personality is, of course, an anomaly ; but the very existence of " States without full sovereignty is an anomaly in itself."

At pages 174 and 175 of the same work the following passage appears :—

> " Heads of States and Governments of Protectorates enjoy " the usual jurisdictional immunities in the Courts of the protecting " State and, probably, in those of other States. The protectorate " is not considered a mere portion of the protecting State."

In the opinion of Viscount Finlay in the *Duff Development* case (supra), the following passage appears at page 814 of the report :—

> " The question put was as to the status of the ruler of Kelan- " tan. 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."

Bearing in mind those statements and the opinion of Viscount Finlay, I turn now to a consideration of the letters from the Secretary of State for

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949—*continued.*

the Colonies dated the 9th June, 1948, and the 12th November, 1948, the Johore Agreement, 1948, and the Federation of Malaya Agreement, 1948.

The first letter states that His Majesty's Government recognises the Sultan as the Ruler of the State of Johore and that, as such, he exercises attributes of sovereignty. It goes on to refer to *Mighell* v. *Sultan of Johore* (*supra*) and to state that the independence of the State of Johore and the sovereignty of its ruler, as recognised in that case, are subject to the Johore Agreement, 1948, the Federation of Malaya Agreement, 1948, and generally upon the position of the State of Johore as a member of the Federation of Malaya.

The second letter of the 12th November, 1948, does not add much to the first letter, but it does state, in paragraph 2 thereof, that before the 20th October, 1945 (which was the date on which the Agreement was entered into between His Majesty's Government and the Sultan of Johore which resulted in the establishment of the Malayan Union under the Malayan Union Order in Council, 1946) His Majesty had no jurisdiction in Johore.

There is no dispute that during the existence of the Malayan Union—i.e. from the 1st April, 1946, to the 1st February, 1948, the Sultan was not an independent Sovereign, but there is no need to consider that further because the Malayan Union is now defunct, having been replaced by the Federation of Malaya.

In my view the starting point for the consideration of the present status of the Sultan is clause 9 of the Johore Agreement, 1948, which reads :—

> " The prerogatives, power and jurisdiction of His Highness " within the State of Johore shall be those which His Highness the " Sultan of Johore possessed on the 1st day of December, 1941, " subject nevertheless to the provisions of the Federation Agree- " ment and this Agreement."

The marginal note to that clause reads :—

> " Sovereignty of the Ruler."

From that clause it is clear that unless there is anything in the Johore Agreement, 1948, and/or the Federation Agreement, 1948, which destroys the independent sovereignty which His Majesty's Government, by the letter from the Secretary of State for the Colonies dated the 12th November, 1948, admitted was formerly possessed by the Sultan, the Sultan is still an independent sovereign.

That being so I turn now to a consideration of the provisions of those two agreements.

I deal first with the Johore Agreement, 1948. In the third recital thereto reference is made to the fact that the Sultan has subjects.

In the fourth recital provision is made for the constitutional development of the State of Johore " under the protection of His Majesty." The passages I have already cited from Oppenheim make it clear that the fact

that the State of Johore is under the protection of His Majesty does not destroy the sovereignty of the Sultan.

Clause 3 gives His Majesty control over defence and foreign affairs. Control of these two matters was provided for in the treaty made between the then Sultan of Johore and Her Majesty the Queen on the 11th December, 1885, to which reference is made in *Mighell* v. *Sultan of Johore* (*supra*), at page 150 of the report, and that did not prevent the then Secretary of State for the Colonies from giving an authoritative certificate that the then Sultan of Johore was an independent sovereign. Further, in the passage cited above from the opinion of Viscount Finlay in the *Duff Development* case (*supra*), it is specifically stated that complete control of foreign affairs by the protecting power does not destroy the sovereignty of the protected power.

By clause 9 the Sultan undertakes to govern the State of Johore in accordance with the provisions of a written Constitution which must be in conformity with the Johore Agreement, 1948, and the Federation Agreement, 1948.

That written constitution was promulgated on 1st February, 1948, and published in the Johore Government Gazette of the 5th February, 1948. It was made by the Sultan with the advice of His Council of Ministers and and with the advice and consent of his Council of State, the British Adviser Johore, being a member of such Council.

Article II thereof defines who are subjects of the Sultan; Article III states that the executive authority in the State shall be exercised by the Sultan; Article V provides that the choice of the Mentri Besar (Prime Minister) shall be the absolute right of the Sultan; Article XVIII provides that the Sultan may act in opposition to the State Executive Council; by Article XXXIV no Bill passed by the Council of State can become law until the Sultan has assented to it, and even when the Council of State has passed a Bill the Sultan is empowered to refuse to assent to it. I have no doubt there is nothing in the Johore Agreement, 1948, which negatives the independent sovereignty of the Sultan.

This brings me to the consideration of the Federation of Malaya Agreement, 1948. Clause 155 thereof reads :—

> " Save as expressed herein, this Agreement shall not affect " the sovereignty and jurisdiction of Their Highnesses the Rulers " in their several States."

The marginal note to that clause reads :—

> " Sovereignty and jurisdiction of Their Highnesses the " Rulers."

The immediately preceding clause 154, the marginal note to which is " Power reserved to His Majesty," reads :—

> " Nothing in this Agreement shall affect the power of His " Majesty or the Imperial Parliament to make laws from time to " time relating to the defence or external affairs of the Federation,

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya. 1st November 1949—*continued.*

" or shall affect His Majesty's sovereignty and jurisdiction in and " over the Settlements."

Mr. Murphy drew attention to the difference in wording between the two clauses, pointing out that nothing in the Agreement affects the sovereignty of His Majesty whereas as regards the Sultans the words used are " save as expressed herein." The explanation for the difference in wording is apparent when one bears in mind that by clause 4 of the Agreement, His Majesty in respect of Johore (and the other Malay States comprising the Federation) has complete control over defence and foreign affairs, which affects but does not destroy the sovereignty of the Sultan. The existence of clause 4 is sufficient to account for the introductory four words of clause 155.

Mr. Murphy in construing the provisions of the Federation of Malaya Agreement relied mainly on the following two points : first, that the Sultans do not have to assent to Bills before they become law ; and secondly, that in view of the long list of matters contained in the Second Schedule to the Agreement on which the Federal Legislature is empowered to legislate, and such legislation would have the force of law in Johore, there are few matters on which the Johore Council of State can legislate.

With regard to the first point, Mr. Murphy argued that by clauses 54(2) and 76 it is the Standing Committee of the Conference of Rulers which assents to Bills and that Committee has no power to withhold its assent.

I reject this argument. The Standing Committee is the method by which the assent of the Rulers to any Bill is recorded but first there must be their assent—see clause 54(1) and the opening words of clause 54(5), which read :—

" 54(1). No Bill shall become a law until it has received the " assent of Their Highnesses the Rulers and either the assent of the " High Commissioner in His Majesty's name and on His Majesty's " behalf, or the assent of His Majesty given through a Secretary of " State.

. . . . .

" (5). A law assented to by the High Commissioner and Their " Highnesses the Rulers . . ."

As regards the second point argued by Mr. Murphy it is true that the Federal Legislature has power to legislate on the long list of matters set out in the Second Schedule to the Agreement, and that by clause 100 the legislative power of the Council of State in each Malay State is restricted to matters of Muslim religion, Custom of the Malays and matters not mentioned in the Second Schedule. Such an argument is really part of another contention put forward by Mr. Murphy that the Sultan of Johore destroyed his sovereignty by agreeing to the State of Johore entering a Federation.

I reject such an argument for two reasons. First, it is negatived by the third recital to the Federation of Malaya Agreement, 1948, which reads :—

" And whereas His Majesty has accordingly entered into a " fresh Agreement with each of Their Highnesses and in the case of

" Negri Sembilan with His Highness the Yang di-Pertuan Besar " and the Ruling Chiefs (which Agreements are hereinafter referred " to together as ' the State Agreements ') for the purpose of ensur- " ing that power and jurisdiction shall be exercised by Their several " Highnesses in their several States and it is in each of such " Agreements provided that it shall come into operation on the " appointed day :".

The words to which I attach particular importance in that recital are " for the purpose of ensuring that power and jurisdiction shall be exercised by Their several Highnesses in their several States."

Secondly, reference to the decision of Their Lordships of the Privy Council in the case of *The Pahang Consolidated Company Limited* v. *The State of Pahang*, (1931-1932) F.M.S.L.R. 390, shows that when the State of Pahang entered the Federated Malay States in 1895 the Sultan of Pahang remained an absolute ruler. This is so stated by Lord Tomlin, at page 391 :—

" The constitutional position in Pahang so far as it is material " to the matters under consideration in this appeal may be sum- " marised thus :

" (1) The Sultan of Pahang is an absolute ruler in whom " resides all legislative and executive power, subject only to " the limitations which he has from time to time imposed upon " himself in the circumstances hereinafter mentioned."

Mr. Murphy endeavoured to get over that part of the opinion of the Privy Council by suggesting that the question of the sovereignty in that case was never really raised and was not an issue in the case. I am unable to agree with that suggestion because an examination of the report of the proceedings in the Court below and in the Court of Appeal, at pages 131 to 228 of (1931-1932) F.M.S.L.R., shows that the constitutional position of the Sultan of Pahang was argued by counsel on both sides and was considered by the various Judges.

The Agreement for the Constitution of a Federal Council, 1909, which can be found at page 71 of Maxwell and Gibson's Treaties and Engagements, Malay States and Borneo, provided, by clause 9 thereof, that each State Council of the States of Perak, Selangor, Pahang and Negri Sembilan could only legislate on questions " connected with Mohammedan Religion, " Mosques, Political Pensions, Native Chiefs and Penghulus and any other questions which in the opinion of the High Commissioner affect the right and prerogatives of any of the above-named Rulers or which for other reasons he considers should properly be dealt with by the State Councils." Thus in the Federated Malay States practically all legislation which had the force of law throughout those States—i.e. in Perak, Selangor, Pahang and Negri Sembilan—was enacted by the Federal Council and, despite that, Their Lordships of the Privy Council held, as already stated, that the Sultan of Pahang was an absolute ruler.

I have examined the whole of the Federation of Malaya Agreement, 1948, and it is sufficient to say, without making reference to each clause

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949— *continued.*

thereof, that I can find nothing therein, construing that Agreement as a whole, which destroys the independent sovereignty of the Sultan.

Accordingly I agree with Gordon Smith, J., that the Sultan is an independent sovereign, and was so at the material time, that is when these proceedings came before the Court below for hearing and determination on the 15th to 18th March, 1949.

I now come to the second question (B), which is whether the Sultan waived his privileges as a sovereign ruler.

The following is a summary of the arguments of Mr. Shearn on this aspect of the appeal :—

(1) the submission by the Sultan to the jurisdiction of the Japanese Court was an act which took place before the High Court of the Colony of Singapore came into existence ;

(2) the Sultan had never submitted to the jurisdiction of the High Court of the Colony ;

(3) That there can be no inquiry into the conduct of the Sultan prior to his objection to the jurisdiction of the High Court of the Colony of Singapore ;

(4) that the proceedings brought by the Trustees under the Japanese Judgments and Civil Proceedings Ordinance, 1946, are separate and distinct from the proceedings brought by the Sultan in the Japanese Court because :—

(A) the parties are different ;

(B) the proceedings by the Trustees are brought by way of an originating summons ;

(C) the High Court of the Colony of Singapore is a different Court from the Japanese Court ;

(D) if the proceedings brought by the Trustees are a continuation of the proceedings brought by the Sultan then the address given by the Sultan in those latter proceedings would still have been used, whereas the Trustees did not attempt to use that address for the service of the proceedings brought by them ;

(5) the Trustees have not shown that the Sultan was a sovereign ruler during the Japanese Occupation and therefore it follows that it has not been shown that he had any sovereign rights to waive.

Mr. Murphy, in supporting the judgment of Gordon Smith, J., on the question of waiver, relied on the proceedings brought by the Trustees under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, being a continuation of the same proceedings as those brought by the Sultan himself, and also, independent of that Ordinance, on that part of the judgment of James, J.J., in *Strousberg* v. *Republic of Costa Rica*, 44 L.T. 199 at page 200, which I have underlined in the following passage from the judgment :—

" There is, in my opinion, but one exception, if it can be called " an exception, to that rule, namely, that where a foreign sovereign

" or state comes into the municipal Courts of this country for the " purpose of obtaining a remedy ; then, by way of defence to that " proceeding—by way of counter-claim if necessary to the extent " of defeating that claim—the person sued here may file a cross- " claim, or *take any other proceeding against that sovereign state for* " *the purpose of enabling complete justice to be done between them.*"

On this question of waiver, Mr. Shearn relied mainly on the decision in the *Duff Development Company Limited* v. *Government of Kelantan* (1924) A.C. 797.

The facts in that case are that the Government of Kelantan granted to the Duff Development Company certain mining and other rights by deed, and the deed contained an arbitration clause, which incorporated the Arbitration Act, 1889, so far as applicable. Disputes arose as to the effect of that deed and were referred to an arbitrator, who made an award in favour of the Company. The Government of Kelantan, being dissatisfied with the arbitrator's award, applied to the Chancery Division, under section 11 of the Arbitration Act, to set aside the award, but the application was dismissed The Government appealed to the Court of Appeal—the appeal was dismissed. A further appeal to the House of Lords by the Government was also dismissed.

Then the Company brought proceedings by Originating Summons in the King's Bench Division under section 12 of the Arbitration Act for leave to enforce the award. The Government applied to set aside those proceedings and to stay all further proceedings on the ground that the Sultan of Kelantan was an independent sovereign ruler and the State of Kelantan was an independent sovereign State. The application succeeded.

It was argued in that case, on behalf of the Company, that if the Sultan of Kelantan was an independent sovereign ruler he had waived his sovereignty and submitted to the jurisdiction of the Courts in England because—

(A) he had agreed to arbitration on the terms of the Arbitration Act, 1889, and

(B) he had applied to the Court to have the arbitration award set aside and pursued that application up to the House of Lords.

It is (B) with which we are concerned in the present appeal, because the Sultan himself made the application to the Japanese Court in 1945.

Mr. Shearn's argument on the decision in the *Duff Development* case is that it was there held that the application by the Company to enforce the award was a new proceeding and, that although it was connected with the earlier application by the Kelantan Government to set aside the award, it was distinct from it, and, therefore, on that ground the Sultan of Kelantan could successfully claim his privilege of immunity from the jurisdiction as a sovereign ruler.

Mr. Shearn relied principally on the following passage in the opinion of Viscount Cave (at page 810) :—

" There remains the question whether the Sultan by applyin
" under s. 11 of the Act to set aside the award impliedly submitte

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949—*continued.*

" to an application under s. 12 of the Act to enforce it. In my " opinion, he did not. By his application under s. 11 he " endeavoured to get rid of the award and left it to the Court to " decide his rights in this respect ; but the application for leave " to enforce the award is a new proceeding, and though connected " with the earlier application is distinct from it. In my opinion, " therefore, this argument also fails."

From this Mr. Shearn argued that although the Sultan had submitted to the jurisdiction of the Japanese Court and obtained the order which he sought, the application by the Trustees to the High Court of the Colony of Singapore, though connected with the Sultan's application to the Japanese Court, is distinct from it and is a new proceeding.

Mr. Shearn conceded that if—

(A) the Sultan had brought his application in the High Court of the Straits Settlements prior to the Japanese Occupation, and

(B) the Trustees had been the defendants to that application, and

(C) the Sultan had obtained the order he sought,

the Trustees, by the Rules of the Supreme Court, could have applied to the High Court of the Straits Settlements to set aside the order, or they could have appealed against such order, and on such application or appeal the Sultan could not successfully have claimed immunity from the jurisdiction of the Court of Appeal of the Straits Settlements.

Mr. Shearn also conceded that if—

(A) the Sultan had brought his application in the High Court of the Straits Settlements prior to the Japanese Occupation, and

(B) the Trustees had been the defendants to the application, and

(C) the Sultan had obtained the order he sought, and

(D) the Japanese Occupation had followed so as to prevent the Trustees from taking the matter to the Court of Appeal of the Straits Settlements,

then the Trustees, by virtue of section 44 of the Singapore Colony Order in Council, 1946, and by the Rules of the Supreme Court, could have applied to the High Court of the Colony of Singapore to set aside the order, or they could have appealed against such order, and on such application or appeal the Sultan could not successfully have claimed immunity from the jurisdiction of the Court of Appeal of the Colony of Singapore.

This brings me to consideration of the Japanese Judgments and Civil Proceedings Ordinance, 1946. The long title reads :—

" An Ordinance to make provision with regard to judgments, " orders and decrees of Japanese Courts and for the carrying on of " proceedings instituted in such Courts during the Japanese " occupation."

Section 3 is the particular provision under which the Trustees applied to the High Court of the Colony of Singapore. It reads :—

" 3(1). Any party to the proceedings in which a Japanese " decree was made or given or any person aggrieved by such decree " may, within three months from the commencement of this " Ordinance, or within such extended time as the appropriate Court " may allow, apply in the prescribed manner to the appropriate " Court for an order—

" (A) that such decree be set aside either wholly or in part ; or

" (B) that the applicant be at liberty to appeal against such decree.

" (2) Upon the hearing of an application under the provisions " of sub-section (1) of this section the appropriate Court may, " subject to the provisions of this section, make such order or " orders thereon, as in the circumstances of the case, may seem fit.

" (3) No Japanese decree shall be set aside on the ground that " the person or persons constituting the Court whose decree is in " question was or were not appointed in accordance with the " provisions of, or did not possess the qualifications specified in, " the existing laws.

" (4) Without prejudice to the generality of the provisions " of sub-section (2) of this section, a Japanese decree may be set " aside on any of the grounds following—

" (A) that it was obtained as a result of such force or threat of force, " injury or detriment to any party to the proceedings or other person " as in the opinion of the appropriate Court was sufficient to render " the action of the party in relation to the proceedings involuntary ;

" (B) that any necessary party did not appear personally but was " represented by any person appointed by any Japanese authority ;

" (C) that it was based on principles unknown to the existing laws, or

" (D) on any other ground which the appropriate Court considers to be " sufficient."

The Trustees rely on paragraphs (B) and (C) of sub-section (4) of that section.

Mr. Shearn conceded that the Trustees come within the expression " any person aggrieved by such decree " in sub-section (1) of that section.

That Ordinance nowhere lays down that proceedings in, and decrees of, Japanese Courts are valid or invalid. The whole scheme of the Ordinance is to provide parties to proceedings in, and persons aggrieved by decrees of, Japanese Courts with remedies if they consider that justice has not been done by a Japanese Court. Hence the right to apply to set aside, or to appeal against, a Japanese decree—section 3 ; the right to carry on in the Colony Courts proceedings instituted in Japanese Courts, which were still pending when the Japanese occupation ceased—section 4 ; and the right

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya. 1st November 1949—*continued.*

to substitute decrees of the Colony Courts for those of Japanese courts—section 5; and the comprehensive provisions contained in the Japanese Judgments and Civil Proceedings (Procedure) Rules, 1947, as to what persons are to be served when proceedings are brought under this Ordinance —see G.N. S.20 in Supplement No. 5 of the Singapore Government Gazette dated the 15th January, 1947.

The Trustees cannot apply under O.38 of the Rules of the Supreme Court to set aside the Japanese decree, nor under O.55 of the same Rules for leave to appeal against such decree, because those Rules do not apply to proceedings in Japanese Courts. Their only remedy is to apply under the Japanese Judgments and Civil Proceedings Ordinance, 1946.

I regard the provisions of that Ordinance, and the Rules made thereunder, generally as analogous to Rules of Court and, in particular, I look upon section 3 of the Ordinance as analogous to Orders 38 and 55 of the Rules of the Supreme Court.

Mr. Shearn contended that the long title to the Ordinance distinguishes between (A) the provisions of the Ordinance relating to judgments, orders and decrees of Japanese Courts, and (B) the provisions relating to the carrying on of proceedings instituted in Japanese Courts.

He stressed the words I have underlined in sections 4(1) and 6, which read :—

> " 4(1) A party to any proceeding commenced before a " Japanese Court which were pending at the cessation of the " Japanese occupation, may apply to the appropriate Court, " within three months from the commencement of this Ordinance " or such extended time as the appropriate Court may allow, *for* " *leave to carry on such proceedings* as proceedings of the appropriate " Court.
>
> . . . . . .
>
> " 6. Where in *any proceedings carried on* in a corresponding " Court under the provisions of section 44 of the Singapore Colony " Order in Council, 1946, any interlocutory order has been made " by a Japanese Court such order shall be deemed to have been " properly made in those proceedings; Provided that the " corresponding Court may, on application made to it in that behalf " in the prescribed form and manner, set aside any such order if " such Court is of the opinion that it is just and equitable so to do."

Mr. Shearn also stressed that by Rule 3 of the Japanese Judgments and Civil Proceedings (Procedure) Rules, 1947, any application under section 3 of the Ordinance, except in Probate and Divorce matters, must be made by an originating summons. He then referred to the definition of the word " originating " in Rule 3 of the Preliminary Rules of Court, which reads :—

> " ' originating ' as applied to any motion, petition, summons " or other proceeding means that such proceeding is taken other- " wise than in a pending cause or matter."

All these references, Mr. Shearn submitted, showed that the application by the Trustees under section 3 of the Ordinance is a new proceeding entirely distinct and separate from the proceedings instituted by the Sultan in the Japanese Court.

I am unable to accept that submission. In my opinion it places too narrow a construction on the objects and provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946.

I do not attach any particular importance to the words relied on by Mr. Shearn in sections 4(1) and 6, because they are the natural words the draftsman of the Ordinance would use for the purpose of continuing proceedings pending in Japanese Courts at the cessation of the Japanese occupation, nor do I attach any particular importance to the use of an originating summons as the method for making an application under section 3 of the Ordinance. If one looks at Rule 7 of the Rules made under the Ordinance one finds that applications in respect of probate and divorce matters made under section 4 of the Ordinance (applications under which Mr. Shearn admitted, would be carrying on proceedings of a Japanese Court) must be made by an originating motion.

What are the Trustees attempting to do under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946? Their Originating Summons No. 23 of 1947 states, inter alia, that they—

> " being persons aggrieved by the Japanese decree dated the " 18th day of June, 2605 (i.e. 1945 A.D.) and made in Originating " Summons No. 24 of 2605 (1945) by the Syonan Kotohoin at " Syonan-to (being the Japanese Court of the Judge at Singapore)" ask
>
> " for an order that such decree be set aside wholly or that " the applicants be at liberty to appeal against the whole of such " decree on the following grounds . . ."

In other words, they are disputing about the very matter—nothing more and nothing less—about which the Sultan himself instituted proceedings in the Japanese Court. In my view that is the crux of this case as regards the question of waiver and distinguishes it from the *Duff Development Company Limited* v. *Government of Kelantan* (*supra*). In that case the Company, when they applied to enforce the arbitrator's award, were not litigating about the *very* matter concerning which the Government of Kelantan had submitted to the jurisdiction of the Court—namely the application to set aside the award. In the present case the Trustees are litigating about the very matter concerning which the Sultan himself brought proceedings in the Japanese Court—not something " connected with the earlier application," to use the words of Viscount Cave in that part of his opinion in the *Duff Development* case set out above.

Therefore I hold that the application by the Trustees under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, is not a new proceeding, but is a continuation of the very same proceedings which the Sultan instituted in the Japanese Court.

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J Federation of Malaya, 1st November 1949—*continued.*

But Mr. Shearn contended that the High Court of the Colony of Singapore in which the Trustees brought their proceedings is a different Court from the Japanese Court in which the Sultan instituted his proceedings.

As stated earlier in this judgment, I agree with him. My answer is that if the Trustees must bring their proceedings in that Japanese Court, that is demanding of them an impossibility. No Japanese Court functioned after the Japanese occupation ceased. The only Courts functioning after the occupation are the Courts established by the legitimate power. The legitimate power altered the Constitution and, inter alia, established the Supreme Court (of which the High Court is a part) of the Colony of Singapore. The Trustees have brought their proceedings in the only Court open to them.

Since, as conceded by Mr. Shearn, section 44 of the Singapore Colony Order in Council, 1946, would prevent the Sultan from successfully claiming immunity in the High Court of the Colony of Singapore if he had brought proceedings in the High Court of the former Straits Settlements—they are two different Courts—I fail to see why a similar state of affairs should not result from the existence of the Japanese Judgments and Civil Proceedings Ordinance, 1946. It is true, as Mr. Shearn pointed out, that the bridge between proceedings in the Courts of the former Straits Settlements and those in the High Court of the Colony of Singapore is contained in an Order in Council, but I cannot see why the bridge between proceedings in Japanese Courts and those in the Courts of the Colony of Singapore created by the Japanese Judgments and Civil Proceedings Ordinance, 1946, should not perform the same function. One would not expect the Order in Council to contain the special provisions of that Ordinance.

I can find nothing in the *Duff Development* case to support Mr. Shearn's contention that the Court must be the same. The emphasis, as I read the report of that case, is that the proceedings must be the same.

With regard to the parties to the proceedings in the High Court of the Colony of Singapore not being the same as they were to the proceedings in the Japanese Court, Mr. Shearn referred to the following passage in the judgment of the Japanese appointed Judge who adjudicated upon the proceedings instituted by the Sultan :—

> " His Excellency the Mayor of Syonan was represented by the
> " Deputy Custodian of Enemy Property and the attitude which
> " he takes is this ; in his view this is prima facie enemy property
> " and as such the Custodian can dispose of it in any manner he
> " thinks fit and proper."

Mr. Shearn also referred to the following passage in the Originating Summons filed by the Trustees :

> " That the following necessary parties did not appear person-
> " ally in the proceedings leading up to such decree, namely, the
> " Applicants and H.H. Ungku Fatimah of Johore but that if any
> " of them were represented at all (which is denied) they were
> " represented by a person appointed by some Japanese Authority
> " and such person so appointed did not appear on the hearing when
> " the said Decree was made."

From these two references Mr. Shearn argued that the Japanese Custodian of Enemy Property did not represent the Trustees and that this is admitted by the Trustees in this Originating Summons.

All I need say on this is that the Sultan in instituting proceedings in the Japanese Court cited the Japanese Custodian of Enemy Property as the defendant to those proceedings, and this could only have been done because he considered that the Custodian represented the Trustees—it could not have been done for any other purpose.

Japan, as a signatory assenting to the International Convention concerning the Laws and Customs of War on Land, 1907, and the Regulations thereunder, except Regulation 44 thereof from which she dissented, bound herself to respect private property, and her Custodian in Singapore should have acted in accordance with that Convention. Therefore he either represented the Trustees in the proceedings in the Japanese Court, or should have done so. Whether he did effectually represent them or not, does not matter —he was cited as defendant and, to my mind, that is sufficient evidence that he was, or should have been, standing in the shoes of the Trustees who were absent from Malaya during the Japanese occupation. Therefore I am unable to agree with the contention of Mr. Shearn that the parties in the present proceedings are different parties.

I do not attach any importance to the submission by Mr. Shearn that the Sultan was served at a different address for service in these proceedings than the address he gave for service in the proceedings he instituted in the Japanese Court. The address given in the Sultan's Originating Summons is—Messrs. Eric Choa and Company, 20, Malacca Street, Singapore. Questioned by me, Mr. Shearn stated that that firm did not continue after the cessation of the Japanese occupation but that Mr. Choa became a member of a different firm at the same address. In my view this is sufficient to dispose of that argument.

One further argument put forward by Mr. Shearn was that the Trustees had not shown that the Sultan possessed any sovereign rights during the Japanese occupation and therefore it had not been shown he had any rights to waive.

As I have already stated earlier in this judgment, the Sultan was an independent sovereign prior to the Japanese occupation, and the following passages from two leading text-books on International Law dispose of Mr. Shearn's argument.

First, Oppenheim's International Law, Vol. 11, 6th edition, page 338 :—

> " What concerns us here is sum of the rights and duties of the
> " occupying belligerent in relation to his political administration
> " of the territory, and to his political authority over its inhabitants.
> " The principle underlying these modern rules is that, although
> " the occupant in no wise acquires sovereignty over such territory
> " through the mere fact of having occupied it, he actually exercises
> " for the time being a military authority over it."

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya, 1st November 1949— *continued.*

Secondly, Hall's International Law, 6th edition, pages 463 and 464 :—

" Recent writers adopt the view that the acts which are permitted to a belligerent in occupied territory are merely incidents " of hostilities, and that the authority which he exercises is a form " of the stress which he puts upon his enemy, that the rights of the " sovereign remain intact, and that the legal relations of the " population towards the invader are unchanged.

. . . . . .

" Looking at the history of opinion with reference to the legal " character of the occupation, at the fact that the fundamental " principle of the continuing national character of an occupied " territory and its population is fully established, at the amount of " support which is already given to the doctrines which are " necessary to complete its application in detail, and to the useless- " ness of the illogical and oppressive fiction of substituted sover- " eignty the older theories may be unhesitatingly ranked as effete, " and the rights of occupation may be placed upon the broad " foundation of simple military necessity."

Accordingly I hold that the Sultan by instituting proceedings in the Japanese Court submitted to the jurisdiction of that Court ; that by virtue of the Japanese Judgments and Civil Proceedings Ordinance, 1946, the proceedings brought by the Trustees in the High Court of the Colony of Singapore are a continuation of the proceedings instituted by the Sultan in the Japanese Court, and therefore the claim by the Sultan of immunity from the jurisdiction of the High Court of the Colony of Singapore fails.

Having so decided on my view of the Japanese Judgments and Civil Proceedings Ordinance, 1946, I turn to Mr. Murphy's argument, that irrespective of the provisions of that Ordinance the Sultan cannot claim immunity from the proceedings brought by the Trustees.

As I have already stated, Mr. Murphy relied on the passage from the judgment of James, L.J., in *Strousberg* v. *Republic of Costa Rica*, 44 L.T. 199 at page 200, which is set out earlier in this judgment. That passage is cited with approval in Westlake's Private International Law, 7th edition, page 272, and by Lawrence J., in *Mighell* v. *Sultan of Johore* (*supra*). The principle is that if a sovereign ruler or state submits to the jurisdiction of the Courts by instituting proceedings himself, the person sued may " take any " other proceeding against that sovereign or state for the purpose of " enabling complete justice to be done between them."

Much as I would like to agree with Mr. Murphy on this argument I regret, for the following reasons, I am unable to do so.

In the *Duff Development* case, Lord Carson, in his dissenting opinion, made reference to *Strousberg* v. *Republic of Costa Rica* (*supra*) and the passage in Westlake. From the principle enunciated in that case Lord Carson, at pages 834 and 835 of the report of the *Duff Development* case, said :—

" My Lords, under such circumstances as these, how can it " be said that, when the act of the sovereign power has invoked " the benefits of the procedure devised by the laws of this country " for enforcing its claims or settling its disputes, ' international " ' comity which induces every sovereign State to respect the " ' independence and dignity of every other sovereign State ' " requires that our Courts should lend themselves to such palpable " injustice as to refuse a mutual relief to both parties concerned ? " or how can it be suggested that under such circumstances we " would be acting upon the principles laid down in the cases I have " already quoted of doing complete justice between the parties if " we refused the application of the appellants ? "

None of the other members of the House of Lords in that case referred to *Strousberg* v. *Republic of Costa Rica*, and therefore I must conclude that the argument of the Duff Development Company, which was that in bringing proceedings in Court to enforce the award after the Kelantan Government had brought earlier proceedings in Court to set aside the award, they did so with the object of enabling complete justice to be done between them and the Kelantan Government, failed.

I cannot see that the claim of doing complete justice between the parties applies with any greater force in the present case than it did in the *Duff Development* case, and therefore much as I should have liked to have done so, I am unable to accept Mr. Murphy's argument.

Mr. Murphy also submitted that the Sultan cannot claim immunity because the proceedings are in respect of real property within the jurisdiction of the Court. He was unable to cite any English authority for this proposition and relied on footnote 4 on page 239 of vol. 1 of the 6th edition of Oppenheim's International Law. The first few lines of that footnote read :

" But there is probably no immunity when the State is sued " as owner of real property—for a survey of cases see Fairman in " A.J., 22 (1928) pp. 567, 568 . . ."

(" A.J." means the American Journal of International Law which is not available here).

If this had been accepted in England as an exception to the Rule with respect to actions against foreign sovereigns, I would have expected it to have been so stated by Lawrence J. in his judgment in *Mighell* v. *Sultan of Johore* (supra) and also by Lord Carson in his opinion in the *Duff Development* case (supra), because the exceptions are mentioned in both that judgment and opinion.

Accordingly, in the absence of any English authority, I am unable to accept the proposition put forward by Mr. Murphy. He stated that he put this proposition forward for the purpose of having a note of it on the record in the event of this case going further.

In the Court of Appeal of the Colony of Singapore.

No. 50. Grounds of Judgment of Sir H. C. Willan, C.J., Federation of Malaya 1st November 1949—*continued*.

Accordingly I would uphold the decision of Gordon Smith J. in the Court below, and dismiss this appeal with costs to the respondents.

Sd. H. C. WILLAN,
Chief Justice,
Federation of Malaya.

Kuala Lumpur.
25th October, 1949.

Read in Singapore on 1st November, 1949.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949.

No. 51.

Grounds of Judgment of Evans, J.

Coram : MURRAY AYNSLEY, C.J., S.
WILLAN, C. J., F. OF M.
EVANS, J.

There is an appeal from a judgment on an application by the appellants to have proceedings brought by the respondents under the Japanese Judgments and Civil Proceedings Ordinance 1946 set aside and all further proceedings stayed on the ground that the appellant is a Sovereign Ruler and not subject to the jurisdiction of this court. The learned Judge who tried the case found that the appellant was so immune from being sued, but that by bringing these proceedings in the Syonan Kotohoin, which these proceedings were brought to set aside, he waived his immunity and submitted to this jurisdiction.

He has appealed primarily on this question of waiver. Before however there can be any waiver, there must be an immunity to be waived. The respondent entered a cross appeal against the finding on sovereignty, though he was in any case at liberty to attack that finding on the appeal itself. The appellant's counsel produced and read to the Court a further letter from the Secretary of State to the appellant referring to the judgment appealed against and to these proceedings, and implying a far less limited recognition by His Majesty of the appellant, than is to be found in the certificate therein referred to and read in the court below.

The parties disputed the intention of this letter and at their request a further letter was addressed to the Secretary of State by the Chief Justice of Singapore on 29th July, 1949, which, after reference to the two letters addressed to Brown J., which Gordon Smith J. held, do " not

answer the question asked by the court," referred to and attached the letters produced at the first hearing of this appeal. The first of these letters from the Sultan to the Secretary of State dated 28th June, 1949, reads as follows :

" 28th June, 1949.

" The Rt. Hon. The Secretary of State for the Colonies,
" Church House,
" Great Smith Street, S.W.1.

" Dear Mr. Creech Jones,

" On the 9th June, 1948, you wrote to the Hon. Mr. Justice T. A. " Brown, of Singapore, with regard to my status as an Independent " Sovereign Ruler, in connection with certain proceedings taken in my " country. That letter was, unfortunately, couched in very vague terms, " and merely stated facts known to everybody, but without expressing " any opinion as to their effect upon my position.

" It is extremely important that I should now have a letter, or certifi- " cate, from you stating in unequivocal terms that, under the existing " Agreements with His Majesty, I am an independent Ruler, and recognized " as such by His Majesty. There can, I take it, be no question about this, " and I shall be grateful if you can let me have such a letter as I require, " at your earliest convenience.

" An appeal from the Proceedings in Johore is due to come on for " hearing about the 18th July next, and it is vital that my legal advisers " should have the letter in their hands before that date.

" Sincerely yours,
Sd. IBRAHIM."

To this the substance of the Secretary of State's reply of 11th July marked " Y " is :

" Your Highness will know that on the certificate which I gave to the " Court Mr. Justice Gordon Smith found that you enjoy your former " status of a Sovereign Ruler. This seems clearly to mean that you are an " independent sovereign (subject to the limitations mentioned by the Judge) " and His Majesty's Government, of course, accept the ruling. I trust that " Your Highness will now regard the matter as satisfactorily settled."

The Chief Justice continued :—

" Counsel for His Highness the Sultan submitted that the contents " of letter Y mean that His Majesty's Government recognizes His Highness " as an independent sovereign.

" Counsel for the Respondents disputed this and suggested that in order " to clarify the position the President of the Court of Appeal should address " a further letter to you.

" Accordingly, as President of the Court of Appeal, I have the honour " to invite an answer to the following question :

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949— *continued.*

" Does your letter Y of the 11th July, 1940, mean that His " Majesty's Government recognizes His Highness the Sultan of " Johore as an independent sovereign "

The Secretary of State replied on 20th August, 1949, and the whole substance of that reply seems to be in the last sentence :

" It was not intended to convey more than that His Majesty's " Government accepted the decision of the Court, which I believed " was not being further contested, and the letter was not intended " to affect the decision of any higher court before whom the " question might come on appeal."

This letter enclosed further correspondence in the matter. The first letter in that correspondence dated 13th July, 1949, is written on behalf of the Secretary of State to the Sultan and is to the same effect as the letter of 11th July. The second is of the same date from Messrs. E. F. Turner & Sons, the Sultan's solicitors to the Secretary of State, and after setting out the state of the proceedings and the law proceeds :

" In view of the fact that an Appeal in the Proceedings in " which His Highness is interested is expected to be heard on the " 18th instant, may we beg that a further letter may be supplied, " stating His Majesty's Government's own view with regard to " His Highness's status, so that we may cable a copy out to " Malaya, in the hope that it may be accepted by the Judiciary " there."

The fourth as they stand is from the same firm dated 18th July and embodying a cable from the Sultan's Malayan advisers reiterating the request and concluding :

" In the interests of justice therefore, may we beg for an " immediate reply to our letter of the 13th instant, in the form of " an unequivocal certificate as to His Majesty's Government's " view of our Client's Sovereignty."

The other two letters are replies on behalf of the Secretary of State. The earlier of 18th July states :

" It is agreed that in cases such as the present, the practice " is for the Court to ask the Secretary of State for a statement " regarding the Ruler's status, but not for such a statement to be " requested by, or supplied to, the Ruler himself. You will also " appreciate that a Secretary of State is not obliged to return " an answer of the kind you seek and indeed that, if he thought fit, " he would be entitled to decline to answer the question put by " the Court."

Otherwise these letters expressly add nothing of substance, but they clearly amount to a refusal to accede to the Sultan's reiterated petition.

The respondents contend that the Court in considering an application of the kind before it must look at any communication received from a

Secretary of State and purporting to convey an intimation of His Majesty's opinion on this matter, and can not look outside it. The appellant does not seriously seek to put any definite meaning on these letters from the Secretary of State. He draws attention to the fact that the Secretary of State never said His Majesty did not recognize the Sultan as sovereign and to the statement in the letter of 12th November, 1948, to Mr. Justice Brown that "before the 20th October, 1945, His Majesty had no jurisdiction in "Johore," but apart from this his contentions are that the court is not restricted to the Secretary of State's letters, but that if these be not clear it can enquire elsewhere and that the Secretary of State has invited its attention to the Johore and Federation of Malaya agreements of 1948. In support of his contention he relies principally on certain dicta of Lord Sumner in the *Kelantan* case (1) at pages 824 *et seq.*

Whether a defendant is an independent Sovereign ruler is a matter of which the courts will take judicial notice. The question may be raised in many connections, and, like any other, may be admitted. Where it is disputed, and where the court cannot decide the matter of its own knowledge, the practice has grown up, and is now well established, of inquiring through a Secretary of State what His Majesty's view of this fact may be, or, where more than one body exists claiming to be sovereign, which His Majesty is pleased to recognise as such. The appellant relies strongly on extracts from the work of Mr. Oppenheim on International Law. While such a work may be considered with the utmost respect, it is not binding on this court, nor is the law it professes to expound that which this court sits to enforce except in so far as he may base his opinions on English precedents. This court is not in the least concerned with the status of the Sultan of Johore in the eyes of an international lawyer. In the procedure adopted and in its actual practice there can be and has been no chance of conflict of opinion between the courts and the executive.

The first case on which the appellant relies is *Yrisarri* v. *Clement* (2). In that case the only question in any way bearing on sovereignty, that of the existence of a state, was in the end held to be admitted by the defendant in his pleadings. There is some talk of recognised and unrecognised states without reference to by whom, or how, such recognition is to be ascertained, and some of how any presumption of continuance of a state is rebuttable. The appellant stated that this case is before the adoption of the procedure referred to. In my opinion it has no bearing on the case before us.

In the Parliament Belge (3) upon which the later cases largely depend, the question was not of the fact of sovereignty but the extent of the immunity conferred. The fact of sovereignty was not questioned for the protest to the jurisdiction was entered by the Attorney General himself. In *Mighell* v. *Sultan of Johore* (4) the Court was asked to say that the certificate of the Secretary of State was not conclusive, but inconsistent with the treaty attached thereto. Wills J. in the Divisional Court seems to have accepted the certificate as conclusive and makes but a passing reference to

(1) 1924 A.C. 797.
(2) 2 C. & P. 223.
(3) 5 P.D. 197.
(4) 1894 Q.B.D. 149.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued.*

the treaty and no finding on the point. In the Court of Appeal Lord Esher, M.R., said at page 158 :

> " The first point taken was that it was not sufficiently shewn " that the defendant was an independent sovereign power. There " was a letter written on behalf of the Secretary of State for the " Colonies, on paper bearing the stamp of the Colonial Office, and " which clearly came from the Secretary of State for the Colonies " in his official character. He is in colonial matters the adviser " of the Queen, and I think the letter has the same effect for the " present purpose as a communication from the Queen. It was " argued that the Judge ought not to have been satisfied with " that letter, but to have informed himself from historical and other " sources as to the status of the Sultan of Johore. It was said that " Sir Robert Phillimore did so in the case of The Charkieh. (1) I " know he did ; but I am of opinion that he ought not to have " done so ; that, when once there is the authoritative certificate " of the Queen through her minister of state as to the status of " another sovereign, that in the Courts of this country is decisive. " Therefore this letter is conclusive that the defendant is an " independent sovereign. For this purpose all sovereigns are equal. " The independent sovereign of the smallest state stands on the " same footing as the monarch of the greatest."

As the logical consequence of so finding, he does not discuss the attached treaty at all. Lopes L.J. does not consider the method by which the court is to inform itself on this matter. Kay L.J. referring to the Secretary of State's letter said

> " I confess I cannot conceive a more satisfactory mode of " obtaining information on the subject than such a letter. Pro- " ceeding as it does from the office of one of the principal secretaries " of state, and purporting to be written by his direction, I think " it must be treated as equivalent to a statement by Her Majesty " herself, and, if Her Majesty condescends to state to one of her " Courts of Justice, that an individual cited before it is an " independent sovereign, I think that statement must be taken as " conclusive."

Thereafter, however, his lordship appears to have looked at the treaty, though he certainly does not discuss it in detail, and to hold that it is not inconsistent with the letter. There being no conflict between these he did not have to consider how far his action was itself logical. His clear words above seem to leave no doubt as to his opinion of the relative importance of the documents.

Statham v. *Statham* and His Highness the Gaekwar of Baroda was decided in December 1911 (2). It was a divorce petition and the court did not follow the usual procedure of obtaining a certificate from the India Office. The appellant relied heavily on this case, and the respondent

(1) L.R. 4 A. & E. 59. (2) 1912 P. 92 at 96

seemed to think it against him. I could not see, and still cannot, that it is a strong support for the appellant's case. The decision is one of a Judge in first instance and the husband in the upshot being given leave to proceed without naming a co-respondent, may not have been seriously prejudiced. Bargrave Deane J. did not follow the usual procedure in the other Divisions and does not seem to have been asked to do so. He made some researches, and these revealed a certificate from the India Office in a case decided the same autumn. It may well have been the existence of a recent certificate on the very point which led the judge to refrain in such circumstances from addressing a further letter to the Secretary of State for India. In his judgment he sets out this certificate in full and then goes on to consider the meaning of a word used therein and in the Statute to which it also refers. This consideration is extensive, but is as to the construction of the certificate and not as criticism of it. He concludes :

> " In my opinion this aptly states the true status of the present " Gaekwar of Baroda and is consistent with the status of that " sovereign prince as defined by the certificate from the India " Office, and it follows that His Highness by international law is " not capable of being made a co-respondent in a suit for dissolu- " tion of marriage in the High Court in England, and his name must " be struck out as a co-respondent. I, however, give leave to the " petitioner to proceed without making any co-respondent as to " those paragraphs of the petition in which his Highness's name " appears."

A case in which the usual and well approved procedure is not followed is of little weight in deciding a case in which that procedure has been adopted, and where there are certificates peculiar to that case. Moreover, as I understand Bargrave Deane J., he did in fact attach primary importance to the certificate. If he regarded himself as following Lord Phillimore in contradistinction to Lord Esher's opinion above I should not be prepared to follow him.

The case which comes nearest to this in many circumstances is that of *Luther* v. *Sagor* (1). That case first came before Roche J. in November and December 1920.

The judge followed the usual procedure despite the fact that there were already before him three letters from the Foreign Office one addressed to the solicitors of the defendants vendor, and one each to the solicitors of defendant and plaintiff. The Court's enquiry elicited no further information. The learned Judge, on a review of the cases dealing with recognition rather than sovereignty, said

> " I therefore propose to deal with the case upon the information " furnished by His Majesty's Secretary of State for Foreign Affairs. " The attitude proper to be adopted by a Court of this country " with regard to foreign governments or powers I understand to be " as follows : (1) If a foreign government is recognised by the " Government of this country the Courts of this country may and

(1) 1921 1 K.B. 456 at 474. (On appeal) 3 K.B. 532.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949— *continued.*

" must recognise the sovereignty of that foreign government and " the validity of its acts : see *Republic of Peru* v. *Dreyfus* (1), and " the cases there cited. (2) If a foreign government, or its sover- " eighty, is not recognized by the Government of this country the " Courts of this country either cannot, or at least need not, or " ought not, to take notice of, or recognize such foreign govern- " ment, or its sovereignty. This negative proposition is, I think, " also established and recognized by the judgment of Kay J. in " *Republic of Peru* v. *Dreyfus* (2)."

He then sets out the letters from the Foreign Office and goes on

" It was said on behalf of the defendants that these communi- " cations were vague and ambiguous. I should rather say that " they were guarded, but as clear as the indeterminate position " of affairs in connection with the subject-matter of the com- " munications enabled them to be ; but lest it should be deemed " that ampler or further information might now be available, " I caused communication to be made by a Master of the Crown " Office to His Majesty's Secretary of State for Foreign Affairs, " asking whether there was in addition to the letters to the parties " or their solicitors further matter or information which should be " placed before me. The reply of the Secretary of State was that " he had no further information which he desired to place before " me. On these materials I am not satisfied that His Majesty's " Government has recognized the Soviet Government as the Gov- " ernment of a Russian Federative Republic or of any sovereign " state or power. I therefore am unable to recognize it, or to hold " it has sovereignty, or is able by degree to deprive the plaintiff " company of its property. Accordingly I decide this point against " the defendants."

The penultimate sentence of this passage seems to show that the negative proposition is most properly read as " cannot recognise." At least in that form is it the ratio decidendi of this point of the case.

This decision was appealed against and came before the Court of Appeal in April and May, 1921. On 16th March, 1921, a Trade Agreement was signed with Russia, and in answer to appellants requests two further letters were obtained from the Foreign Office on April 20th and 22nd. The former stated :

" (2) I am to inform you that His Majesty's Government " recognize the Soviet Government as the de facto government of " Russia."

" ' Under these circumstances,' said Bankes L.J., ' the whole aspect of the " case is changed.' " The Court of Appeal, however, went out of its way to affirm the judgment of Roche J., both Bankes and Warrington L.J. specifically stating that on the materials before him they entirely agreed

(1) 38 Ch. D. 348. (2) 38 Ch. D., pp. 357, 358 and 359.

with his view, and Scrutton L.J. saying that his judgment was set aside " on the new materials available."

The appellants relied on *Pahang Consolidated* v. *Sultan of Pahang* (1), but in my opinion that case has no bearing at all on this point, nor on this case, being concerned with the Sultan's position in the State of Pahang.

The only substantial support for the appellants argument is to be found in the speech of Lord Sumner in *Duff Development Co.* v. *Kelantan Government.* (2) In that case a letter was received from Colonial Office stating that Kelantan was an " independent state " and the Sultan the " sovereign ruler." The letter set out some facts as to His Majesty's relation with that state, and enclosed a treaty and agreement. All the Law Lords found in this letter a clear and unambiguous assertion of the Sultan's sovereignty. Their references to the enclosures varied. Lord Cave refers to them shortly but makes no sort of analysis. Lord Finlay said :—" There " are very good reasons for this practice. The department might lay " itself open to serious misunderstanding if it took any other course. It " might be said that there was a want of candour in merely stating the con- " clusion that the Power is a sovereign Power without disclosing any such " limitations on the sovereignty as exist here. The contention that by " appending these documents the Colonial Office remits the question to " the Court to form its own opinion upon it is based on a misconception." Lord Dunedin made a short speech ; he did not refer to the treaty but he seems to have been of opinion that " the home sovereign has in him the only " power and right of recognition." Lord Carson's speech is the most significant in this regard, he alone of their Lordships thought that the letter was not consistent with the enclosures. He regarded himself as bound by the letter. Lord Sumner's speech is great authority and the greater by reason of the fact that the commencement of the speech seems to show that his Lordship intended to deal fully with the subject. As to the case before the House his opinion is clear enough. " It is the prerogative of the Crown " to recognize or to withhold recognition from States or chiefs of States, and " to determine from time to time the status with which foreign powers are " to be deemed to be invested. This being so, a foreign ruler, whom the " Crown recognizes as a sovereign, is such a sovereign for the purposes of " an English Court of Law, and the best evidence of such recognition is the " statement duly made with regard to it in His Majesty's name. Accordingly " where such a statement is forthcoming no other evidence is admissible or " needed. I think that this is the real judicial explanation why it was held " that the Sultan of Johore was a foreign sovereign. In considering the " answer given by the Secretary of State, it was not the business of the " Court to inquire whether the Colonial Office rightly concluded that the " Sultan was entitled to be recognized as a sovereign by international law. " All it had to do was to examine the communication in order to see if the " meaning of it really was that the Sultan had been and was recognized " as a sovereign."

Although this begins by speaking of " to recognize or to withhold

(1) 1931/2 F.M.S.L.R. 131. (2) 1924 A.C. 797.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued.*

recognition " certain of the later sentences might be read as applying only to cases in which a positive certificate was forthcoming. I do not think this is intended. When His Lordship goes on to consider hypothetical cases not before him, the opinion is not, to me, so lucid, but it is on these dicta the appellant must rely. They follow immediately on the above passage. His Lordship refers to cases where the " answer to the question put has to be " temporary if not temporising, or even where some vaguer expression has " to be used." He passes however at once to two cases in the first of which " there is no recognition yet given " and in the second " the Crown had never " recognised " the defendant. Any implication of knowledge of later events in these expressions must, of course, be ignored, and they are in fact cases of negative certificates.

In considering the first of these Lord Sumner speaks of the Crown declining to answer the enquiry, and says that then the Court " might be " entitled to accept secondary evidence in default of the best, subject, of " course, to the presumption that, in the case of a new organization, which " has de facto broken away from an old state, still existing and still recognized " by His Majesty, the dominion of the old state remains unimpaired until " His Majesty is pleased to recognize the change." This then is a fourth case in all, and the third in this paragraph : the case of no answer, the others being an affirmative a negative or an inconclusive reply.

His Lordship goes on tentatively to consider questions as to the boundaries of foreign states, though declaring they stand on a different footing, and refers to the cases of *Foster* v. *Globe Venture Syndicate* (1) and *Luther* v. *Sagor* (2). This question might appear disparate from that of sovereignty. Sovereignty, I understand, to be at International Law a mixed question of fact and law, and at English law a pure question of fact, i.e. His Majesty's opinion. The former would seem to be, like other questions of boundaries, primarily a matter of fact of which better evidence might be obtained, even in the remote cases referred to, from the history of the tribes and their grazing customs and from geographical and topographical features, albeit in fact the tribes may graze where they can and find what political support they may. Judicial decisions involving such considerations could not, however, generally be executed or otherwise given effect to without the assistance of the home or foreign governments. The necessity for agreement between the decisions of the Kings Courts and His Majesty's views on these matters at once becomes apparent. This is the nexus between such cases and that under consideration and this is the ground of Farwell J.'s decision in *Foster* v. *Globe Venture Syndicate*, where he said " sound policy seems to " me to require that I should act in unison with the government on such a point as that."

The connection of this case with *Luther* v. *Sagor* is not to me clear. The latter seems to me a case of a vague certificate, the word " guarded," applied to it by Lord Roche, might be applied to the letters here. There is, however, no hint or suggestion by Lord Sumner that Roche, J., as he then was, was wrong or that he should have sought extraneous evidence. I see no reason

(1) 1900 1 Ch. D. 811 at 814. (2) 1921 1 K.B. 456 and 3 K.B. 532.

why all certificates affirmative negative or indefinite shall not come within the passage of Lord Sumner's speech set out above. Whichever it may be, it is yet His Majesty's opinion, or the best evidence thereof.

Where a certificate is refused Lord Sumner thinks secondary evidence might be sought. The immediate question is: Secondary evidence of what? The answer is of His Majesty's recognition of the claimant's status. It is difficult to see what that secondary evidence could be. The refusal itself seems to be strong evidence of non-recognition. Evidence at large could not be given of His Majesty's Acts or those of his servants, since to draw deductions from these would be to define or interpret His Majesty's policy. I conceive that it could only be found in some Act of State such as a Proclamation, or as in *Statham* v. *Statham* (1) a certificate in another case. Such earlier definite opinion can, however, avail little, a later refusal or guarded certificate may or would indicate a change of opinion and the effect of such change is demonstrated in *Luther* v. *Sagor* (2).

In this case appellant's own counsel relies little on the letters. As to them he says only that they do not say the Sultan is not a sovereign, and that that of 12th November, 1948, states: "Before 20th October, 1945, His Majesty had no jurisdiction in Johore." The fact that there is no denial of sovereignty is immaterial. Though this be a matter on which the court will, if necessary, inform itself, nevertheless evidence can be tendered (Lord Sumner 1924 A.C. at page 827). In either event the court must be satisfied that the defendant is duly recognised otherwise his plea fails.

Jurisdiction is certainly no determinative of sovereignty. The Crown exercised jurisdiction in Turkey and China as to whose sovereignty there was never any doubt. Jurisdiction similar to that exercised by the British Crown under the Foreign Jurisdiction Act 1890 was acquired in the former country at a time when it was one of the greatest military powers and arose from the impossibility of dealing with Christians under Islam where law and religion are one. So, too, the Slave Trade was suppressed by grants of jurisdiction to British courts or to mixed courts by states whose sovereignty was never questioned. The apparent assumption therefore that the statement in the letter of 12th November, 1948, amounts to an assertion that the Sultan was Sovereign prior to 20th October, 1945, is without foundation.

There is, however, an earlier recognition of the sovereignty of the state of Johore in the case of *Mighell* v. *Sultan of Johore* (3). This is expressly referred to in the last paragraph of the letter of 9th June, 1948, with a warning that the position has now materially altered. In that case the Secretary of State's letter stated "Johore is an independent state and territory in the "Malay Peninsula and that His Highness Abu Bakar is the present "sovereign ruler thereof, that the relations between himself and His Majesty "the Queen which are relations of alliance and not suzerainty, are now "regulated by treaty, wherein he is called the Maharajah of Johore; that "the Sultan has raised and maintains armed forces by sea and land, has "organised a postal system, dispenses justice through regularly constituted

(1) (1912) P. 92.
(2) 1921 3 K.B. 532.
(3) 1894 Q.B.D. 149.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued.*

" Courts of Justice, and generally speaking exercises, without question, the " usual attributes of a Sovereign ruler." Paragraph 2 of the letter of 9th June is an emasculated redraft of this. The state is no longer described as " independent " nor the ruler as " sovereign," and he is now only said to exercise " attributes of sovereignty." The later paragraphs may be added as an explanation of the varied opinion.

The fourth of these paragraphs might suggest to a Moslem prince a wide exception, and to imply, for the reason above referred, no sort of interference between Moslem and Moslem, or Moslem and Ruler. This is, however, a common provision in Protectorate Treaties and has been given a narrower interpretation than elsewhere.

There is a presumption of continuance but it can have only occasional application in these cases. There is no statement of loss of recognition, and as the matter stood in July, this argument seemed strong. The subsequent letters and the refusals to the Sultan render it no longer tenable. It is suggested the Secretary of State may have been misled by Brown J.'s letter to which the Secretary of State's letter of 12th November 1948 is a reply. I do not think so. The Secretary of State is well advised as to what is required. The letter of 9th June, 1948, deals with the present position, which, I think, alone matters. The Sultan's letter set out above is perfectly clear and the Chief Justice's letter of 29th July only repeats the Sultan's question.

It is suggested that the matter is left by the Secretary of State to the Court. The question of fact was always with the court; the Secretary of State cannot by letter or otherwise vary what " for the purpose of an " English court of law," the court must seek: The Court applies for information and not for an issue of fact or law. Parties may ask for a decision on facts stated or agreed, but the Secretary of State is not a party, and the Respondent has not agreed. It may be His Majesty would be prepared to submit any question between himself and the Sultan to the decision of a British Court. The Sultan's opinion on this matter are abundantly clear from his letters, but a matter far more dim is what His Majesty thinks of the Sultan's status and any assumption of contention would imply non-recognition by His Majesty which in itself is sufficient for the purpose of this court in this case.

The documents attached are agreements. In their nature they would hardly seem to be the place to find the opinion of one of the parties of the other. Had I to analyse these documents I should be inclined to attach more importance to the recitals, as statements of fact than to the expressions of common intention, and there seems a great difference between that of the Treaty of 1885:

> " AGREEMENT on certain points touching the relations of
> " Her Majesty's Government of the Straits Settlements with the
> " Government of the Independent State of Johore, made between
> " the Right Honourable Frederick Arthur Stanley, Her Majesty's
> " Secretary of State for the Colonies, on behalf of the Queen of the

" United Kingdom of Great Britain and Ireland, Empress of India, " and His Highness the Maharajah of Johore."

and recitals 2 and 3 of the Johore Agreement, 1948 :

" AND WHEREAS it has been represented to His Majesty " that fresh arrangements should be made for the peace, order and " good government of the State of Johore :

" AND WHEREAS His Majesty in token of the friendship " which he bears towards His Highness, the subjects of His " Highness, and the inhabitants of the State of Johore is pleased to " make fresh arrangements to take effect on such day as His " Majesty may by Order in Council appoint (hereinafter called " ' the appointed day ') : "

Had the court to construe these documents they could only do so by reading them as treaties at International Law which could not produce the answer required, or as contracts when it would seek the common intention the law would ascribe to the parties, not the opinion of one. In them is no clear statement of recognition by the Crown which could be read as amplifying the certificates, nor could such statement be of more recent date.

The appellant's own contentions were largely an answer to his preliminary point. When speaking of the Sultan's assent to Bills under Article 54, and his obligations under Article 8 of the Federation Agreement and a suggestion that steps might be taken to dispense with assent, he described this as circular reasoning based on an assumption of non-sovereignty, and quoted Kay L.J. (1) where he suggests that " If the Sultan " disregards it (the obligation to accept advice) the consequences may be the " loss of that protection, or possibly other difficulties with this country." That clearly is begging the question with an assumption of sovereignty. There is, however, a great difference between a treaty from which a party may resile at will and agreements such as these attached by the Secretary of State. In fact the only answer is in the policy of His Majesty and the means of enforcing it. These are not matters for the court, and were such matters to be discussed we might expect to be addressed at length in the language with which Mr. Shearn concluded his reply.

Again he tells the Court it must decide if Sovereignty is in the Sultan, the Federation or His Majesty. The authorities seem to show clearly the court should do nothing of the kind while a British court may for the benefit of a British subject have to define the limits of the prerogative. I cannot believe that one who is not a British subject can require it to trace the limits of His Majesty's Sovereignty. Vaughan Williams L.J. in rejecting Mr. Hall's thesis on the Foreign Jurisdiction of the British Crown in *Sekgome's* case (2) refused to regard the external exercise of His Majesty's Royal Power in relation to such persons as dependent on statute, or in effect to treat it as other than a matter of fact. There is no other answer to Mr. Hall's argument. For acts outside the realm against such person might be raised the plea of Act of State on which the ratification, which gives to the act its character, may similarly be proved by letter of the Secretary

(1) 1894 Q.B.D. 162. (2) (1910) 2 K.B. 376.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued*.

of State that seems to conclude inquiry. (1) The appellant's arguments would seem to ignore the function of a municipal court. We are mercifully spared seeking the absolute truth but that on facts between parties. There is no reason to suppose that the respondent here knows, or is in a position to prove, all the facts and considerations on which His Majesty's opinion would be based, and still less the appellant, the object of the opinion. The court can neither put itself in His Majesty's place to form an opinion, nor substitute its own based may be on International Law. As Lord Sumner says : " for the purpose of an English Court of Law," a municipal court can only look for His Majesty's recognition and the same limitation seems implied locally in the terms of Section 57(1) (viii) of the Evidence Ordinance. While His Majesty may not, except by constitutional convention, be restricted as to the form of the expression of his opinion yet the forms of evidence and scope for interpretation seem alike very limited.

I am not satisfied that the Sultan of Johore is recognised by His Majesty as an independent Sovereign, on the view I take on other matters it is not necessary to decide the case on this point, as it can better be decided on a point of substantial justice than on one of mere political theory.

The main point in the appeal itself was that the learned Judge was wrong in holding that the proceedings brought in the Syonan Kotohoin were a submission to the jurisdiction of this court. This Court, it was argued, is the Supreme Court of the Colony of Singapore and came into existence on 1st April, 1946, only. It is not the same court as that of the Straits Settlements, though a submission thereto might have constituted a submission to this court, and it most certainly is not the same court as the Syonan Kotohoin in which on 3rd May, 1945, proceedings were instituted by the appellant. Moreover, the parties to that suit and in these proceedings were not the same.

The respondents argued that they came into this court under the terms of the Japanese Judgments and Civil proceedings Ordinance, 1946, and that Ordinance equates these proceedings to those, and puts them themselves on the same footing as a party thereto. This court is the successor, and in effect the same court as the Kotohoin which was properly conducted, administered English law and lawfully stood in the place of the former Straits Settlements Court. They also relied on a dictum of James L.J. in the case of *Strousberg* v. *Republic of Costa Rica* (2) where he says that a defendant sued by a foreign sovereign may counterclaim " or take any other " proceeding against that sovereign state for the purpose of enabling com- " plete justice to be done between them." These proceedings having regard to the very special circumstances are proceedings which would come within that dictum.

The respondents relied on an affidavit of Mr. Ess in which it is stated that

> " The old staff of the former Supreme Court of the Straits " Settlements except the Europeans who had escaped from Singa- " pore or had been interned by the Japanese, were re-appointed to " the position which they had previously held.

(1) *Buron* v. *Denman* 2 Ex. 167. (2) 44 L.T.R. 199 at 201.

" The practice and procedure of the said Syonan Kotohoin " was identical with the practice and procedure of the former " Supreme Court of the Straits Settlements both in civil and " criminal matters, except (i) that as regards criminal matters the " procedure was slightly altered by a ruling to the effect that " before an accused or an appellant could be acquitted the Japanese " criminal judge had to be consulted. A few amendments were " made to the criminal law under which some new offences were " created and some punishments for old offences were varied, " (ii) that the former heading of all proceedings in the Courts was " changed from ' In the Supreme Court of the Straits Settlements, " Settlement of Singapore ' to ' In the Syonan Kotohoin, " Syonan.' "

" Apart from those slight amendments the criminal law was " unaltered. Civil law and civil procedure was left completely " unaltered in so far as it affected British subjects except for the " formal heading of the proceedings mentioned in the last para- " graph hereof. However, in a case in which one or both of the " parties were Japanese, the Japanese Judge was the only judge " who had jurisdiction to try the case. In such a case the Japanese " would adopt as far as I am aware the Japanese procedure and " the Japanese civil law."

The learned judge who decided the case seems to have relied heavily on the fact that orders in both proceedings were signed by the same Assistant Registrar. Were it not for this I should have thought the proposition beyond question that a Court consist of Judges, and at least as regards this court, or the Straits Settlements Court, that proposition is clear for the words of Section 3 Courts Ordinance are quite definite. The facts of the Japanese occupation are common knowledge and records of the Kotohoin are among the records of this Court.

Singapore was surrendered on 15th February, 1942, and the Japanese entered into military occupation on the morning of 16th February, 1942. The sessions of the Supreme Court were then continuing and sittings had been held up to that time. None of the Judges of this Court had left the country and sufficient judges were resident in this building to constitute a full court. They were that day removed at the point of the rifle, and later interned.

As a power in military occupation of territory it was at international law the duty of the Japanese to give the inhabitants access to the courts they were accustomed to. The law administered and the procedure should continue without alteration. The cases of the courts of Alsace in 1870 and of the Belgian courts in 1914/18 illustrate the nature of these obligations. The Articles of war are to the same effect. It is said the occupying power was entitled to intern judges and others, and that " all legitimate steps he takes in the exercise of this right must be recognised by the legitimate government after the occupation has ceased." (1).

(1) Oppenheim International Law, Vol. II S.169 (6th Ed.).

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued.*

It may be that the occupying power has such rights and that its legitimate acts must be recognised. There is here, however, no evidence at all that the Japanese occupation was conducted in accordance with the conditions prescribed, and none of the necessity to remove judges. Moreover, even supposing these facts could be proved, such courts established by necessity are not the courts of the occupied country but those of the occupying power. In fact a proclamation of annexation was issued and the name of the court was changed indicating a changed court. In the Writs issued His Majesty's name was struck out, and "Dai Nippon Teikoku" substituted, and they were witnessed, not by the Chief Justice of Singapore, but by a Judge of the Syonan Kotohoin.

It was suggested at the conclusion of the argument that the courts of the British Military Administration continued cases from the Kotohoin. Those courts were given very wide powers, and what may have been done from necessity or by consent, or without objection of parties seems to me of small moment. The Kotohoin were never recognised as the legal continuing courts of the country. By the Proclamation made and published in Kandy but to take effect here by Lord Mountbatten on 15th August 1945 section 6 provided

> "All courts and tribunals, other than military courts established under my authority are hereby suspended and deprived of all authority and jurisdiction until authorised by me to reopen."

Orders made by Japanese courts after that date have been treated as void. Those courts were treated as enemy courts. The Ordinance, under which respondents are proceeding, refers throughout to Japanese Courts and Japanese judgments.

The fact that the same Assistant Registrar signed in each case may reflect on the nature of his acts but cannot affect the character of the courts.

I am therefore unable to agree with the learned trial Judge that this court is the same as the Syonan Kotohoin. I feel no doubt that it is not.

This fact in itself appears to me sufficient to dispose of any question of waiver. The jurisdictional immunity of the appellant depends not on his position at international law, nor what his standing might be before some court at the Hague, nor yet on his position relative to the Mikado ; but on what he is recognised as being by His Majesty the King. His actions therefore in a Japanese court, albeit in military occupied territory, cannot in my opinion affect his position in this court.

It is suggested that the Japanese proceedings may have been in some way collusive. There is no evidence of this, beyond the absence of defence, nor do we know the Sultan's foresight in April, 1945. We do know that this family property of which he was the original grantor, was then sequestrated, and of no benefit to any member of the family, and would so continue for an unknown period. It is, I think, a matter of general and common knowledge of the history of the country that the Sultan's own country was itself under military occupation, that meetings of the Sultans and the Japanese were

held, but there is no evidence whatever in detail of the relations of the Sultan as a sovereign, or as a litigant with the Japanese.

Nevertheless it is said that these are the same proceedings. In order to effect a waiver I think it must be shewn that the submission is to the same jurisdiction and in the same proceedings and as the respondents cannot shew the first the second appears immaterial. In most cases the same proceedings must be in the same jurisdiction, but in the special circumstances here, it is said, they need not be so. The point being specifically taken must be considered. The proceedings are undoubtedly closely connected. The matter can now only be brought into this court by virtue of the provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946. I agree that the fact that the respondents were not parties to the original proceedings is immaterial, for the legislator must be understood to have used the words "any person aggrieved" rather than "party" to include such persons as the respondents who are absentees with an undoubted interest in the subject matter. This Court is, however, bound by the decision in *Duff Development Co.* v. *Kelantan Government* (1) and that case seems closely analogous to this in that regard. There three of the law Lords clearly held that an application under Section 11 of the Arbitration Act 1889 to set aside the award was not such a submission to the courts jurisdiction as would extend to a subsequent application by the other side under Section 12 of the same Act to enforce the award, but that the latter was a "new proceeding and though connected with the earlier application is distinct from it." Proceedings could hardly be more closely connected, the subject matter of both was the same award.

The proceedings in this court are connected with and arise out of those in the other, the Japanese Court. They are brought under Section 3 (1) of the Japanese Judgments and Civil Proceedings Ordinance 1946 which provides :—

> "3.—(1) Any party to the proceedings in which a Japanese "decree was made or given or any person aggrieved by such decree "may, within three months from the commencement of this "Ordinance, or within such extended time as the appropriate "Court may allow, apply in the prescribed manner to the "appropriate Court for an order—
>
> "(A) that such decree be set aside either wholly or in part ; or
>
> "(B) that the applicant be at liberty to appeal against such decree."

This section confers on the persons for whose benefit it is made a new right to attack and possibly to defeat what certainly were in the times of the Japanese Military Occupation vested rights, and which now are rights defeasible, and by inference defeasible only, in the manner prescribed. Such proceedings are in exercise of a totally new right which applies to all judgments of the courts prescribed regardless of date. The rights obtained by Japanese Judgment stand until set aside ; they are not nullified by the

(1) 1924 A.C. 797.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued.*

liberation nor by the respondents challenge, so that the appellant must prove his case over again.

Rules made under the Ordinance prescribe proceedings by Originating Summons, and in this case there was great difficulty in effecting the fresh service required. These facts are emphasised by appellant, they are appropriate to new proceedings but whether these proceedings are the same or fresh, is to be decided rather by their nature than by their incidents.

Proceedings under the Ordinance of 1946 cannot be equated to proceedings under Order 27 rule 15 or Order 39 of the Rules of the Supreme Court which are limited to default judgments and in time, and which, had the courts and proceedings been in fact the same, would themselves have been available in their limited scope. The legislator clearly thought they did not apply or were insufficient and he provided a new right. Proceedings based on fraud and available at any time to reverse a judgment—are by a fresh action eo nomine. In such case the claim is based on fraud and only when that is established do the earlier proceedings come in question. It is clearly a new proceeding and whether the courts would in such case take a wider view or might make an exception need not concern us as fraud is not here pleaded. In my opinion these cannot be regarded as the " same proceedings."

The three questions of whether the jurisdiction, the proceedings and the parties are the same here as in the Kotohoin were argued as if they were distinct. They are in fact interdependent, and the first is by far the most important. The parties are parties to the proceedings and apart from the proceedings have no existence as parties. If this point is to be considered they are apart from the proceedings different persons, and the Japanese Custodian was acting at that time adversely to the present respondents. If the proceedings are the same the parties for that purpose also are, the Ordinance of 1946 putting them on the same footing. On the other hand if, as I think, jurisdiction and proceedings are different so are the parties.

Respondent also relied on the above dictum of James, L.J. It is pure obiter. The court in *Strousberg's* case did not act on it but upheld the immunity of the Costa Rican Republic. It must be read in the light of the decision and so read can only apply to " any other proceeding " in the same cause or matter. It was said in argument that in *Strousberg's* case the counterclaim greatly exceeded the claim and arose out of other dealings, but the first of these facts is quite irrelevant and the second might well be. The plaintiff's application for substituted service was there rejected because his claim was not in form a counter-claim, but a new action on a new writ. Jessel M.R. said : " It is a simple independent action and the only object of it is to get judgment for the sum of money alleged to be due for the purpose of setting that judgment off against the former judgment," and James L.J. himself went on : " Pollock B. was induced to take the view " that this was really and in substance a case . . . of defence to the " original suit. But then the original suit was brought to such a point that " this could by no possibility be used *as a defence in that suit,* and the position " merely resolved itself into this, that, because the Republic of Costa Rica " had once brought an action in this country, and had obtained a judgment

" against the defendant in that action, that at any time afterwards, because " there had been that suit at one time pending between them, that same " defendant may come to this country and say: ' I submitted to the " ' jurisdiction in your claim, and I now say that you must submit yourselves " ' to the jurisdiction in my claim.' " This seems to me apposite to proceedings under this Section 3, and more particularly to those under paragraph (A). If proceedings be taken under (B) they are in the nature of an application for leave to appeal and then in the words of Lord Finlay in the *Duff Development Co.* v. *Kelantan Government* at page 819 (1): " The leave " of the Court being necessary before the award can be enforced as if it " were a judgment, if a sovereign State claimed its immunity this would be " a good reason for refusing to leave." The Sultan asked for construction of a deed, obtained it, and on it has entered on the land. I am at a loss to see how his position can differ, and for him be worse, by reason of the fact that he went by way of the Japanese Court and not by a single unlawful entry.

This brings me to the last point taken by respondents and taken but briefly; that the sovereign's immunity does not extend to claims in respect of land or property within the jurisdiction. He referred to Oppenheim's International Law Volume I, page 239 n. (2) and to *Burns* v. *Siemens Brothers* (3) where, he contended, the court accepted an argument that in addition to jurisdiction specifically conferred by Statute, it had an inherent jurisdiction to enforce legal rights of property.

Wheaton (4) expresses an opinion more definitely in his favour holding that " The tendency of international law is to protect such property in all " cases where any dealings with it would impair the dignity of the foreign " sovereign, and to substitute negotiations between governments for " proceedings in the local Courts in such cases. But where the suit can be " carried on without affecting his dignity there seems no objection to the " local Court deciding the case in the ordinary way. . . . He will also " probably be amenable to the local Courts in respect of actions arising out " of such immovable property as he possesses within the territory."

The second exception referred to in *Strousberg* v. *Republic of Costa Rica* (5) is actually more to the point; that is the case of trust property within the jurisdiction in which a foreign sovereign may have an interest, an exception to the general rule which was acted on in *Gladstone* v. *Musurus Bay* (6). Here the property was subject to a trust but is now apparently held freed from the trust.

The Parliament Belge (7) and Jupiter (8) show that the case cannot be put as high as the respondents would. Those proceedings were against the

(1) 1924 A.C. 797.
(2) Oppenheim's International Law, Vol. 1 (7th Edn.).
(3) 1919 1 Ch. 225.
(4) Wheaton's International Law, Vol. 1 (6th Edn.), p. 242.
(5) 44 L.T.R. 199.
(6) 1 Hem. & M. 495.
(7) 1880 5 P.D. 197, 214.
(8) 1924 P. 236.

In the Court of Appeal of the Colony of Singapore.

No. 51. Grounds of Judgment of Evans, J., 1st November 1949—*continued.*

property itself temporarily within the jurisdiction, but the property was of a very moveable nature, for which reason, and on the facts of the former case, it could not be suggested that coming within the jurisdiction implied any submission to it.

Prior to 1870 an alien could not hold land in England and it is therefore perhaps not surprising to find no English case concerning land, nor are European sovereigns often resident outside their own country. English tenure is feudal in origin and all land was held mediately or immediately of the King. It would seem difficult in such circumstances to deny his jurisdiction or expect it to be withheld. Moreover the consequence of attempted tenure by an alien was forfeiture to the Crown.

In India such cases might be expected and in fact have not been infrequent. So much so that legislative provision has been made recognising the principle contended for. It is to be found in Section 86 Civil Procedure Code subsections (1), (2) and (5) of which read

" 86. (1) Any such Prince or Chief, and any ambassador or envoy of " a foreign state, may, with the consent of the Governor- " General in Council, certified by the signature of a Secretary " to the Government of India, but not without such consent, be " sued in any competent Court.

" (2) Such consent may be given with respect to a specified suit or " to several specified suits, or with respect to all suits of any " specified class or classes, and may specify, in the case of any " suit or class of suits, the Court in which the Prince, Chief, " ambassador or envoy may be sued ; but it shall not be given " unless it appears to the Government that the Prince, Chief, " ambassador or envoy—

" (A) has instituted a suit in the Court against the person " desiring to sue him, or

" (B) by himself or another trades within the local limits of the " jurisdiction of the Court, or

" (C) is in possession of immovable property, situate within " those limits and is to be sued with reference to such " property or for money charged thereon.

" (5) A person may, as a tenant of immovable property, sue, " without such consent as is mentioned in this section, a Prince, " Chief, ambassador or envoy from whom he holds or claims to " hold the property."

It will be seen that no difference is made between princes and the representatives of foreign sovereigns, and that the cases in which the Government may assert jurisdiction include those which are the exceptions to a sovereign's immunity in works on International Law and in the cases cited in this court. A distinction is drawn between cases in which the princes' title to land could and those in which it could not be called in question. This is not without significance for the descent of the land may follow that of the

sovereignty, and a claim to land might be, and in fact has been, used to test the claim to the principality, *Neelkish Deb. Burmono* v. *Beerchunder Thakoor* (1). Where it can not be called in question (subsection 5) the prince may be sued as of right, which goes to shew the immunity is not personal, but depends on the nature of the claim.

Singapore was a part of the Indian Empire till 1866, and here too the difficulties arising from the presence of sovereigns who mignt not be wholly foreign was felt as is shewn in the cases of (1861) *Nairne* v. *Rajah of Quedah* (2) and (1843) *Abdul Wahab* v. *Sultan of Johore* (3). The latter case in which the Sultan of Johore was held not to be entitled to immunity to these courts, was not cited and probably could not now be relied upon, but the decision rested at least in part on the nature of the claim in the action and not on the person of the defendant. Neither of these cases refers to land.

It has always been held that by the Treaty of Cession and the first Charter of Justice English law was imported into this colony. The cession of 1824 is one of Sovereignty and property to the East India Company. There appears to be no express provision as to the tenure of land either in the later Singapore charter of 27th November, 1826, or in Geo. IV c. 85 (s. 19–21). In the absence thereof reference may be made to Sir Roland Braddell who, in his book Law of the Straits Settlements Vol. I page 43, sets out the tenures actually created. It will be seen that all are leases except the last which arises from long possession and which can hardly be regarded as granted. In such case the courts might presume, as was the case, in the Settlement of Malacca in the absence of supposed Dutch grants, the grant of a title in fee simple (4), unlikely as this would seem, or they might more logically presume a lost grant of the kind usually made. The present form of Crown grant is old. It does not specify the tenure. The tenants in fee simple would presumably be tenants in chief, and the grantees by lease clearly could not question their lessors' title. In the original settlement before the court that of 1st December, 1903, the Sultan claims to have been seised in fee simple of land forming part of Government Grant No. 91 of 14th September, 1869.

The Sultan of Johore is an alien and can only hold land under the Statutory provisions enabling such persons to hold. Lord Brougham's argument in *Mayor of Lyons* v. *East India Company* does not apply here (5) Section 2 Naturalisation Act 1870 provides :—

> " 2. Real and personal property of every description may be
> " taken, acquired, held, and disposed of by an alien in the same
> " manner in all respects as by a natural-born British subject ;
> " and a title to real and personal property of every description may
> " be derived through, from, or in succession to an alien, in the
> " same manner in all respects as through, from, or in sucession to
> " a natural-British born subject ;

(1) 12 Moores (I.A.) 523.
(2) 1 Kyshe 145.
(3) 1 Kyshe 298.
(4) 1 Kyshe 27.
(5) 1 Moore P.C.C. at 275

In the Court of Appeal of the Colony of Singapore.

No. 51: Grounds of Judgment of Evans, J., 1st November 1949— *continued.*

" Provided—

" (1) That this section shall not confer any right on an " alien to hold real property situate out of the United Kingdom " and shall not qualify an alien for any office or for any " municipal, parliamentary, or other franchise :

" (2) That this section shall not entitle an alien to any " right or privilege as a British subject, except such rights " and privileges in respect of property as are hereby expressly " given to him :

" (3) That this section shall not affect any estate or " interest in real or personal property to which any person " has or may become entitled, either mediately or immediately, " in possession or expectancy, in pursuance of any disposition " made before the passing of this Act, or in pursuance of any " devolution by law on the death of any person dying before " the passing of this Act."

The local ordinance suggests that here, as in other Colonies, the rule may not have been strictly enforced for it provided in 1875

" 2. Any alien may by grant, conveyance, lease, assignment, " succession, inheritance, bequest, or otherwise, take, acquire, " hold and possess any lands or other immoveable property situated " in this Colony, and the said lands or other property as aforesaid " may sell, transfer, assign, bequeath, or transmit to any other " person as fully and effectually to all intents and purposes, and " with the same rights, remedies, exemptions and privileges as if " he were a natural born subject to His Majesty residing in this " Colony.

" 3. Every such grant, conveyance, lease, assignment or " bequest, sale, transfer or other act prior to the twenty-fourth " day of December, 1875, made or done by or with any such alien, " and the right to all property derived by or through any alien " prior to the said date of succession, inheritance, transmission or " otherwise, shall be deemed as valid and effectual to all intents " and purposes as if it had been made, done or derived by, with or " through any natural born British subject."

Section 3 appears to validate such former holding for the purpose of title only. Although the rights and privileges of the alien are said here to be as full and effectual as those of a natural born subject, whereas in England the alien was not entitled to any of the privileges of a British subject except privileges of property, the effect is I think the same and they hold subject to the same privileges. More recent grants are made subject to the terms of the Crown lands Ordinance Cap. 113, yet, these terms would be virtually unenforceable against a foreign sovereign who holds land. This I cannot believe to be the law.

In the Parlement Belge (1) Brett L.J. (as he then was) gave a long and carefully prepared judgment for the full court. He speaks of the immunity of the person of any foreign Sovereign or ambassador, of the ambassadors property and of the public property of any state. This is none of these. It is said to be derogatory to the foreign sovereign's independence or dignity to summons him as if he were subject to or expected to submit to a jurisdiction foreign to his state. There are not the same difficulties as to service in an action for recovery of land. In the case of many personal actions, the English courts in effect say : Sue the sovereign in his own courts by such process as he there permits. It is however unlikely that his courts would try a case concerning here and outside his jurisdiction, and it is even more unlikely that these courts or this government would recognise their judgments in such cases. It therefore appears to me that this contention of the respondent is founded on sound legal principles. To allow such a claim in respect of land held privately under a Crown grant would be tantamount to converting this claim of personal immunity to one differing little from territorial sovereignty of the land no matter how unlawfully the occupation of such land may have been obtained.

This point was not argued at length nor did the appellant effectively reply to it. The paucity of authority does not excuse this court from coming to some decision on the matter. It can, I think, be decided on principle. The immunity now claimed is both outside that previously recognised, and unnecessary for the purposes for which that immunity is said to exist. On the other hand it might deprive a complainant of all remedy in any place and is inconsistent with the English theories of land tenure. It was not shewn that this is such an action concerning land. On the face of it, it is a proceeding to set aside a declaratory judgment. The declaratory judgment was one on the construction of instruments creating interests in land. Should the respondent proceed by action to recover possession of the land, of which under the instrument they had the beneficial interest they would be met with this judgment. This proceeding appears to me therefore to be one concerning land, which is undoubtedly within the jurisdiction and which is the subject of a private and personal claim of the Sultan, and not a claim of public property of the State. In such case it seems to me the Sultan is subject to the jurisdiction of this court.

Sd. L. E. C. EVANS,
Puisne Judge,
Singapore.

Singapore, 1st November, 1949.

Certified true copy,

Sd. HENG PENG HOE,
P.S. to Evans, J.

1.11.49.

(1) 1880 5 P.D. 197, 214.

In the Court of Appeal of the Colony of Singapore.

No. 52. Petition for Leave to Appeal to Privy Council, 23rd December 1949.

No. 52.

Petition for Leave to Appeal to Privy Council.

TO THE HONOURABLE THE JUDGES OF THE COURT OF APPEAL.

(L.S.)

THE HUMBLE PETITION of His Highness Sir Ibrahim, the Sultan of Johore (Appellant) of Grosvenor House, Park Lane, London, but ordinarily resident in the State of Johore in the Federation of Malaya.

SHEWETH—

1. That on 3rd May 1945 Your Petitioner applied to the Court of the Judge at Syonan in Originating Summons No. 24 of 2605 for the construction of a Deed of Gift and Settlement dated the 1st December, 1903, in favour of Inche Rugiah, the late Sultanah of Johore, and of a Deed of Gift Settlement and Trust dated the 22nd December 1926 in favour of Tungku Zahrah binte Tungku Abubakar deceased as Donee and Your Petitioner as Trustee and for declarations as to whether in the events which had happened and having regard to the fact that the parties thereto were Mohammedans the said Deeds were lawfully executed and valid or bad and void and for consequential relief.

2. That by an Order of the said Court of the Judge at Syonan dated the 18th June 2605 it was declared that Mohammedan law was applicable to the gifts comprised in the said Deeds and that the said gifts were invalid void and of no effect and that the immovable properties comprised in the said gifts reverted to Your Petitioner as beneficial owner thereof.

3. That in the proceedings commenced by Originating Summons No. 23 of 1947 referred to in the title to this Petition Abubakar Tungku Aris Bendahara of the State and Territory of Johore, Henry Walter Cowling and George Herbert Garlick both of Singapore as the Trustees of a Deed of Settlement dated the 28th day of June 1944 applied to the High Court of the Colony of Singapore for an order that the said Order or Decree dated 18th June 2605 be set aside wholly or for leave to appeal against the whole of the said Order or Decree on the grounds that necessary parties did not appear personally and that if they were represented on the hearing leading up to such Order or Decree (which it was denied) they were represented by a person appointed by some Japanese Authority who did not appear and further that the said Order or Decree was based on principles unknown to the existing laws of the Colony of Singapore and was erroneous and bad in law.

4. That pursuant to an Order of Court dated the 15th August 1947 notice of the concurrent Originating Summons herein was served on Mohamed Ismail of Johore Bahru as one of the attorneys of Your Petitioner.

5. That on the 8th October 1947 conditional appearance was entered for Your Petitioner in the Registry of this Honourable Court and on the 11th October 1947 a Summons in Chambers No. 564/47 was filed on behalf of Your Petitioner praying that the Orders dated the 30th June 1947 and the 15th August 1947 as to the service of the Originating Summons referred to in paragraph 3 of this Petition and all proceedings thereunder including the service of the said Originating Summons might be set aside and all further proceedings herein might be stayed as against Your Petitioner on the ground that this Honourable Court has no jurisdiction over Your Petitioner who is a Sovereign Ruler.

6. That the said Summons in Chambers was adjourned for argument in open Court and came on for hearing before the Honourable Mr. Justice Gordon-Smith on the 15th, 16th, 17th and 18th days of March 1949 when judgment was reserved and later delivered on the 7th April 1949, and an Order was made which reads as follows :—

"UPON the application of His Highness, Sir Ibrahim, The "Sultan of Johore, made by way of Summons in Chambers entered "No. 564 of 1947 coming on for hearing on the 15th, 16th, 17th "and 18th days of March 1949 AND UPON reading the Agreed "Bundle AND UPON hearing what was alleged by Mr. E. D. "Shearn and Mr. K. A. Seth of Counsel for the Applicant, by "Mr. J. Laycock and Mr. Denis Murphy of Counsel for (i) Abubakar "Tunku Aris Bendahara of the State and Territory of Johore "(ii) Henry Walter Cowling and (iii) George Herbert Garlick "(hereinafter called "the Respondents") by Dr. C. H. Withers-"Payne of Counsel for H.H. Ungku Fatimah and Tunku Maimunah "Abubakar and by Mr. K. Gould of Counsel for the children of "Tunku Abubakar aforesaid IT WAS ORDERED that the same "should stand for Judgment and upon the same standing for "Judgment this day THIS COURT DOTH ORDER that the said "Summons be dismissed with costs to be taxed and paid by the "Applicant AND THIS COURT DOTH CERTIFY for two Counsel to "be allowed to the Respondents."

7. That Your Petitioner was dissatisfied with the Judgment and Order delivered and made by The Honourable Mr. Justice Gordon-Smith as recited in paragraph 6 hereof and on the 25th April 1949 gave notice of Appeal to the Court of Appeal against so much of the said Judgment as held that Your Petitioner had submitted to the jurisdiction of this Honourable Court by presenting in the year 1945 the Originating Summons No. 24 of 2605 referred to in paragraph 1 of this Petition and obtaining a Decree thereon and that Your Petitioner had therefore waived his sovereignty and against the Order dismissing with costs Summons in Chambers No. 564/47. On the 30th June 1949 Your Petitioner filed a Memorandum of Appeal in the said proceedings and therein set out the grounds of Appeal.

8. That the Appeal of Your Petitioner came on for hearing on the 25th, 26th and 28th days of July 1949 and 19th and 20th days of September 1949 before The Honourable Mr. Charles Murray Murray-Aynsley, Chief

In the Court of Appeal of the Colony of Singapore.

No. 52. Petition for Leave to Appeal to Privy Council, 23rd December 1949—*continued.*

Justice of the Colony of Singapore, The Honourable Sir Harold Curwen Willan, Chief Justice of the Federation of Malaya and The Honourable Mr. Laman Evan Cox-Evans, Judge, when judgment was reserved and later delivered on the 1st day of November, 1949 and an order was made which reads as follows :—

" This Appeal coming on for hearing on the 25th, 26th and " 28th days of July 1949 and 19th and 20th days of September " 1949 before The Honourable Mr. Charles Murray Murray-" Aynsley, Chief Justice of the Colony of Singapore, The Honour-" able Sir Harold Curwen Willan, Chief Justice of the Federation " of Malaya and The Honourable Mr. Laman Evan Cox-Evans, " Judge, in the presence of Messrs. E. D. Shearn and K. A. Seth " of Counsel for His Highness, Sir Ibrahim, The Sultan of Johore, " the Respondent-Appellant and of Mr. Denis Murphy of Counsel " for Abubakar, Tungku Aris Bendahara of the State and Territory " of Johore, Henry Walter Cowling and George Herbert Garlick " the Applicants-Respondents and upon reading the record and " upon hearing what was alleged by Counsel for both parties " THIS COURT DID ORDER that the said Appeal should stand " for Judgment and the same standing for Judgment this day in " the presence of Mr. K. A. Seth and Mr. Denis Murphy Counsel " as aforesaid THIS COURT DOTH ORDER that the Appeal of the " Respondent-Appellant be dismissed with costs to be taxed and " paid by the Respondent-Appellant to the Applicants-Respondents " AND LASTLY THIS COURT DOTH ORDER that the sum of $500 " paid into Court by the Respondent-Appellant as security for costs " of the Appeal be paid out to the Applicants-Respondents or their " Solicitors Messrs. Chan, Laycock & Ong on account of costs " payable to them."

9. Your Petitioner is advised and humbly submits that the said Order of the Court of Appeal is erroneous and ought to be reversed on the grounds that Your Petitioner is a Sovereign Ruler and as such has the immunities, privileges and prerogatives usually accorded by the comity of nations to a Sovereign Ruler and that Your Petitioner is not subject to the jurisdiction of this Honourable Court.

10. Your Petitioner therefore prays for a Certificate that this case as regards the nature of the legal issues and questions involved is a fit one for appeal to His Majesty in Council.

And Your Petitioner as in duty bound will ever pray, etc., etc.

Sd. IBRAHIM (in Malay).

Dated this 23rd day of December, 1949.

Sd. SISSON & DELAY,
French Bank Building, Singapore,
Solicitors for the Petitioner, His Highness
Sir Ibrahim, the Sultan of Johore.

It is intended to serve this Petition upon the Applicants-Respondents Abubakar, Tungku Aris Bendahara of the State and Territory of Johore, Henry Walter Cowling and George Herbert Garlick.

I, IBRAHIM, Sultan of Johore, the Petitioner abovenamed, affirm and say that the statements contained in the foregoing Petition are to the best of my knowledge information and belief in all respects true.

Affirmed at 115 Leadenhall Street in the City of London this 23rd day of December, 1949, by the Deponent Ibrahim, Sultan of Johore. } Sd. IBRAHIM (in Malay).

Before me,

Sd. E. CRAWLEY,
A Commissioner for Oaths.

No. 53.

Order granting Leave to Appeal to His Majesty in Council.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
ISLAND OF SINGAPORE.

IN THE COURT OF APPEAL.

Civil Appeal No. 7 of 1949
Originating Summons No. 23 of 1947.
(L.S.)

In the Matter of a Japanese Decree made in O.S. No. 24 of 2605 (1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th day of June 1945

and

In the Matter of the Japanese Judgments and Civil Proceedings Ordinance 1946.

BEFORE THE HONOURABLE THE CHIEF JUSTICE. IN OPEN COURT.

UPON Motion made to the Court this day by Mr. John Kendall Gale of Counsel for His Highness Sir Ibrahim Sultan of Johore in the presence of Counsel for Abubakar Tunku Aris Bendahara of the State and Territory of Johore, Henry Walter Cowling and George Herbert Garlick and upon reading the Petition herein and hearing what was alleged by Counsel THIS COURT DOTH CERTIFY that this case as regards the nature of the legal issues and questions involved is a fit one for appeal to His Majesty in Council AND THIS COURT DOTH GRANT to His Highness Sir Ibrahim Sultan of Johore leave to appeal herein to His Majesty in Council.

Dated this 23rd day of January 1950.

Sd. E. D'NETTO,
Dy. Registrar.

No. 54. Originating Summons, 3rd May 2605.

No. 54.

Originating Summons.

IN THE COURT OF THE JUDGE AT SYONAN.

Originating Summons No. 24 of 2605.

In the Matter of Order 52 Rule 5 of The Rules of the Supreme Court, 1934

and

In the matter of a Deed of Gift and Settlement dated the 1st December, 1903, in favour of Inche Rugiah, the late Sultanah of Johore, deceased

and

In the matter of a Deed of Gift, Settlement and Trust dated the 22nd December 1926 in favour of Tungku Zahrah binte Tungku Abubakar, deceased (Donee) and His Highness Tungku Ibrahim Ibni Abubakar (Trustee)

Between

HIS HIGHNESS TUNGKU IBRAHIM IBNI ABUBAKAR SULTAN, Johore ... ... *Plaintiff*

and

THE CUSTODIAN OF ENEMY PROPERTY, Syonan ... ... *Defendant.*

ORIGINATING SUMMONS

Let the Custodian of Enemy Property the abovenamed defendant attend at Chambers at the Court House at Syonan on Monday the 28th day of May 2605 at 11 o'clock on the forenoon upon the application of His Highness Tungku Ibrahim Ibni Abubakar the abovenamed Plaintiff, who claims to be the Donor of the above referred to two Deeds, for the determination of the following matters, questions and things, namely :—

(1) For construing the said two Deeds.

(2) Whether, in the events which have happened and having regard to the fact that the parties to the said Deeds were Mohammedans, the said two Deeds were properly and lawfully executed under the law applicable to the parties, and are valid.

(3) If the answer to (2) above is in the negative, whether according to Mohammedan Law the said two Deeds are bad and void.

(4) If the answer to (3) above is in the affirmative, the plaintiff prays for consequential declaration reliefs and directions to revert the

lands and hereditaments concerned to the plaintiff and for necessary rectification of the land records.

(5) Such further or other relief as the nature of the case may require.

No. 54. Originating Summons, 3rd May 2605— *continued.*

Dated this 3rd day of May, 2605.

Sd. TAN THOON LIP,
Asst. Registrar.

This Summons was taken out by Messrs. Eric Choa & Co., whose address for service is No. 20 Malacca Street, Syonan.

This Summons is supported by an Affidavit of the plaintiff sworn to on the 17th day of April 2605, and is intended to be served on the defendant.

N.B.—If you do not attend either in person or by your solicitor at the time and place abovementioned (or at the place abovementioned at the time mentioned in the endorsement hereon) such order will be made and proceedings taken as the Judge may think just and expedient.

No. 55.

Affidavit of Appellant with 2 Exhibits thereto.

No. 55. Affidavit of Appellant with 2 Exhibits thereto, 17th April 2605.

IN THE COURT OF THE JUDGE AT SYONAN.

Originating Summons No. 24 of 2605.

In the matter of Order 52 Rule 5 of the Rules of the Supreme Court, 1934

and

In the matter of a Deed of Gift and Settlement dated 1st December, 1930, in favour of Inche Rugiah, the late Sultanah of Johore, deceased

and

In the matter of a Deed of Gift, Settlement and Trust (dated the 22nd December, 1926) in favour of Tungku Zahrah binte Tungku Abubakar, deceased, and Ibrahim Ibni Abubakar, Sultan of Johore

Between

HIS HIGHNESS SULTAN IBRAHIM, Johore ... ... *Plaintiff*

and

THE CUSTODIAN OF ENEMY PROPERTY, Syonan ... ... *Defendant.*

AFFIDAVIT.

I, Ibrahim, the Sultan of Johore, do solemnly affirm and say as follows :—

No. 55. Affidavit of Appellant with 2 Exhibits thereto, 17th April 2605— *continued.*

1. On or about the 1st day of December, 1903, and at all material times I was possessed of the following lands and hereditaments :—

(A) All that piece of land situated in the District of Geylang in the Island of Syonan (then called Singapore), containing an area of 112,993 square feet whereof the boundaries and dimensions and abuttals are more particularly delineated and coloured in the plan drawn on an Indenture dated the 1st day of September, 1897 (Registered in Vol. V of No. 192) and made between Mary Anne Esther Dunman and others of the one part and Saul Jacob Nathan of the other part with messuage or dwelling house erected thereon and known as No. 84, Grove Road, Geylang together with all easements thereto.

(B) All that piece of land situated in the District and Island aforesaid containing an area of 86,025 square feet whereof the boundaries and dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September, 1897 (Registered in Vol. C.V. No. 192) and made between Mary Anne Esther Dunman and others of the one part and Thaddeus Paul of the other part with the messuage or dwelling house erected thereon and numbered 77, Meyer Road, Syonan (then called Singapore) : formerly numbered as No. 86, Geylang Road.

which said two pieces of land herein-before-mentioned formed portion of the larger piece of land comprised in Government Grant No. 91 dated the 14th September 1869.

2. I had married one Inche Rugiah and made her the Sultanah of Johore. It was then thought appropriate and fitting that she should be provided with some substantial property commensurate with her standing and dignity. Accordingly I conveyed the aforesaid two pieces of lands and hereditaments to her by virtue of a Deed of Settlement and Gift executed by me on or about the 1st day of December 1903. The said Deed is now produced and shown to me and marked " IBAI." The said Deed was duly registered and the lands and hereditaments transferred to the said Inche Rugiah.

3. My sole intention in settling the said lands and hereditaments on the said Inche Rugiah was to provide her with property, though nominally but the legal estate and possession thereof was to remain vested in me with the understanding between me and the said Inche Rugiah that the registration of the said lands and hereditaments would be transferred to me on her death. Inche Rugiah had agreed and consented to this arrangement.

4. I am advised and verily believe that in conformity with the requirements of the Mohammedan Law applicable to myself and the said Inche Rugiah, a proper Deed of Settlement and Gift could only be valid if it was accompanied by reciprocal expressions of words of mouth of the donor and donee declaring " I give . . ." and " I accept . . ." In the case of this

Deed referred to above no such expressions were exchanged between myself and Inche Rugiah and it was only a nominal and ostensible arrangement, the legal and real possession of the thing gifted remaining in the donor, i.e. myself.

5. The aforesaid Inche Rugiah died intestate on or about the 8th day of March, 1926, leaving her surviving myself, her husband, and Tungku Abubakar, her only son and child by me. After her death even nominally the hereditaments should have reverted to me and the registration transferred to my name. However by that time a granddaughter, our first grandchild, was born to Tungku Abubakar, my son by Inche Rugiah. Inche Rugiah and myself had brought up our granddaughter. So after the death of Inche Rugiah my intention was to settle the said hereditaments on our grandchild for her life.

6. Letters of Administration to the Estate of Inche Rugiah were granted to Tungku Abubakar by the then Supreme Court, Singapore, on the 19th day of July 1926. Prima facie and as the facts stood then, Tungku Abubakar was entitled to $\frac{3}{4}$ of the said Estate and myself $\frac{1}{4}$ according to the Mohammedan Law, though actually the whole Estate all the time remained in me, the registration should have been transferred to me. But there was no difficulty at the time as Tungku Abubakar who fully understood my intention readily consented to my wishes and intentions to settle the whole Estate on my first granddaughter Tungku Zahrah for her life.

7. On or about the 22nd day of December, 1926, myself and the said Tungku Abubakar, by way of a family arrangement agreed to settle the aforesaid two pieces of lands and hereditaments by a further Deed of Settlement and Gift and conveyed them to myself as Trustee to stand possessed of the entirety thereof for one Tungku Zahrah binte Tungku Abubakar, the eldest daughter of the Tungku Abubakar, during her life time, subject to the rights and powers reserved for me in the said Deed to deal with the said hereditaments and lands as such Trustee. This Deed is now produced and shown to me and marked "IBAI ii." This arrangement of conveying the said lands and hereditaments lacked the exchange of verbal expressions necessary for valid settlements and gifts between parties professing Mohammedan religion, as stated above. The real legal estate and possession of the lands and hereditaments were to remain vested in me. In fact the settlement was by me alone and Tungku Abubakar was only a party nominally.

8. The aforesaid Tungku Zahrah binte Abubakar died intestate on the 1st day of March 1939 and Letters of Administration to her Estate were granted to her father the aforesaid Tungku Abubakar as her lawful father, by the Supreme Court, Johore Bahru, on the 3rd day of February, 1940. According to Mohammedan Law of Distribution the whole of the Estate of a woman dying intestate before marriage and without issue goes to the father. In this case therefore the whole of the said Estate and hereditaments would have gone to Tungku Abubakar but for my wishes and intention that the said Estate and hereditaments were to be settled on Tungku

No. 55. Affidavit of Appellant with 2 Exhibits thereto, 17th April 2605—*continued*.

Zahrah for her life only and that on her death they should revert to me. Thus after the death of Tungku Zahrah the said Estate and hereditaments reverted to me and myself to be registered as owner instead of myself as Trustee. The settlement and Trust on Tungku Zahrah expired on her death.

9. Tungku Abubakar with the whole of his family left Johore during the beginning of the hostilities of this war and embarked together with his family for an enemy country (India), on a boat from Syonan shortly before the fall of Singapore and nothing has been heard of him since. I am the only next of kin—lawful father of the said Tungku Abubakar in Malai at present.

10. The aforesaid two lands and hereditaments as a result of departure of Tungku Abubakar and his family were taken over and have been in the custody of the Custodian of Enemy Property, Syonan, the above-named Defendant, who is still holding them, treating tham as of enemy character.

11. I do hereby state and declare that in the first instance by settling the said two hereditaments on the aforesaid Inche Rugiah and conveying them to her under the circumstances recited in paras. 2 and 3 supra I never intended to give these hereditaments to her absolutely. The transfer of registration was only normal. My intention on the contrary was that the legal and equitable Estate and also possession were to remain vested in me and on her death if she predeceased me the registration of the whole of the said hereditaments to be transferred to me, and/or if I predeceased her, though the transfer was effected but only nominal, so to my natural and lawful children. In the meantime they were to remain nominally and ostensibly in her name but legal and equitable Estate thereof remaining together with other possession in me.

12. I do also solemnly state and declare that I did not intend or wish to settle or convey absolutely the said two hereditaments to the said Tungku Zahrah binte Tungku Abubakar under the circumstances recited in para. 7 hereof. On the contrary my wish was that the said Tungku Zahrah binte Abubakar should have those lands and hereditaments during her life time and in case she predeceased me they should be reverted to me to form part of my Estate—legal and equitable estate and possession thereof remaining vested in me all through.

13. I am now advised and verily believe that according to Mohammedan Law the Settlement by me of the said two hereditaments on Inche Rugiah was not truly executed and carried out in accordance with the proper intentions of the parties and consequently of the requirements of Mohammedan Law, which enjoins that all gifts and settlements from one person to another shall be in the first instance by words of mouth of the donor offering the thing to be gifted away to the donee who in turn must express his/her acceptance of the same also by words of mouth in the presence of each other. In this case there were no such verbal expressions of offer and acceptance. Therefore the Deed concerned, being illegal, is void. In the case of the

Deed of Gift, settlement and trust in favour of Tungku Zahrah binte Tungku Abubakar since deceased, the Trust expired on the death of the said Tungku Zahrah as was my intention.

14. Under the circumstances I verily believe that the Deed referred to above do not represent the facts accurately and fully. Somehow or other my behests were not fully and correctly embodied in the said Deeds. Taking into consideration the misrepresentation of facts and noncompliance with the requirements of Mohammedan Law the said Deeds are ineffective and inoperative. Accordingly I verily believe that the said two herditaments should revert and registration be transferred to me to form part of my estate as originally intended and contemplated.

Affirmed by the aforesaid Ibrahim, Sultan of Johore, at Johore Bahru this 17th day of April, 2605. } Sgd. IBRAHIM

Before me,

(Sgd.) Illegible.

MAGISTRATE,
Johore Bahru.

(COPY OF "IBA ii.")

THIS INDENTURE is made the twenty second day of December One thousand nine hundred and twenty six Between HIS HIGHNESS TUNGKU ABUBAKAR of Johore (hereinafter called "Tungku Abubakar") on the one part and HIS HIGHNESS SIR IBRAHIM, Sultan of the State and Territory of Johore, Grand Commander of the Most Distinguished Order of Saint Michael and Saint George (hereinafter called "His Highness the Sultan") of the other part.

WHEREAS Her Highness Inche Rugiah Sultana of Johore died intestate on the 8th day of March 1926 being then seised in fee simple of the hereditaments described in the Schedule hereto free from incumbrances and Whereas the said Sultana left surviving her husband His Highness the Sultan and one child only Tungku Abubakar and no other child and according to Mohammedan Law the said Tungku Abubakar is entitled to three-fourths of the deceased's estate and His Highness the Sultan to one-fourth AND WHEREAS Letters of Administration of the said Sultana estate were on the 8th day of March 1926 granted by the Supreme Court of the Straits Settlements of Singapore to Tungku Abubakar and His Highness the Sultan desire to settle the said hereditaments on the trusts hereinafter declared and it has been agreed that the said hereditaments shall be conveyed to His Highness the Sultan as Trustee of the Settlement.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the covenant by His Highness the Sultan hereinafter contained the said Tungku Abubakar so far as regards three equal

No. 55. Affidavit of Appellant with 2 Exhibits thereto, 17th April 2605— *continued.*

fourth part of the said hereditaments as settler hereby conveys and as to the entirety of the said premises as the personal representatives of the said Sultana hereby conveys to His Highness the Sultan ALL the hereditaments described in the Schedule hereto TO HOLD to His Highness the Sultan upon the trusts hereinafter declared AND His Highness the Sultan hereby declares that he will stand possessed of the entirety of the said hereditaments upon trust for the eldest daughter named Tungku Zahrah binte Abubakar of the said Tungku Abubakar during her life and so that while under coverture she shall not have power to anticipate the same and after her decease upon trust for her issue living at her decease if more than one in equal shares per stirpes and in default of such issue in trust for the persons entitled to share in her according to Mohammedan Law if she had died intestate and unmarried. AND it is hereby declared that it shall be lawful for His Highness or other the trustee or trustees for the time being of these presents to sell the said hereditaments or any part thereof or any immoveable property for the time being subject to the trusts of these presents by public auction or private contract at such price and on such terms and conditions as he or they shall think fit and in the event of any sale the net proceeds shall be invested in the purchase of immoveable property in the Colony of the Straits Settlements or in the State of Johore being freehold or of a like tenure or leasehold having not less than Sixty (60) year's to run or in any investments authorised by law of the said Colony or of the State of Johore for the investment of trust funds and it is also hereby declared that His Highness the Sultan or other the trustee or trustees for the time being of these present may let or demise the hereditaments or any immoveable property for the time being subject to the trust of these presents from month to month or for any term of years and shall receive the rents and profits thereof and may thereout or out of any capital moneys spend moneys on the repair or improvement construction or reconstruction of any buildings or in the improvement of the property and generally manage any such immoveable property as if the trustee or trustees was absolute owner.

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

ALL that piece of land situate in the District of Geyland in the Island of Singapore containing an area of One hundred and twelve thousand nine hundred and ninety three (112,993) square feet whereof the boundaries dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September 1897 (Registered in Volume CV No. 192) and made between Mary Anne Esther Dunman, Ellen Dunman, Charles James Lacey and Robert Dunman of the one part and Saul Jacob Nathan of the other part formerly having the messuage or dwelling house erected thereon and known as No. 84, GROVE ROAD, GEYLANG, TOGEHTER also with all easements thereto.

ALL that piece of land situate in the District and Island aforesaid containing an area of Eighty six thousand and twenty five (86,025) square

feet whereof the boundaries, dimensions and abuttals are more particularly delineated red in the plan drawn on an Indenture dated the 1st day of September 1897 (Registered in Volume CV. No. 192) and made between Mary Anne Esther Dunman, Ellen Dunman, Charles James Lacey and Robert Dunman of the one part and Thaddeus Paul of the other part TOGETHER with the messuage or dwelling house erected thereon and numbered 77, MEYER ROAD, Singapore.

WHICH said two pieces of land hereinbefore mentioned form portion of the larger piece of land comprised in Government Grant No. 91 dated the 14th September 1869 to Thomas Dunman.

Signed Sealed and Delivered by the above-named Tungku Abubakar in the presence of : } Sd. ABUBAKAR OF JOHORE. (Seal)

Sd. C. V. MILES,
Solicitor,
Singapore.

Signed Sealed and Delivered by the above-named His Highness Sir Ibrahim, Sultan of Johore, in the presence of : } Sd. IBRAHIM.

Sd. C. V. MILES.

On this 22nd day of December A.D. 1926 before me CHARLES VALENTINE MILES—a solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared TUNGKU ABUBAKAR who of my own personal knowledge I know to be the identical person whose name "Abubakar of Johore" is subscribed to the above written instrument and acknowledged that he had voluntarily executed this instrument.

Witness my hand and seal.

Sd. C. V. MILES. (Seal)

On this 22nd day of December A.D. 1926 before me CHARLES VALENTINE MILES—a solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared HIS HIGHNESS Sir Ibrahim who of my own personal knowledge I know to be the identical person whose name IBRAHIM is subscribed to the above written instrument and acknowledged that he had voluntarily executed this instrument.

Witness my hand and seal.

Sd. C. V. MILES. (Seal)

No. 55. Affidavit of Appellant with 2 Exhibits thereto, 17th April 2605— *continued.*

(COPY OF "IBAi.")

THIS INDENTURE made the first day of December ONE THOUSAND NINE HUNDRED AND THREE (1903) between HIS HIGHNESS IBRAHIM, THE SULTAN OF JOHORE, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George (hereinafter called the said Sultan) of the one part and INCHE RUGIAH the wife of the said Sultan of the other part

WHEREAS the said Sultan is seised in fee simple in possession free from incumbrances of the hereditaments hereinafter described NOW THIS INDENTURE WITNESSETH that in consideration of the natural love and affection which the said Sultan bears to the said Inche Rugiah Firstly all that piece of land situate in the District of Geylang in the Island of Singapore containing an area of 112,993 square feet whereof the boundaries dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September 1897 (registered in Volume CV. No. 192) and made between Mary Anne Esther Dunman Ellen Dunman Charles James Lacey and Robert Dunman of the one part and Paul Jacob Nathan of the other part TOGETHER with the messuage or dwelling house erected thereon and known as No. 84, Grove Estate Geylang Singapore TOGETHER also with all easements thereto Secondly all the piece of land situate in the District and Island aforesaid containing an area of 86,025 square feet whereof the boundaries dimensions and abuttals are more particularly delineated and coloured red in the plan drawn on an Indenture dated the 1st day of September 1897 (registered in Volume CV No. 192) and made between Mary Anne Esther Dunman Ellen Dunman Charles James Lacey and Robert Dunman of the one part and Thaddeus Paul of the other part TOGETHER with the messuage or dwelling house erected thereon and numbered 86, GEYLANG ROAD SINGAPORE and which two pieces of land hereinbefore mentioned form portion of the larger piece of land comprised in Government Grant No. 91 dated the 14th September 1869 to Thomas Dunman To HOLD the same unto the said Inche Rugiah for ever AND it is hereby declared that for the purpose of stamping this document the hereditaments hereby conveyed shall be deemed to be of the value of Dollars Twenty three thousand five hundred ($23,500).

IN WITNESS WHEREOF the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered by His Highness the said Ibrahim in the presence of } Sd. IBRAHIM.

Sd. ROWLAND ALLEN,
Solicitor,
Singapore.

On this First day of December A.D. 1903 before me Rowland Allen a Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared HIS HIGHNESS IBRAHIM who of my own personal knowledge I know to be the identical person whose name IBRAHIM is subscribed to the above written instrument and acknowledged that he had voluntarily executed this instrument.

No. 55. Affidavit of Appellant with 2 Exhibits thereto, 17th April 2605— *continued.*

Witness my hand and seal.

Sd. ROWLAND ALLEN. (Seal)

No. 56. Grounds of Judgment of M. V. Pillai, 18th June 2605.

No. 56.

Grounds of Judgment of M. V. Pillai.

IN THE SYONAN KOTOHOIN.

Originating Summons No. 24 of 2605.

In the matter of Order 52 Rule 5 of the Rules of the Supreme Court, 1934.

and

In the matter of a Deed of Gift and Settlement dated 1st December 1903 in favour of Inche Rugiah the late Sultanah of Johore, decd.

and

In the matter of a Deed of Gift, Settlement and Trust (dated the 22nd December, 1926) in favour of Tungku Zaharah binte Tungku Abubakar, deceased, and Ibrahim Ibni Abubakar Sultan of Johore.

Between

HIS HIGHNESS SULTAN IBRAHIM, Johore ... ... *Plaintiff*

and

THE CUSTODIAN OF ENEMY PROPERTY, Syonan ... ... *Defendant.*

JUDGMENT.

This Summons was taken out by His Highness the Sultan of Johore who claims to be the donor of the properties in Syonan referred to in two Deeds of Gift dated the 1st December 1903 and 22nd December 1926 for the determination of the following matters:

(1) For construing the said two Deeds.

(2) Whether, in the events which have happened and having regard to the fact that the parties to the said Deeds were Mohammedans,

No. 56. Grounds of Judgment of M. V. Pillai, 18th June 2605— *continued.*

the said two Deeds were properly and lawfully executed under the law applicable to the parties, and are valid.

(3) If the answer to (2) above is in the negative, whether according to Mohammedan Law the said two Deeds are bad and void.

(4) If the answer to (3) above is in the affirmative, the plaintiff prays for consequential declaration reliefs and directions to revert the lands and hereditaments concerned to the plaintiff and for necessary rectification of the land records.

This Summons is supported by an Affidavit sworn to by His Highness which, in the main, sets out the material facts and the Mohammedan Law relating to gifts. The Affidavit also contains certain allegations as to what the donor intended by executing those two Deeds.

The said Deeds were drawn up by eminent conveyancers and are quite clear and unambiguous.

I have, therefore, no hesitation in holding that the two Deeds speak for themselves and under the Law of Evidence applicable even to-day throughout the whole of Malaya I cannot import into those Deeds any intentions other than those expressed clearly therein.

I propose first of all to deal with the validity of these gifts according to Mohammedan Law.

Hiba or Gift : a hiba or gift is " a transfer of property made " immediately, and without any exchange, by one person to another, and accepted by or on behalf of the latter."

The three essentials of a gift : It is essential to the validity of a gift that there should be (1) a declaration of gift by the donor, (2) an acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee. If these conditions are complied with, the gift is complete. As observed by the Judicial Committee, " the taking of possession of the subject-matter of the gift by the " donee, either actually or constructively," is necessary to complete a gift.

Gift may be made through the medium of trust. A gift may be made through the medium of a trust. The same conditions are necessary for the validity of such a gift as those for a gift to the donee direct.

A gift of immovable property which is in the occupation of tenants may be completed by a request by the donor to the tenants to attorn to the donee. See *Bibi Khaver* v. *Bibi Rukhia* (1903) 29 Bombay.

In the case of incorporeal property the gift may be completed by any act on the part of the donor showing a clear intention on his part to divest himself *in praesenti* of the property, and to confer it upon the donee.

If the property is gifted by a grandfather to his grandchild and the father of the latter is alive and has not been deprived of

his rights and powers as guardian there must be a delivery of possession by the grandfather to the father as guardian of his minor child, otherwise the gift is not complete. The mere fact that the minor had always lived with the grandfather and had been brought up and maintained by him will not constitute him guardian of the property so as to dispense with delivery of possession. (See *Musa Miya* v. *Kadar Bux* (1928) 52 Bombay.)

A Deed of Gift containing the words " so long as I live I shall " enjoy the properties and I shall not sell or make gift to any one, " but after my death you will be the owner." The gift is void, for it is not accompanied by delivery of possession and it is not to operate until after the death of the donor. (See *Yusuf Ali* v. *Collector of Tiperah* (1882) 9 Calcutta.)

The Judgment of Mr. Justice Tyabji in a case cited in the Indian Law Reports 29 Bombay is very appropriate.

" Two important points put forward are :—first, as to the " question, whether possession was necessary or not. It was not " disputed that as a general rule the Mohammedan Law requires " possession in cases of gift. Possession either actual, symbolical " (275) or constructive is essential. I think this proposition is " too elementary and too well established to be called in dispute. " This proposition is clearly laid down in page 343 of Wilson's " Mohammedan Law. But it was argued that this does not apply " to the present case because this is not a case of gift but a case " of trust.

" It was argued that trusts being unknown in the Mohammedan, " Law, the English Law must be applied. The proposition came " upon me with great surprise, because I am not aware that trusts " are unknown in the Mohammedan Law. In fact if any system " of law enforces and recognises them it is the Mohammedan Law. " We find ramifications of trusts throughout almost every branch " of Mohammedan Law. Therefore in my opinion there is no " foundation for the general statement that trusts are unknown " to the Mohammedan Law. Then why should not possession be " quite as necessary in the case of a trust as in the case of a gift ? " What is this trust deed ? It is a deed of gift executed by one " man in favour of another without consideration. What is it " but a gift ? The only difference being, that in the case of a trust " the gift is made through a third party ; and in the case of a gift " it is made direct to the donee. It was a startling proposition " that possession was necessary in the one case and not necessary " in the other.

" So far as I am concerned, the proposition is not debateable " in this court. Because I have held in the case of *Abdul Cader* v. " *Tajoodin* (1) that possession is necessary in the case of trust as " (276) in the case of direct gift. I have heard nothing in the " course of this lengthy trial which has shaken that conclusion in " the slightest degree."

No. 56. Grounds of Judgment of M. V. Pillai, 18th June 2605— *continued.*

What are the facts in this case ?

The Sultan of Johore married one Inche Rugiah and made her the Sultanah of Johore. Considering it appropriate and fitting that she should be provided with some substantial property commensurate with her standing and dignity he conveyed the two pieces of land in question by virtue of a Deed of Settlement and Gift executed by him on or about the 1st day of December 1903. The said Deed was duly registered. There is no evidence that there was any acceptance either in writing or by word of mouth of this gift by the Sultanah. There is no evidence that the rent receipts or assessment receipts were transferred to her name. In fact there is nothing to show that any of the essentials of a Deed of Gift according to Mohammedan Law were complied with. His Highness through his agents collected the rents and profits and treated the property as his own.

The Sultanah died intestate on the 8th of March 1926 leaving her surviving His Highness and Tungku Abubakar her only son by His Highness. A grand-daughter was born being His Highness' first grand-child and was brought up and maintained by his Highness.

Letters of Administration to the estate of the Sultanah were granted to Tungku Abubakar on the 19th July 1926. By arrangement with the said Tungku Abubakar His Highness agreed to have the properties in question settled by way of Deed of Gift on his grand-daughter Tungku Zahrah. The same being executed on the 22nd day of December 1926 constituting himself as the trustee. There is no evidence to show that there was any exchange of expressions necessary for a valid settlement of gift between the parties professing the Mohammedan religion.

As quoted above, Tungku Abubakar, who was the father of Tungku Zahrah, never took possession of the property, nor did he in any way accept same as the father of Tungku Zahrah. It would, however, appear that he more or less recognised that the properties which had been nominally gifted to his mother really belonged to His Highness and that after her death His Highness and he executed a Deed in favour of Tungku Zahrah without complying with any of the conditions essential for such a gift.

Tungku Zahrah died intestate on the 1st of March 1939 and Letters of Administration to her estate were granted to her father on the 3rd of February 1940.

According to Mohammedan Law of distribution the whole of the estate of a woman dying intestate, before marriage and without issue, goes to the father, but it is clear that having regard to the family arrangement Tungku Abubakar never claimed the property either expressly or by implication.

Tungku Abubakar with the whole of his family left Johore at the beginning of the hostilities of this war and has not been heard of since.

The two lands were, therefore, treated as Enemy Property and were taken over by the Custodian of Enemy Property under the laws of the Military Administration.

All the parties belong to the Shaffi sect and are governed by the Mohammedan Law applicable to that sect and were all domiciled in the State of Johore.

No. 56. Grounds of Judgment of M. V. Pillai, 18th June 2605—*continued.*

Relying on the authorities, the absence of the conditions essential for a valid gift as evidenced by the conduct through-out of the donees or the representatives, I have no hesitation in holding that both these gifts are not valid according to Mohammedan Law.

We now come to the main and more important factor in this case, and that is whether this Court should declare those gifts as invalid.

The authorities quoted are perfectly clear to the effect that as far as immovable properties situated in Singapore are concerned they must be dealt with according to English Law whether the owners are Mohammedans or of any other religion and residing here or elsewhere irrespective of the laws that may apply to them in other parts.

His Excellency the Mayor of Syonan was represented by his Deputy Custodian of Enemy Property and the attitude which he takes is this: in his view this is a *prima facie* enemy property and as such the Custodian can dispose of it in any manner that he thinks fit and proper.

Apart from the general laws and procedure and evidence which are applicable to the whole of Malaya certain Ordinances have been passed whereby the old laws have been modified to a certain extent to suit the present conditions.

As I understand it, his position is as follows: there are in Malaya races of different kinds with special laws applicable and wherever possible such laws should be respected and any claims based on such laws should be entertained throughout Malaya.

If according to Mohammedan Law applicable to His Highness these gifts are not valid then the property must revert to His Highness as the original sole owner of such property. If, on the other hand, these gifts are good and valid according to Mohammedan Law then the application cannot be entertained and no order made thereon and such rightly be at the disposal of the Custodian dealing with enemy property. Personally, I cannot see anything outrageous in this attitude.

While in the past the different States of Malaya were governed by their respective laws in conjunction with the Colony which had its own laws. to-day the Military Administration treats the whole of Malaya as one whole, and except in special cases where special legislation or decree is found desirable the laws applicable to the people living in Malaya are not disturbed.

Based on that assumption and having held that these gifts were clearly not valid according to Mohammedan Law, I have no alternative but to declare those gifts as void and of no effect and that the properties must revert to the applicant His Highness the Sultan of Johore as the sole beneficiary owner thereof.

In conclusion I may add that sitting as Judge I have to carry out the policy of the Military Administration in its true spirit according to the present conditions AND it is not for me to anticipate what may happen in the future under different conditions.

Sd. M. V. PILLAI,
Judge.

Syonan, 18th June 2605.

No. 57. Order of Court, 18th June 2605.

No. 57.

Order of Court

IN THE SYONAN KOTOHOIN, SYONAN.

Originating Summons No. 24 of 2605.

In the matter of Order 52 Rule 5 of the Rules of the Supreme Court, 1934

and

In the matter of Deed of Gift and Settlement dated 1st December 1903 in favour of Inche Rugiah, the late Sultanah of Johore, decd.

and

In the matter of a Deed of Gift, Settlement and Trust (dated the 22nd December 1926) in favour of Tungku Zahrah binte Tungku Abubakar, decd., and Ibrahim Ibni Abubakar, Sultan of Johore

Between

HIS HIGHNESS SULTAN IBRAHIM, Johore ... ... *Plaintiff*

and

THE CUSTODIAN OF ENEMY PROPERTY, Syonan ... ... *Defendant.*

18th day of June 2605.

UPON the application of His Highness Sultan Ibrahim of Johore the abovenamed Plaintiff-Applicant made by way of Originating Summons herein coming on for hearing before the Honourable Mr. Justice Pillai in Chambers on the 28th May 2605 in the presence of Mr. Mohamed Ismail of Counsel for the applicant and Mr. Katayama appearing for the Custodian of Enemy Property of Syonan the abovenamed Defendant-Respondent same was adjourned for argument and this adjourned Originating Summons coming on for hearing on the 11th day of June 2605. Upon reading the affidavit of the applicant sworn to on the 17th day of April 2605 and filed herein on the 3rd day of May 2605 and the exhibits therein referred to and Upon Hearing what was alleged by Counsel and the said Mr. Katayama being absent IT WAS ORDERED that same be adjourned for judgment.

AND this Originating Summons coming on for judgment this 18th day of June 2605 in the presence of Counsel for the Applicant and Mr. Katayama being absent THIS COURT DOTH DECLARE

Firstly : That Mohammedan Law is applicable to gifts made by a Mohammedan person notwithstanding that the subject matter of the gift be immovable properties situate in Syonan.

Secondly : that according to Mohammedan Law applicable thereto the two gifts made by the applicant by virtue of :—

(A) An Indenture of Conveyance made the 1st day of December 1903 between the applicant of the one part and Inche Rugiah of the other part ; and

(B) The Deed of Settlement made the 22nd day of December 1926 between His Highness Tungku Abubakar of Johore of the one part and the applicant of the other part.

No. 57. Order of Court, 18th June 2605— *continued.*

are invalid.

AND IT IS ACCORDINGLY DECLARED that the two gifts aforesaid are void and of no effect and that the properties mentioned in the Schedule thereto be reverted to the applicant as sole beneficial owner thereof.

Entered in Volume XLIX Page 285 this 22nd day of June 2605 at 2.45 p.m.

Sd. TAN THOON LIP,
Asst. Registrar.

No. 58.

No. 58. Agreement between H.M. Government of the Straits Settlements and the State of Johore, 11th December 1885.

Agreement between H.M. Government of the Straits Settlements and the State of Johore.

JOHORE 1885.

AGREEMENT on certain points touching the relations of Her Majesty's Government of the Straits Settlements with the Government of the Independent State of Johore, made between the Right Honourable Frederick Arthur Stanley, Her Majesty's Secretary of State for the Colonies, on behalf of the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Highness the Maharajah of Johore.

ARTICLE I.

The two Governments will at all times cordially co-operate in the settlement of a peaceful population in their respective neighbouring territories, and in the joint defence of those territories from external hostile attacks, and in the mutual surrender of persons accused or convicted of any crime or offence, under such conditions as may be arranged between the two Governments.

ARTICLE II.

His Highness the Maharajah of Johore undertakes, if requested by the Government of the Straits Settlements, to co-operate in making arrangements for facilitating trade and transit communication overland through the State of Johore with the State of Pahang.

No. 58. Agreement between H.M. Government of the Straits Settlements and the State of Johore, 11th December 1885—*continued.*

ARTICLE III.

If the Government of the Straits Settlements shall at any time desire to appoint a British Officer as Agent to live within the State of Johore, having functions similar to those of a Consular Officer, His Highness the Maharajah will be prepared to provide, free of cost, a suitable site within his territory, whereon a residence may be erected for occupation by such officer.

ARTICLE IV.

Any coinage in the currency of the Straits Settlements, which may be required for the use of the Government of Johore shall be supplied to it by the Government of the Straits Settlements, at rates not higher than those at which similar coinage is supplied to Governments of the Malay Protected States, and under the same limitations as to amount. His Highness the Maharajah on his part undertakes that the applications of his Government for subsidiary coinage shall be strictly limited by the legitimate requirements of the inhabitants of the State of Johore, and that the coinage so issued shall be subject to the same limitations as regards legal tender as are in force in the Straits Settlements.

ARTICLE V.

The Governor of the Straits Settlements, in the spirit of the former treaties, will at all times to the utmost of his power take whatever steps may be necessary to protect the Government and territory of Johore from any external hostile attacks; and for these or for similar purposes Her Majesty's Officers shall at all times have free access to the waters of the State of Johore; and it is agreed that those waters extend to three miles from the shore of the State, or in any waters less than six miles in width to an imaginary line midway between the shores of the two countries.

ARTICLE VI.

The Maharajah of Johore, in the spirit of former treaties, undertakes on his part that he will not without the knowledge and consent of Her Majesty's Government negotiate any Treaty, or enter into any engagement with any foreign State, or interfere in the politics or administration of any native State, or make any grant or concession to other than British subjects or British companies or persons of the Chinese, Malay, or other Oriental Race, or enter into any political correspondence with any foreign State.

It is further agreed that if occasion should arise for political correspondence between His Highness the Maharajah and any foreign State, such correspondence shall be conducted through Her Majesty's Government, to whom His Highness makes over the guidance and control of his foreign relations.

ARTICLE VII.

Whereas His Highness the Maharajah of Johore has made known to the Governor of the Straits Settlements that it is the desire of his chiefs and people that he should assume the title of Sultan, it is further agreed that,

in consideration of the loyal friendship and constant affection His Highness has shown to the Government of Her Majesty the Queen and Empress, and of the stipulations contained in this Memorandum, he and his heirs and successors, lawfully succeeding according to Malay custom, shall in future be acknowledged as His Highness the Sultan of the State and territory of Johore, and shall be so addressed.

No. 58. Agreement between H.M. Government of the Straits Settlements and the State of Johore, 11th December 1885—*continued.*

In Witness whereof the said Right Honourable FREDERICK ARTHUR STANLEY, and his said Highness the Maharajah of Johore, have signed this Agreement at the Colonial Office, London, the eleventh day of December, one thousand eight hundred and eighty-five.

Sd. FREDERICK ARTHUR STANLEY.
Sd. ABUBAKAR (In Malay).

Witnessed by
ROBERT G. W. HERBERT.
ABDUL RAHMAN.

No. 59.

No. 59. Agreement between H.M. Government and the State of Johore, 12th May 1914.

Agreement between H.M. Government and the State of Johore.

JOHORE 1914.

Whereas it is considered desirable that Article III of the Agreement of the 11th December, 1885, made by the Right Honourable FREDERICK ARTHUR STANLEY, Her Majesty's Secretary of State for the Colonies, on behalf of Her Britannic Majesty's Government and His Highness the Maharajah of Johore should be repealed and another Article substituted therefor :

Now it is hereby agreed by and between His Excellency Sir Arthur Henderson Young, K.C.M.G., Governor of the Colony of the Straits Settlements, on behalf of His Britannic Majesty's Government and His Highness the SULTAN OF THE STATE AND TERRITORY OF JOHORE that the above Article be repealed and the following Article substituted therefor :

ARTICLE III.

The Sultan of the State and territory of Johore will receive and provide a suitable residence for a British Officer to be called the General Adviser, who shall be accredited to his Court and live within the State and territory of Johore, and whose advice must be asked and acted upon on all matters affecting the general administration of the country and on all questions other than those touching Malay Religion and Custom.

No. 59. Agreement between H.M. Government and the State of Johore, 12th May 1914—*continued.*

The cost of the General Adviser with his establishment shall be determined by the Government of the Straits Settlements and be a charge on the Revenues of Johore.

The collection and control of all revenues of the country shall be regulated under the advice of the General Adviser.

In witness whereof the said SIR ARTHUR HENDERSON YOUNG and HIS said HIGHNESS THE SULTAN OF THE STATE AND TERRITORY OF JOHORE have signed this agreement this twelfth day of May, one thousand nine hundred and fourteen.

Signature of His Highness the Sultan of the State and Territory of Johore.

Sd. IBRAHIM.

Witnessed by

Omar Bin Ahmad
Ahmad Bin Mohammed
Jaafar Bin Haji Muhammed
Muhammed Bin Mahbub

} In Malay characters.

Signature of His Excellency Sir Arthur Henderson Young.

Sd. ARTHUR YOUNG.

Witnessed by R. J. Wilkinson.

In the Privy Council.

No. 45 of 1950.

ON APPEAL FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE ISLAND OF SINGAPORE.

IN THE MATTER of a JAPANESE DECREE made in O.S. No. 24 of 2605 (A. D. 1945) in the Japanese Court of the Judge at Syonan (Singapore) on the 18th of June, 1945.

and

IN THE MATTER of the JAPANESE JUDGMENTS and CIVIL PROCEEDINGS ORDINANCE, 1946.

BETWEEN

THE SULTAN OF JOHORE *Appellant*

AND

ABUBAKAR, TUNKU ARIS BENDAHARA AND OTHERS *Respondents.*

RECORD OF PROCEEDINGS

E. F. TURNER & SONS,
115 Leadenhall Street,
London, E.C.3,
Solicitors for the Appellant.

PEACOCK & GODDARD,
Dacre House,
5 Arundel Street,
Strand, W.C.2,
Solicitors for the Respondents.

GEO. BARBER & SON LTD., Printers, Furnival Street, Holborn, E.C.4, and Cursitor Street, Chancery Lane.
(A51429)