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14, 1951

No. 10 of 1951.

In the Privy Council.

ON APPEAL
FROM THE COURT OF CRIMINAL APPEAL DIVISION OF THE
SUPREME COURT OF THE COLONY OF SINGAPORE.

UNIVERSITY OF LONDON
DIVISION OF THE
W.C.1.
21 JUL 1953

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

E. H. BATTAT - - - - - *Appellant*

AND

THE KING - - - - - *Respondent*

RECORD OF PROCEEDINGS

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10 NEW SQUARE,
LINCOLN'S INN, W.C.2,
Solicitors for Appellant.

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9 BISHOPSGATE,
LONDON, E.C.2,
Solicitors for Respondent.

14, 1951

31414 No. 10 of 1951.

In the Privy Council.

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FROM THE COURT OF CRIMINAL APPEAL DIVISION OF THE SUPREME COURT OF THE COLONY OF SINGAPORE.

UNIVERSITY OF LONDON
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27 JUL 1953
INSTITUTE OF ADVANCED
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Appellant

BETWEEN

E. H. BATTAT

AND

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Respondent.

RECORD OF PROCEEDINGS

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- Case for Appellant (Kang Woon Goek). D. K. Walters.
- Case for the Crown. A. D. Farrell.
- Reply for Appellant (E. H. Battat). Sir Roland Braddell.

In the Privy Council.

ON APPEAL
*FROM THE COURT OF CRIMINAL APPEAL DIVISION OF THE
SUPREME COURT OF THE COLONY OF SINGAPORE.*

BETWEEN

E. H. BATTAT *Appellant*

AND

THE KING *Respondent.*

10 **RECORD OF PROCEEDINGS**

No. 1.

RULING OF BROWN, J.

IN THE HIGH COURT OF SINGAPORE.

A.C. 43/49.

R. *vs.* (I) E. H. BATTAT.

(II) KANG WOON GEOK.

—
CORAM—BROWN, J.
—

RULING.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the High
Court.*

No. 1.
Ruling of
Brown, J.,
18th
October
1949.

20 The accused are charged under the Finance Regulations, which were made under section 3 of the Finance Regulations Proclamation. Both the Proclamation and the Regulations made under it were made by the British Military Administration. Mr. Walters, on behalf of both accused, has contended that—

30 (1) Legislation made by the B.M.A. consists of a number of orders or commands which fall short of being "laws," because laws can only be made by a duly constituted law-making authority, and the power whereby the B.M.A. made proclamations and regulations having temporarily the force of law came from the circumstances in which that administration found itself, which furnished no more authority than that of force.

In the
Supreme
Court
of the
Colony of
Singapore.

In the High
Court.

No. 1.
Ruling of
Brown, J.,
18th
October
1949,
continued.

(2) If the B.M.A. legislation was law in the full and proper sense of that word, then upon a proper construction of section 2 (1) of the Singapore Order in Council, 1946, such legislation has been excluded from the definition of "existing laws" which is contained therein, and so has not been continued in force under the provisions of section 42 (1).

(3) If the B.M.A. legislation is not excluded from the definition of "existing laws" then the Order in Council is *ultra vires* in so far as it purports to continue in force the Finance Regulations made by the B.M.A.

10

With regard to the first point, the B.M.A. constituted the *de facto* Government of the country at that time, and the Order in Council clearly shows that His Majesty's Government has recognised it as the *de facto* Government. That being so, apart from any legislation which may have been enacted locally, in the light of the decision in *Luther v. Sagor* ([1921] 3 K.B. 532) I doubt if it would be competent for this Court to question the validity as laws of the legislation which was enacted by the B.M.A. But section 5 of the Indemnity and Validating Ordinance 1946, puts the matter beyond any shadow of doubt. That section provides that all laws, proclamations, orders, rules, regulations and legislative acts whatsoever made or issued during the war period (which is defined) by or with the assent of any British or Allied military authority shall be deemed to have been validly made from the date of their promulgation.

20

With regard to the second point, the definition of "existing laws" in the Order in Council includes Proclamations issued by, or under the authority of, the Supreme Allied Commander, South East Asia, other than the Proclamations establishing the British Military Administration and delegating powers thereunder.

Then come the words "and all Rules, Regulations, and Bye-Laws made thereunder." Mr. Walters asks me to construe this definition as if those words applied to the Proclamations establishing the British Military Administration, and not to the Proclamations issued by or under the authority of the Supreme Allied Commander. Thus he asks me to include in the definition the Proclamations of the Supreme Allied Commander, but to exclude from the definition the Rules and Regulations which were made under the Proclamations. He says that it is unlikely that the Order in Council intended all the Rules and Regulations made by or under the authority of the Supreme Allied Commander to be continued, having regard to the circumstances in which they were made I take precisely the opposite views. It seems to me that it is precisely because of the circumstances in which they were made, and the conditions which existed in this country, that those who were responsible for the Order in Council intended to keep alive the Rules and Regulations which the Supreme Allied Commander had found it necessary to make from time to time during the period of his administration. It seems to me that nothing is less likely than that they should have intended the Rules and Regulations suddenly to cease, while keeping the Proclamations under which they were made alive. I go so far as to say that to construe the definition in the manner contended for would, in my opinion, make nonsense of the Order in Council.

40

10 Lastly, the argument that the B.M.A. Finance Regulations ought not to have been continued in force by being included in the definition of "existing laws" appears to be based on the Emergency Laws (Transitional Provisions) Act, 1946, and the Emergency Laws (Miscellaneous Provisions) Act, 1947. I find it difficult to understand what bearing these statutes have upon the matter. Those statutes empower the Crown by Order in Council to extend the duration of certain Defence Regulations in certain territories for a limited time. And the argument as I understand it, is that because the Imperial Parliament has imposed a time-limit in those

20 statutes upon the right which those statutes give to the Crown to extend the life of the Defence Finance Regulations and other war-time legislation in the territories in question, therefore the Crown ought not in this Order-in-Council to have extended the life of these Finance Regulations without a time-limit. I should find it easier to understand the argument if this Order-in-Council purported to be made under the Royal prerogative. But it is made under the Straits Settlements (Repeal) Act, 1946. By section 1 (2) of that Act the Imperial Parliament provided that an Order-in-Council might determine the laws which were to remain valid in these territories. That is the power which the statute gives. It does not seek

30 to impose a time-limit, or any other limit, on the laws which may be continued in force by the Order-in-Council. And in providing that "the Proclamations of the Supreme Allied Commander . . . and all Rules, Regulations and Bye-Laws made thereunder" shall continue to have effect in the Colony as part of the "existing laws" the Order-in-Council did no more than exercise the power which the statute provided.

My ruling is that the Finance Regulations, which the accused are charged with having contravened, and the Finance Regulations Proclamation under which such contraventions are punishable, are part of the law of the land, and that the charges are in order.

30

(Sgd.) T. A. BROWN,

Judge.

Supreme Court,
Singapore.

18th October 1949.

*In the
Supreme
Court
of the
Colony of
Singapore.**In the High
Court.**No. 1.
Ruling of
Brown, J.,
18th
October
1949,
continued.*

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Criminal
Appeal.*

No. 2.
Notice of
Appeal,
26th
October
1949.

No. 2.

NOTICE OF APPEAL.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
In the Court of Criminal Appeal.

Criminal Appeal No. 43 of 1949.

**REX V. 1. E. H. BATTAT.
2. KANG WOON GEOK.**

Notice of Appeal—Question of Law only.
(Rule 24 (a).)

To : The Registrar or Deputy Registrar
of the Court of Criminal Appeal.

10

I, E. H. BATTAT, having been convicted of the offences (numbered as they were in the Court of Trial) of:—

(1) That I and Kang Woon Geok between 24th day of August, 1948, and 17th day of June, 1949, at Singapore were parties to a criminal conspiracy with certain persons purporting to act on behalf of Albert Shayo & Company of Bangkok and one Albert Shayo of New York, in that we agreed together to carry on the business of foreign exchange, an act which is not illegal, by illegal means, namely by contraventions of Regulation 13 (2) of the Finance Regulations, and that in furtherance 20 of such criminal conspiracy, I did an act, namely, on 16th May, 1949, made a payment of \$169,952.77 to the Netherlands Trading Society, Singapore, and he Kang Woon Geok, did an act, namely, on 16th May, 1949, made a payment of \$170,000 to me, and that we thereby committed an offence punishable under section 120B (2) of the Penal Code.

(3) That whereas one Kang Woon Geok on or about the 16th day of May, 1949, at Singapore, did, without the permission of the Controller of Foreign Exchange or his Deputy, make a payment of \$170,000 to me, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the 30 sterling area, and thereby committed an offence under Regulation 13 (2) of the Finance Regulations, I abetted the commission of the said offence which was committed in consequence of my abetment, and that I thereby committed an offence punishable under section 109 of the Penal Code and section 7 (2) of the Finance Regulations Proclamation No. 36/46.

(5) That I, on or about the 16th May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$169,925.77 to the Netherlands Trading Society, Singapore, a person who was not resident outside the sterling area on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the 40 sterling area, and that I thereby committed an offence under Regulation 13 (2) of the Finance Regulations and punishable under section 7 (2) of the Finance Regulations Proclamation No. 36/46.

(7) That whereas one Kang Woon Geok on or about the 19th and 20th days of May, 1949, at Singapore, did, without the permission of the

Controller of Foreign Exchange or his Deputy, make a payment of \$215,000 to me, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and thereby committed an offence under Regulation 13 (2) of the Finance Regulations, I abetted the commission of the said offence which was committed in consequence of my abetment, and that I thereby committed an offence punishable under section 109 of the Penal Code and section 7 (2) of the Finance Regulations Proclamations No. 36/46.

10 (9) That I, on or about the 19th May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$214,699.70 to the Netherlands Trading Society, Singapore, a person who was not resident outside the sterling area on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and that I thereby committed an offence under Regulation 13 (2) of the Finance Regulations and punishable under section 7 (2) of the Finance Regulations Proclamation No. 36/46.

20 (11) That whereas one Kang Woon Geok on or about the 25th day of May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy, make a payment of \$99,000 to me, a person who was not resident outside the sterling area, on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and thereby committed an offence under Regulation 13 (2) of the Finance Regulations, I abetted the commission of the said offence which was committed in consequence of my abetment, and that I thereby committed an offence punishable under section 109 of the Penal Code and section 7 (2) of the Finance Regulations Proclamation No. 36/46.

30 (13) That I, on or about the 27th May, 1949, at Singapore, did without the permission of the Controller of Foreign Exchange or his Deputy make a payment of \$98,357.90 to the Netherlands Trading Society, Singapore, a person who was not resident outside the sterling area on behalf of Albert Shayo & Company of Bangkok, a person who was resident outside the sterling area, and that I thereby committed an offence under Regulation 13 (2) of the Finance Regulations and punishable under section 7 (2) of the Finance Regulations Proclamation No. 36/46, and being now a prisoner in His Majesty's Prison at Outram Road, Singapore, Do Hereby Give You Notice of Appeal against my conviction (particulars of which hereinafter appear) to the Court of Criminal Appeal on questions of law, that is to say :—

40 1. There was no jurisdiction to try or convict Your Appellant of an offence against the Finance Regulations or of a conspiracy to break the Finance Regulations, because the Finance Regulations were not at any material time law in the Colony of Singapore.

50 (a) The Finance Regulations were justified, if at all, by the Finance Regulations Proclamation, one of the proclamations purporting to be made under the authority of the Supreme Allied Commander, South East Asia, during the time of the British Military Administration. Such Proclamations were made by or under the authority of the Supreme Allied Commander by virtue of his own Proclamation made at Kandy, Ceylon, on or about 15th August, 1946, which was entitled a "Proclamation to establish a Military Administration", and which justified itself by

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*No. 2.
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*In the
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Court
of the
Colony of
Singapore.*

*In the
Court of
Criminal
Appeal.*

No. 2.
Notice of
Appeal,
26th
October
1949,
continued.

recital of military necessity, suppression of disorder and the maintenance of public safety. Such Proclamations were nothing more or less than martial law and *prima facie* lapsed with the passing of the necessity and conditions which justified their imposition.

(b) Whether or not the said Finance Regulations became law in the Colony, must, it is respectfully submitted, depend upon whether their introduction as part of the "existing laws" of the said Colony by the Singapore Colony Order in Council, 1946, was authorised by the Straits Settlements (Repeal) Act, 1946. 10
The last mentioned Act laid it down that "laws" might be introduced by Order in Council. Your Petitioner respectfully submits that the Proclamations of the Supreme Allied Commander were not laws within the meaning of the said Statute and this applies to Regulations purporting to be made under such Proclamations. Accordingly Your Petitioner submits that the said Order in Council, to the extent to which it purports to introduce Proclamations or Regulations of the British Military Administration, was *ultra vires*.

(c) The learned trial Judge (so it is respectfully submitted) 20
was wrong in law in holding that the principle of the recognition by His Majesty's Government of a *de facto* Government as the Government of a particular foreign area, has any application to the case of a Colony of the British Empire under temporary military control and in particular to the case of Singapore. Accordingly the learned Judge was wrong in law in holding that because of such alleged recognition it was doubtful whether this Honourable Court was entitled to question whether the Proclamations and Regulations thereunder made by the British Military Administration aforesaid are now law in this Colony. 30

(d) The learned Judge was wrong in law in holding that the Indemnity & Validating Ordinance, 1946, Section 5, settled the said question and precludes this Honourable Court from even considering whether Proclamations and Regulations made thereunder during the time of the British Military Administration, are law in the Colony today. Your Petitioner respectfully submits that what the said section really does do is to preclude this Honourable Court from questioning the validity during the time of the British Military Administration of the said Proclamations and Regulations, and that the said section has no bearing at all 40
on the question as to whether any particular Proclamation or Regulation are law in the Colony of Singapore, constituted on the termination of the British Military Administration.

(Sgd.) E. H. BATTAT,
Applicant.

Signature and address of witness
attesting mark

(Sgd.) L. A. J. SMITH,
Solicitor, Singapore.

Dated this 26th day of October, 1949.

PARTICULARS OF TRIAL AND CONVICTION.

				<i>In the Supreme Court of the Colony of Singapore.</i>
	1. Date of Trial ?	1949, October 17, 18, 19, 20, when Your Petitioner was convicted, and October 22 when he was sentenced.	
	2. Place of Trial ?	High Court, Singapore.	<i>In the Court of Criminal Appeal.</i>
	3. Sentence ?	On Charge 1—6 months rigorous imprisonment and fine of \$4,500/- or 6 months in default.	No. 2.
10			On Charge 3—6 months rigorous imprisonment and fine of \$2,000/- or 6 months in default.	Notice of Appeal, 26th October 1949, <i>continued.</i>
			On Charge 5—6 months rigorous imprisonment and fine of \$2,000/- or 6 months in default.	
			On Charge 7—6 months rigorous imprisonment and fine of \$3,500/- or 6 months in default.	
20			On Charge 9—6 months rigorous imprisonment and fine of \$3,500/- or 6 months in default.	
			On Charge 11—6 months rigorous imprisonment and fine of \$1,600/- or 6 months in default.	
			On Charge 13—6 months rigorous imprisonment and fine of \$1,600/- or 6 months in default.	

Sentences of imprisonment were ordered to be concurrent.

- 30 4. Were the above questions of law raised at the trial ? The above questions of law were raised at the trial.

You are required to answer the following questions :—

1. If you desire to apply to the Court of Criminal Appeal to assign you legal aid on your appeal, state your position in life, and amount of wages, or salary, etc., and any other facts which you submit show reasons for legal aid being assigned to you. Arrangements have been made for me to be orally represented and I do not desire legal aid to be assigned.
- 40 2. Do you desire to be present on the hearing of your appeal by the Court of Criminal Appeal? If you do so desire, state the reasons upon which you submit the said Court should give you leave to be present. I desire to be present at the hearing so that I can answer any question that may be put to me and also because I am vitally interested in the matter.

*In the
Supreme
Court
of the
Colony of
Singapore.*

*In the
Court of
Criminal
Appeal.*

No. 2.
Notice of
Appeal,
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continued.

3. The Court of Criminal Appeal, will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing, set out here or annex hereto as fully as you think right, a statement of your case and argument in support of your appeal.

I desire my case should be presented orally by Counsel.

10

This petition has been presented on behalf of the applicant by Messrs. DONALDSON & BURKINSHAW, Advocates & Solicitors, of Mercantile Bank Chambers, Singapore, which is the address for service.

No. 3.
Additional
Grounds
of Appeal,
2nd
December
1949.

No. 3.

ADDITIONAL GROUNDS OF APPEAL.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
In the Court of Criminal Appeal.

Criminal Appeal No. 43 of 1949. 20

REX V. 1. E. H. BATTAT.

2. KANG WOON GEOK.

To The Registrar or Deputy Registrar
of the Court of Criminal Appeal.

TAKE NOTICE that at the hearing of this Appeal, Sir Roland Braddell, Mr. D. K. Walters and Mr. L. A. J. Smith of Counsel for the Appellant E. H. Battat intend to rely upon the following additional grounds of appeal.

ADDITIONAL GROUNDS OF APPEAL.

A. (I) The Finance Regulations are stated expressly therein 30 to derive their force from section 3 of the Finance Regulations Proclamation ;

(II) The Finance Regulations Proclamation is stated expressly therein to derive its force from the Military Administration (Delegation of Powers) Proclamation ;

(III) By express words in section 2 of the Singapore Colony Order in Council, 1946, the Military Administration (Delegation of Powers) Proclamation is excepted from those Proclamations

which are to be included in " the existing laws " and the Finance Regulations are excepted from those Regulations which are to be included in " the existing laws " ;

*In the
Supreme
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10 (IV) If the Indemnity and Validating Ordinance, 1946, or the Transfer of Powers and Interpretation Ordinance, 1946, or the Transfer of Powers and Interpretation Ordinance, 1949, or any resolution of the Legislative Council, purported or purports to continue in force or to declare to continue in force the Finance Regulations, then each of such conflicts with the Singapore Colony Order in Council, 1946, and is *ultra vires* by reason of the Colonial Laws Validity Act, 1865.

*In the
Court of
Criminal
Appeal.*

No. 3.
Additional
Grounds
of Appeal,
2nd
December
1949,
continued.

Without prejudice to the foregoing paragraph A and in the alternative thereto :—

20 B. (I) The Finance Regulations Proclamation was an economic measure and was not a military necessity or made for the prevention or suppression of disorder or the maintenance of public safety or permitted in British territory under martial law and further the Finance Regulations Proclamation and the Finance Regulations thereunder were made on January 4th, 1946, when there was in existence as a part of the Law of the Colony of the Straits Settlements, the Defence (Finance) Regulations, 1940, which covered the same subject-matter as was pretended to be covered by the said Proclamation and Regulations ;

(II) The issuing of the Finance Regulations Proclamation was, therefore, an invalid act done by or under the authority of the Supreme Allied Commander South East Asia and was of no legal effect ;

30 (III) Accordingly His Majesty received no power under section 1 of the Straits Settlements (Repeal) Act, 1946, to declare by Order in Council that the Finance Regulations Proclamation, or the Finance Regulations made thereunder, should be part of the law of the new Colony of Singapore ;

(IV) Singapore, being a settled Colony, the Crown had no general prerogative right to legislate for it by Order in Council and did not receive such a right until the Government of the Straits Settlements Act, 1866, came into force ;

(V) As long as the Colony of the Straits Settlements continued to be in existence, that is to say until April 1st, 1946, the British Settlements Act, 1887, did not apply to it ;

40 (VI) Section 2 of the Straits Settlements (Repeal) Act, 1946, applies the British Settlements Acts, 1887 and 1945 to the new Colony of Singapore, but the general right to legislate by Order in Council given therein is governed, so far as the declaration of what laws shall remain valid in the new Colony is concerned, by the particular section 1 of the said Act ;

(VII) In section 42, read with section 2, of the Singapore Colony Order in Council, 1946, His Majesty was exercising the power

*In the
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Court
of the
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given to Him by Section 1 of the Straits Settlements (Repeal) Act, 1946, and neither there nor anywhere else in the said Order in Council did He purport to validate or give force to anything which previously had been invalid, but on the contrary, by section 43 of the said Order in Council expressly confined the validity of previous Acts to those which were lawful.

*In the
Court of
Criminal
Appeal.*

(Sgd.).....

Solicitors for E. H. Battat.

No. 3.
Additional
Grounds
of Appeal,
2nd
December
1949,
continued.

Dated this 2nd day of December, 1949.

Filed by DONALDSON & BURKINSHAW, Advocates and Solicitors, of 10
Mercantile Bank Buildings, Singapore, Solicitors for the said
E. H. Battat.

No. 4.
Judgment
of Court of
Criminal
Appeal,
16th
January
1950.

No. 4.

JUDGMENT OF COURT OF CRIMINAL APPEAL.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.

In the Court of Criminal Appeal.

Island of Singapore.

Criminal Appeal No. 43 of 1949.

1. E. H. BATTAT,
2. KANG WOON GEOK Appellants 20
against

REX Respondent.

CORAM :

MURRAY-AYNSLEY, C.J.

EVANS, J.

GORDON SMITH, J.

JUDGMENT.

In this case the Appellants were convicted of certain offences against the Finance Regulations made under the Finance Regulations Proclamation and with conspiracy to contravene the said regulations. The validity of all these convictions depends upon whether or not at material times these regulations were in force in the Colony. 30

It is necessary to consider briefly the history of this proclamation and other proclamations. During the period from August of 1945 to March 1946 a series of proclamations was issued by or under the authority of the Supreme Allied Commander in South East Asia who was an officer in His Majesty's Forces. Among these was the proclamation in question. A considerable time was taken in consideration of the legal effect of these proclamations. We do not think that this was necessary. It is quite clear that during a period and in an area in which circumstances prevent the normal functioning of the civil authority, military authority has under
 10 no circumstances any power of legislation.

*In the
Supreme
Court
of the
Colony of
Singapore.*

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Court of
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No. 4.

The only legal consequence of such a state of affairs is that necessity may justify legally action taken against persons and property which otherwise would subject the person responsible to civil or criminal proceedings. Disobedience to the orders of a military commander may justify sanctions against persons not subject to military law by statute. But these orders are not in any sense law and they cease to have even this sort of authority when once the emergency which caused them to be issued has passed.

Judgment
of Court of
Criminal
Appeal,
16th
January
1950,
continued.

This proclamation is merely an order of a military commander. Unless
 20 it has at some subsequent time been enacted as a law it can have no legal effect. The sole question is whether it has been enacted as law in the Colony.

For this purpose it is necessary to consider subsequent legislation.

The first in point of time is the Straits Settlements (Repeal) Act, 1946. This Act repealed the Straits Settlements Act of 1866 and gave the Crown powers by Order in Council to make provision for the government of the territories concerned. In particular section 1, sub-section (2), gave power to adapt the existing laws to the new form of government and section 2 gave power to legislate for the future by Order in Council by applying the
 30 British Settlements Act, 1887 and 1945, to the territories. The Crown had enjoyed an identical power under the repealed statute.

By virtue of the powers under this statute the Singapore Order in Council was made. This Order in Council established the present form of government in Singapore. Among other things it established the present Supreme Court and by section 42 it provided for the law to be administered in the newly established Colony. It provided that the "existing laws shall . . . continue to have effect in the Colony." If this had stood alone the military proclamations would not have been affected. But section 2 contains a definition of "existing laws." This definition reads as follows :—

40 "the existing laws" means the common law, the doctrines of equity and all Acts of Parliament, Orders in Council, Ordinances of the Legislature of the Colony of the Straits Settlements, Proclamations issued by the Governor of the Straits Settlements, or by or under the authority of, the Supreme Allied Commander South East Asia (other than the proclamations establishing the British Military Administration and delegating powers thereunder) and all Rules, Regulations and By-laws made thereunder and all other enactments or instruments having the force of law

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*In the
Court of
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No. 4.
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16th
January
1950,
continued.

in the territory comprising the Colony or in any part thereof immediately prior to the appointed day, whether the same were administered by the British Military Administration or not.

It will be seen that this definition expressly includes " Proclamations issued . . . by or under the authority of the Supreme Allied Commander South East Asia " (with certain exceptions). But this is governed by the succeeding words " having the force of law . . . immediately prior to the appointed day ".

Now it is clear that these proclamations never had the force of law at any time prior to establishment of the Colony of Singapore in the sense that 10 the other things specified, e.g., Acts of Parliament, Ordinances of the Legislature of the Straits Settlements, etc. But if this interpretation is adopted the introduction of any reference to these Proclamations in the definition becomes futile. It is therefore necessary to put some other construction on the words. In relation to these Proclamations we consider that these words must be taken to refer to the *de facto* authority of the Proclamation under the military regime.

Section 45 clearly expresses an intention to treat these Proclamations as law in force in the period before the appointed day.

It was clearly within the scope of section 2 of the Repeal Act to make 20 the proclamations law for the Colony. Although it is not done in express terms we think this intention can be found by reading section 42 together with the definition. Section 45 confirms this construction.

In view of this it is, we think, unnecessary to consider whether, if the Order in Council had failed to make the proclamations into law, subsequent legislation in the Colony had had that effect.

(Sgd.) C. M. MURRAY-AYNSLEY,
Chief Justice,
Singapore.

(Sgd.) L. E. C. EVANS, 30
Judge,
Singapore.

(Sgd.) F. GORDON SMITH,
Judge,
Singapore.

Singapore, 16th January, 1950.

No. 5.

ORDER of His Majesty in Council granting Special Leave to Appeal.
AT THE COURT AT WINDSOR CASTLE

The 31st day of March, 1950

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

SIR ALAN LASCELLES

CHANCELLOR OF THE

DUCHY OF LANCASTER

In the
Privy
Council.

No. 5.
Order of
His Majesty
in Council
granting
Special
Leave to
Appeal,
31st March
1950.

10 WHEREAS there was this day read at the Board a Report from the
Judicial Committee of the Privy Council dated the 13th day of March 1950
in the words following viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the
Seventh's Order in Council of the 18th day of October 1909 there
was referred unto this Committee a humble Petition of E. H. Battat
in the matter of an Appeal from the Court of Criminal Appeal in the
Supreme Court of the Colony of Singapore between the Petitioner
Appellant and Your Majesty Respondent setting forth (amongst
other matters) : that the Petitioner desires special leave to appeal
from the Order of the Court of Criminal Appeal in the Supreme Court
of the Colony of Singapore dated the 12th December 1949 dismissing
his Appeal from conviction by the High Court of Singapore on the
20th October 1949 for offences against the Singapore Finance
Regulations : that a question of great importance to the Colony of
Singapore is involved in this Appeal namely : whether a Proclama-
tion made by the Supreme Allied Commander South-East Asia
Lord Louis Mountbatten assuming *inter alia* full legislative powers
and jurisdiction in Malaya and Proclamation Nos. 15 and 36 made
or purported to be made under the said Proclamation of the Supreme
30 Allied Commander whereby Finance Regulations were issued or
purported to be issued under the authority of the said Proclamation
No. 15 are valid and whether the said Finance Regulations are
now or ever have been part of the law of Singapore : And humbly
praying Your Majesty in Council to grant the Petitioner special
leave to appeal from the Order of the Court of Criminal Appeal in
the Supreme Court of the Colony of Singapore dated the
12th December 1949 and for further and other relief :

40 “ THE LORDS OF THE COMMITTEE in obedience to His late
Majesty's said Order in Council have taken the humble Petition into
consideration and having heard Counsel in support thereof and in
opposition thereto Their Lordships do this day agree humbly to
report to Your Majesty as their opinion that leave ought to be
granted to the Petitioner to enter and prosecute his Appeal against
the Order of the Court of Criminal Appeal in the Supreme Court of
the Colony of Singapore dated the 12th day of December 1949 but
that the Appeal ought to be limited to the question whether the law
under which the High Court of Singapore purported to convict the
Petitioner was at the time a law of the Colony of Singapore :

L.S.

*In the
Privy
Council.*

No. 5.
Order of
His Majesty
in Council
granting
Special
Leave to
Appeal,
31st March
1950,
continued.

“ AND Their Lordships do further report to Your Majesty that the proper officer of the said Court of Criminal Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Singapore for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. 10

E. C. E. LEADBITTER.

No. 6.
Order of
His Majesty
in Council
granting
Restoration
of Appeal,
27th
February
1951.

No. 6.

ORDER of His Majesty in Council granting Restoration of Appeal.

AT THE COURT AT BUCKINGHAM PALACE

The 27th day of February, 1951

Present

THE KING'S MOST EXCELLENT MAJESTY
LORD PRESIDENT MR. TOMLINSON
MR. SECRETARY GRIFFITHS MR. NESS EDWARDS

20

L.S.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of February 1951 in the words following, viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of E. H. Battat in the matter of an Appeal from the Court of Criminal Appeal in the Supreme Court of the Colony of Singapore between the Petitioner Appellant and Your Majesty Respondent setting forth : that by Order in Council dated the 31st March 1950 special leave to appeal was granted to the Petitioner from an Order of the Court of Criminal Appeal dated 12th December 1949 which dismissed his Appeal from a conviction by the High Court of Singapore on the 20th October 1949 for offences against the Singapore Finance Regulations : that the Certified Record of Proceedings was registered at the offices of 30

10 the Judicial Committee of the Privy Council in London on the 4th May 1950 and numbered Privy Council Appeal Number 16 of 1950 : that an appearance was entered to the proceedings on behalf of the Petitioner on the 9th June 1950 : that by virtue of Rule 35 (a) of the Judicial Committee Rules 1925 the Appeal was dismissed for non-prosecution on the 13th February 1951 : that in an Affidavit sworn on the 14th February 1951 by Kenneth John Heastey Nichols a Partner in the firm of Messrs. Speechly, Mumford & Craig of 10 New Square Lincoln's Inn London W.C.2 and filed with the Petition it is submitted that the delay in the prosecution of the Appeal has been occasioned by unfamiliarity with the procedure governing Appeals to Your Majesty in Council and the responsibility for the delay rests with the aforesaid firm and the Petitioner should in no way be held responsible : And humbly praying Your Majesty in Council to order that the Appeal be restored :

*In the
Privy
Council.*
—
No. 6.
Order of
His Majesty
in Council
granting
Restoration
of Appeal,
27th
February
1951,
continued.

20 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and the Solicitors for the Respondent having signified in writing their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Court of Criminal Appeal in the Supreme Court of the Colony of Singapore dated the 12th day of December 1949 subject to the limitation set out in Your Majesty's Order in Council dated the 31st day of March 1950."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of his Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

30 Whereof the Governor or Officer administering the Government of the Colony of Singapore for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.
