6, 1952 No. 45 of 1956.

In the Privy Council.

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
HERBERT WALTER COWLING
GEORGE HERBERT GARLICK . . . *Respondents.*

Case for the Appellant.

RECORD.

1. This is an appeal by leave of the Court of Appeal of the Colony of Singapore from a Judgment and Order of the said Court dated the 1st November 1949, dismissing an appeal by the Appellant from an Order of the High Court of the Colony of Singapore dated the 7th April 1949. By the said Order, the High Court had dismissed an application by the Appellant to set aside two Orders of the High Court dated respectively the 30th June 1947 and the 15th August 1947 and all proceedings thereunder, including service of Originating Summons No. 23 of 1947. The ground upon which the Appellant sought, and seeks in this Appeal, to have the said Orders and service set aside was and is that the High Court of Singapore had and has no jurisdiction over or in respect of the Appellant, since the Appellant was and is a ruler of an independent sovereign State and was and is entitled to immunity as such.

p. 133, ll. 15–37.
p. 72, l. 20. p. 73, l. 12.
p. 59.
p. 25, l. 20–p. 26, l. 29; p. 28, l. 24–p. 29, l. 22.
p. 1, l. 20–p. 2, l. 45.

2. The facts and matters which gave rise to these proceedings and to this Appeal are set out in the following paragraphs.

It may, however, be convenient at the outset of this Case to summarise briefly the varying reasons given by the learned Judges of the Courts below for rejecting the Appellant's contention. In the High
p. 49, ll. 35–42. Court, Gordon Smith J. held that the Appellant was a sovereign ruler and was by reason of his status in general entitled to immunity from
p. 53, ll. 9–14. proceedings, but that he had waived his immunity for the purposes of the present proceedings. In the Court of Appeal the Order of the High Court was affirmed, but the three learned Judges differed each from the 10
p. 73, l. 18–p. 80, l. 12. other as to the grounds for reaching that decision. Murray-Aynsley C.J. (Chief Justice of Singapore) held that the Appellant had failed to establish
p. 80, l. 21–p. 108, l. 2. that he was a sovereign ruler. Willan C.J. (Chief Justice of the Federation of Malaya) held that the Appellant was a sovereign ruler and entitled in general to immunity as such, but that the Appellant had waived his
p. 108, l. 14–p. 129. immunity. Evans J. while apparently inclining to the view that the Appellant was not a sovereign ruler, did not purport to decide the appeal on that ground, but held that the proceedings concerned land situate within the jurisdiction, and that in such circumstances the doctrine of immunity had no application. 20

It should also be mentioned at the outset of this Case that, subsequent to the Judgment and Order of the Court of Appeal, a letter has been
Not included in the Record. received from His Majesty's Secretary of State for the Colonies, dated the 1st February 1951, which, as the Appellant will seek to submit, sets out in an unambiguous manner the view of His Majesty's Government as to the status of the Appellant. The Appellant will at the hearing of this Appeal ask leave to refer to that letter and to submit that it is conclusive of the question as to the Appellant's status; and that it thus invalidates, or renders superfluous, much of the reasoning of the Courts below, which did not have the opportunity of considering the contents of that letter; 30 and that it supersedes, and renders unnecessary the consideration of, much, if not all, of the material considered by the Courts below on this issue of the Appellant's sovereignty. Nevertheless, it is necessary in the circumstances to set out in this Case the material which was before the Courts below on this issue and to summarise the reasoning with regard thereto in the several judgments.

p. 7, l. 31–p. 8. 3. By an Indenture dated the 1st December 1903, the Appellant conveyed, or purported to convey, to his wife, Inche Rugiah, two parcels
p. 9, l. 16. of land situate in the Island of Singapore. On the 8th March 1926 Inche Rugiah died intestate leaving, surviving her, her husband, the 40 Appellant, and her only son Tunku Abubakar (hereinafter referred to as "Abubakar"), who is the first Respondent. Abubakar was on the
p. 9. 19th July 1926 granted letters of administration of his mother's estate.
p. 10, ll. 11–17. Abubakar was entitled on his Mother's intestacy to three-fourths of his Mother's estate, and the Appellant was entitled to one-fourth thereof.

pp. 10–12 4. By an Indenture dated the 22nd December 1926 between the Appellant and Abubakar, Abubakar as personal representative of the
p. 10, l. 25–p. 11, l. 19. deceased, Inche Rugiah, conveyed or purported to convey all the land, above-mentioned, to the Appellant to hold on the trusts therein expressed,

namely, that the Appellant should hold the same upon trust for the eldest daughter of Abubakar during her life, and, after her death, for any of her issue living at her death. On the 1st March 1939, Abubakar's said eldest daughter died intestate, an infant and unmarried. Abubakar was on the 23rd January 1940 granted letters of administration of her estate. By Mohammedan Law, which was the personal law of the deceased and the law governing the distribution of her property, upon her death intestate her father, Abubakar, and her mother, one Ungku Fatimah, become entitled to the whole of their daughter's property in proportions, respectively, of five-sixths and one-sixth. By an Indenture dated the 28th June 1944 between Abubakar of the first part, the said Ungku Fatimah, his wife, of the second part, and one S. H. Shirazie, one Tan Chin Tuan and one John Laycock, as trustees, of the third part, Abubakar and his wife assigned and transferred, or purported to assign and transfer, to the trustees certain properties and interests in properties situate in the Island of Singapore and in Johore, including the properties which were the subject-matter of the Indenture of the 22nd December 1926. By a Deed dated the 12th April 1947 between Abubakar of the first part, Tan Chin Tuan of the second part, John Laycock of the third part, and George Herbert Garlick (the third Respondent) of the fourth part, the said Tan Chin Tuan and the said S. H. Shirazie were discharged of their trusts under the Indenture of 1944 and the said property was vested, or was purported to be vested, in the said John Laycock and George Herbert Garlick as trustees.

p. 13, ll. 19–31. p. 13. p. 15, ll. 10–15. p. 14, l. 20–p. 17. pp. 18–20.

5. In the meantime the whole of Malaya and the Colony of Singapore had been invaded and occupied by Japanese troops, Singapore itself being thus occupied on the 16th February 1942. The British administration in Singapore was expelled, the Courts of the Colony were closed and the Judges were interned. Thereafter Courts were reopened in Singapore, and a Japanese High Court, known as "Syonan Kotohoin" was established. One of the issues in the Courts below was whether or not the Syonan Kotohoin should be regarded as the previous Supreme Court of the Straits Settlements functioning under a different name and title. On this matter, one C. F. J. Ess, who had been Deputy Registrar of the Supreme Court of the Straits Settlements before the occupation, and who became Registrar of the Syonan Kotohoin in May 1942, swore an affidavit which was adduced on behalf of the Respondents in these proceedings, dealing with the composition and practice of the Syonan Kotohoin.

p. 38–p. 39, l. 13. p. 38–p. 39, l. 13.

6. On the 3rd May in the year 2605 in the Japanese Calendar (A.D. 1945), the Appellant took out Originating Summons No. 24 of 2605 in the Court of the Judge at Syonan (Singapore), naming as Defendant the Custodian of Enemy Property, Syonan (that is, a Japanese official), and applying to the Court to determine, *inter alia*: (i) the construction of the Deeds dated the 1st December 1903 and the 22nd December 1926, referred to in paragraphs 3 and 4 above; and (ii) whether, in the events which had happened, and having regard to the fact that the parties to the deeds were Mohammedans, the said deeds were properly and lawfully executed under the law applicable to the parties, and were valid. The summons was heard by one M. V. Pillai, a Japanese-appointed judge of the Syonan Kotohoin. There was no appearance by the Defendants

p. 134–p. 135, l. 15. p. 7, l. 31–p. 8, pp. 10–12. p. 143, l. 10–p. 147.

p. 148–p. 149, l. 12. p. 149, ll. 8–10. and the application was heard *ex parte*. By an Order dated the 18th June 2605 (A.D. 1945), it was declared that the two gifts contained in the said deeds were void and of no effect and that the properties in respect of which they were made reverted to the Appellant as sole beneficial owner thereof.

7. At the beginning of September 1945 the Japanese were driven out of Singapore and Malaya. There followed a period of administration by a British Military Administration. On the 1st April 1946, a new and separate Colony of Singapore was created by the Singapore Colony Order in Council, 1946 (S.R. & O. 1946 No. 464). By section 14 of the said Order in Council, the Supreme Court of the Colony of Singapore was established. It is that Court, thus established, which has been functioning in the Colony of Singapore since the 1st April 1946.

8. The connecting link between proceedings in the former Supreme Court of the Straits Settlements and proceedings in the Supreme Court of the Colony of Singapore is supplied by section 44 of the Singapore Colony Order in Council 1946, which reads :—

> " 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."

9. On the 15th January 1947 there came into force Singapore Ordinance No. 37 of 1946, of which the 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." By a definition in section 2 of the Ordinance ; " appropriate Court " means in relation to proceedings in, or degrees 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."

10. Under the said Ordinance and the rules of procedure made thereunder, an Originating Summons, No. 23 of 1947, was taken out in the High Court of the Colony of Singapore on the 14th April 1947 by Abubakar (the first Respondent) John Laycock, and George Herbert Garlick (the third Respondent). The two last-named persons, as has been set out in paragraph 4 of this Case, were the trustees under the Deed of the 12th April 1947. At some stage, it would appear, Herbert Walter Cowling, the second Respondent, was substituted for the said John Laycock as applicant in this Originating Summons. How or when such substitution took place does not appear from the Record. By the said Originating Summons, the Respondents sought an order that the Decree dated the 18th June 2605 (A.D. 1945) be set aside wholly or that the Respondents be at liberty to appeal against the whole of the said Decree, on grounds set out in the Originating Summons.

pp. 1–2. p. 2, l. 20. See p. 24, ll. 15–17. p. 2, ll. 8–19.

11. By an Order dated the 19th May 1947 the Court allowed an amendment of the Originating Summons of the 14th April 1947, and extended up to the 30th June 1947 the time in which the application to set aside the Decree of the 18th June 2605 (A.D. 1945) might be made. By a further Order dated the 30th June 1947 the Court ordered that (*inter alia*) the Respondents be at liberty to issue a Concurrent Originating Summons, and to serve notice of the same upon the Appellant in the United Kingdom, and that the time for the Appellant to enter an appearance be limited to within 40 days after service. The said Order was varied by a further Order dated the 15th August 1947.

p. 24, l. 12–p. 25, l. 7. p. 2, ll. 20–27. p. 148–p. 149, l. 12. p. 25, l. 20–p. 26, l. 27. p. 28, l. 26–p. 29, l. 22.

12. Conditional appearance was entered on behalf of the Appellant on the 8th October 1947 without prejudice to an application to set aside the Orders of the Court dated the 30th June 1947 and the 15th August 1947, the concurrent Originating Summons, service of notice thereof and all proceedings thereunder and for a stay of further proceedings in the said Originating Summons of the 14th April 1947. A Summons in these terms was taken out on behalf of the Appellant on the 11th October 1947. The present Appeal arises directly out of that Summons and out of the decisions of the High Court and the Court of Appeal of the Colony of Singapore in respect thereof.

p. 35, ll. 16–41. p. 35. pp. 1, 2. p. 36, ll. 1–24.

13. One of the principal issues in this appeal is, as has been said, whether the Appellant is entitled to immunity from proceedings, as being a sovereign ruler. It was held in 1893 by the Court of Appeal in England, in *Mighell* v. *The Sultan of Johore* [1894] 1 Q.B. 149, that the then Sultan who was the Appellant's father and immediate predecessor as Sultan was entitled to such immunity. It is, therefore, necessary (subject, however, to the Appellant's submission as to the effect of the recent letter from the Secretary of State for the Colonies, referred to in paragraph 2 hereof) to summarise the relevant factors relating to the constitutional position, and the position in international law, of the State of Johore and of the Sultan of Johore, at that date, and the subsequent changes which have occurred, in order to show, as the Appellant submits, that he is now an independent sovereign and entitled as such to immunity from proceedings in British Courts. In 1893 the fully independent status of

Not included in Record.

p. 149, l. 16–p. 151, l. 15. the then Sultan was affected only by the terms of an Agreement between Her Majesty's Government of the Straits Settlements and the Sultan of Johore, signed on the 11th December, 1885. In addition to certain terms relating to the presence of a British Agent in Johore, the supply of currency by the Government of the Straits Settlements, and the protection of the Johore by the Government of the Straits Settlements, the Agreement, in Article VI, principally provided that the Sultan of Johore should make over to Her Majesty's Government the guidance and control of his foreign relations.

p. 150, ll. 1–8.
p. 150, ll. 9–19.
p. 150, ll. 20–28.
p. 150, ll. 29–40.

p. 151, l. 16–p. 152. 14. By an Agreement signed on the 12th May 1914, the provisions in the Agreement of 1885 relating to the presence of a British Agent were repealed and it was provided instead that henceforth the Sultan of Johore would receive a British Officer to be called the General Adviser, who should be accredited to the Court of the Sultan and should live within the State 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.

p. 151, ll. 25–36.

15. No other treaties or agreements which could be deemed to affect the status of the Appellant were entered into until the 20th October 1945, on which date the Appellant signed an Agreement with Sir Harold MacMichael on behalf of His Majesty. 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.

Colonial Office publication, No. 194 of 1946.

16. 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 by the Malayan Union Order in Council, 1946 (S.R. & O. 1946 No. 463) and by 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 by the 1st February 1948 when the whole Order in Council was revoked by section 53 of the Federation of Malaya Order in Council, 1948 (S.I. 1948 No. 108). 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.

Separate document.

17. The Agreement of 1945 and the Malayan Union Order in Council, 1946, were replaced by an Agreement, made between His Majesty and the Appellant, dated the 21st January 1948 (hereinafter called " the Johore Agreement "), by an Agreement of the same date made between His Majesty and the Rulers of the Malay States and Settlements (hereinafter called " the Federation Agreement ") and by the Federation of Malaya Order in Council, 1948 (S.I. 1948 No. 108), which, as has already been mentioned, came into operation on the 1st February 1948.

Separate document, 1st Schedule (1).

Separate document, 2nd Schedule.

Separate document.

18. By Clause 15 of the Johore Agreement (the marginal note whereof is " Sovereignty of the Ruler ") it is expressly provided that :— Separate document, p. 21.

> " 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 Agreement and this Agreement."

19. In the course of the proceedings, out of which this Appeal arises, before the Supreme Court of the Colony of Singapore, various requests were sent to, and various replies received from, His Majesty's Secretary of State for the Colonies in an endeavour to elucidate the view of His Majesty's Government as to the status of the Appellant as ruler of the State of Johore. In a letter dated the 9th June 1948, addressed to Brown, J., a Judge of the said Court, the Secretary of State referred to the Federation Agreement and the Johore Agreement, and concluded : " 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* . . . 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." By a further letter dated the 12th November 1948 addressed to Brown J. the Secretary of State dealt at length with the provisions of the Malayan Union Order in Council, 1946, which, as the Appellant submits, are in any event irrelevant to the main issue of this Appeal, since the said Order in Council had been revoked, and was no longer in operation or effect at any material date. The Secretary of State nevertheless concluded that, even during the period when the 1946 Order in Council was in operation, " the State " (of Johore) " retained its identity and the Sultan continued to possess certain attributes of sovereignty." p. 53, l. 24–p. 55, l. 20. Separate document, p. 55, ll. 10–15. p. 55, l. 22–p. 58. p. 58, ll. 32, 33.

20. The Appellants' application, as set out in paragraph 12 of this Case, to stay proceedings in the Respondents Originating Summons (No. 23 of 1947) was heard in the High Court, by Gordon Smith, J., on the 15th, 16th, 17th and 18th March 1949. By Order dated the 7th April 1949, the summons was dismissed with costs. The reasons given by the learned Judge in his Judgment were, briefly, as follows : Prior to the 20th October 1945 (the date of the Agreement on which the Malayan Union Order in Council 1946, was based), the Appellant was a sovereign ruler. The effect of that Agreement and that Order in Council was to deprive the Appellant of his status of independent sovereign ruler. Nevertheless, his status as such was restored by the Federation of Malaya Order in Council, 1948, as from the 1st February 1948 and he was thereafter entitled to the privileges and prerogatives usually accorded to such a sovereign ruler. The material date for this purpose was the date of the hearing by the Court and not the date of the institution of the proceedings. The Appellant had, however, waived his privileges and prerogatives by submitting to the jurisdiction of that Court in presenting the Originating Summons in 1945 (that is, the Originating Summons in the Syonan Kotohoin during the Japanese occupation). This latter finding of the learned Judge was based upon his views : (i) that the High Court (or Syonan p. 36, ll. 1–24. p. 59. p. 39, l. 16–p. 53, l. 22. p. 46, ll. 24–29 p. 46, ll. 30–32. Separate document. p. 49, ll. 37–41. p. 53, ll. 9–11. pp. 134, 135. p 50, ll. 34–35.

Kotohoin) " continued to function as formerly during the occupation and it is exactly the same High Court that is continuing to function to-day " ; (ii) that the Japanese Custodian of Enemy Property must be
p. 51, ll. 20–29. deemed to have been made a Defendant to the 1945 Originating Summons in order to represent the Respondents, and that therefore the present proceedings were not between different parties ; and (iii) that by virtue of Ordinance 37 of 1946 (referred to in paragraph 9 of this Case), the
p. 53, ll. 12–15. proceedings in the present case were not new proceedings, but were a continuation of the earlier proceedings instituted by the Appellant in
p. 51, l. 30–p. 52, l. 21. the Syonan Kotohoin. On this final point, the learned Judge sought to distinguish the decision in *Duff Development Co. Ltd.* v. *Kelantan Government* [1924] A.C. 797.

21. From this Judgment, save as to the decision that the Appellant
p. 60, ll. 1–27. was a sovereign ruler, the Appellant by notice dated the 25th April 1949,
p. 60, l. 27–p. 61, l. 28. appealed to the Court of Appeal in the Colony of Singapore. The
p. 61, l. 30–p. 62, l. 12. Respondents, by notices dated the 12th July 1949 and the 13th July 1949 entered a cross-appeal against, in substance, so much of the learned Judge's Judgment as held that the Appellant was a sovereign ruler.

22. Subsequent to the Judgment and Order of Gordon Smith, J., and before the hearing of the appeal was concluded, certain further correspondence with His Majesty's Secretary of State for the Colonies
p. 68, ll. 10–38. took place. By a letter dated the 11th July 1949 from the Secretary
p. 62, ll. 14–40. of State to the Appellant, and by a further letter dated the 13th July 1949 written on behalf of the Secretary of State to the Appellant, it was intimated that His Majesty's Government accepted the ruling of Gordon Smith, J., that the Appellant was an independent sovereign. However, by further
p. 69, ll. 1–22. letters, one dated the 27th July 1949, addressed to the Appellant's Solicitors
p. 71, l. 22–p. 72, l. 17. in London, and another dated the 20th August 1949, addressed to the Chief Justice, Singapore, the Secretary of State declared that his letters previously referred to in this paragraph were written under a mis-
p. 72, ll. 9–12. apprehension, since he had considered that the question of the Appellant's sovereignty could no longer be *sub judice*. He concluded : " 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."

23. The Appellant's appeal to the Court of Appeal of the Colony of Singapore was heard on the 25th 26th and 28th July and the 19th and 20th September 1949, by Murray-Aynsley, C.J., Chief Justice of the Colony of Singapore, Willan, C.J., Chief Justice of the Federation of Malaya,
p. 72, l. 19–p. 73, l. 12 and Evans, J. By Order dated the 1st November 1949 the appeal was dismissed. Since the reasons given by the learned Judges differed materially, it is necessary to summarise separately the conclusions at which the respective members of the Court arrived on the various issues.

p. 73, l. 14–p. 80, l. 16. 24. Murray-Aynsley, C.J., was of opinion that on the question of sovereignty it was not open to a court of law to consider any evidence other than a certificate given on behalf of His Majesty's Government.

He says: "It has to be established that the converse proposition that the Courts cannot treat any government as sovereign and independent unless it is so recognised 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." The learned Chief Justice relied, in particular, upon the statement of Roche, J. (as he then was), as the Judge of first instance in *Luther* v. *Sagor* [1921] 1 K.B. 456, at p. 473: "The proper source of information as to a foreign power its status and sovereignty, is the sovereign of the 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 Chief Justice strongly criticised the decision, or the apparent grounds for the decision, in *Statham* v. *Statham* [1911] P. 92, as to the sovereign status of the Gaekwar of Baroda. He further criticised certain observations of Lord Sumner in *Duff Development Co. Ltd.* v. *Kelantan Government* [1924] A.C. 797, which he admitted to show an opinion "clearly contrary to the one I have formed." Lord Sumner said, at p. 824: ". . . This being so, a foreign ruler, whom the Crown recognised 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." Again, at p. 825: "I conceive that, if the Crown declined to answer the inquiry, the Court might be entitled to accept secondary evidence in default of the best . . ." The learned Chief Justice's criticism is: "It is submitted that in the case of status (as distinct of" (? *from*) "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." Having thus arrived at the conclusion that sovereign status and immunity cannot be established otherwise than by a statement made on behalf of His Majesty to that effect (a conclusion which the Appellant submits is wrong), the learned Chief Justice apparently assumed that the various letters, then before the Court, from the Secretary of State did not constitute or contain such a statement. (The Appellant submits that, if this view were right, such a statement is now to be found in the letter dated the 1st February 1951, referred to in paragraph 2 hereof, which was not before the Court of Appeal). Because, presumably, of this conclusion, Murray-Aynsley, C.J., did not examine the constitutional position in any detail, but dealt with the whole matter in a few sentences. The rulers of Johore, he said, were immune from the jurisdiction of the British Courts until 1945. Since then the status of Johore and its ruler has been changed twice, in 1945 and in 1948. For the present proceedings, only the latter is material. "But," said the learned Chief Justice, "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." It is respectfully submitted that a careful examination of the relevant treaties and Orders in Council shows that, as was held by Willan, C.J., after such examination, there was no change, at any rate after the revocation of the Malayan Union Order in Council, 1946, which in any way affects or impairs the earlier recognition.

p. 73, l. 41–p. 74, l. 4.
p. 74, l. 44–p. 75, l. 28.
p. 75, ll. 29–40.
p. 75, l. 41–p. 77, l. 39.
p. 75, ll. 14–18.
p. 77, ll. 33–36.
p. 77, ll. 39, 40.
p. 77, ll. 41, 42.
p. 77, ll. 43–46.

p. 78, l. 9–p. 80, l. 3. 25. Murray-Aynsley, C.J., then went on to consider, since the Court was not unanimous on the question of sovereignty, whether there had been waiver or submission to the jurisdiction by the Appellant. He held, as the Appellant submits rightly, that there had been no such waiver or submission, since there was, as between the present proceedings and the 1945 proceedings in the Syonan Kotohoin, identity neither of parties, of Court, nor of proceedings, all three of which are essential to constitute an effective submission or waiver.

p. 80, ll. 1–3.

p. 78, l. 30–p. 79.

p. 80, l. 19–p. 108, l. 6. 26. The Chief Justice of the Federation of Malaya, Sir H. C. Willan,
p. 87, l. 24–p. 89, l. 27. C.J., in his Judgment, held, first, that the relevant time in relation to which the question of sovereignty has to be considered is the time when the proceedings fall to be determined by the Court, and not the time when the
p. 89, l. 28–p. 93, l. 2. proceedings are instituted. Secondly, the learned Chief Justice held that where a certificate or statement is given by or on behalf of His Majesty's Government on the question of recognition of sovereignty, and such certificate or statement is, on its face, not conclusive one way or the other,
p. 92, l. 41–p. 93, l. 2. the Court is not precluded from looking to other evidence. Any argument to the contrary is not supported by authority and is negatived by the opinion of Lord Sumner in the *Kelantan* case (cited in paragraph 24 of
p. 93, l. 3–p. 98, l. 2. this case). Thirdly, after a careful and comprehensive review of the relevant authorities, agreements and statutory instruments, Willan, C.J.,
p. 98, ll. 3–7. came to the conclusion, agreeing with Gordon Smith, J., that the Appellant is an independent sovereign, and was so at the material time. On each of these three issues, the Appellant respectfully submits that the learned Chief Justice was right, both on authority and on principle.

p. 106, ll. 18–24.
p. 83, l. 24–p. 85, l. 3. 27. On the question of waiver, however, Willan, C.J., held against the Appellant. He was of opinion that the Syonan Kotohoin, in which the Appellant's proceedings had been brought, was not the same Court as the High Court of the Colony of Singapore. Nevertheless, in his view,
p. 104, ll. 26–28. the emphasis, in a consideration of a question of waiver of immunity, is
p. 104, ll. 1–6. on the continuity of proceedings. It was impossible for the Respondents to bring their proceedings in the former Japanese Court. (This, it is respectfully submitted, is irrelevant to the question of waiver by the Appellant.) By reason of the special provisions of Ordinance 37 of 1946
p. 106, ll. 20–24. (summarised in paragraph 9 of this case) the present proceedings by the Respondents " 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."

p. 107, ll. 24–44. 28. The learned Chief Justice then dealt briefly with an argument on behalf of the Respondents, which had not, apparently been put forward in the Court below, namely, that the Appellant could not claim immunity because the proceedings were in respect of real property within the
p. 107, ll. 41–44. jurisdiction of the Court. He held that there was no English authority to justify this proposition.

p. 108, l. 10–p. 129.
p. 110, l. 43–p. 117, l. 15.
p. 117, ll. 4, 5. 29. Evans, J., in his Judgment, discussed at length the question whether the Court can consider what he calls " secondary evidence " on the question of sovereignty when there is no conclusive certificate as to

His Majesty's recognition. Although the learned Judge did not express any formal conclusion on this question, it would seem that his view was that no such evidence could be considered. He then went on to express the view that the Appellant is not recognised by His Majesty as an independent sovereign, but he did not consider it necessary to decide the case on that point. Next, he held that the Japanese Court, the Syonan Kotohoin, was not the same Court as that in which the Respondents brought their proceedings, and that this disposed of the question of waiver. The learned Judge further held that the proceedings were not the same, and that the parties were different. The ground on which, in the learned Judge's opinion, the case should be decided against the Appellant was a ground which had been rejected by Willan, C.J., and which was not referred to in the Judgment of Murray-Aynsley, C.J., nor by Gordon Smith, J., in the High Court. That ground was that "this proceeding" (the Orginating Summons taken out by the Respondents) "appears to me . . . 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."

p. 117, ll. 4–15.
p. 117, ll. 4–15.
p. 120, ll. 15–18.
p. 120, l. 19–p. 122, l. 31.
p. 122, ll. 30, 31.
p. 122, ll. 32–38.
p. 123, l. 3–p. 124, l. 19.
p. 124, ll. 20–29.
p. 125, l. 17–p. 129.
p. 129, ll. 31–35.

30. Accordingly, and for these different and contradictory reasons, by formal Judgment and Order dated the 1st November 1949, the Appellant's appeal was dismissed with costs.

p. 72, l. 19 p. 73, l. 10.

31. By Order dated the 23rd January 1950, leave was granted to the Appellant, by the Court of Appeal of the Colony of Singapore, to appeal to His Majesty in Council.

p. 133, ll. 16–38.

32. The Appellant humbly submits that this Appeal should be allowed, with costs, and that the relief claimed by the Appellant in his application to the High Court of the Colony of Singapore, or such other relief as may be deemed fit, should be granted for the following amongother

p. 36, ll. 1–25

REASONS.

(1) BECAUSE the Appellant is, and at all material times was, an independent sovereign ruler and because he cannot without his consent be impleaded in any of His Majesty's Courts.

(2) BECAUSE the ground relied on by Murray-Aynsley, C.J., and, semble, by Evans, J., in the court below that in the absence of a conclusive certificate on behalf of His Majesty's Government it was not open to the court to hold that the Appellant was a sovereign ruler is wrong.

(3) BECAUSE the Appellant has not consented to be so impleaded nor has he submitted to the jurisdiction of His Majesty's Courts in respect of the proceedings out of which this Appeal arises nor has he in any manner or at any time waived his right to claim sovereign immunity in respect of such proceedings.

(4) BECAUSE if, contrary to the Appellant's contention, the proceedings instituted by him before the Japanese Court would otherwise have constituted a waiver of his right to immunity in respect of the present proceedings, such potential waiver is in any event irrelevant and ineffective as regards the present proceedings, having regard to the various constitutional events which have happened since 1945 and, in particular, to the fresh recognition by His Majesty's Government of the sovereign status of the Appellant implicit in the Johore Agreement of the 21st January 1948.

(5) BECAUSE the ground relied on by Murray-Aynsley, C.J., in the Court below, namely that the Appellant had failed to establish his status as a sovereign ruler, is wrong both on the material then before that Court, and, further or alternatively, having regard to the additional material which the Appellant now seeks to adduce.

(6) BECAUSE the ground relied on by Willan, C.J., in the Court below, namely that the Appellant had waived his right to sovereign immunity in respect of the proceedings out of which this Appeal arises, is wrong.

(7) BECAUSE the reasoning of Murray-Aynsley, C.J., rejecting the Respondents' contention as to waiver and submission is correct.

(8) BECAUSE the ground relied on by Evans, J., in the Court below, namely that the immunity of an independent sovereign does not extend to proceedings relating to land within the jurisdiction, is wrong.

(9) BECAUSE the doctrine and principle of sovereign immunity is not subject to any exception or limitation in respect of proceedings relating to land or real property within the jurisdiction.

(10) BECAUSE if there were, contrary to the Appellant's contention, any such exception or limitation, the proceedings out of which this Appeal arises do not fall within the scope thereof.

(11) BECAUSE, therefore, the Judgment and Order appealed against is wrong and should be reversed.

JOHN FOSTER.

JOHN MEGAW.

No. 45 of 1950.

In the Privy Council.

ON APPEAL

from the Court of Appeal of the Colony of Singapore, Island of Singapore.

BETWEEN

THE SULTAN OF JOHORE *Appellant*

AND

ABUBAKAR, TUNKU ARIS BENDAHARA and Others *Respondents.*

Case for the Appellant.

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