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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
IN THE PRIVY COUNCIL.

78551 Judgment 11/1964
No. 23 of 1962

ON APPEAL
FROM THE SUPREME COURT OF THE FEDERATION
OF MALAYA IN THE COURT OF APPEAL AT
KUALA LUMPUR

B E T W E E N

LIM LIAN GEOK Appellant (Applicant)

- and -

10 THE MINISTER OF THE INTERIOR, FEDERATION OF MALAYA Respondent (Respondent)

C A S E FOR THE RESPONDENT

RECORD

1. This is an appeal from the Order of the Court of Appeal of the Supreme Court of the Federation of Malaya dated the 4th January 1962 dismissing the Appeal of the Appellant against the Order of Thomson C.J. made on the 13th October 1961 in the High Court at Kuala Lumpur discharging the Order Nisi of Ong J. made on the 13th September 1961 in the same Court upon the ex parte application of the Appellant whereby the Respondent had been prohibited from referring the case of the Appellant to a Committee of Inquiry under Clause (2) of Article 27 of the Federal Constitution until the aforesaid Order Nisi had been made absolute or discharged and whereby the Respondent had been ordered to show good cause on or before the 4th October 1961 why the aforesaid prohibition should not be made absolute.

P.76
P.31
P. 4

2. The main issue in the present Appeal concerns the validity, as to both form and substance, of a notice which was served on the Appellant as a citizen of the Federation pursuant to Clause (1) of Article 27 of the Federal Constitution.

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3. The provisions of the Federal Constitution and the Citizenship Rules, 1960 which are material to this Appeal are set out in the Annexes hereto.

4. It is not in dispute that the Respondent, whose bona fides were never impeached by the Appellant, was at the material time the Minister who on the direction of His Majesty the Yang di-Pertuan Agong exercised the functions of the Federal Government under Part III and the Second Schedule of the Federal Constitution. It is also not in issue that the Appellant was a person who could be the subject of deprivation of citizenship proceedings. 10

P.80

5. On the 14th August 1961 the Appellant received by registered post from the Registrar-General of Citizens of the Federation of Malaya a Notice (Exhibit A) dated the 12th August 1961. The substance of the said Notice was as follows:-

"WHEREAS it has been represented to the Federal Government that you LIM LIAN GEOK a Citizen of the Federation of Malaya, have shown yourself, since 1957, by act and speech to be disloyal and disaffected towards the Federation of Malaya, in that you did make: 20

(a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang di-Pertuan Agong and the Government of the FEDERATION; and

(b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence. 30

AND WHEREAS the Federal Government proposes to make an Order under Article 25 of the Federation of Malaya Constitution depriving you of your Citizenship of the Federation of Malaya.

NOW, THEREFORE, I, Ibrahim bin Ali, the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government DO HEREBY GIVE YOU NOTICE that unless within one Calendar month from the date of service upon you of this Notice, you inform me in writing that you claim that your case be referred to a Committee of Inquiry constituted for that purpose 40

by the Federal Government under Article 27(2) of the said Constitution, the Federal Government will proceed to make the Order of depriving you of your Citizenship of the Federation of Malaya."

6. By a letter dated the 5th September 1961 (Exhibit B) addressed to the Registrar-General of Citizens the Appellant denied his authority to issue the said Notice and requested that it be withdrawn and that a proper Notice be served on him if it was still the intention of the Federal Government to deprive him of his citizenship. The Registrar-General did not comply with this request and asserted the validity of the said Notice in a letter dated the 6th September 1961 (Exhibit C) addressed by him to the Appellant.

P.81, 1.29

P.83

7. Thereupon, pursuant to a Notice of Motion dated the 12th September 1961, the Appellant applied ex parte to Ong J. in the High Court at Kuala Lumpur on the 13th September 1961 for an order that the Respondent be prohibited from referring the Appellant's case to a Committee of Inquiry under Clause (2) of Article 27 of the Federal Constitution for the reasons inter alia:-

P. 1

(1) that it was not competent for the Registrar-General to issue the Notice that he purported to have issued under Rule 22 of the Citizenship Rules; and

(2) that the allegations made as to the basis for the Notice assuming them to be true, were not a sufficient compliance with the requirements of paragraph (a) of Clause (1) of Article 25 of the Constitution.

8. The Appellant's application was supported by his own affidavit evidence in which he referred to the events leading up to the application and to the above mentioned reasons therefor and after invoking his right as a citizen to freedom of speech and expression as a fundamental liberty guaranteed by Article 10 of the Constitution he concluded by contending that he had not infringed any of the restrictions that Parliament had by law imposed on that right.

P. 2, 1.24

9. Ong J. granted the Appellant's said application to the extent of making the Order Nisi dated the 13th September 1961 mentioned in paragraph 1 hereof.

P. 4

10. Accordingly, pursuant to a Notice of Motion dated the 18th September 1961, the Respondent applied to

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- P. 4, 1.33 Thomson C.J. in the High Court at Kuala Lumpur on the 4th October 1961 for an order discharging the said Order Nisi on the grounds that:-
- (1) An order of prohibition did not lie against the decision of the Respondent; and
 - (2) If an order of prohibition did lie -
 - (a) the notice issued by the Registrar-General of Citizens was in the form prescribed by and upon the instructions of the Respondent and was in compliance with the requirements of Article 27 of the Constitution; and 10
 - (b) the grounds shown in the notice were a sufficient compliance with the requirements of paragraph (a) of Clause (1) of Article 25 of the Constitution.
- P. 6 11. The Respondent's application was supported by his own affidavit evidence in which he deposed inter alia that he had decided pursuant to Article 27 of the Constitution to cause the Notice to be sent to the Appellant and that the Notice was in the form prescribed by the Respondent in rule 22 of the Citizenship Rules, 1960. He further deposed that the Notice was on his decision sent to the Appellant by the Registrar-General of Citizens who was a civil servant in the Respondent's Ministry and that he, the Respondent, was satisfied that the act and speech of the Appellant justified his decision to proceed under Article 27 of the Constitution. 20
- P. 7 12. The Appellant filed an affidavit in opposition to the Respondent's application in which he deposed that he was born in China and came to the Federation in or about 1929 and that he became a Citizen of the Federation in or about September 1951. The Appellant's affidavit also contained a summary of his career as a Chinese school teacher and of his activities in connection with Chinese Education in the Federation which the Respondent will contend was altogether irrelevant to the issues raised before Thomson C.J. and was rightly so regarded by him. 30
- P.19
- P. 9 13. The hearing of the Respondent's application took place on the 4th and the 5th October 1961 and on the 13th October 1961 Thomson C.J. delivered a reserved judgment discharging the Order Nisi and made an Order to that effect. 40
- P.15
P.31

14. In his reserved judgment the learned Chief Justice expressed the view that the question of whether the powers of the Respondent under Article 25 could be exercised by the Registrar-General of Citizens or any other official did not arise in the case before him. In his judgment there had in fact been no delegation and no attempt at delegation of any power. Although the Notice addressed to the Appellant bore the physical signature of the Registrar-General of Citizens it had been made clear from the Respondent's affidavit that it was the Respondent himself who caused the Notice to be issued.

P.22, 1.19

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P.22, 1.28

The learned Chief Justice concluded that the Registrar-General signed the Notice not in the purported exercise of any powers delegated to him but as the clerk or amanuensis of the Respondent.

15. After observing that much of the argument before him had gone far beyond the main question at issue and that it did not have to be decided at that stage how far an order of deprivation of citizenship under Article 25 was open to examination by the Courts the learned Chief Justice said:-

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P.23, 1.5

"What has to be considered here is the extent of the power of the Minister to take a step the taking of which is a condition precedent to the making by him of an order of deprivation, that step being to cause the holding of an Inquiry under Article 27. Such an inquiry is required to be held and the Minister is required to have regard to its report which clearly implies that the report is something he must consider in deciding whether he has attained satisfaction for the purpose of Article 25."

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16. The learned Chief Justice went on to say that whilst it was nowhere stated in terms what the Minister's state of mental assent must be to such materials as might be before him before he was entitled to take steps to have the inquiry held this question, which had been raised in argument by the Appellant's Counsel, was beside the point" because it is clear from the wording of the Constitution itself that four conditions must be fulfilled. The first is that the Minister must have certain grounds of fact in his mind. The second is that these grounds must consist of acts or speech. The third is that the person against whom the order is proposed to be made should be informed what these

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P.24, 1.1

RECORD

grounds are. And the fourth is that these grounds of fact should be capable, if made out, of showing as a matter of law disloyalty or disaffection towards the Federation."

P.24, 1.24

In his judgment the first three of the conditions postulated by him had been fulfilled so that the only remaining question for decision was whether the grounds stated in the Notice were such as to be capable in law of showing disloyalty or disaffection.

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P.26, 1.30

17. The learned Chief Justice then made preliminary observations in the light of which he proposed to consider this question which he was approaching without the assistance of authority. No useful purpose would in his judgment be served by attempting to frame exhaustive definitions of "disloyalty" and "disaffection". However in considering some of the attributes of these terms he expressed the view that "Disloyalty" clearly involved some failure of a duty or something inconsistent with a duty whatever that duty might be. "Disaffection" he regarded as involving lack of affection or dislike exceeding bare dislike and amounting to active enmity or hostility. After referring in this connection to the terms, set out in the First Schedule of the Federal Constitution, of the oath required to be taken by applicants for citizenship by registration he went on to observe:-

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P.26, 1.46

P.27, 1.7

"Probably the safest way in which to approach the problem is from a consideration of what must be the object of disloyalty or disaffection. This is not the Yang di-Pertuan Agong nor is it the Constitution. It is the Federation itself which is the political unit consisting of the eleven separate States brought together and constituted into a whole by and in accordance with the Constitution. Now, it must be remembered that the individuals who go to make up that political unit enjoy the status of citizenship. The Federation does not as do other sovereign States, consist of persons enjoying a common nationality and owing as subjects to a sovereign a duty of allegiance that springs from nationality. It consists of citizens who owe to the Federation itself a duty which may be analogous to that of allegiance but which springs not from nationality but from citizenship."

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P.27, 1.30

18. Mere disapproval of existing constitutional arrangements or of the policy of the Government was

not in his judgment disloyalty or disaffection which would justify depriving a citizen of his citizenship and he acknowledged the right of a citizen to advocate publicly the making by constitutional means of changes in the Constitution itself or in the Government of the day or any part of its policy. He concluded his preliminary observations as follows:-

P.28, 1.11

10 "If however he acts and speaks in such a way as to excite his fellow citizens to disobey the laws rather than to change them; if he behaves in such a way as to endanger the domestic peace and tranquility or the enjoyment of law and order which the Federation must assure to its citizens if it is to continue to exist; if it is the natural and probable consequences of what he says and does that some citizens may be moved to effect changes in the persons making up or in the machinery of Government otherwise than in the way provided for by the
20 Constitution itself; then and in any one of such cases it would, to my mind, be open as a matter of law to say that the individual's conduct showed disloyalty or disaffection."

19. After commenting that the examination in the light of the above observations of the grounds stated by the Respondent in the Notice as showing disloyalty or disaffection on the part of the Appellant must in his view be examined not in detail but as a whole the learned Chief Justice
30 added that such grounds included allegations which considered in isolation would not in his view be capable of showing disloyalty or disaffection to the Federation. As an example he referred to the allegation of "deliberate misrepresentation and inversion of Government education policy" contained in the Notice and indicated that he doubted if this allegation went much beyond describing substantial disagreement with that policy.

P.28, 1.28

40 However the allegation in the Notice regarding the making of emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence was in his judgment something which could well make out both disloyalty and disaffection on the part of anyone making such appeals. He dwelt on the history of the Federation which has a population comprised of different races drawn from many countries with

P.29, 1.3

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different languages customs and religions and concluded as follows:-

P.29, 1.23

"For many years some sort of uniformity, some sort of community, was imposed on these people by the exercise of foreign suzerainty. Now that external pressure has been removed and for little over four years these people have had to exercise qualities of self-discipline, restraint and mutual tolerance without which the Federation of which they are members could not exist. The magnitude of the task involved may be appreciated by a consideration of the history of Great Britain since the disappearance of the Roman Colonial power some 1,500 years ago or of the history of India throughout the centuries. How then can it be said that the public use of language appealing to the heart and not to the head which is calculated to promote feelings of mutual ill-will and hostility among the people of various races who are citizens of the Federation to such an extent as to be likely to cause violence is not in its very nature sufficient, if proved, to make out disloyalty and disaffection to the Federation?" 10 20

P.29, 1.48

20. Finally the learned Chief Justice adverted to the Appellant's contention that if he were to be deprived of his citizenship because of speeches made by him a restriction would thereby be imposed on his right to freedom of speech under Article 10 of the Constitution. In the view of the learned Chief Justice this argument was without substance because article 25 expressly provided that a citizen could be deprived of citizenship if he had shown himself to be disloyal or disaffected "by act or speech". Moreover the corollary of the Appellant's argument on this point was that disaffection or disloyalty could never be shown by speech unless such speech were of a sort specifically forbidden by Parliament and this was a result which could not reasonably have been intended. The learned Chief Justice finally rejected the Appellant's arguments on this point in the following words:- 30 40

P.30, 1.20

"The truth is that Article 10 says that subject to certain restrictions a man may say what he likes; it does not say that in no circumstances whatever can what he says be used in evidence against him."

P.32

21. The Appellant duly appealed against the whole of the said judgment of Thomson C.J. on the grounds inter alia that:-

I. The learned Chief Justice was wrong in law - P.34, l.15

(a) in finding that the Registrar-General signed the Notice as the clerk or amanuensis of the Respondent and not in purported exercise of powers delegated to him;

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(b) in implying from the provisions of Article 27 that the Respondent must consider the report of the Committee of Inquiry in deciding whether he had attained satisfaction for the purposes of Article 25;

(c) in holding that the question of whether it was conducive to the public good that a person should be deprived of his citizenship was a consequential one which could not arise until disloyalty or disaffection had been made out and must depend on the degree thereof;

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(d) in the test laid down by him for determining as a matter of law when an individual's conduct showed disloyalty or disaffection; and

P.35

(e) in finding that to make emotional appeals of an extreme communal nature calculated to provoke feelings of ill-will and hostility between different races in the Federation likely to cause violence is something which could well make out both disloyalty and disaffection.

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II and V. The learned Chief Justice had failed to appreciate the argument addressed to him invoking Article 10 and should have given its proper effect to the fundamental liberty of speech guaranteed by Article 10 to a citizen, such liberty being limited only by the terms of that Article.

P.35, l.38
P.36, l.39

IV. The learned Chief Justice failed to give full and proper effect to Article 25(3) of the Constitution.

P.36, l.36

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22. The said appeal was heard by the Court of Appeal (Hill J.A., Good J.A. and Hepworth J.) at Kuala Lumpur on the 14th December 1961.

P.37

23. For the Appellant it was contended inter alia that:-

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- P.38, 1.10
Pp.44-45
Pp.55-56
- (a) The Notice was void in form because the Registrar-General expressly claimed to be acting on behalf of the Federal Government but the Respondent had not delegated his powers to him.
- P.39, 1.27
P.41
Pp.46,50, 1.15
Pp.57,59, 1.27
- (b) The Minister must have achieved a state of satisfaction for the purposes of Article 25 before issuing the notice so that failure to state it was a defect in the substance of the notice. In this connection Thomson C.J. had wrongly assumed that the Minister was obliged to hold an inquiry in every case. 10
- P.40
Pp.48-9
Pp.58-9
- (c) Paragraphs (b) and (c) of Clause (1) of Article 149 of the Constitution were the apparent inspiration for the grounds in the Notice and this citation from Article 149 showed that the Minister was not making valid exercise of his power under Article 25 because if an individual were supposed to have done the acts described in Article 149 then he must be dealt with under the ordinary law. 20
- P.40, 1.34
P.49, 1.35
P.59, 1.17
- (d) If on the face of the document evidencing the exercise of the power it was apparent that there were insufficient grounds for the exercise of the power then the Courts must ex debito justitiae intervene.
- P.41, 1.6
P.51, 1.2
P.60, 1.3
- (e) The right of freedom of speech under Article 10 of the Constitution was only cut down to the extent allowed by paragraph (a) of Clause (2) thereof and such right could only be restricted by Parliament by law. 30
24. For the Respondent it was contended inter alia that:-
- P.41
P.51-2
P.60
- (a) The Respondent's decision to issue the Notice was a ministerial act which could only be challenged on bad faith.
- (b) The questions before the Court related to the decision to give notice under Article 27 and not to a decision to deprive under Article 25.
- P.41, 1.23
P.52, 1.6
P.60, 1.26
- (c) The Registrar-General had acted as the alter ego of the Respondent who had caused the Notice to be issued. 40

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- (d) If acts referred to in Article 149 were done by an individual they constituted disloyal acts in respect of which action could be taken under Articles 25 and 27. P.53, 1.1
P.61, 1.13
- (e) Article 25 constituted an intentional restriction on Article 10 of the Constitution P.53, 1.6
P.61, 1.18
- (f) An act might be a crime and at the same time the offender might be liable to action under Article 25 since prosecution and executive action were not mutually exclusive. P.53, 1.15
P.61, 1.26
- 10 25. On the 4th January 1962 the Court of Appeal unanimously dismissed the Appellant's appeal. P.62
P.76, 1.20
26. In the early stages of his judgment Hill J.A. stated that, for reasons which he indicated later, he proposed to deal only with one ground of appeal, namely that both in its form and in its content the Notice issued to the Appellant was bad in law. P.65, 1.16
27. As regards the form of the Notice the learned Judge of Appeal said:-
- 20 "It was the Appellant's contention that the Notice could only be in order if the Registrar-General had had any of the Minister's functions delegated to him under section 4 of the Second Schedule and that as there had been no such delegation by the Minister the Notice was void. In view of the wording of section 6 of the Second Schedule I might have found this argument persuasive but for the hiatus in it regarding the Minister's affidavit and Rule 22 of the
- 30 Citizenship Rules. Rule 22 concerns a "Notice given by the Federal Government" and it clearly follows in my view that neither by accident nor design is there any delegation of the Minister's functions in fact or in law.
- I am therefore of the opinion that in so far as its form is concerned the notice served on the Appellant was in order."
28. As regards the substance or content of the Notice Hill J.A. said:- P.68, 1.9
- 40 "The procedure is based on Article 25 and 27 of the Constitution and at the point or stage at

In other words to set out whether it is ground (a), (b) or (c) of Article 25. No particulars or details are required to be given and in my opinion the notice should have been confined to a bare reference to ground (a) in Article 25(1)".

10 However in the view of the learned Judge of Appeal the Notice clearly and unequivocally indicated that paragraph (a) of Clause (1) of Article 25 was intended and he could not conceive that on this point the Appellant could have been left in any doubt. He accordingly concluded that both in form and content the Notice served on the Appellant was a proper one. P.70, 1.42

30. Good J.A. concurred with the judgment of Hill J.A. but gave additional reasons for arriving at the same result. P.71

31. On the question of jurisdiction the learned Judge of Appeal observed:-

20 "Article 27 sets out certain conditions precedent to the making of an order under article 25, and, as I see it, the only purpose for which the supervisory jurisdiction of the Court can be invoked at this stage is to ascertain whether the essential preliminary steps have properly been taken according to law. The Government is not yet committed to depriving the appellant of his citizenship; it has only announced its intention of doing so if the appellant does not within a specified time claim that his case be referred to a committee of inquiry as provided by Article 27. If the appellant does so 30 claim - he has not yet done so but has elected to bring these proceedings instead - no order can be made affecting his status as a citizen until the Government has considered the committee's report. It is therefore premature to discuss the sufficiency of the ground on which it is proposed to make the order; if indeed, this can ever be discussed forensically, as to which I express no opinion. P.72, 1.16

40 The Court at this stage is concerned only with the question whether the notice issued to the appellant under Clause (1) of Article 27 is good in form and in content".

32. As regards the form of the Notice Good J.A. expressed the opinion that the Registrar-General P.73

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had not purported to exercise any of the functions of the Federal Government and that the Respondent's affidavit made it perfectly clear that the making and issuing of the notice was his own act and not that of the Registrar-General who had acted as the instrument or mouthpiece by which the intended action of the Government, and the ground upon which it was intended, had been communicated to the Appellant.

P.73, 1.42

33. As regards the content of the Notice the learned Judge of Appeal considered that so long as it gave the Appellant sufficient notice of the ground upon which the Government proposed to rely the Notice was not invalidated by reason of the fact that its wording had been partly derived from Article 149 of the Constitution which had nothing to do with deprivation of citizenship. He then considered the question how much information the Government was obliged to give before an inquiry was held as to the ground on which it was proposed to make an order of deprivation. He answered this question as follows:-

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P.74, 1.28

"Article 27(1) and Article 25 must be construed in relation to one another, and I would construe the words of Article 27(1) - "informing him of the ground on which the order is proposed to be made" - as meaning "informing him on which of the grounds set out in Article 25 the order is proposed to be made." If I am right, it follows that it would have been sufficient if the notice had merely informed the appellant that it was proposed to deprive him of his citizenship on the ground of acts (or speech) showing him to be disloyal (or disaffected) towards the Federation. Anything further is surplusage, but there could be no misunderstanding in the mind of any person reading the contents of the notice that what was intended was deprivation on ground (a) in Article 25(1). In my opinion that is sufficient. The particular allegations will emerge at the inquiry if the appellant elects to ask for one. This is nowhere explicitly stated, but it is implicit in the procedure: there cannot be an inquiry unless there is something to inquire into, and it cannot be a proper inquiry unless the appellant is told what is alleged against him".

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P.75, 1.6

34. After comparing the provisions of Clause (1) of Article 27 with those of paragraph (a) of Clause

(1) of Article 151 of the Constitution (which required a detainee to be informed of the ground for his detention and also, subject to the qualification as to national interest in Clause (3) of Article 151, of the allegations of fact on which the detention order was based) Good J.A. concluded as follows:-

10 "The omission of any such requirement from Article 27(1) suggests to me that it was not intended that, at this stage of the proceedings, the person affected should be informed of anything more than the bare ground of intended deprivation, and in my opinion this requirement has been sufficiently complied with by the contents of the notice in question in the present case." P.75, 1.25

35. Hepworth J. concurred with the judgment of Hill and Good J.J.A. P.76

20 36. On the 15th May 1962 the Appellant was by Order of the Court of Appeal granted final leave to appeal to His Majesty the Yang-di-Pertuan-Agong from the said judgment of the Court of Appeal and the said Appeal to His Majesty the Yang di-Pertuan Agong is accordingly referred to the Judicial Committee of Her Majesty's Privy Council for hearing pursuant to Article 131 of the Federal Constitution and Article 2 of the Federation of Malaya (Appeals to Privy Council) Order in Council, 1958 (S.I. 1958 No. 426). P.78

30 37. If, notwithstanding the Appellant's Notice of Motion dated the 12th September 1961 in which he sought an order prohibiting the Respondent from referring the case to a Committee of Inquiry under Article 27(2) of the Constitution, the Appellant now desires that the case should be so referred the Respondent will if so requested in writing by the Appellant within one calendar month after the conclusion of this appeal himself refer the case to such a Committee.

40 38. By virtue of subsection (1) of Section 4 of the Malaysia Act which came into force on the 14th September 1963 the Federation of Malaya became known by the name "Malaysia".

39. On behalf of the Respondent it will be contended that the decision of the Court of Appeal

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is right and should be upheld for the following
among other

R E A S O N S

- (1) BECAUSE Thomson C.J. and the Court of Appeal rightly regarded the supervisory jurisdiction of the Supreme Court to restrain the Respondent from referring the Appellant's Case to a Committee of Inquiry as being exercisable under the circumstances of this Appeal in the light only of the validity or otherwise on the face of it of the Notice which had been served on the Appellant pursuant to Clause (1) of Article 27 of the Federal Constitution as a necessary preliminary step in deprivation of Citizenship proceedings and rightly declined to extend the scope of the proceedings to permit the examination of any question beyond the validity or otherwise on the face of it of such Notice. 10
- (2) BECAUSE Thomson C.J. and the Court of Appeal rightly decided that there had been no delegation or attempt at delegation by the Respondent to the Registrar-General of Citizens of any of the Respondent's powers under Articles 25 and 27 of the Federal Constitution and that, although the Notice issued to the Appellant had been signed by the Registrar-General, the affidavit of the Respondent had made it clear that he the Respondent had caused the Notice to be issued and that the Registrar-General had acted throughout merely as his instrument or amanuensis. 30
- (3) BECAUSE the Court of Appeal rightly held that the Notice issued to the Appellant would have satisfied the requirements of Clause (1) of Article 27 of the Federal Constitution as to grounds if it had informed him only that it was proposed to deprive him of his citizenship under paragraph (a) of Clause (1) of Article 25 of the Federal Constitution on the ground that he had shown himself by act or speech to be disloyal or disaffected towards the Federation, and that such requirements had been complied with by the actual contents of the said Notice. 40
- (4) BECAUSE whilst it is conceded that the Appellant was entitled to impeach the validity of the

Notice on the grounds that on the face of it the form or the content or both the form and the content thereof were defective Thomson C.J. and the Court of Appeal rightly decided that the Appellant had failed to establish the invalidity of the Notice.

- 10 (5) BECAUSE Thomson C.J. rightly held that as a matter of law the allegation in the Notice regarding the making of emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence was something which could well make out both disloyalty and disaffection on the part of anyone making such appeals.
- 20 (6) BECAUSE Hill J.A. in the course of affirming the decision of Thomson C.J. rightly held (with the concurrence of Good J.A. and Hepworth J.) with regard to the said allegation in the Notice concerning the making of the said emotional appeals that it was then premature to endeavour to form any opinion without details and particulars of the alleged emotional appeals whether they showed the Appellant to be disloyal or disaffected towards the Federation and to what extent but that there were clearly circumstances when appeals of such a nature could show that the maker of them was disloyal or disaffected.
- 30 (7) BECAUSE Thomson C.J. gave due weight to the Appellant's right to freedom of speech and expression under Article 10 of the Federal Constitution when considering the grounds stated in the Notice and rightly decided that the allegations in paragraph (b) thereof were in their very nature sufficient if proved to make out disloyalty and disaffection for the purposes of paragraph (a) of Clause (1) of Article 25 of the Federal Constitution.
- 40 (8) BECAUSE notwithstanding the provisions contained in Article 10 the provisions of paragraph (a) of Clause (1) of Article 25 of the Federal Constitution in so far as they render a limited class of citizens liable to deprivation of citizenship for being and showing themselves by act or speech to be disloyal or disaffected towards the Federation are valid and effective.

- (9) BECAUSE the allegations contained in paragraph (a) and in paragraph (b) of the Notice were together or separately capable, if proved, of establishing that the Appellant had shown himself to be disloyal or disaffected towards the Federation.
- (10) BECAUSE the fact that the Notice contained allegations which, if proved, indicated that the Appellant had rendered himself liable to proceedings under the Sedition Ordinance, 1948 (F. of M. No. 14 of 1948) or the Internal Security Act, 1960 (No. 18 of 1960) did not cause the Notice to be invalid as alleged by the Appellant or at all. 10
- (11) BECAUSE the Court of Appeal rightly rejected the contention of the Appellant that because paragraphs (b) and (c) of Clause (1) of Article 149 of the Federal Constitution was the apparent inspiration of the grounds stated in the Notice the Respondent was not making valid exercise of his power under Article 25 of the Federal Constitution. 20
- (12) BECAUSE at the stage which the deprivation of citizenship proceedings against the Appellant had reached it was not relevant for the Supreme Court to inquire whether the Respondent had actually attained the satisfaction provided by Clauses (1) and (3) of Article 25 of the Federal Constitution to be requisite before an order under the said Article could be made. 30
- (13) BECAUSE the bona fides of the Respondent were never in issue.
- (14) BECAUSE the Order of Thomson C.J. dated the 13th October 1961 was right.

BLEDISLOE

P.G. CLOUGH

A N N E X E

CONSTITUTION OF THE FEDERATION OF MALAYA

PART II

FUNDAMENTAL LIBERTIES

10. (1) Subject to Clause (2), -

Freedom of
speech.....

(a) every citizen has the right to freedom
of speech and expression;

.....

(2) Parliament may by law impose -

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(a) on the rights conferred by paragraph
(a) of Clause (1), such restrictions
as it deems necessary or expedient in
the interest of the security of the
Federation, friendly relations with
other countries, public order or
morality and restrictions designed
to protect the privileges of
Parliament or of any Legislative
Assembly or to provide against
contempt of court, defamation, or
incitement to any offence;

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.....

PART III

CITIZENSHIP

Chapter 2 - Termination of Citizenship

25. (1) Subject to Clause (3), the Federal
Government may by order deprive of his citizenship
any person who is a citizen by registration under
Article 17 or a citizen by naturalisation if
satisfied -

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Deprivation
of citizenship
By registra-
tion under
Article 17 or
by naturalisa-
tion.

(a) that he has shown himself by act or
speech to be disloyal or disaffected
towards the Federation;

(b) that he has, during any war in which
the Federation is or was engaged,
unlawfully traded or communicated

with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or

- (c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced. 10

(2) Subject to Clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 17 or a citizen by naturalisation if satisfied that he has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither - 20

- (a) been at any time in the service of the Federation or of an international organisation of which the Federal Government was a member; nor
- (b) registered annually at a Malayan Consulate his intention to retain his citizenship. 30

(3) No person shall be deprived of citizenship under this Article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under Clause (1) if, as the result of the deprivation, he would not be a citizen of any country outside the Federation.

Procedure for deprivation 27. (1) Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article. 40

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.

10 (3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that Government; and the Federal Government shall have regard to the report in determining whether to make the order.

28. (1) For the purposes of the foregoing provisions of this Chapter -

Application of Chapter 2 to certain citizens by operation of law.

20 (a) any person who before Merdeka Day became a federal citizen or a citizen of the Federation by registration as a citizen or in consequence of his registration as the subject of a Ruler, or by the grant of a certificate of citizenship, under any provision of the Federation of Malaya Agreement, 1948, or of any State law shall be treated as a citizen by registration and, if he was not born within the Federation, as a citizen by registration under Article 17;

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Chapter 3 - Supplemental

31. Until Parliament otherwise provides, the supplementary provisions contained in the Second Schedule shall have effect for the purposes of this Part.

Application of Schedule 2.

PART XI

SPECIAL PROVISIONS AGAINST SUBVERSION,
AND EMERGENCY POWERS

40 149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation -

Legislation against subversion.

(a)

- (b) to excite disaffection against the Yang di Pertuan Agong or any Government in the Federation; or
- (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
- (d)
- (e)

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9 or 10, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill. 10

[As amended by section 28 of the Constitution (Amendment) Act, 1960 (No.10 of 1960)]

Article 31.

SECOND SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO CITIZENSHIP

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The Minister

1. The functions of the Federal Government under Part III shall be exercised by such Minister of that Government as the Yang di-Pertuan Agong may from time to time direct, and references in this Schedule to the Minister shall be construed accordingly.

2. A decision of the Federal Government under Part III shall not be subject to appeal or review in any court.

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4. The Minister may delegate to any officer of the Federal Government or, with the consent of the Ruler or Governor of any State, to any officer of the Government of that State, any of his functions under Part III of this Schedule; but any person aggrieved by the decision of a person to whom the functions of the Minister are so delegated may appeal to the Minister.

Functions of Minister

6. Subject to Federal law, the Minister may make rules and prescribe forms for the purpose of the exercise of his functions under Part III and this Schedule.

[As amended by section 33 of the Constitution
(Amendment) Act, 1960 (No. 10 of 1960)]

CITIZENSHIP RULES, 1960 (L.N. 310 of 1960)

10 (Made by the Minister under section 6 of the Second
Schedule of the Constitution)

1. These Rules may be cited as the Citizenship Rules, 1960.

Citation.

2. In these Rules unless the context otherwise requires -

Interpretation.

"Minister" means the Minister of the Interior;

"Registrar-General" means the Registrar-General of Citizens of the Federation of Malaya appointed by the Minister under rule 3 of these Rules;

.....

20 3. (1) The Minister may appoint a Registrar-General of Citizens of the Federation of Malaya and as many Registrars, Deputy Registrars and Assistant Registrars as he deems necessary in order to give effect to the objects of Part III of the Constitution and the Second Schedule thereto.

Appointment of Registrar-General and Registrars.

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RENUNCIATION AND DEPRIVATION

30 22. The Notice given by the Federal Government to a person against whom the deprivation order is proposed to be made under the provisions of Article 27 of the Constitution shall be in the form Q set out in the Schedule to these Rules.

Notice of deprivation.

FORM Q

NOTICE

To

of

WHEREAS it has been represented to the Federal Government that you a Citizen of the Federation of Malaya

AND WHEREAS the Federal Government proposes to make an Order under Article 24, 25 or 26 of the Federation of Malaya Constitution depriving you of your Citizenship of the Federation of Malaya; 10

NOW THEREFORE I, the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government DO HEREBY GIVE YOU NOTICE that unless within one Calendar month from the date of service upon you of this Notice, you inform me in writing that you claim that your case be referred to a Committee of Inquiry constituted for that purpose by the Federal Government under Article 27(2) of the said Constitution, the Federal Government will proceed to make the Order depriving you of your Citizenship of the Federation of Malaya. 20

Dated this day of 19...

.....

Registrar-General of Citizens
of the Federation of Malaya.

No. 23 of 1962

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF THE
FEDERATION OF MALAYA IN THE
COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N

LIM LIAN GEOK Appellant
(Applicant)

- and -

THE MINISTER OF THE
INTERIOR, FEDERATION
OF MALAYA Respondent
(Respondent)

CASE FOR THE RESPONDENT

WRAY, SMITH & CO.,
1 King's Bench Walk,
Temple,
London, E.C.4.

Respondent's Solicitors.