

1967, 1

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.      NO. 33 of 1965.

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ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR  
(Appellate Jurisdiction)

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B E T W E E N

C. DEVAN NAIR ..... Appellant

- and -

YONG KUAN TEIK ..... Respondent

(In the matter of Election Petition No. 1 of 1964 in the High Court in Malaya Election for Bungsar Ward to the Dewan Ra'ayat holden on the 25th day of April 1964

BETWEEN      Yong Kuan Teik ..... Petitioner

And

C. Devan Nair ..... Respondent )

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R E C O R D      O F      P R O C E E D I N G S

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COWARD, CHANCE & CO.,  
St. Swithin's House,  
Walbrook, London, E.C.4

GARBER, VOWLES & CO.,  
37, Bedford Square,  
London, W.C.1

Solicitors for the Appellant

Solicitors for the Respondent.

91371

UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED**  
LEGAL STUDIES  
15 MAR 1968  
25 RUSSELL SQUARE  
LONDON, W.C.1.

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR  
(Appellate Jurisdiction)

---

B E T W E E N:

C. DEVAN NAIR Appellant

- and -

YONG KUAN TEIK Respondent

---

10 (In the matter of Election Petition No. 1 of 1964 in the High Court in Malaysia Election for Bungsar Ward to the Dewan Ra'ayat holden on the 25th day of April 1964

Between

Yong Kuan Teik Petitioner

And

C. Devan Nair Respondent )

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R E C O R D O F P R O C E E D I N G S

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 25 RUSSELL SQUARE  
 LONDON, W.C.1.

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.33 of 1965.

ON APPEAL FROM THE FEDERAL COURT OF MAYAYSIA HOLDEN AT KUALA LUMPUR (Appellate Jurisdiction)

BETWEEN: C. DEVAN NAIR Appellant  
- and -  
YONG KUAN TEIK Respondent

10 (In the matter of Election Petition No. 1 of 1964 in the High Court in Malaya Election for Bungsar Ward to the Dewan Ra'ayat holden on the 25th day of April 1964

Between Yong Kuan Teik Petitioner  
- and -  
C. Devan Nair Respondent

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R E C O R D O F P R O C E E D I N G S

---

No. 1 Petition

IN THE HIGH COURT OF MALAYA  
THE ELECTION OFFENCES ORDINANCE, 1954  
Petition No.1 of 1964

In the High Court of Malaya  
No.1  
Petition

20 Election for Bungsar Ward to the Dewan Ra'ayat holden on the 25th day of April 1964.  
The Petition of Yong Kuan Teik of No. 130B Klang Road (3rd mile) Kuala Lumpur, whose name is subscribed.

1. Your Petitioner Yong Kuan Teik is a person who voted at the above election.

30 2. And Your Petitioner states that the election was holden on the 25th day of April 1964 when Devan Nair, Chew Choo Soot, Koh Pooi Kee and V. David were candidates, and the Returning Officer, by Notification 2234 in the Federal Government Gazette for the 11th June, 1964 has returned C.

In the High  
Court of  
Malaya

No.1  
Petition  
(cont.)

Devan Nair as being duly elected.

3. And your Petitioner says that the said C. Devan Nair was at the time of his election a person disqualified for election to the Dewan Ra'ayat by virtue of Article 47(b) of the Federal Constitution and Regulation 4 (i) of the Election (Conduct of Elections) Regulations, 1959 in that:-

The said C.Devan Nair was not at the time of his election a citizen of Malaysia.

WHEREFORE your Petitioner prays that it might be determined that the said C.Devan Nair was not duly elected or returned and that the election was void.

10

Sd. Yong Kuan Teik  
(Signed) Yong Kuan Teik  
Petitioner.

No.2

Receipt for  
presentation  
of Petition

29th June  
1964

No. 2. RECEIPT FOR PRESENTATION OF PETITION

RECEIVED on the 29th day of June, 1964 at the Registry of the High Court, a Petition touching the Election of C. Dev an Nair for Bungsar Ward to the Dewan Ra'ayat, purporting to be signed by Yong Kuan Teik of No. 130B Klang Road (3rd mile), Kuala Lumpur.

20

Sd. Raja Azlan Shah  
(RAJA AZLAN SHAH)  
REGISTRAR,  
HIGH COURT, MALAYA  
KUALA LUMPUR.



No.3. NOTICE OF PRESENTATION OF PETITION  
FILED WITH REGISTRAR, HIGH COURT.

In the High  
Court of  
Malaya

TAKE NOTICE that the annexed Petition was presented at the High Court, Kuala Lumpur, on the 29th day of June, 1964 and that the sum of \$500/- being security for costs has been duly deposited with the Supervisor of Elections, Selangor, Kuala Lumpur, on the 1st day of July, 1964.

No.3  
Notice of  
presentation  
of Petition  
filed with  
Registrar  
High Court

10 Dated this 7th day of July, 1964.

7th July 1964

Sd: Rajendra & Teik Ee,

Solicitors for Petitioner.

To,

The Respondent,  
C. Devan Nair.

No.4. SUMMONS BY RESPONDENT TO PETITION  
FOR PARTICULARS.

No.4

Summons by  
Respondent to  
Petition for  
particulars.

20 LET all parties concerned attend the Judge in Chambers on Monday the 10th day of August 1964 at 10.00 o'clock in the forenoon on the hearing of an application on the part of the Respondent for an Order that the Petitioner above named do within three days deliver to the Respondent or the Respondent's Solicitors the following particulars in writing of the Petition viz:-

6th August  
1964

- 30 (1) Whether it is alleged that the Respondent was at no time before his election a citizen of Malaysia, and, if so, the reasons for so alleging;
- (2) If not, whether it is alleged that the Respondent was a citizen but subsequently lost his citizenship, and, if so, how and when he lost such citizenship.

And that in default the Petitioner be precluded

In the High Court of Malaya

from giving evidence in support thereof on the hearing of this Petition, and that the costs of this Application be costs in the cause.

No.4

Dated this 6th day of August 1964.

Summons by Respondent to Petition for particulars.

Sd. Siti Norma Yaakob  
Senior Asst. Registrar  
High Court Kuala Lumpur.

6th August 1964  
(cont.)

This Summons was taken out by Messrs. Shook Lin & Bok of Lee Wah Bank Building, Kuala Lumpur Solicitors for the Respondent.

10

To,

Yong Kuan Teik or his Solicitors  
Messrs. Rajendra & Teik Ee Advocates & Solicitors Kuala Lumpur.

No.5

No. 5. SUMMONS BY PETITIONER FOR LEAVE TO ADMINISTER INTERROGATORIES.

Summons by Petitioner for leave to administer Interrogatories.

LET all parties concerned attend the Judge in Chambers on Monday, the 10th day of August 1964 at 10.00 o'clock in the forenoon on the hearing of an application on the part of the Petitioner for an Order that the Petitioner be at liberty to deliver to the Respondent Interrogatories in writing, a copy whereof is delivered herewith, and that the Respondent do within two (2) days answer the said Interrogatories in writing by affidavit and that the costs of and relating to this application be costs in the cause.

20

8th August 1964

Dated this 8th day of August, 1964.

Seal of the High Court, Malaya

Sd: Harwanth Kaur  
Senior Asst. Registrar,  
High Court,  
Kuala Lumpur.

30

This Summons was taken out by Messrs. Rajendra & Teik Ee of No.11, Cross Street (1st floor), Kuala Lumpur, Solicitors for the Petitioner.  
To, C.Devan Nair or his Solicitors, Messrs. Shook Lin & Bok, Advocates & Solicitors, Kuala Lumpur.

INTERROGATORIES.In the High  
Court of  
Malaya

No.5

Interroga-  
tories

1. Whether Respondent was at the time of his birth a British Subject.
2. Whether the Respondent acquired citizenship of the then Federation of Malaya under the Federation of Malaya Agreement 1948 and (a) if the answer is in the affirmative whether he acquired such citizenship:-
  - (a) by operation of law.
  - 10 (b) by registration.
  - (c) by naturalisation.
3. Was the Respondent at any time in the Federation of Malaya between the 1st of January 1952 and 31st December, 1957 and if so where and when.
4. Whether the Respondent attended Victoria School Singapore from the 18th January 1937 to 13th December 1940.
5. Whether the Respondent taught at the Montford School, Singapore from 7th June 1947 to 31st December 1948.
- 20 6. Whether the Respondent worked in St. Andrews School, Singapore from 1st September 1949 until January 1951.
7. Whether on 8th January 1951 the Respondent was detained under the Preservation of Security Ordinance of Singapore until the 9th April 1953.
8. Whether the Respondent applied to St. Andrews School for reinstatement in May 1964 and reinstatement was refused on 8th May 1964.
- 30 9. Whether on the 28th February 1955 the Respondent was nominated to the Singapore Legislative Assembly for Farrer Park.
10. Whether the Respondent was again detained under the Preservation of Security Ordinance of Singapore in 1956 and released in 1959.

In the High  
Court of  
Malaya.

No.6. JUDGE'S NOTES OF HEARING.

No.6

Cor: Ismail Khan, J.

17th August, 1964

Judge's notes  
of hearing

NOTES OF HEARING

17th August  
1964

Ponnudurai for Petitioner.

Yong Pung How for Respondent.

Ponnudurai: Marshall was engaged for Petitioner. He felt he could not go on with the case and informed me on Friday. My client wants to engage another counsel. Have informed Pung How I would ask for adjournment. Pung How has no objection. 10

Pung How confirms.

Adjourned to 28.8.64 at Seremban. No further adjournment.

There is also Summons-in-Chambers (Enclosure 23) to be heard.

By consent, order for particulars as prayed.

I.K.

Certified true copy

Sd: D.C.Haslam

Secretary to Judge,  
High Court,  
Seremban.

20

2.10.64

No.7. ORDER FOR DELIVERY OF PARTICULARS.

In the High  
Court of  
Malaya

BEFORE THE HONOURABLE MR. JUSTICE ISMAIL KHAN  
ELECTION JUDGE, MALAYA.

No.7

Order for  
delivery of  
particulars.

IN CHAMBERS

This 17th day of August, 1964.

17th August  
1964

O R D E R

10 UPON HEARING Mr. Ponnudurai of Counsel for  
the Petitioner and Mr. Yong Pung How of Counsel  
for the Respondent AND UPON READING the Summons in  
Chambers dated the 6th day of August, 1964  
BY CONSENT IT IS ORDERED that the Petitioner  
above named do within three days deliver to the  
Respondent or the Respondent's solicitors the  
following particulars:-

(1) Whether it is alleged that the  
Respondent was at no time before his  
election a citizen of Malaysia, and if  
so, the reason for so alleging.

20 (2) If not, whether it is alleged that the  
Respondent was a citizen but  
subsequently lost his citizenship and  
if so, how and when he lost such  
citizenship.

AND IT IS ORDERED that in default thereof the  
Petitioner be precluded from giving evidence in  
support on the hearing of his Petition

AND IT IS FURTHER ORDERED that the costs of this  
Application be costs in the cause.

30 GIVEN under my hand and the seal of the Court  
this 17th day of August, 1964.

Sd. Siti Norma Yaakob  
Senior Assistant Registrar, High Court,  
Kuala Lumpur.

20/8

In the High  
Court of  
Malaya

No.8. PARTICULARS.

Delivered by the Petitioner.

No.8

Particulars

24th August  
1964

1(a) The Respondent was at no time before his election or on election day a Citizen of Malaysia because he never acquired it under Article 14(1) (a) of the Federal Constitution.

(b) Article 14(1)(b) of the said Constitution is not applicable as the Respondent was obviously born before Malaysia day.

(c) If Article 14(1) (c) of the said Constitution is applicable the Respondent would not have been qualified to be elected for the Bungsar Ward in view of Article 30 A(1) of the said Constitution.

2. The Respondent never even acquired Citizenship of the Federation of Malaya before or after Merdeka day.

3. Even if the Respondent at any time acquired Citizenship of the Federation of Malaya under the Federation of Malaya Agreement 1948 - which is denied - he lost it under the provisions of Clause 132(2) of the Federation of Malaya Agreement 1948.

Delivered this 24th day of August 1964.

Sd. Rajendra & Teik Ee  
Solicitors for Petitioner.

To:

The Respondent or his Solicitors,  
Messrs. Shook Lin & Bok,  
Kuala Lumpur.

COPY SERVED ON US at 3.15 p.m.  
on 24.8.64.

Sd. Illegible,  
for SHOOK LIN & BOK  
KUALA LUMPUR.

No.9. SUMMONS BY RESPONDENT TO PETITION  
TO STRIKE OUT PETITION

In the High  
Court of  
Malaya

No.9

Summons by  
Respondent to  
Petition to  
strike out  
Petition.

25th August  
1964

LET all parties concerned attend the Judge  
in Chambers at the High Court in Seremban on  
Friday the 28th day of August 1964 at 10.00  
o'clock in the forenoon on the hearing of an  
application on the part of the Respondent that  
the Petition herein may be forthwith struck off  
the file on the ground that notice of the  
presentation of the Petition was not within ten  
days of the presentation of the Petition served  
by the Petitioner on the Respondent as required  
by Rule 15 of the Election Petition Rules 1954  
and that the costs of and occasioned by this  
application and the costs of the Petition be  
borne and paid by the Petitioner.

10

Dated this 25th day of August 1964.

Sd. Siti Norma Yaakob

Senior Assistant Registrar,  
High Court, Kuala Lumpur.

20

This Summons was taken out by Messrs. Shook  
Lin & Bok of Lee Wah Bank Building Kuala Lumpur  
Solicitors for the Respondent and will be  
supported by the affidavit of Yong Pung How  
affirmed on the 25th day of August 1964.

To,

Yong Kuan Teik or his Solicitors Messrs.  
Rajendra & Teik Ee Advocates & Solicitors,  
Kuala Lumpur.

30

In the High Court of Malaya.

No.10. AFFIDAVIT OF YONG PUNG HOW

No.10  
Affidavit of  
Yong Pung  
How.

25th August  
1964

I, YONG PUNG HOW of Lee Wah Bank Building, Kuala Lumpur do solemnly affirm and say as follows:-

1. I am a partner of the firm of Messrs. Shook Lin & Bok Advocates and Solicitors, Lee Wah Bank Building Kuala Lumpur who are the Solicitors for the Respondent herein and I am the member of the said firm attending to this matter.

2. The Petition herein was presented to the High Court at Kuala Lumpur on 29th June 1964. 10

3. Under Rule 15 of the Election Petition Rules 1954 notice of the presentation of the Petition shall within ten days of the presentation of the Petition be served by the Petitioner on the Respondent.

4. The said notice was served by a notice dated 13th July 1964 and published in the Federal Government Gazette on 23rd July 1964.

5. By reason of the failure of the Petitioner to comply with the said Rule 15 the Petition is bad in law and should therefore be struck off the file. 20

Dated this 25th day of August, 1964.

Affirmed by the said YONG PUNG )  
HOW at Kuala Lumpur the 25th )  
day of August, 1964 at 10.25 ) Sd.Yong Pung How  
a.m. )

Before me,

Sd. Hamid Khan

Commissioner for Oaths,  
High Court Kuala Lumpur.



No.11. JUDGE'S NOTES OF HEARING.

In the High  
Court of  
Malaya.

Cor: Ismail Khan J.

28th August, 1964

No.11

Judge's Notes  
of hearing

28th August  
1964

NOTES OF HEARING

Summons in Chambers.

Yong Pung How, Barker with him, for Respondent/  
Applicant.

Ponnudurai, Palasunthram with him, for  
Petitioner/ Respondent.

Barker refers to application.

10 Rule 15 of Election Petition Rules.

Affidavit of Yong in support.

Service by way of Gazette two weeks out of  
time.

No affidavit in reply to Yong's.

Election Offences Ordinance and Election  
Rules, 1954.

Rule 15 peremptory rule.

No power under Ordinance or Rules to extend  
time.

20 Absence of service of notice within time.  
Petition is a nullity.

Williams v. The Mayor of Tenby & Ors.,  
L.R.C.P. Vol.5 (1879-1880) p.135.

Similar position in present case. Service  
out of time goes to root of matter and incurable.

No provision for curing defect.

Palasunthram:

See Rule 10. Respondent left no notice with

In the High  
Court of  
Malaya.

No.11

Judge's Notes  
of hearing  
(cont.)

28th August  
1964

Registrar.

Petitioner wrote to Registrar on 3.7.64 if Respondent left any address.

Reply received from Registrar on 6.7.64 to say no address given.

On 7.7.64 Petitioner filed with Registrar copy of petition with notice required.

On 9.7.64 Registrar acknowledged receipt of copy of petition and copy of notice in petition.

On 10.7.64 letter from Petitioner to Registrar to say Respondent's address 12B, Bintong Park, Singapore, and to effect service on Respondent of petition and notice. The Registry gazetted notice. 10

Rule 15 says he shall post notice to such address or deliver within time above mentioned. This phrase qualifies all that precedes. If recourse had to last alternative, there is no time limit to such rule apart from this. Respondent has taken a step in proceedings by applying by summons in chambers for particulars. 20

Government Gazette published only once a fortnight.

As to whether it is a nullity - see Au-Yong v. Dicum & Anor., 1963 M.L.J. 349.

Reasons given in above case could apply here.

Sheldon v. Brown Bayley's Steelworks, Ltd. & Anor., (1953) 2 A.E.R. p. 894.

Re a Debtor (No.441 of 1938), Ex parte Petitioning Creditor v. Debtor, (1938) 4 A.E.R. p. 92, 97. 30

Pike v. Michael Nairn & Co., Ltd., (1960) 2 A.E.R. p.184, 187.

Section 42 of Election Ordinance. Rule 10 shows what is service.

Barker:

Court has no powers to extend time.

Petitioner says he served on 7.7.64. If so, why write to Registrar to serve on Respondent in Singapore, and why advertise in Gazette?

See Gazette. Obviously sent on 13.7.64. If 13.7.64 still out of time.

Admit taken further step.

If service out of time it is a nullity.

10 (1953) 2. A.E.R. 894.

Question is, if defect nullity or irregularity.

Order 64 Rule 7. Extend time allowed only by rules.

As to Rule 10, general provision.

Rule 15 deals specifically with presentation of petition.

Strict on service of petition. Notice to go to the Respondent.

20 Rule 10 similar to our Supreme Court Order 67, rule 4.

C. A. V.

I.K.

Certified true copy

Sd. D.C.Haslam

Secretary to Judge,  
High Court,  
Seremban.

In the High  
Court of  
Malaya.

No.11

Judge's Notes  
of hearing  
(cont.)

28th August  
1964

In the High  
Court of  
Malaya.

No.12. JUDGMENT

No.12  
Judgment  
26th  
September  
1964

This is an application to strike out an election petition on the ground that notice of the presentation of the petition was not served by the Petitioner on the Respondent within ten days of such presentation as required under Rule 15 of the Election Petition Rules, 1954.

In this case the election was held on the 25th April, 1964, to elect a member for Bungsar Ward to the Dewan Ra'ayat. The result of the election was published in the Gazette on 11th June, 1964, the Respondent being returned as duly elected. On 29th June, 1964, the Petition was lodged with the Registrar of the High Court at Kuala Lumpur, that is, within twenty one days under Section 38(1) of the Election Offences Ordinance, 1954. The Respondent did not avail himself of the provisions of rule 10 of the above Rules to leave with the Registrar a written appointing an advocate and solicitor to act as his solicitor in case there should be a petition against him or stating that he intended to act for himself. He left no address with the Registrar at which notices addressed to him might be left.

On 7th July, 1964, the Registrar wrote to the Petitioner's solicitors, in reply to their letter of 3rd July, 1964, that the Respondent had left no address for service. On the same day the Petitioner's solicitors sent to the Registrar a copy of the petition and a copy of the notice of presentation of the petition. On 11th July, 1964, they wrote to the Registrar requesting him to effect service of the petition and notice on the Respondent at what was described in their letter as the "Respondent's permanent place of abode No. 12B, Bintong Park, Singapore". However, on 23rd July, 1964, the Petitioner published a notice of the presentation of the petition in the Gazette. On the same day the Respondent appointed his solicitors, Messrs. Shook Lin & Bok, to appear for him in the matter of the petition. On 17th August, 1964, the Respondent obtained an order for the Petitioner to deliver to him certain particulars.

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On 25th August, 1964, the Respondent took out this summons to strike out the petition.

In the High  
Court of  
Malaya.

No.12

Judgment  
(cont.)

26th  
September  
1964

The application is resisted by Mr. Palasuntharam for the Petitioner on various grounds. I shall dispose of his first two objections which, in my opinion, are without any merit. It was argued for the Petitioner that under rule 10, as the Respondent had failed to appoint an advocate and solicitor or to leave an address for service, the Petitioner need only to leave the notice with the Registrar and that this would be deemed good service. I do not think Mr. Palasuntharam can be seriously pressing this point. Rule 15 contains the relevant provision as to the service of notice. It reads:-

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"Notice of the presentation of a petition, accompanied by a copy thereof, shall, within ten days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the solicitor appointed by the respondent under Rule 10 of these Rules or by posting the same in a registered letter to the address given under Rule 10 of these Rules at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or if no solicitor has been appointed, or no such address given, by a notice published in the Gazette stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar."

40

The only mode of service then, where the Respondent has failed to appoint a solicitor or to leave an address for service, is publication in Gazette. In fact, the Petitioner did adopt this mode of service when he published the notice in the Gazette on 23rd July, 1964. It was then contended that the period of ten days would apply only to the service on the Respondent's solicitors or to the posting of the notice to the Respondent's address and that there was no limitation of time as regards the publication of the notice in the

In the High  
Court of  
Malaya.

No.12

Judgment  
(cont.)

26th  
September  
1964

Gazette. Such a construction is certainly not warranted by the plain language of rule 15. The first limb thereof states clearly the period within which service is to be effected. The next merely sets out the various methods of service open to the Petitioner and it is clear that, whichever method is adopted, it has to be effected within ten days of presentation of the petition.

The last objection pressed upon me is that the failure to comply with rule 15, that is, to serve the notice within the period of ten days, was a mere irregularity which was validated by the Respondent, when he took step in the proceedings by obtaining the order for particulars on 17th August, 1964. In support of this Mr. Palasantharam referred to the following cases:-

- (1) Au-Yong v. Dicum & Anor, 1963 M.L.J. p.349;
- (2) Sheldon v. Brown Bayley's Steelworks, Ltd. & Anor., (1953) 2. A.E.R. p.894.
- (3) Re A Debtor (No.341 of 1938), Ex parte Petitioning Creditor v. Debtor, (1938) 4 A.E.R. p.92;
- (4) Pike v. Michael Nairn & Co., Ltd., (1960) 2 A.E.R. p.184.

Only the first two cases need call for any comment.

It was held in the first case that the service of an unsealed and unsigned copy of the bankruptcy notice contrary to the Bankruptcy Rules was a mere irregularity which had occasioned no injustice to the debtor. That case has no application. There, section 131 of the Bankruptcy Ordinance was invoked. That section has no counterpart on our Election Petition Rules. Even there, it was observed by Thomson, C.J. (as he then was) that the first question which had to be considered in relation to the application of section 131 is "whether what is complained of is an irregularity. If any non-compliance with the requirements of the law goes beyond being a

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mere irregularity and amounts to something that renders the proceedings a nullity that is, of course, the end of the matter and the section has no application."

In the High  
Court of  
Malaya.

No.12

In the next case - Sheldon v. Brown Bayley's Steelworks, Ltd. & Anor. - a plaintiff in an action under the Fatal Accidents Act, 1846, issued a writ within twelve months of the death as required by section 3 of that Act, but only effected service of it more than twelve months after its date, when by virtue of R.S.C. Order 8 rule 1, it had ceased to be in force. The defendants entered an unconditional appearance and then applied to have the writ set aside on the ground that it had become a nullity. It was held that the failure to serve within the prescribed time was only an irregularity which had been waived by the defendants' unconditional appearance. That case can be distinguished. There, although the writ was no longer in force after the twelve months, it could be renewed under Order 64, rule 7, which reads:-

Judgment  
(cont.)

26th  
September  
1964

"A Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. Provided that when the time for delivering any pleading or document or filing any affidavit, answer or document, or doing any act is or has been fixed or limited by any of these Rules or by any direction on or under the summons for directions or by an order of the Court or a Judge the costs of any application to extend such time and of any order made thereon shall be borne by the party making such application unless the Court or a Judge shall otherwise order."

This rule is in its terms identical with our rule. But this is a rule permitting an enlargement of time "appointed by these Rules or fixed by an

In the High  
Court of  
Malaya.

No.12

Judgment  
(cont.)

26th  
September  
1964

order enlarging time for doing any act or taking any proceeding". In the instant case, the time for service is prescribed, not by the Rules of Supreme Court, but by Statute, and there is no provision for enlargement of time in the Election Petition Rules.

Mr. Barker for the Respondent contended that because of the absence of the notice of presentation of the petition, the petition is a nullity and is therefore incurable. No attempt is made in the cases to define what is a nullity or a mere irregularity. Most of these cases were reviewed in Pritchard v. Deacon & Others, (1963) 2 W.L.R. p.685, and it would appear that what were regarded as irregularities were merely defects of procedure which fell within Order 70.

10

In the present case, it seems to me that the absence of a notice of service is something more than a mere irregularity. The case most in point is Williams v. The Mayor of Tenby & Ors., L.R. C.P. 1879, p.135. The decision there turns on the construction of section 13(4) of the Municipal Elections Act, 1872, (35.36 Vic.c.60). That sub-section is similar to rule 15 of our Election Petition Rules, with this variation, that the notice of the presentation as well as notice of the proposed Security had to be served on the respondent within a period of five days. It reads as follows:- "Within five days after the presentation of the petition the petitioner shall serve on the respondent a notice of presentation and of the notice of the proposed security and a copy of the Petition." In that case, the respondent applied to strike out the petition on the ground that no notice of presentation of the petition and of the proposed security was served on him. It was urged for the Petitioner that while the provisions regarding the presentation of the petition within the period of twenty one days were peremptory, those of sub-section (4) were not imperative. It was held, however, by the Court of Appeal, that they were peremptory and that the terms not complied with were a condition precedent to the election petition. The same principal would apply in this case.

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I therefore hold that the provisions of rule 15



are mandatory and the breach thereof renders the petition a nullity.

As to the suggestion that it would be a hardship if the mere absence of notice should be held to operate against the petition, I need only refer to the observation of Groves, J. in the above case at page 137:-

10

"It is said that there would be hardship supposing money deposited, if mere omission of notices should prevent a petition. I see no more hardship than may occur in any case where a definite time is to be observed."

Earlier in his judgment, His Lordship had also said this:-

20

"The meaning of the enactment is that the petition shall not be kept long hanging over the heads of persons elected in municipal corporations. The petition must be presented in twenty one days, and during that time the petitioners should read the Act and ascertain what they have to do. We have found great inconvenience in ordinary cases where the Court have power to extend the time, for we are much occupied with applications for extension of time, and in many cases it is most important that the time of proceeding should be limited, and that persons should know when they are safe."

30

In the result, I order that the petition be struck out. The Petitioner will pay the costs,

Sd. ISMAIL KHAN

JUDGE,  
HIGH COURT,  
MALAYA.

Seremban,  
26th September, 1964.

In the High  
Court of  
Malaya.

No.12

Judgment  
(cont.)

26th  
September  
1964

40

Certified True Copy  
Sd. D.C.Haslam,  
Secretary to Judge  
Supreme Court, Seremb an.  
29.9.64

In the High Court of Malaya.

No. 13. JUDGE'S NOTES OF HEARING.

No.13

Cor: Ismail Khan, J.

26th September, 1964

Judge's Notes of hearing.

Yong, Barker with him for Respondent/Applicant.

26th

Ponnudurai, Palasuntharam with him, for Petitioner/Respondent.

September 1964

As before.

I deliver written judgment in Open Court. See judgment.

Mr.Palasuntharam applies that this matter be adjourned to Open Court for further argument. Order 54, rule 22 and 22A. Courts of Judicature Act - section F 68(2).

10

I certify that I do not require any further argument.

I give leave to appeal to the Federal Court.

G

I.K.

Certified true copy.

Sd. D. C. Haslam

Secretary to Judge,  
High Court,  
Seremban.

20

26.9.64.

No.14

No.14. ORDER.

Order

26th September 1964

UPON HEARING Mr. V. K. Palasuntharam with Mr. Ponnudurai of Counsel for the Petitioner and Mr. E.W.Barker with Mr.Yong Pung How of Counsel for the Respondent AND UPON READING the Summons in Chambers dated the 25th day of August 1964 and the Affidavit of Yong Pung How affirmed on the 25th day of August 1964 and filed herein IT IS ORDERED that the Petition herein be struck out AND IT IS ORDERED

30

that the Petitioner do pay to the Respondent the costs of this suit as taxed by the proper officer of the Court.

Given under my hand and the seal of the Court this 26th day of September 1964.

Sd. E. E. Sim

Deputy Registrar,  
Malaya.

In the High Court of Malaya.

No.14

Order  
(cont.)

26th  
September  
1964

No.15. NOTICE OF APPEAL

In the Federal Court of Malaysia

No.15

Notice of  
Appeal

23rd October  
1964

10 TAKE NOTICE that Yong Kuan Teik the Appellant above named being dissatisfied with the decision of the Honourable Mr. Justice Ismial Khan given at Seremban on the 26th day of September 1964 appeals to the Federal Court against such part only of the said decision as decided that the Petition be struck out and that the Petitioner should pay the Respondent's costs.

Dated this 23rd day of October 1964.

Sd. Rajendra & Teik Ee

20 Solicitors for the Appellant

To The Registrar,  
The Federal Court,  
Kuala Lumpur.

And to

The Registrar,  
The High Court in Malaya at Seremban,  
Seremban.

And to

30 C.Devan Nair the Respondent above named or his Solicitors Messrs. Shook Lin & Bok, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

The address for service for the Appellant is c/o Messrs.Rajendra & Teik Ee, No.11 (1st floor) Cross Street, Kuala Lumpur.

In the  
Federal Court  
of Malaysia

No.16. MEMORANDUM OF APPEAL.

No. 16  
Memorandum  
of Appeal  
          
4th  
December  
1964

Yong Kuan Teik the Appellant abovenamed appeals to the Federal Court against part of the decision of the Honourable Mr. Justice Ismail Khan given at Seremban on the 26th day of September 1964 on the following grounds:-

1. The decision is contrary to law and against the weight of the facts before the learned Judge.

(a) Under Rule 10 of the Election Petition Rules 1954 if a person returned as a member of Parliament does not leave at the office of the Registrar a writing "giving an address within the Federation at which notices addressed to him may be left.....all notices and proceedings may be given or served by leaving the same at the office of the Registrar." As the Respondent had left no such writing with the Registrar the leaving by the Appellant's Solicitors at the office of the Registrar on 7.7.1964 of the Notice of the presentation of the Petition together with a copy of the Petition was due service of the same on the Respondent. Such service was within 10 days of the presentation of the Petition.

10

20

2(b) The three modes of service specified in Rule 15 are in addition to the mode of service prescribed by Rule 10: the Appellant was entitled to choose any one of the 4 modes as may be available.

2(c) Even if the 3 modes of service set out in Rule 15 are the only modes from which the Appellant could choose the mode of service, no time limit is prescribed by Rule 15 for publication in the Gazette of the Notice of the presentation of the Petition. The legislature in providing publication in the Gazette as a mode of service must have refrained from providing a 10 day time limit or any other time limit for that mode as the Gazette is published fortnightly.

30

2(d) The Respondent knowing that a Petition was going to be filed against his election and yet not leaving with the Registrar a writing giving his address for service is not entitled to complain of

40

absence of due service.

3. The learned Judge failed to draw a distinction between the presentation of the Petition and the service of the Notice of the presentation of the Petition and of the copy thereof.

4. The learned Judge failed to apply the test between a nullity and an irregularity approved by the Court of Appeal of the Federation: ".....one test which is often useful is to suppose that the other side waived the flaw in the proceedings or took some fresh step after knowledge of it. Could he afterwards, in justice, complain of the flaw?"

5. "In the present case there was no 'failure of process'. What there was (if indeed it was that) was the failure to effect service in the way required by the Election Petition Rules and, in view of the decision of the Court of Appeal in Au-Yong vs. Dicum and another following Fry vs. Moore, "that was an irregularity and nothing more".

6. By taking out the Summons in Chambers dated 6.8.1964 for Particulars of the allegation in the Petition that he is not a citizen, by obtaining the Order dated 17.8.1964 for those Particulars, by taking part in the proceedings of 17.8.1964 and therein consenting to the adjournment of the hearing of the Petition and otherwise the Respondent has waived any objection he might have had to the due service of the Notice of the presentation of the Petition.

7. In view of section 42 of the Election Offences Ordinance 1954 the Rules of Court are also applicable in addition to the Election Petition Rules 1954.

8. The case of Williams vs. the Mayor of Tenby relied on by the learned Judge is inapplicable as there was no question of waiver in that case and in view of subsequent higher authorities.

9. It is respectively submitted that the Respondent made the application on 25.8.1964 to strike out the Petition after being served on 24.8.1964

In the  
Federal Court  
of Malaysia

No. 16

Memorandum  
of Appeal  
(cont.)

4th  
December  
1964

In the  
Federal Court  
of Malaysia.

with the Particulars of why he was not a citizen and in view of those Particulars: the application was not a bona fide one.

No. 16  
Memorandum  
of Appeal  
(cont.)  
4th  
December  
1964

- 10. The said Rule 15 is not a mandatory provision.
- 11. It is respectfully submitted that in any event the petition was not a nullity and that the Respondent is estopped from urging that it is a nullity.

Dated this 4th day of December, 1964.

Sd. Rajendra & Teik Ee

10

Solicitors for the Appellant

To

The Registrar,  
Federal Court,  
Kuala Lumpur

And to

C. Devan Nair the Respondent above named or his Solicitors Messrs. Shook Lin & Bok, Lee Wah Building, Medan Pasar, Kuala Lumpur.

The address for service for the Appellant is c/o Messrs. Rajendra & Teik Ee, No. 11 (1st Floor) Cross Street, Kuala Lumpur.

20

No.17  
Notes of  
Argument  
recorded by  
Thomson, Lord  
President.  
3rd March  
1965

No.17. NOTES OF ARGUMENT RECORDED BY THOMSON,  
LORD PRESIDENT, MALAYSIA.

3rd March, 1965

For Appt: Palasuntharam & Ponnudurai.

For Respt: Yong Pung-How

Palasuntharam:

The time is governed by r.10 and not r.15 of the 1954 rules & r.10 has been followed.

30

"Gazette" published fortnightly so literal compliance with r.15 is in some cases impossible.

In the Federal Court of Malaysia

In any event there has been waived by S-i-C dated 6.8.64 for particulars and obtaining an order on the summons on 17.8.64 and the same day consenting to adjournment of hearing (p.14).

No. 17  
Notes of Argument recorded by Thomson, Lord President. (contd.)

3rd March 1965

10 Summons to strike out not taken till 25.8.64, day after particulars delivered. Submit they did so because they had learned what the particulars were.

Palasuntharam:

A letter had been written on 2.6.64.

28th July 1964 respt. filed notice which is dated 6.7.64.

Waiver

J. did not consider that there was no question of waiver in:

Williams v. Tenby Corpn. (1879) V C.P.D.135.

Case on waiver -

20 Taylor v. Clemson & Vaughan (1844) XI Clark & Finnelly 609, 643

Waiver is something which comes from the Common Law of England.

Ordinance 5/56 s.3(1).

Craies "Statute Law" (6th Ed.) p.337-38

Park Gate Iron Co. v. Coates (1869) L.R. C.P.

V 634

Adjd. to 4.3.65

4th March 1965

4th March 1965

30 Palasuntharam:

I refer to rules 34, 35.

In the  
Federal Court  
of Malaysia

No.17

Notes of  
Argument  
recorded by  
Thomson, Lord  
President.  
(cont.)

4th March  
1965

Respt. knew about Petition on or about  
6.7.64. But that was not filed till 23 or  
28.7.64. This was default on the part of  
Respt's. solicitors and he cannot take advantage  
of it.

Returning to waiver -

Wilson v. McIntosh (1894) A.C. 129, 133.

Corpn. of the City of Toronto v. Russell  
(1908) A.C. 493, 500.

As regards public interest -

Hunt v. Hunt 31 L.J. Ch. 161, 175.

Respt. had knowledge of the Petition irrespective  
of service.

The only rule regarding dismissal of Petition  
is 12(3).

A Petition cannot be withdrawn without leave  
- see rule 21.

Palasuntharam:

Provisions of the rules as to service etc.  
are not mandatory.

Then I refer to s.42 which shows the rules  
are purely procedural. This brings in the R.S.C.  
when the Election rules are silent. This brings  
in the provisions of Order 70.

Proceedings of a civil nature. So Respt. could  
waive any irregularity and he has done so.

Pike v. Michael Nairn & Co.Ltd. (1960)  
2 A.E.R. 184, 186.

Deft. can waive service and proceed if he  
has knowledge aliunde here.

Au-Yong v. Dicum (1963) M.L.J. 349

Fry v. Moore 23 Q.B.D. 395.

10

20

30



(Stopped on general question of waiver.)

I now come to -

Williams v. Tenby Corpn. V C.P.D. 135.

The Municipal Corporations Act, 1882, differs from our Ordinance and Rules.

As regards duty of solicitor -

Halsbury XXXVI p.194.

Where service is by advertisement in the "Gazette" there is no time limit prescribed by the rules.

In the  
Federal Court  
of Malaysia

No. 17

Notes of  
Argument  
recorded by  
Thomson, Lord  
President.  
(cont.)

4th March  
1965

10

"Gazette" published fortnightly and so the time limit must be impossible.

We were entitled to serve under r.10 and we did so by filing with Registrar as soon as he told us he had no address for service. Service under r.10 is alternative to service under r.15.

Case for Appt.

Yong Pung-How:

20

Correct interpretation of r.10 is that it is a general provision and is to be read with r.9 and r.15.

R.15 deals with the specific point of service of notice. And cf. r.18.

As regards inconvenience under r.15 the provisions are reasonably clear. In the present case they could have got into the "Gazette" of 9th July.

Notice published on 23.7.64. It was dated 13th July when it was already out of time.

30

Williams v. Tenby (1879) V C.P.D. 135, says notice was a condition precedent and if condition not satisfied Petition must be struck out. I concede there was no question of waiving there,

In the  
Federal Court  
of Malaysia

but waiver would have been irrelevant - see p.137.

On question of knowledge see Tenby case p.135.

No. 17

Notes of  
Argument  
recorded by  
Thomson, Lord  
President.  
(cont.)

As to allegation that we waived everything by taking out Summons for particulars we say we are covered by Tenby case - condition had not been complied with and in consequence the proceedings were a nullity.

4th March  
1965

Au-Yong v. Dicum (1963) M.L.J. 349, this Court considered the question of nullity and irregularity, but I refer to -

10

Re Pritchard (dec'd.) (1963) 1 A.E.R. 873, 882.

In all the cases on waiver cited by other side, all the conditions waived have been laid down for benefit of parties - not of public at large, e.g.

Park Gate Iron Co. v. Coates 5 C.P. 634.

On Election Petitions -

Atkins (1st Ed.) Vol. VIII p.556.

There is the provision of s.33 of the Ordinance.

20

Re Perting Timor Election (No.2) (1962) M.L.J.333.

Fry v. Moore is not really in point for the question of nullity is not strictly speaking relevant.

Anyhow the Tenby case has never been criticised.

There is no provision in the rules for extension of time. Nor is there provision corresponding to R.S.C. Order 70 for remedying of formal defects.

30

Yong Pung-how:

Here the public interest is involved.

Ord. s.38 sets limits of 27 (or 28) days for Petition.

Rule 15 allows 10 days for service of notice of petition whereas period for service of a writ is 1 year.

The whole thing goes beyond the interests of the actual parties.

Case for Respt.

Palasuntharam:

10 Odgers' "Construction of Deeds" p.201.

C.A.V.

Intld. J.B.T.  
4.3.65

TRUE COPY

Sd. Tneh Liang Peng  
(Tneh Liang Peng)  
Secretary to the Lord President  
Federal Court of Malaysia.

31/5/65

20 No.10. NOTES OF ARGUMENT RECORDED BY  
BARAKBAH, C.J. Malaya

Palasuntharam with Ponnudurai for Appellant.

Yong Pung How for Respondent.

Kuala Lumpur, 3rd March, 1965.

Palasuntharam: Rule 10 not Rule 15 for Elections  
Petition Rules.

Rule 15 - publication in Gazette - no time  
limit stated.

Gazette published fortnightly on Thursdays.

In the  
Federal Court  
of Malaysia

No. 17

Notes of  
Argument  
recorded by  
Thomson, Lord  
President.  
(cont.)

4th March  
1965

No. 18

Notes of  
Argument  
recorded by  
Barakbah, C.J.  
Malaya.

3rd March 1965

In the  
Federal Court  
of Malaysia

No. 18

Notes of  
Argument  
recorded by  
Barakbah,  
C.J. Malaya.  
(cont.)

3rd March  
1965

(See Current List of Publications, July  
1964 p.27)

Waiver by Respondent:-

1. By entering an appearance - 23.7.64
2. By making an appearance Summons in  
Chambers 6.8.64 asking for particulars  
pp. 8 and 9, 17th August 1964 obtaining  
Order for particulars; consenting to  
postponement p.14.

Elections - 25.4.1964.

10

Judgment p.28

Waiver:

Taylor v. Clemson - 3 E.R. 1243, 1247.

Waiver - part of the Common Law.

Sec. 3(1) Civil Law Ordinance 1956.

Chris on Statute Law 6th Ed. pp. 337,338

It is a waiver if a step has been taken.

Park Gate Iron Co.Ltd. v. Coates - 1869 - 70  
L.R. 5CPC. 634.

Williams v. Mayor of Tenby - 1879 L.R.  
C.P.D.135

20

Corporation of Toronto case.

4th March  
1965

4th March 1965

Palasuntharam.

Rules 34 and 35 Election Petition Rules 1954.

Respondent's counsel did not comply with these  
rules.

Wilson v. McIntosh - 1894 A.C. 129, 130.

Corporation of City of Toronto v. John Russell  
1908 A.C. 493, 500.

30

Duty to the public:

Hunt v. Hunt - 31 L.J. Ch. 161, 175.

Not necessary for Respondent to insist on service of notice on him as he already knew about it.

Rule 12, (3).

Rules 21, 23, 24, 26(2), 27, 28, 29.

Rule 15 not mandatory.

Sec. 42 - Election Offences Ordinance 1954.

10 Order 52 rule 1.

Order 70.

Pike v. Michael Nairn & Co. Ltd. - 1960 2  
A.E.R. 184,186

Au-Yong v. Dicun & Anor. - 1963 M.L.J.349,353

Fry v. Moore - 1309 - 23 Q.B.D. 395, 398.

Halsbury Vol. 36 p. 194 - duty of a solicitor.

Rule 15.

No time limit prescribed by the Rules regarding publications in Gazette.

20 Gazette published once a fortnight.

Current List of Publications July 1964  
(Malaysia) p.27 para. 5.

Rule 10 is an alternative to Rule 15.

Pung How: 1. If there was a defect, it was an irregularity cured by a waiver.

2. Rule 15.

3. Rule 10.

Rule 10 only a general provision.

In the  
Federal Court  
of Malaysia.

No. 18

Notes of  
Argument  
recorded by  
Barakbah,  
C.J. Malaya.  
(cont.)

4th March  
1965

To be read with Rules 9 and 15.

Rule 9 - "shall".

Rule 10 - "may".

Rule 15 deals with a specific point - notice  
of petition etc.

Rule 18.

Rule 15 - reasonably clear.

P. 31 Record.

They could have got the notice into the  
Gazette of 9th July if they acted promptly.

10

Notice dated 13th July published in Gazette  
of 23rd July.

Williams v. Mayor of Tenby - 1879 5 C.P.D.  
135, 138.

Proceedings a nullity vide Mayor of Tenby's  
case.

Question of Waiver.

re Pritchard (decd.) - 1963 1 A.E.R. 873,  
882, 883.

Park Gate Iron Co's. case - 1869-70, L.R.5CPC  
634, 637, 638, 639.

20

Corporation of City of Toronto - 1908 A.C.  
493, 498.

Atkins Forms and Precedents Vol. 3 1st Ed.  
p.556.

Re Perting Timor Election (No.2) - 1962 M.L.J.  
333

Sec. 42(2).

No provision for extension of time.

No provision for remedy of formal defects.  
e.g. Order 70 Rules of Supreme Court or  
Sec. 131 Bankruptcy Ordinance.

In the  
Federal Court  
of Malaysia.

No. 18

Reasons found in the dictates of public  
policy and public interest as stated in the  
rules.

Notes of  
Argument  
recorded by  
Barakbah,  
C.J. Malaya.  
(Cont.)

Sec. 38.

Rule 15 - 10 days.

4th March  
1965

10

Order 8 Rules of Supreme Court - 1 year  
for writ.

Palasuntharam

Odgers Interpretation of Statutes.

Rule 11.

C.A.V.

S.S. Barakbah,  
4th March, 1965.

True Copy

Sd. G.E.Tan  
(Mrs. G.E. Tan)

20

Secretary to Chief Justice,  
Malaya,

7th June, 1965.

In the  
Federal  
Court of  
Malaysia.

No. 19. NOTES OF ARGUMENT RECORDED BY  
TAN AH TAH, F.J.

No. 19  
Notes of  
Argument  
recorded by  
Tan Ah Tah  
F.J.  
3rd March  
1965

Palasuntharam, Ponnudurai with him, for Appellant  
Yong Pung How for Respondent

Palasuntharam:

Rule 10 of Election Petition Rules made under  
the Election Offences Ordinance, 1954 (Ord.  
No. 9/54).

Appointment of solicitor by respondent.

Rule 15 Service

10

Petition lodged on 29/6/64

Filed with Registrar 7/7/64

Published in Gazette 23/7/64

No time limit mentioned as to publication in the  
Gazette.

The Gazette is published fortnightly on Thursdays.

There has been a waiver by the Respondent:-

(1) entering conditional appearance.

(2) filing S/Ch on 6/8/64 asking for  
particulars and obtaining an order for particulars  
on 17/8/64. On 17/8/64 consenting to adjournment  
of hearing to 28/8/64.

20

Election held on 25/4/64.

Respondent was elected.

On 2.6.64 D. Marshall then acting for  
Petitioner wrote to Respondent. p.49.

On 5.6.64 Lee & Lee replied to Marshall p.51

On 3.7.64 Rajendra & Teik Ee wrote to  
Registrar.



On 6.7.64 Registrar replied to them.

On 7.7.64 Rajendra & Teik Ee sent copy of Petition and copy of Notice to Registrar.

On 9.7.64 Registrar acknowledged receipt. See Notice at p.7.

On 10.7.64 Rajendra & Teik Ee asked Registrar to serve Petition & Notice at Singapore p.48.

10 On 23.7.64 Respondent nominated his solicitors enclosure 18 in the file. Respondent signed the document on 6.7.64.

At p.14 the record of the hearing shows that Yong consented to what happened.

Taking the 3rd round first, i.e. waiver, I submit Judge did not consider the difference between the facts of this case and the facts in Williams v. The Mayor of Tenby & Ors. 5 L.R.C.P. (1879-1880) 135.

Taylor v. Clemson 8 E.R. at pp.1233, 1247.

20 There was no waiver in the Mayor of Tenby case.

Waiver - this is a principal of the common law.

s.3(1) Civil Law Ordinance No. 5/56

Craies on Statute Law 6th ed. p.337, 338

It is a sound rule to construe a statute in conformity with the common law unless the statute's object is to alter the common law.

30 The common law rule as to waiver is not excluded by the Election Petition Rules, 1954.

Park Gate Iron Co. v. Coates (1870) L.R.5 C.P.634

Adjourned to 4/3/65 Sd. Tan Ah Tah.

In the  
Federal  
Court of  
Malaysia.

No.19

Notes of  
Argument  
recorded by  
Tan Ah Fah  
F.J.

3rd March  
1965

In the  
Federal  
Court of  
Malaysia

No.19

Notes of  
Argument  
recorded by  
Tan Ah Fah  
F.J.

4th March  
1965

Palasuntharam: Rules 34 and 35 of the Election  
Petition Rules. Respondent signed a  
retainer on 6/7/64. His advocate and  
solicitor should have, under Rule 34,  
immediately upon his appointment left written  
notice of his appointment at the Registrar's  
office.

The retainer was not filed until 23/7/64.

Wilson v McIntosh (1894) A.C.129 at  
p.130.

10

Toronto Corporation v Russell (1908)  
A.C.493 Duty to the public.

Hunt v. Hunt 31 Law Jo. Ch. 161 at  
p.175 1st col. There was no duty owed by  
Respondent to the public to insist on  
service on him when he already knew about  
it. If he had a duty it was not to insist  
on his rights when an irregularity had  
occurred - it was his duty to see that no  
disqualified person sits in Parliament.

20

Rule 12 (3). This is the only instance  
when it is provided that the petition should  
be dismissed - when security is not given by  
the petitioner.

Expressio unius ..... should be applied.

Rule 16

Rules 21, 23, 24, 26(2), 27, 28, 29.  
The petitioner cannot put an end to the  
petition by his own act. He must obtain the  
leave of the court.

30

All these rules indicate that the rule  
regarding service is only directory and not  
mandatory.

Sec. 42 Election Offences Ordinance  
- the Rules of the Supreme Court, 1957 are  
applicable in so far as there are no express  
provisions in the Election Petition Rules.

0.54 r.1 Every application shall be made

by summons. Respondent had recourse to this rule.

The court is guided both by R.S.C. and the Election Petition Rules.

0.70 Effect of non-compliance.

0.70 r.1 or with any (other) Rule

0.70r.2 Respondent took a fresh step after knowledge of the irregularity.

10 Preliminary Rule in R.S.C. "These Rules shall apply to all proceedings of a civil nature....." Respondent took out S/Ch to ask for further particulars. He could waive an irregularity.

Pike v Michael Nairn & Co., Ltd. (1960)  
2 All E.R.184 at p.186 CD

The caption on the retainer was the same as the caption on the Election Petition. Somebody must have seen the Petition and copied the caption.

20 Affidavit of 25/8/64 does not say Respondent has been prejudiced by the non-service of the petition on him.

Au-Yong v Dicum (1963) M.L.J.349 at p.352.

Fry v Moore (1889) 23 Q.B.D.395.

30 Williams v The Mayor of Tenby & Ors. (1879-1880) 5 L.R.C.P.135 - imperative words are used in the rules. The law has developed. The courts can now say which rules are peremptory and which are merely directory. A rule similar to Rule 12(3) is not to be found in the Municipal Elections Act, 1872. The legislature did not indicate that it was peremptory in the Act.

As to the duty of a solicitor:

36 Halsbury's Laws p.194. The solicitor

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(cont.)

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failed to inform the Registrar of his appointment. The petitioner was penalised.

There is no time limit when service is by advertisement in the Gazette.

The Gazette is a fortnightly publication. The legislature must have been aware of it.

Rule 10. The Registrar wrote on 6.7.64 (p.45) saying that Respondent had not given his address for service.

Rule 10 is an alternative to Rule 15.

Yong: It is said there was an irregularity which was waived. Also no time limit for publication in the Gazette.

Also Rule 10 was applicable.

My reply is the Ordinance has to be read as a whole.

Rule 10 has to be read with Rules 9 & 15.

Rule 9 says the petitioner shall leave at Registrar's office the name of a solicitor.

Rule 10.

Rule 15 cannot be ignored. If Palasuntharam is right it will be possible to lodge a petition without notice to Respondent because all notices can be left with the Registrar. Respondent will come to know only when the time and place of the trial is fixed by the Judge under Rule 18. No provisions for interrogatories or pleadings.

As to time limit for publication in the Gazette, the first sentence of Rule 15 provides that service should be effected within 10 days. The Judge has dealt with the point at p.31.

Petitioner could have published the

petition on 9/7/64 on which day a Gazette was published.

Maxwell on Statutes 11th ed. p.373.

The notice was dated 13/7/64 & was published on 23/7/64 in the Gazette. On 13/7/64 it was already out of time.

Williams v Mayor of Tenby - it was held to be a condition precedent. It is said there was no waiver in that case. But the judgment (p.137 top) shows waiver would have been irrelevant.

10

Respondent signed a retainer in blank as it was known a petition was going to be filed.

Tenby case. s.13 (1) the petition had to be published in the borough. p.135, 136. Judgment also referred to publication in the borough.

20

Public considerations. Waiver and knowledge are irrelevant.

As to waiver, I submit there was a condition precedent which had not been complied with and the proceedings were a nullity.

30

In Au-Yong v Dicum (1963) M.L.J.349 Lord Denning's test is mentioned. First, the test cannot be usefully applied to the present case. Secondly, Upjohn L.J. criticised it in Re Pritchard (1963) 1 All E.R. 873 at p.882. It must first be decided whether it is a nullity. At p.883 Upjohn L.J. set out a number of examples of nullity. (Thomson L.P.: Marsh v Marsh appears to be relevant).

Groves J. in the Tenby case did not consider whether it was a nullity or irregularity. He said there was a condition precedent.

I submit the defect could not be waived.

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There is a common thread in all cases cited by Palasantharam. The provisions were inserted in the acts or rules purely for the benefit of one or other party. The public at large were not concerned. None of the matters went to the jurisdiction of the court.

Park Gate Iron Co. v Coates (1869-70)  
5 L.R. C.P. 634 at p.637

20 & 21 Vict. c.43 cited in that case is the Summary Jurisdiction Act.

10

Bovill C.J. at p.637, Montague Smith J. p.638 & Brett J. at p.639 spoke about rules enacted for the benefit of the respondent.

Toronto Corporation v Russell (1908)  
A.C.493 at p.500 per Lord Atkinson.

Adjourned to 2.30 p.m.

Yong (continuing): As to why the Tenby case has not been cited in subsequent cases, (1) election petitions are in England dealt with apart from the ordinary cases in court (2) the way Fry v Moore was decided made it unnecessary to refer to the Tenby case.

20

8 Atkin's Forms 1st ed. 556 "The law & practice....election petitions".....  
Election judges are elected by rota.

s.33(2) Election Offences Ordinance

s.33(3) - the Election Judge is referred to.

Re Perting Timor Election (No.2) (1962)  
M.L.J. 333 last 3 lines.

30

Fry v Moore (1889) 23 Q.B.D. 395 - see arguments of counsel, no reference to nullity. At p.398 Lindley L.J. dealt with it very briefly. Lopes L.J. also dealt with nullity very briefly. He held it was a mere irregularity.

(Thomson: Counsel (Robson) dealt with nullity)

Yes, but no authorities were cited to the court.

Judgment was not reserved.

s.42(2) Election Offences Ordinance - the rules in Second Schedule are made to apply.

The rules are peremptory. No provision for extension of time. No provision for remedy in the case of formal defects. I submit the reason is public policy. Other persons are interested and may be affected.

s.38 Election Offences Ordinance - 21 days. There is a proviso which extends the time to 28 days in case of fraud, etc.

Rule 15 provides 10 days. Cf RSC which allows one year for service of writ - Order 8.

Rule 16 petition at issue.

Rule 17 Public Interest.

Rules 21 et seq. Petitioner cannot withdraw. The matter is of public interest.

Rule 29. If Respondent dies, the petition does not abate.

The provisions relating to commencement and withdrawal are strict and peremptory.

Palasuntharam: Odgers on Construction of Deeds & Statutes 3rd ed. p.200, 201 Rule XI The statute must be so construed that Respondent does not profit by it.

C.A.V.

Sd. Tan Ah Tah.

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30

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Palasuntharam, Ponnudurai with him,  
for Appellant.

No.19

Robert Hoh for Yong Pung How for  
Respondent.

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Argument  
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F.J.(cont.)

Written judgment read by Thomson L.P.  
allowing the appeal with costs. Syed Sheh  
Barakbah C.J. and I agree. Appeal allowed  
with costs here and below. Deposit to be  
paid out to Appellant.

13th May  
1965

Sd. Tan Ah Tah

10

Certified true copy

Eng Seong Hooi  
Private Secretary to the Judge,  
Federal Court, Malaysia.

15.6.1965.

No.20

No. 20. JUDGMENT OF THOMSON, LORD  
PRESIDENT.

Judgment of  
Thomson, Lord  
President.

13th May 1965

This is an appeal from a decision of the  
High Court at Seremban whereby an election  
petition under the Election Offences Ordinance  
1954, was ordered to be struck out.

20

The matter arises out of the Parliamentary  
Election held last year. The petitioner, the  
present appellant, is a person who voted in the  
election for the Bungsar constituency in Kuala  
Lumpur at which the present respondent was  
returned as duly elected.

The result of the election was published in  
the Gazette on 11th June, 1964 (Notification No.  
2234) and on 29th June, 1964, that is within the  
period of 21 days prescribed by section 38(1) of  
the Election Offences Ordinance, the appellant  
filed an election petition asking that it be  
determined whether or not the respondent was  
duly elected or returned on the ground that at  
the time of the election he was not a citizen of

30



Malaysia. And here I would pause to observe with all possible emphasis that at no time has there been any shadow of a suggestion of any impropriety on the part of the respondent or his supporters.

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10 The respondent after his return had not furnished the Registrar of the High Court with an address for service, which he is permitted but not required to do under rule 10 of the Election Petition Rules, and on ascertaining this fact the appellant proceeded to serve notice of the presentation of the petition under the provisions of rule 15 of the Rules by publication in the Gazette. That notice which was dated 13th July, 1964, was published in the Gazette on 23rd July 1964 (Notification No.3008), that is to say some 14 days after the expiration of the period, prescribed by rule 15, of 10 days from presentation of the petition.

20 A few days later the respondent filed a notice of retainer of solicitors and on 6th August his solicitors took out a summons for an order for further and better particulars. Two days later the appellant's solicitors retaliated with a summons asking for liberty to administer interrogatories. Both these summonses came on for hearing on 17th August when the summons for interrogatories was adjourned and an order for particulars as prayed was made by consent.

30 On 24th August the appellant's solicitors filed the required particulars and a copy of these was served on the respondent's solicitors at 3.15 p.m. the same day. The following day the respondent's solicitors took out a summons to have the petition struck out on the ground that notice of presentation had been served on the respondent out of time.

40 In the event the Judge took the view that the provisions of rule 15 requiring service of notice of presentation within 10 days was mandatory and that failure to comply with it was not a mere irregularity that was capable of being waived by the other party. Following the case of Williams v. Tenby Corporation (1) he held that compliance with

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(1) (1879) 5.C.P.D. 135.

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the rule was a condition precedent to the right to petition. The condition had not been fulfilled and accordingly he was obliged to strike out the petition.

Against that decision the appellant has not appealed.

The law in this country relating to election petitions is contained in Part VII of the Election Offences Ordinance, 1954, and the Election Petition Rules, 1954.

10

Section 34 of the Ordinance provides that an election petition may be presented to the High Court by persons of certain specified classes having an interest in the election to which the petition relates. By section 33(1) such petitions are to be "tried" by the Chief Justice or by a Judge of the High Court nominated by him for the purpose who is called the Election Judge, but by section 33(4) interlocutory matters connected with a petition may be dealt with and decided by any Judge of the High Court.

20

Section 38 provides that the petition shall be presented within 21 days (in certain cases 28 days) of the publication of the result in the Gazette.

The reliefs which may be claimed are set out in section 35. These are declarations that the election in question is void, that a person returned should not have been returned and a scrutiny of votes. By section 36 the Election Judge is required to determine the questions raised in the petition and to certify his determination to the Election Commission or to the Head of State concerned who is required to take action in terms of the determination.

30

Finally, section 42 provides that the procedure and practice on election petitions is to be regulated by rules of court, and that, until varied or revoked by rules of court, the rules contained in the Second Schedule to the Ordinance shall be in force.

40

The rules contained in the Second Schedule

have not been varied or revoked and are still in force. Those of them which are relevant here are as follows:

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10 Rules 1 to 9 deal with the filing and content of petitions. Rule 10 enables (but does not compel) a person returned at an election to provide an address for service prior to the presentation of any petition to which he may be a party. Rules 12 to 14 deal with the giving of security for costs by the petitioner. In particular rule 12 (1) requires that such security shall be given by the petitioner at the time of presentation of the petition or within three days afterwards and rule 12 (3) provides that if security "as in this rule provided" is not given no further proceedings shall be had on the petition and the respondent may apply to the Election Judge for an order directing its dismissal. Rule 15 requires notice of the presentation of the petition to be served on the respondent within ten days of such presentation, but it is to be noted that the rule does not contain, as does rule 12, provision that the petition is to be dismissed for non-compliance.

30 Rules 21 to 28 deal with withdrawal or abatement of the petition. Rule 21 provides that a petition may not be withdrawn without the leave of the Judge and then only on proof that no unlawful agreement or undertaking has been given in relation to the withdrawal. Rule 22 prescribes the form of application for leave to withdraw and rule 23 provides for notice of it to be served on the respondent and published in the Gazette. Rule 24 provides that any person who might have been a petitioner in respect of the election to which the petition relates may apply to be substituted for the petitioner and rule 26 provides that the Judge may make such a substitution. Rule 27 provides that on the death of the petitioner the petition shall be "abated" but rule 28 provides for the publication of notice of abatement as in the case of withdrawal and contains provision for any person interested to be substituted for the deceased as petitioner.

40 Finally, rules 29 and 30 provide that the

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death or withdrawal from the proceedings of the respondent shall not abate the petition but it shall continue irrespective of whether or not any person is substituted as respondent and that in the case where the respondent has given notice not to oppose he shall not be allowed to take any further part in the proceedings.

Now the jurisdiction to deal with election petitions created by the Election Offences Ordinance, 1954, is clearly vested in the High Court in Malaya and not in any specially created "Election Court". That result follows from the course of reasoning of the Privy Council in relation to the similar provisions of the law of Ceylon as stated in the case of *Gooncsinha v. de Kretser* (2) which it is unnecessary to repeat here.

10

From the proposition that the jurisdiction to deal with election petitions is vested in the High Court it can be argued with some plausibility that any lacunae in the rules relating to the exercise of that jurisdiction can be filled by referring to the general rules of court. And in consequence it has been argued that the present case falls within the scope of Order 70 rule 2 which provides that no application to set aside any proceeding for irregularity shall be allowed if the party applying has taken any fresh step after knowledge of the irregularity.

20

The main ground of appeal has been based on that argument; it has been said that by his conduct the respondent has waived compliance with rule 15. The argument is attractive and certainly if the provisions of rule 15 were capable of being waived they clearly were waived by the respondent when instead of immediately asking for the petition to be struck out he took steps to carry on the litigation by asking for further and better particulars. In any ordinary civil proceeding that would probably have been conclusive. The argument, however, overlooks the very special and distinctive nature of the jurisdiction with which we are concerned.

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It is not a jurisdiction to deal with the

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(2) (1945) A.C. 63

rights and obligations of individuals as in the ordinary civil jurisdiction of the Court. It is a jurisdiction to deal with matters affecting on the one hand the integrity of the country's legislature and on the other hand the representation in that legislature of constituencies comprising many thousands of electors. As was said by Lord Abinger, C. B., in the case of Coppock v. Bower (3) an election petition "is a proceeding instituted not for the benefit of the individuals, but of the public - and the only interest in it which the law recognises, is that of the public."

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In that connection I would quote the following observations of the Privy Council (per Lord Cairns) in the case of Theberge v. Laundry (4) with reference to the corresponding and largely similar legislation in the then Colony of Quebec:-

"These two Acts of Parliament,..... are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating and entirely new, and up to that time unknown, jurisdiction in a particular Court of the colony for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that Court, that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly."

And again at page 107:-

"the subject matter, as has been said, of the legislation is extremely peculiar. It concerns the rights and privileges of the electors and of the Legislative Assembly to which they elect members. Those rights and privileges have always in every colony, following the example of the mother country,

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(3) 4 M. & W. 361, 366  
(4) (1876-7) 2 A.C. 102, 106.

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been jealously maintained and guarded by the  
Legislative Assembly."

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Much the same thing was said half a century later  
in the case of Stricklan v. Grima (5) in relation  
to the corresponding law in Malta, where Lord  
Blanesburgh referred to Theberge v. Laundry  
(Supra) and said that "it is pointed out that  
decisions upon such matters are no decisions of  
mere ordinary civil rights:"

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Again it is clear that our Ordinance is based  
on, though it does not follow in every detail,  
the law in the United Kingdom which is contained  
in sections 107 et seq. of the Representation of  
the People Act, 1949, which replaced the  
Parliamentary Elections Act, 1868, and here it  
will be desirable to glance briefly at the  
history of the United Kingdom law.

10

The British House of Commons has always been  
jealous of its privileges and among those it has  
consistently claimed the right of providing for  
its own Constitution and in particular the right  
to decide questions of disputed elections. Before  
the Parliamentary Elections Act of 1770 questions  
as to disputed elections were tried and  
determined by the whole House (see Erskine May  
"Parliamentary Practice", 16th Ed., p.134).  
After the 1770 Act petitions relating to such  
questions were referred to committees of the  
House. This proved unsatisfactory and various  
experiments were tried in the way of appointing  
bodies of independent commissioners to investigate  
and to report to the House on such petitions.  
Ultimately by the Act of 1868 this duty of  
investigating and reporting was handed over to  
the Judges.

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30

In practice most elections were disputed on  
grounds of alleged acts of bribery and corruption  
and it was thought to be one of the weaknesses of  
the various methods of dealing with election  
petitions before 1868 that they provided too many  
opportunities for the hushing up of scandalous

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(5) (1930) A.C. 285, 296.

matters which in the public interest should be brought into the open (see Holdsworth "History of English Law", Vol. XIV, p.161 et seq.) And it would seem reasonably clear that this is the mischief aimed at by the United Kingdom provisions of the legislation placing difficulties in the way of withdrawing and abating election petitions.

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10 Support for this view is to be found in the earlier election petition cases. In the case of Hartlepool Election Petition (6) Blackburn, J., said that withdrawal of a petition "might in some cases very well be the means of cloaking or concealing an attempt to stifle an inquiry where an inquiry ought really to be made". And again in the case of County of Durham (North Division) Election Petitions (7) Grove, J., said this:-

20 "The withdrawing of an election petition must be by leave of the judge, and if the judge saw that the withdrawal was the result of any compromise, of any giving and taking so as to prevent evidence being brought forward, which ought to be brought forward, not in the interest of either of the parties, but in the interest of the constituency, and of purity of election, the judge ought not to allow a petition to be withdrawn; he ought as far as he would have power to do so, to insist upon the petition being  
30 proceeded with."

40 It may be a far cry in more senses than one from Eatanswill to Bungsar but similar provisions have been inherited in our own legislation and these should be approached as having in view the same mischiefs. That strongly supports the view that under our Ordinance and rules once an election petition has come into existence it can only be disposed of in some way which the legislation itself permits and that any rules, written or conventional, relating to the exercise by the Court of its ordinary civil jurisdiction

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(6) (1869) 19 L.T. 821, 822  
(7) (1874) 31 L.T. 321

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are to be disregarded. On this basis the circumstances in which a petition can be disposed of are clear. Normally it will be disposed of by the Election Judge making his report upon it in accordance with the provisions of the Ordinance. Apart from that the only specific provisions which enable it to be disposed of are those relating to withdrawal and abatement subject to supervision of the Court and the provisions of rule 12 enabling the petition to be struck out if security for costs is not given within the prescribed time. Clearly, too, the provision of rule 16 that on the expiration of time limited for making petitions "the petition shall be deemed to be at issue" indicates the point of time at which the petition becomes incapable of being disposed of except in one of the ways which have been mentioned.

10

It would therefore follow that the trial Judge had no power to strike out the petition for non-compliance with rule 15 because there was nothing in the Ordinance or the rules which gave him power to do so.

20

Before departing from the case something should be said with regard to the case of Williams v. Tenby Corporation (supra), which appears to occupy a somewhat isolated position in our legal literature. That case was concerned with an election petition under the Municipal Elections Act, 1872.

30

That Act provided for dealing with disputed municipal elections by way of election petitions. Section 13 governed the presentation of such petitions. Section 13(2) required the petition to be presented within 21 days of the election, section 13(3) required that security for costs should be given within 3 days of presentation and section 13(4) required notice to be given to the respondent within 5 days of presentation.

In the Tenby case a petition was presented within the required time but security and notice were not given within the required periods and on these grounds the petition was struck out. An appeal against that decision was dismissed. It was held that the provisions of the Act, including

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those of sub-sections (3) and (4) of section 13 were peremptory and were "conditions precedent, which ought to be complied with before the petition could be presented".

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10 It is not necessary to discuss in detail the course of reasoning which led to the result in that case because the case is by no means on all fours with the present one. In particular there is one difference between the United Kingdom Act of 1872 and our own Ordinance. In the United Kingdom Act the requirements as to notice and costs are contained in the body of the Act itself and are clearly on the same footing as the requirement that the petition itself must be presented within 21 days. In our Ordinance, however, while the requirement that the petition must be presented within 21 days is contained in the Act itself (section 38) the requirements as to notice of presentation are contained in the rules which in terms regulate "practice and procedure" (section 42). In other words the requirement that the petition must be presented within 21 days is a condition precedent to the exercise of the right to petition; the rules, however, do not touch on the right to petition but only affect the way in which the petition is to be dealt with once the right to present it has been exercised and it has come into existence. More-  
20 over these rules, particularly those dealing with the disposal of election petitions, are much more clearly analogous to rules relating to the performance of a public duty than to rules affecting the rights and obligations of individuals and as such are to be treated as directory and not as of such a nature that non-compliance with them affects the validity of acts done (see Montreal Street Railway Co. v. Normandin(8)).

I would allow the appeal with costs.

40 Kuala Lumpur  
13th May 1965

Sgd. J.B.Thomson  
LORD PRESIDENT.  
FEDERAL COURT OF MALAYSIA

TRUE COPY  
Sgd. Tneh Liang Peng  
Secretary to the Lord President  
Federal Court of Malaysia.

V.K.Palasantharam Esq., for appellant  
Yong Pung-how Esq. for respondent.

In the  
Federal Court  
of Malaysia.

No. 21. ORDER.

No.21  
Order  
          
13th May 1965

BEFORE: THOMSON,  
LORD PRESIDENT,  
FEDERAL COURT,  
MALAYSIA  
  
SYED SHEH BARAKBAH,  
CHIEF JUSTICE, HIGH COURT IN MALAYA,  
  
TAN AH TAH,  
JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

10

THIS 13TH DAY OF MAY, 1965.

THIS APPEAL coming on for hearing on the 3rd and 4th days of March 1965 in the presence of Mr. V.Kandiah Palasuntharam (Mr.R.Ponnudurai with him) of Counsel for the Appellant above named and Mr. Yong Pung How of Counsel for the Respondent abovenamed AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment, and the same coming on for judgment this day in the presence of Mr.V.Kandiah Palasuntharam (Mr.R.Ponnudurai with him) of Counsel for the Appellant abovenamed and Mr. Robert Hoh of Counsel for the Respondent above named, IT IS ORDERED that this Appeal be and is hereby allowed AND IT IS ORDERED that the Respondent do pay to the Appellant the costs of this appeal and of the proceedings in the High Court on the said Summons in Chambers dated the 25th day of August, 1964 and incidental thereto and consequent thereon as taxed by the proper officer of the Court and IT IS LASTLY ORDERED that the deposit by the Appellant of the sum of \$500/- as security for costs of this appeal be refunded to the Appellant.

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30

Given under my hand and the Seal of the Court this 13th day of May, 1965.

Sd. Raja Azlan Shah,  
The Seal of the Federal Court, Malaysia.  
CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA, KUALA LUMPUR.

40

No.22. ORDER GRANTING CONDITIONAL  
LEAVE TO APPEAL TO HIS MAJESTY  
THE YANG DI-PERTUAN AGONG.

In the  
Federal Court  
of Malaysia.

No.22

BEFORE:

SYED SHEH BARAKBAH, CHIEF JUSTICE,  
HIGH COURT, MALAYA.

WEE CHONG JIN, CHIEF JUSTICE,  
HIGH COURT, SINGAPORE.

AND

10 TAN AH TAH, JUDGE, FEDERAL COURT, MALAYSIA

Order granting  
conditional  
leave to  
Appeal to His  
Majesty the  
Yang di-  
Pertuan Agong.

27th May 1965

IN OPEN COURT

This 27th day of May, 1965.

UPON MOTION made unto this Court this day by Mr. Robert K.C. Hoh of Counsel for the abovenamed Respondent in the presence of Mr. R. Ponnudurai of Counsel for the abovenamed Appellant AND UPON READING the Notice of Motion dated the 14th day of May 1965 and the Affidavit of Robert Kiang Chan Hoh affirmed on the 14th day of May 1965, the  
20 Supplementary Affidavit of Robert Kiang Chan Hoh affirmed on the 24th day of May 1965 and the Affidavit of Yong Kuan Teik affirmed on the 26th day of May 1965 all filed herein in support of the said Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang Di-Pertuan Agong from the Order of the Federal Court dated the 13th day of May, 1965 upon the following condition:-

- 30 (a) That the abovenamed Respondent do within three months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, Kuala Lumpur in the sum of \$5,000/- (Dollars Five thousand only) for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the above-named Appellant in the event of the abovenamed Respondent not  
40 obtaining an Order granting him final leave

In the  
Federal Court  
of Malaysia.

No.22

Order grant-  
ing condition-  
al leave to  
Appeal to His  
Majesty the  
Yang di-  
Pertuan Agong.

to appeal, or of the Appeal being dismissed for non-presentation, or His Majesty the Yang di-Pertuan Agong ordering the above named Respondent to pay the above named Appellant costs of the Appeal, as the case may be; and

(b) That the abovenamed Respondent do within the said period of three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England;

10

27th May 1965 (cont.) AND IT IS FURTHER ORDERED that the costs of this Motion be costs in the Appeal.

Given under my hand and the seal of the Court this 27th day of May 1965.

SD. ILLEGIBLE  
CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA, KUALA LUMPUR

No.23

Order granting  
final leave  
to Appeal to  
His Majesty  
the Yang Di-  
Pertuan Agong

30th August  
1965

No. 23. ORDER GRANTING FINAL LEAVE TO  
APPEAL TO HIS MAJESTY, THE YANG  
DI-PERTUAN AGONG.

20

CORAM:- THOMSON, LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA:  
ONG HOCK THYE, JUDGE, FEDERAL COURT,  
MALAYSIA, and  
ABDUL AZIZ, JUDGE, HIGH COURT, MALAYA.  
IN OPEN COURT

This 30th day of August, 1965

UPON MOTION made unto this Court this day by Mr. Robert K.C. Hoh of Counsel for the above named Respondent in the presence of Mr. Ponnudurai of Counsel for the above named Appellant AND UPON READING the Notice of Motion dated the 14th day of May 1965 and the Affidavit of Robert Kiang Chan Hoh affirmed on the 14th day of May 1965 herein in support of the said Motion AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that final leave be and is hereby granted to the above named Respondent to appeal to His Majesty the Yang di-Pertuan Agong AND IT IS ORDERED that the

30

40

costs of this Motion be costs in the said Appeal.

Given under my hand and the seal of the Court this 30th day of August 1965.

Sd. PAWAN AHMAD  
CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA,  
KUALA LUMPUR.

THE SEAL OF THE  
FEDERAL COURT  
MALAYSIA.

In the  
Federal Court  
of Malaysia.

No.23

Order granting  
final leave  
to Appeal to  
His Majesty  
the Yang Di-  
Pertuan Agong  
(cont.)

30th August  
1965

ExhibitsE X H I B I T S.

<u>Petitioner's</u> <u>Exhibit</u>	DAVID MARSHALL Advocates & Solicitors Notary Public	1st Floor, BANK OF CHINA CHAMBERS, SINGAPORE, 1
F.	Our Ref:DM/JBJ/1325/64	2nd June, 1964

Letter,  
Messrs. David  
Marshall to  
Respondent

C.V. Devan Nair, Esq.,  
12B, Bintong Park,  
Singapore.

2nd June 1964

Dear Sir,

We have to inform you we have been consulted  
by Mr. Yong Kuan Teik, 130B, Klang Road (3rd mile)  
K.L., a voter in the constituency of Bungsar at the  
last Federal Elections. 10

Our instructions are that in so far as our  
client can ascertain, you have lost your citizen-  
ship of the Federation of Malaya, if you had it  
prior to Merdeka Day, 1957, by virtue of your  
continuous absence from the State, and also your  
conduct in standing for election in the State of  
Singapore in 1955, and putting yourself out as  
seeking to obtain Singapore Citizenship for the  
purpose of standing for elections in 1963. 20

In order to avoid the unnecessary expense of  
an Election Petition, our client enquires if  
there are facts which indicate that his view of  
the position of your Citizenship is wrong.

We would appreciate an early communication  
from you indicating the position, as to the  
manner in which you obtained Citizenship of the  
Federation of Malaya, and whether, in fact, you  
have been continuously absent from the Federation  
for a period of five years prior to 1957, and if  
there are any factors whereby the provisions as  
to automatic termination of citizenship do not  
apply. 30

Yours faithfully,

Sd. David Marshall.

57.

G.

Petitioner's  
Exhibit.

LEE & LEE  
ADVOCATES & SOLICITORS  
NOTARIES PUBLIC

10-B, Malacca Street  
(2nd Floor)  
Singapore, 1.

Your Reference: DM/BJJ/1325/64  
Our Reference: DL/LTH/Misc.

5th June 1964

G.

Letter,  
Messrs. Lee  
& Lee to  
Messrs. David  
Marshall

5th June 1964

10 Mr. David Marshall,  
Bank of China Chambers,  
Singapore.

Dear Sir,

We act for Mr. C.V. Devan Nair who has handed us your letter of the 2nd June 1964 written on behalf of Mr. Yong Kuan Teik.

We are instructed that our client was born in the State of Malacca and had not been continuously absent from the Federation of Malaya for a period of five years prior to 31st August 1957.

20 We have advised our client that your client is not entitled to any further information on the facts and on the law which he appears to be fishing for.

Our client was qualified to stand as a candidate for the constituency of Bungsar at the last election and be a member of Parliament, and he is still so qualified.

30 In the circumstances, an Election Petition brought by your client will be at his peril as to costs.

Yours faithfully,

Sd. Lee & Lee

58.

Petitioner's  
Exhibit.

A.

P/71/64

3rd July, 1964

A.

(4) dlm. E.P.No.1/64.

Letter,  
Petitioner's  
Solicitors  
to Registrar,  
High Court.

Pendaftar,  
Pejabat Pendaftaran,  
Mahkamah Tinggi,  
Mahkamah Ke'adilan,  
Kuala Lumpur.

3rd July 1964

Sir,

Election Petition No. 1 of 1964

10

We thank you for your letter of the 30th  
June, 1964 enclosing a receipt in the prescribed  
form.

The sum of \$500/- being security for costs  
has been paid and we now enclose herewith  
Receipt No. Q917222 therefor.

With regard to paragraph 4 of your letter  
we shall be obliged to know whether the  
Respondent herein has given his address of  
service as is required under the Election  
Petition Rules, 1954.

20

We have the honour to be,

Sir,

Your obedient servants,

Sd. Rajendra & Teik Ee.

Encl:-



59.

B.

Petitioner's  
Exhibit.

HIGH COURT REGISTRY  
THE LAW COURTS

PEJABAT PENDAFTARAN  
MAHKAMAH TINGGI  
MAHKAMAH KE'ADILAN

Kuala Lumpur,  
6hb Julai, 1964

B.

Letter,  
Registrar,  
High Court,  
to  
Petitioner's  
Solicitors.

Bil (7) dlm. E.P. No. 1/64

z/kcw

6th July 1964

10 Messrs. Rajendra & Teik Ee,  
Advocates & Solicitors,  
No. 11, Cross Street (1st floor)  
Kuala Lumpur.

Gentlemen,

Election Petition No.1 of 1964

I have the honour to acknowledge the receipt of your letter P/71/64 dated 3rd July, 1964 together with receipt No. Q 917222 for \$500/- enclosed therewith.

20 2. The Respondent in the above Petition has not given his address of service as required under the Election Petition Rules, 1954.

I have the honour to be,

Gentlemen,

Your obedient servant,

Sd. Raja Azlan Shah

(Raja Azlan Shah)

PENDAFTAR.

60.

Petitioner's  
Exhibit.

C.

C. P/71/64

7th July, 1964

Letter,  
Petitioner's (4) dlm. E.P.No.1/64  
Solicitors  
to Registrar,  
High Court  
7th July 1964  
Pendaftar,  
Penabat Pendaftaran,  
Mahkamah Tinggi,  
Mahkamah Ke'adilan,  
Kuala Lumpur.

Sir,

Election Petition No. 1 of 1964.

10

We have the honour to refer to our letter  
of the 3rd inst.

As the time limited for service of the  
Petition herein would expire tomorrow we are  
today in pursuance of Rule 10 of the Election  
Petition Rules 1954 enclosing a copy of the said  
Petition together with copy of Notice required.

Please acknowledge receipt.

We have the honour to be,

Sir,

20

Your obedient servants,

Sd. Rajendra & Teik Ee.

Encl:-

61.

D.

Petitioner's  
Exhibit.

HIGH COURT REGISTRY  
THE LAW COURTS

PEJABAT PENDAFTARAN  
MAHKAMAH TINGGI  
MAHKAMAH KE'ADILAN

Kuala Lumpur  
9hb. Julai 1964

D.

Letter,  
Registrar  
High Court  
to  
Petitioner's  
Solicitors.

Bil (10) dlm. E.P.No:1/64

9th July 1964

Z/MAA

10 Messrs. Rajendra & Teik Ee,  
Advocates & Solicitors,  
No.11 Cross Street, (1st floor)  
Kuala Lumpur.

Gentlemen,

Election Petition No.1 of 1964

I have the honour to acknowledge receipt of  
your letter P/71/64 dated 7th July, 1964 together  
with a copy of the Petition and a copy of  
Notice in the above Election Petition.

I have the honour to be,

20

Gentlemen,

Your obedient servant,

Sd. Raja Azlan Shah

(RAJA AZIAN SHAH)

PENDAFTAR.

Petitioner's  
Exhibit.

E.

E.

P/71/64 .

Letter,  
Petitioner's  
Solicitors  
to Registrar,  
High Court.

Pendaftar,  
Pejabat Pendaftaran,  
Mahkamah Tinggi,  
Mahkamah Ke'adilan,  
Kuala Lumpur.

10th July 1964

10) dlm. E.P.No.1/64.

10th July, 1964.

Sir,

Election Petition No. 1 of 1964

10

We are instructed by our client that the Respondent's permanent place of abode is at No. 12B, Binting Park, Singapore.

We shall therefore be much obliged if you will be good enough to effect service of the Petition and Notice herein on C.Devan Nair at the said address through the Registrar, High Court, Singapore.

We shall be glad to hear from you.

We have the honour to be,

20

Sir,

Your obedient servants,

Sd. Rajendra & Teik Ee.

63.

H.

Respondent's  
Exhibit.

H.

No. 3008

IN THE HIGH COURT OF MALAYA  
THE ELECTION OFFENCES ORDINANCE 1954  
PETITION No. 1 of 1964

Notice of  
presentation  
of Petition,  
G.N.No.3008,  
dated 13th  
July 1964.  
Published in  
Gazette dated  
23rd July 1964

Election for Bungsar Ward  
to the Dewan Ra'ayat holden  
on the 25th day of April,  
1964.

10

The Petition of Yong Kuan  
Teik of 130B, Klang Road  
(3rd mile), Kuala Lumpur,  
whose name is subscribed.

NOTICE is hereby given that Petition has been  
presented to the High Court of Malaya, at Kuala  
Lumpur, vide Election Petition No. 1 of 1964,  
on the 29th day of June, 1964, and that a copy may  
be obtained by you on application at the office  
of the Registrar.

20 Dated this 13th day of July, 1964.  
(P/71/64.)

RAJENDRA & TEIK EE,  
Solicitors for Petitioner.

To

The Respondent, Member of Parliament,  
C. Devan Nair.

No. 33 of 1965

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL COURT OF  
MALAYSIA HOLDEN AT KUALA LUMPUR  
(Appellate Jurisdiction)

BETWEEN:

C. DEVAN NAIR Appellant

- and -

YONG KUAN TEIK Respondent

(In the matter of Election Petition No.  
1 of 1964 in the High Court in Malaya  
Election for Bungsar Ward to the Dewan  
Ra'ayat holden on the 25th day of  
April 1964

BETWEEN Yong Kuan Teik Petitioner  
and  
C.Devan Nair Respondent )

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RECORD OF PROCEEDINGS

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COWARD, CHANCE & CO.,  
St.Swithin's House,  
Walbrook, London, E.C.4

Solicitors for the Appellant

GARBER, VOWLES & CO.,  
37, Bedford Square,  
London, W.C.1

Solicitors for the Respondent