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In the Privy Council.

No. 10 of 1951.

ON APPEAL FROM THE COURT OF CRIMINAL
APPEAL, IN THE SUPREME COURT OF THE
COLONY OF SINGAPORE

UNIVERSITY OF LONDON
W.C.1.
21 JUL 1953
INSTITUTE OF FINANCED
LEGAL STUDIES

BETWEEN

E. H. BATTAT ... APPELLANT

AND

THE KING ... RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment of the Court of Criminal Appeal in the Supreme Court of the Colony of Singapore dated the 16th January, 1950, which dismissed the Appellant's appeal against his conviction by the High Court of Singapore of seven offences against or in relation to the Finance Regulations made under the Finance Regulations Proclamation (No. 36 of 1946), committed between the 24th August, 1948, and the 17th June, 1949.

pp. 10-12
pp. 1-3
p. 4, l. 14-
p. 5, l. 34

2.—The appeal is limited to the question whether the law under which the High Court of Singapore purported to convict the Appellant was at the time a law of the Colony of Singapore. Legislation relevant to this question is printed in an appendix to the Record.

p. 13,
ll. 46-48

3.—The Trial Judge, Brown, J., after stating that the Finance Regulations Proclamation and the Finance Regulations made under it, upon which the charges were based, had been made by the British Military Administration, set out the Appellant's contentions for the view that the Regulations were not part of the existing law of Singapore. In his view the British Military Administration had been recognised by His Majesty as the *de facto* Government and he doubted if its legislation could be questioned. The Indemnity and Validating Ordinance, 1946, however, by Section 5 provided that the Regulations shall be deemed to have been validly made from the date of their promulgation. The definition of existing laws in the Singapore Colony Order in Council, 1946, on its true

p. 1,
ll. 19-22
p. 1, l. 24-
p. 2, l. 10-
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20

RECORD

p. 3,
ll. 1-29

construction includes the Finance Regulations Proclamation and the Regulations made thereunder. The Straits Settlements (Repeal) Act, 1946, provided that the Order in Council might determine the laws which were to remain valid, and there is nothing in the other Acts to cut down that power, by the exercise of which the Finance Regulations, and the Finance Regulations Proclamation were at the material time part of the law of Singapore.

p. 11,
ll. 1-22

4.—The Appellant's appeal to the Court of Criminal Appeal (Murray-Aynsley, C.J., and Evans and Gordon Smith, JJ.), was dismissed, although in certain respects the reasoning of the learned Judges was, in the Respondent's respectful submission, unduly favourable to the Appellant's arguments. The Court held that under no circumstances has the military authority any legislative authority during a period and in an area in which circumstances prevent the normal functioning of the civil authority; that therefore the Finance Regulations Proclamation was merely a military order, disobedience to which might be punished but not when once the emergency has passed. It was in no sense law unless it had subsequently been enacted as law. 10

p. 11, l. 23-
p. 12, l. 6

5.—The Court then outlined the subsequent legislation and held that the Singapore Colony Order in Council, 1946, by its definition of existing laws which by Section 42 were to continue to have effect. The description of laws which were to continue is governed by the words "having the force of law immediately prior to the appointed day" (1st April, 1946), which are not apt to apply to any military proclamations or regulations; but the express inclusion of these makes it necessary to take the words as referring to the *de facto* authority of the Proclamations under the military regime. Section 45 of the Order in Council treats the Proclamation as law in force before the appointed day, and there was power under the Straits Settlements (Repeal) Act, ~~1946~~, to make the Proclamations law for Singapore. This had not (the Court thought) been done in express terms but the intention can be found in Section 42 and the definition. 20 30

p. 12,
ll. 6-17

p. 12,
ll. 18-26

6.—The Respondent submits that the Finance Proclamation and the Regulations made thereunder had the force of law immediately prior to the appointed day, that by the express terms of the Order in Council they were continued in force as existing laws, and that they were so in force when the acts constituting the offences of which the Appellant was convicted took place.

7.—By the Straits Settlements Act, 1866 (29 & 30 Vict., c. 115), His Majesty in Council had full powers to make laws for the peace, order and good government of the Straits Settlements and to delegate these powers to any three or more persons in the Straits Settlements or any part thereof. 40

This Act was repealed by the Straits Settlements (Repeal) Act, 1946 (9 & 10 Geo. 6, c. 37), as from the 1st April, 1946, being the day appointed pursuant to the Act by the Straits Settlements (Repeal) Order in Council, 1946. By the Act, the Straits Settlements then ceased to be a single colony and were divided into such territories as His Majesty might direct by Order in Council which might determine (subject to a continuing power to vary or revoke) the laws which on and after the 1st April, 1946, should remain law and might adapt or modify any such laws or any other laws in force on the 26th March, 1946 relating or referring to any of such territories.

10 The Act also applied the British Settlements Acts, 1887 and 1945, to each such territory. Under those Acts His Majesty in Council has the like powers as under the Straits Settlements Act, 1866, save that the power of delegation is not to three or more persons but to any specified person or persons or authority.

8.—On the 27th March, 1946, pursuant to the Straits Settlements (Repeal) Act, 1946, His Majesty in Council directed that the Straits Settlements be divided into the Colony of Singapore and into other territories incorporated into the Malayan Union. The Singapore Colony Order in Council, 1946, was expressed to be made by virtue and in exercise of the powers in that behalf by the Straits Settlements (Repeal) Act, 1946, and by the British Settlements Acts, 1887 and 1945, or otherwise in His Majesty vested.

9.—The Singapore Colony Order in Council came into operation on the 1st April, 1946. By Section 2 (1) the existing laws included proclamations by or under the authority of the Supreme Allied Commander South East Asia (other than the proclamations establishing the British Military Administration and delegating powers thereunder), all regulations made thereunder and all other enactments or instruments having the force of law immediately prior to the appointed day.

30 10.—Part VI of the Order in Council contained transitional provisions. By Section 40 the Governor was given power to make laws for the peace, order and good government of the Colony, and in making such laws was to consult the Advisory Council (constituted as provided in Section 41 (1)) without being bound to follow its advice. Section 42 provided that the existing laws should continue with certain immaterial adaptations and modifications, and in accordance with certain rules of construction set out in the section. Section 45 gave the Courts established under Part III (Sections 14 and 15) jurisdiction with respect of all offences, including offences against proclamations issued by or under the authority of the
40 Supreme Allied Commander, committed before the appointed day for which the accused might have been tried within the Settlement of Singapore under the law (including the provisions of any such proclamation) in force in the Straits Settlements prior to the appointed day. By Section 46 the military courts established by the British Military Administration in

which proceedings were pending on the 1st April, 1946, were deemed lawfully constituted courts with jurisdiction to continue and conclude such proceedings. By Section 49 the provisions of Sections 42 to 48 might be amended by laws made under Section 40.

11.—The Indemnity and Validating Ordinance (No. 1 of 1946), made on the 1st April, 1946, under Section 40 of the Order in Council, defined “war period” as the period from the 8th December, 1941, until a date to be notified by the Governor, and by Section 5 provided that all laws, proclamations, orders, rules, regulations, and legislative acts whatsoever made or issued during the war period by or with the assent of any British or Allied military authority should be deemed to have been validly made from the date of promulgation in the area concerned notwithstanding that any such law, proclamation, order, rule, regulation or legislative act might have repealed or amended or been inconsistent with any law previously in force. 10

12.—The Transfer of Powers and Interpretation Ordinance, 1946 (No. 2 of 1946), defined “proclamation” as any proclamation made by or under the authority of the Supreme Allied Commander which relates to Malaya or to the Settlement of Singapore. By Section 3 certain proclamations were cancelled or amended. By Section 9 the provision of any proclamation or of any regulation under a proclamation shall prevail, if there is any conflict or inconsistency, over any written law of the Straits Settlements. By Section 2 references in the continuing proclamations and regulations thereunder to the British Military Administration, Malaya, and various officials were to be construed where the context permitted as references to the Government, the Colony and specified officials. 20

13.—The Transfer of Powers and Interpretation Ordinance, 1949 (No. 9 of 1949), provided by Section 3 (1) that no regulation under any proclamation made by or under the authority of the Supreme Allied Commander between the 15th August, 1945, and the 1st April, 1946, and in force in the Colony should continue in force for more than four months after the Ordinance came into force except by resolution of the Legislative Council; and no such regulation made thereafter should come into force until approved by such a resolution. 30

14.—The Respondent submits that the legislation referred to above makes it abundantly clear that at all material times the Finance Regulations Proclamation and the Finance Regulations made thereunder were part of the law of the Colony of Singapore, and that the Appellant was properly convicted.

15.—The Respondent accordingly submits that this appeal should be dismissed for the following amongst other 40

REASONS

1. BECAUSE from the time of their promulgation the Finance Regulations Proclamation and the Finance Regulations were part of the law of territory including the territory which became the Colony of Singapore, and remained part of such law up to the 1st April, 1946.
2. BECAUSE the proclamation and regulations were continued as part of the law of the Colony of Singapore by the Singapore Colony Order in Council.
- 10 3. BECAUSE at all material times His Majesty in Council had full legislative authority in respect of the Colony of Singapore and validly exercised such authority to make the proclamation and regulations part of the law of the Colony of Singapore from the 1st April, 1946.
4. BECAUSE the local legislation recognised the proclamation and regulations as part of the law of the Colony of Singapore and gave them statutory effect.
- 20 5. BECAUSE the proclamation and regulations were in force when the Appellant committed the acts with which he was charged.

FRANK GAHAN.

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