

~~P.A.~~
~~CHIT G 2~~

Judgment
11, 1964

IN THE PRIVY COUNCIL

No. 23 of 1962

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

B E T W E E N

LIM LIAN GEOK

Appellant
(Applicant)

- AND -

THE MINISTER OF THE INTERIOR,
FEDERATION OF MALAYA

Respondent
(Respondent)

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

- 78549

Wray, Smith & Co.,
1 King's Bench Walk,
Temple,
London E.C.4.

Respondent's Solicitors.

Graham Page & Co.,
41 Whitehall,
London S.W.1.

Appellant's Solicitors.

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

B E T W E E N

LIM LIAN GEOK ... Appellant
(Applicant)

V

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

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
	<u>IN THE HIGH COURT AT KUALA LUMPUR</u>		
1.	Applicants Notice of Motion	12th September 1961	1
2.	Applicant's Affidavit in Support of Notice of Motion	12th September 1961	2-3
3.	Order Nisi of Prohibition	13th September 1961	4
4.	Respondent's Notice of Motion	18th September 1961	4-5
5.	Respondent's Affidavit in Support of Notice of Motion	18th September 1961	6
6.	Applicant's Affidavit in Opposition to Notice of Motion	2nd October 1961	7-9
7.	Judge's Notes of Argument	4th and 5th October 1961	9-15
8.	Judgment of Thomson C.J.	13th October 1961	15-30

No.	Description of Document	Date	Page No.
9.	Order discharging Order Nisi for Prohibition <u>IN THE COURT OF APPEAL AT KUALA LUMPUR</u>	13th October 1961	31-32
10.	Notice of Appeal	13th October 1961	32-33
11.	Memorandum of Appeal	24th November 1961	33-37
12.	Judge's Notes of Argument (Hill J.A.)	14th December 1961	37-42
13.	Judge's Notes of Argument (Good J.A.)	14th December 1961	42-53
14.	Judge's Notes of Argument (Hepworth J.)	14th December 1961	54-62
15.	Judgment of Hill J.A.	4th January 1962	62-71
16.	Judgment of Good J.A.	4th January 1962	71-75
17.	Judgment of Hepworth, J.	4th January 1962	76
18.	Order dismissing Appeal	4th January 1962	76-77
19.	Order granting Conditional Leave to appeal to His Majesty, the Yang di Pertuan Agong (not printed)	19th January 1962	77
20.	Order allowing Final Leave to Appeal to His Majesty, the Yang di-Pertuan Agong	15th May 1962	78-79

EXHIBITS

Exhibit Mark	Description of Document	Date	Page No.
A.	Notice from Registrar of Citizens to Applicant	12th August 1961	80-81
B.	Letter, Applicant to Registrar of Citizens	5th September 1961	81-82
C.	Letter, Registrar of Citizens to Applicant	6th September 1961	83

IN THE PRIVY COUNCIL

NO. 23 OF 1962

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

B E T W E E N

LIM LIAN GEOK Appellant (Applicant)

- AND -

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

10

RECORD OF PROCEEDINGS

No. 1.

APPLICANT'S NOTICE OF MOTION

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT KUALA LUMPUR

Originating Motion No. 24 of 1961

In the matter of LIM LIAN GEOK
alias Lim Chai Koo, a Citizen
of the Federation of Malaya

and

20

In the matter of Article 25 of
the Constitution.

B E T W E E N

LIM LIAN GEOK ... Applicant

AND

THE MINISTER OF THE INTERIOR
FEDERATION OF MALAYA ... Respondent

30

TAKE NOTICE that the Court will be moved on
Wednesday the 13th day of September 1961 at the hour
of 10 o'clock in the forenoon or as soon thereafter
as Counsel can be heard, by Mr. R. Ramani of Counsel
for the above-named Applicant for an order that the
Minister of the Interior, Federation of Malaya, be
prohibited from referring the Case of the abovenamed
to a Committee of Inquiry under Article 27(2) of the
Constitution for the reasons inter alia -

In the High
Court at
Kuala Lumpur

No. 1

Applicant's
Notice of
Motion

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

12th September
1961.

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

Dated this 12th day of September, 1961.

In the High Court at Kuala Lumpur

Sd. A.W.Au Senior Asst.Registrar Supreme Court, Kuala Lumpur Sd. P.G. Lim Solicitor for the abovenamed Applicant

No. 1 Applicant's Notice of Motion 12th September 1961 (continued)

This Notice of Motion was taken out by Miss P.G. Lim, Advocate and Solicitor, Malayan Banking Building, 92 High Street, Kuala Lumpur, Solicitor for the abovenamed Lim Lian Geok alias Lim Chai Koo 10

This application is supported by the affidavit of Lim Lian Geok alias Lim Chai Koo affirmed on the 12th day of September, 1961 and filed herein To.

The Minister of the Interior, Federation of Malaya, Secretariat, Kuala Lumpur. 20

No. 2.

APPLICANT'S AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

No. 2 Applicant's Affidavit in Support of Notice of Motion 12th September 1961 Exhibit A Exhibit B Exhibit C

I, LIM LIAN GEOK alias Lim Chai Koo, a Federal Citizen of full age and residing at No. 25-27, Jalan Raja Muda Musa, Kuala Lumpur, do hereby affirm and say as follows:

1. I am the Applicant abovenamed. 30

2. On the 14th day of August, 1961 I was served by Registered Post the Notice, a copy of which is now produced and shown to be marked 'A'

3. On the 5th day of September, 1961, I wrote to the Registrar-General a letter, a copy of which is now produced and shown to me marked 'B'

4. On the 6th day of September, 1961 I received the Registrar-General's reply to my letter, copy of which is now produced and shown to me marked 'C'

5. I am advised that the functions of the Federal Government under Article 25 can only be 40

3.

exercised by a Minister of that Government and that there was no power in the Minister further to delegate his powers to a Registrar-General or any other official.

In the High Court at Kuala Lumpur

No. 2.

10 6. I am further advised that the acts and conduct alleged against me, as being the cause of the proposed deprivation of my citizenship are not, in their very statement capable of falling within para (a) of Article 25(1) and the Notice therefore, even assuming it was issued by the proper authority, is not in its content sufficient for the exercise by the Federal Government of its powers under the Constitution.

Applicant's Affidavit in Support of Notice of Motion

12th September 1961
(Continued)

7. I wish further to add that as a Citizen my right to freedom of speech and expression is a fundamental liberty guaranteed by Article 10 of the Constitution and I have not infringed any of the restrictions that Parliament has by law imposed on that right.

20 AFFIRMED at Kuala Lumpur }
this 12th day of September } Sgd: Lim Lian Geok
1961 at 12.10 p.m.

Before me,

Sd: Ho Wai-Kwong.
Commissioner for Oaths.

30 I hereby certify that the above affidavit was read translated and explained by me to the deponent who seemed perfectly to understand it, declare to me that he did understand it, and made his signature in my presence.

Sd: Ho Wai-Kwong.
Commissioner for Oaths.
Supreme Court, Kuala Lumpur.

This Affidavit is filed by Miss P.G. Lim, Advocate and Solicitor, Kuala Lumpur on behalf of the Applicant.

No. 3. - ORDER NISI OF PROHIBITION

In the High Court at Kuala Lumpur

BEFORE THE HONOURABLE MR. JUSTICE ONG,

JUDGE, FEDERATION OF MALAYA

No. 3.

IN COURT.

Order Nisi of Prohibition

This 13th day of September 1961

13th September 1961

UPON Motion made unto the Court this day by Mr. R. Ramani and Miss P.G.Lim of Counsel for Lim Lian Geok, the Applicant herein AND UPON READING the Notice of Motion issued on the 12th day of September, 1961 and the Affidavit of the Applicant affirmed on the 12th day of September 1961 and filed in support thereof

10

IT IS ORDERED that the Minister of the Interior Federation of Malaya be and is hereby prohibited from referring the Case of the abovenamed Applicant to a Committee of Inquiry under Article 27 (2) of the Constitution until this Order shall be made absolute or be discharged.

AND IT IS ORDERED that the said Minister of the Interior do show unto the Court good cause on or before the 4th day of October 1961 why the said prohibition should not be made absolute

20

AND IT IS ORDERED that a copy of the said Notice of Motion and the said Affidavit together with a copy of this Order be served on the said Minister of the Interior.

GIVEN under my hand and the seal of the Court this 13th day of September, 1961

Sd: A.W. Au.
Senior Assistant Registrar,
High Court, Kuala Lumpur.

30

No. 4.

No. 4. - RESPONDENT'S NOTICE OF MOTION

Respondent's Notice of Motion
18th September 1961

TAKE NOTICE that the Court will be moved on the 2nd day of October, 1961 at the hour of 10 o'clock in the forenoon or as soon thereafter as Counsel can be heard, by Syed Othman

bin Ali, Federal Counsel for the abovenamed respondent that the order of prohibition dated 13th September, 1961 herein may be discharged on the grounds that :-

In the High Court at Kuala Lumpur

No. 4.

(1) an order of prohibition does not lie against the decision of the Minister;

Respondent's Notice of Motion

(2) if an order of prohibition does lie -

18th September 1961

10

(a) the notice issued by the Registrar-General of Citizens was in the form prescribed by and upon the instructions of the Minister of the Interior and was in compliance with the requirements of Article 27 of the Constitution;

(continued)

(b) the grounds shown in the notice are a sufficient compliance with the requirements of paragraph (a) of Clause (1) of Article 25 of the Constitution;

20

and that the said applicant may be ordered to pay the costs of this application.

Dated the 18th day of September, 1961.

Sd: Syed Othman bin Ali,
Federal Counsel.
(Solicitor for the abovenamed Respondent.)

Sd: A.W. Au,
Senior Asst. Registrar,
High Court, Kuala Lumpur.

30

This Notice of Motion was taken out by Syed Othman bin Ali, Federal Counsel, Attorney-General's Chambers, Kuala Lumpur, Solicitor for the Minister of the Interior.

This Application is supported by the Affidavit of the Minister of the Interior, Federation of Malaya, affirmed on the 18th day of September, 1961 and filed herein.

40

To:
Lim Lian Geok alias Lim Chia Khoo,
25-27 Jalan Raja Muda Musa,
Kuala Lumpur
or his Solicitor Miss P.G. Lim,
Malayan Bank Building,
92 High Street, Kuala Lumpur.

No. 5. - RESPONDENT'S AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

In the High Court at Kuala Lumpur.

No. 5.

Respondent's Affidavit in Support of Notice of Motion.

18th September 1961.

I, Dato Dr. Ismail bin Dato Abdul Rahman, a Federal Citizen of full age residing at 20B Maxwell Road, Kuala Lumpur, do hereby affirm and say as follows :-

1. I am the Respondent abovementioned. I am the Minister of the Interior in the Government of the Federation of Malaya.

2. On the direction of the Yang di-Pertuan Agong. I am the Minister who exercises the functions of the Federal Government under Part III and the Second Schedule of the Federal Constitution. 10

3. In pursuance of Article 27 of the Constitution I decided to cause a Notice, a copy of which is Exhibit A referred to in the Affidavit of the Applicant, to be sent to the Applicant. The aforesaid Notice was in the form prescribed by me in rule 22 of the Citizenship Rules, 1960. The aforesaid rules were published as Legal Notification No. 310 in the Federal Government Gazette of 1st December, 1960. 20

4. The Notice in the aforesaid prescribed form was on my decision sent to the applicant by the Registrar-General of Citizens of the Federation of Malaya who is a civil servant in my Ministry.

5. I am satisfied that the act and speech of the applicant justify my decision to proceed under Article 27 of the Federal Constitution. 30

Affirmed at Kuala Lumpur this 18th day of September, 1961 at 12.40 p.m. } Sd: Ismail Rahman } Minister of the Interior

Before me, Sd: S.S. Gill, Magistrate, Federation of Malaya. 40

This affidavit is filed by Syed Othman bin Ali Federal Counsel, Federation of Malaya on behalf of the Respondent.

No. 6. - APPLICANT'S AFFIDAVIT IN
OPPOSITION TO NOTICE OF
MOTION

In the High
Court at
Kuala Lumpur

No. 6.

I, LIM LIAN GEOK, a Federal Citizen of full age and residing at 25-7 Jalan Raja Musa, Kuala Lumpur, do hereby affirm as follows :-

Applicant's
Affidavit in
Opposition
to Notice of
Motion.

2nd October,
1961.

10 1. I am the Applicant abovenamed and I have had read and explained to me the affidavit of Dato (Dr.) Ismail bin Dato Abdul Rahman affirmed on the 18th day of September, 1961 and filed herein.

2. I was born in China and I came to this country in or about 1929, having qualified at Amoy in China as a Chinese school teacher.

3. I was first registered as a Chinese school teacher by the Education Department of the Federated Malay States soon after my arrival and I taught at the Kong Ho School in Klang and the Yoke Hwa High School in Kajang.

20 4. During 1932 and 1933 I was back in China in connection with the death of my mother and I returned in or about 1934 when I joined the Confucian School in Kuala Lumpur as a teacher.

I have been teaching in that School for all the years since - excluding the years of the Japanese Occupation of Malaya, when I made a living as a pig farmer.

30 5. Before the war I was a member of the St. John Ambulance Brigade at Kuala Lumpur and actively served as such until the fall of Singapore, where in the course of service I received a bullet wound on my right shoulder.

6. I have taken a great deal of interest in Chinese education and promoted the formation in 1949 of the Kuala Lumpur Chinese School Teachers' Association of which I became President in 1951.

I was continuously re-elected President year after year for ten years until 1960 and this year I have stood down, but I am still associated with it as its Vice-President.

40 7. In 1951 all the Chinese school teachers of the whole of the Federation organised themselves as the United Chinese School Teachers' Association and I

In the High
Court at
Kuala Lumpur

No. 6.

Applicant's
Affidavit in
Opposition to
Notice of
Motion.

2nd October,
1961.

(Continued)

took an equally prominent part in the promotion of this all-Malayan body.

Since 1954 I have continuously been elected annually as its president.

8. In September, 1958 I as president represented the United Chinese School Teachers' Association at a conference in Ipoh of organisations interested in Chinese Education and served as one of the three Presidents of the Conference.

10

9. In April, 1959 at a conference held in Kuala Lumpur of over 1,200 representatives of Chinese guilds in Malaya to discuss the Government's Chinese Education policy I again served as one of the Presidents of the Conference.

10. I became a Citizen of the Federation in or about September, 1951 and I have actively taken part in public debates and discussions relating to Chinese Education and Government's policy thereon. I have not taken part in any other public activity, nor acted in any way suggestive of disloyalty or disaffection to the Government.

20

11. I have always striven through the organisations that I have been associated with to instil a sense of loyalty to the country in Chinese students and have always urged their learning the national language as a means of promoting unity among the several races in the country.

30

My speeches in this connection have been repeatedly broadcast by Radio Malaya.

12. I have also served on Government Committees relating to Education and I have always co-operated with and assisted the officers of the Government in its general policies on Education.

13. I have never been a member of any political organisation, not even the Malayan Chinese Association, though I have at the personal request of the late Tun Sir Cheng Lock Tan served on the Central Education Committee of the Association as a representative of the United

40

Chinese Teachers' Association.

AFFIRMED at Kuala Lumpur)
this 2nd day of October, } Sd: Lim Lian Geok.
1961 at 12.10 p.m.

In the High
Court at Kuala
Lumpur.

No. 6.

Before me,

Sd: Ho Wai-Kwong.

Commissioner for Oaths.
Supreme Court, Kuala Lumpur.

Applicant's
Affidavit in
Opposition to
Notice of
Motion.

2nd October,
1961.

(continued)

10

I hereby certify that the above affidavit was read translated and explained by me to the deponent who seemed perfectly to understand it, declare to me that he did understand it, and made his signature thereto in my presence.

Sd: Ho Wai-Kwong.
Commissioner for Oaths.
Supreme Court, Kuala Lumpur.

This Affidavit is filed by Miss P.G. Lim, Advocate and Solicitor, Kuala Lumpur on behalf of the Applicant.

20

NO. 7. - JUDGE'S NOTES OF ARGUMENT
4th October,

No. 7.

For Applicant: Ramani & Marshall 1961
For Respondent: Syed Othman

Judge's Notes
of Argument

Syed Othman:

4th-5th
October 1961

Certificate of Citizenship 25.9.51 under Federation of Malaya Agreement and Federal Citizenship Regulations.

30

On Constitution coming into force became a citizen by virtue of Article 14 but as he became a citizen before Merdeka day by registration Article 28 applies and so does 25.

In the High
Court at
Kuala Lumpur

No. 7.

Judge's Notes
of Argument

4th - 5th
October 1961.
(continued)

12.8.61 Registrar issued notice.

Citizenship Rules 1960 made under Article
31 and clause 6 of the 2nd Schedule.

Applicant questioned notice because not
signed by Minister.

Order nisi made 13.9.61. I now ask for
its discharge.

An order of prohibition does not lie against
the decision of the Minister.

If an order does lie the notice served was
valid and in accordance with the Constitution. 10

Grounds shew cause capable of being in
accordance with the Constitution.

Andrew v. Mitchell (1905) A.C. 78.

There is no appeal or review by the Courts.
Constitution 2nd Schedule s.2.

Ordinance 29/50 s.44(2).

British Nationality Act, 1948, s.26.

There was a "decision" when the Minister
issued the notice. 20

Syed Othman:

As to the Minister being satisfied :

Liversidge v. Anderson (1942) A.C. 206, 256.

Carltona v. Commissioner of Works (1943) 2 A.E.R.
560, 564.

Nakkuda Ali v. Jayaratne (1951) A.C. 66, 76.

"Judicial Review of Administrative Action" de
Smith 222, 230.

Deportation of aliens is an executive matter.

The King v. Inspector of Leman Street Police
Station (1920) 3 K.B. 72. 30

In any event all the requirements of the law

have been complied with.

/ Ramani : Concede that all powers tanta et talia vested in the Federal Government are properly exercised by the Minister of the Interior. /

Minister has power to make rules and may appoint a civil servant to act on his behalf.

A civil servant is entitled to exercise the power vested in the Minister and is the alter ego of the Minister.

10

Metropolitan Borough & Town Clerk of Lewisham v. Roberts (1949) 2 K.B. 608, 621.

Carltona v. Commissioners of Works (1943) 2 A.E.R. 560

Woollett v. Minister of Agriculture & Fisheries (1955) 1 Q.B. 103, 120.

In any event Minister has power to delegate - 2nd Schedule s.4. Applicant's remedy was to appeal to the Minister.

20

Melayu Raya Press v. Blythe (1951) M.L.J. 89.

Point of Ayr Collieries v. Lloyd-George (1943) 2 A.E.R. 546, 548.

Jackson Stensfield & Sons v. Butterworth (1948) 2 A.E.R. 558.

Denning, L.J., expressed doubt as to extent of delegation in :

Barnard v. National Dock Labour Board (1953) 2 Q.B. 18, 40.

30

Alleged that grounds for notice not sufficient but they must be considered as a whole though words do not exactly correspond with words of Article 25(1) (a).

Liversidge v. Anderson (1942) A.C. 206, 254.

Case for Respondent.

Ramani :

The notice was a bad one.

In the High Court at Kuala Lumpur

No. 7.

Judge's Notes of Argument.

4th - 5th October 1961.

(continued)

In the High Court
at Kuala Lumpur

No. 7.

Judge's Notes
of Argument.

4th - 5th
October 1961.

(continued)

- (1) Its form is bad.
- (2) Its substance is bad.
2nd Schedule amended by Act 10/60.

Did not make rules (L.N. 309/60) under
s.4 of 2nd Schedule but under s.6.

Halsbury XXX p.699 S 1341.

As to its substance the Minister cannot
issue notice on the grounds set out in the
notice in this case. Article 25(1) is subject
to (3).

10

Minister has not said in affidavit he is
satisfied "that it is not conducive to the
public good".

The question of emotional appeals has
no connection with loyalty.

Disloyalty can only be considered in
relation to allegiance.

Disloyalty to the Agong is not
disloyalty as contemplated by Article 25.

Exciting disaffection is not being
disaffected.

20

"Federation" is not the Agong or the
Government. cf. Article 149.

"Disaffection" means "disloyalty" and
that implies defective allegiance.

"Disaffection" occurs in I.P.C. sec.
124A (not in our P.C.)

QUEEN-EMPRESS V. TILAK 22 BOMB. 112, 133.

QUEEN-EMPRESS V. NARAYAN 22 BOMB, 152, 159.

"Loyalty" is defined in Burrows Words
& Phrases III p.291.

30

Here I.P.C. 124A was replaced by the
Sedition Ordinance (No. 14/48).

"Disaffection" considered.

Burns v. Ransley 79 C.L.R. 101.

"Exciting disaffection" is different

from "being disaffected."

I say sovereignty is in the people and the symbol of it is the Constitution.

In the present case prohibition lies.

"Highwater mark" is to be found in:

R. v. Manchester Legal Aid Committee (1952) 2.Q.B.
413, 430.

Alkaff v. The Governor-in-Council (1937) M.L.J.
211.

In the High
Court at
Kuala Lumpur

No. 7.

Judge's Notes
of Argument.

4th - 5th
October 1961.

(continued)

10 Ramani :

Most of the cases were cases during a time of national emergency (cf. Liversidge)

Liberty of subject involved.

Consequences permanent.

A-G for Canada v. Hallet & Carey Ltd. (1952)
A.C. 427, 449.

Our Constitution provides for a parliamentary system of government; so matters of policy can be debated.

20 Constitution provides for freedom of speech (Article 10).

Fundamental liberties are largely taken from the Indian Constitution.

Basu I. 159.

State of Madras v. Row (1952) S.C.R. 597.
(1952) A.I.R. S.C. 196.

30 Liversidge v. Anderson is not wholly in point here. (a) It is a civil action for damages (b) it is not concerned as we are here with a permanent deprivation (c) procedure involved are different.

It must be read in the light of :

Nakkuda Ali v. Jayaratne (1951) A.C. 66, 76.

In the High
Court at
Kuala Lumpur

No. 7.

Judge's Notes
of Argument.

4th - 5th
October 1961.

(continued)

I agree the question is :

"Are powers (a) and (b), assuming them to be made out in fact, incapable of making out disloyalty and/or disaffection within the meaning of Article 25".

As to Articles 25 and 27.

Burrows "Words and Phrases" V.26.

On the question of "as they think fit" -

Roberts v. Hopwood (1925) A.C. 578.

On "satisfied" -

10

Harward v. Hackney Union 14 T.L.R. 306.

Everett v. Griffiths (1920) 3 K.B. 163, 204.

Mungoni v. A-G of Northern Rhodesia (1960)
A.C. 336, 350.

A-G for Canada v. Hallet (1952) A.C. 427, 444,

When there are no grounds Court will interfere.

Ross-Clunis v. Papadopoulos (1958) 1 W.L.R.
546, 560.

Estate & Trust Agencies v. S'pore Improvement Trust (1937) A.C. 898.

20

Case for Respondent.

Syed Othman :

Under our Constitution the Agong is the sovereign.

Interpretation Ordinance s.55.

Any act of disaffection towards the Agong is disaffection towards the Federation.

A question of disloyalty or disaffection is for the Minister.

30

Here there is no question of bad faith.

15.

Nakkuda Ali v. Jayaratne (1951) A.C. 66, 76.

The notice is a valid one issued by a civil servant. Nothing to say Minister shall sign the notice. Applicant is not prejudiced in any way.

13th October, 1961.

Judgment.

Order nisi discharged.

Sd: J.B. Thomson.
C.J. F.M.
13.10.61.

In the High
Court at
Kuala Lumpur.

No. 7.

Judge's Notes
of Argument.

4th - 5th
October 1961.

(continued)

10

No. 8. - JUDGMENT OF THOMSON, C.J.

This is a motion by the Minister of the Interior for the discharge of an order of prohibition nisi made against him on the application of one Lim Lian Geok on 13th September, 1961.

No. 8.

Judgment of
Thomson C.J.

13th October
1961.

Enche Lim was born in China and came to this country in 1929. In 1951 he became a citizen of the then Federation of Malaya by registration and accordingly by reason of Article 28 is to be treated as a citizen by registration under Article 17 of the Constitution.

20

On 12th August, 1961, the Registrar-General of Citizens issued a notice to Enche Lim in the following terms :-

Exhibit A

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

30

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

In the High
Court at
Kuala Lumpur.

No. 8.

Judgment of
Thomson C.J.

13th October
1961.

(continued)

di-Pertuan Agong and the Government
of the Federation: and

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

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

10

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

20

On receipt of that notice Enche Lim wrote a
letter to the Registrar-General in which he
acknowledged the receipt of the notice and went
on :-

30

Exhibit B

"Though it purports to be in accordance
with the Form provided under the Rules made
by the Minister, I am advised that the power
to deprive one of his Citizenship is under
the Constitution vested in the Minister
alone, and he is not empowered to delegate
that function to any other official or
authority under any of the Sections of the
Second Schedule to the Constitution. With
the utmost respect, therefore, I wish to
point out that there would appear to be no
authority in you to issue the Notice.

40

I therefore respectfully request that the
Notice be withdrawn and a proper Notice
served on me if it is still the Federal
Government's intention to deprive me of my
Citizenship".

To that letter the Registrar-General replied as follows:-

In the High Court at Kuala Lumpur.

No. 8.

Judgment of Thomson C.J.

13th October, 1961.

(continued)

10 "I am to invite your attention to the fact that the Notice dated the 12th day of August, 1961, which was sent to you is in accordance with Rule 22 of the Citizenship Rules, 1960. - This Notice is issued by the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government and is in accordance with the Constitution."

20 On 12th September, 1961 Enche Lim's solicitor filed a Notice of Motion asking for an Order that the Minister of the Interior be prohibited from referring his case to a Committee of Inquiry under Article 27(2) of the Constitution "for the reasons inter alia - (1) that it was not competent for the Registrar-General to issue the Notice that he purports to have issued under Rule 22 of the Citizenship Rules; (2) that the allegations made as to the basis for the said Notice assuming them to be true, are not a sufficient compliance with the requirements of para (a) of Article 25(1) of the Constitution."

Document No. 1.

That Notice was supported by an affidavit in which Enche Lim set out what had happened and went on :-

Document No. 2.

30 I am advised that the functions of the Federal Government under Article 25 can only be exercised by a Minister of that Government and that there was no power in the Minister further to delegate his powers to a Registrar-General or any other official.

40 I am further advised that the acts and conduct alleged against me, as being the cause of the proposed deprivation of my citizenship are not, in their very statement capable of falling within para (a) of Article 25(1) and the Notice therefore, even assuming it was issued by the proper authority, is not in its content sufficient for the exercise by the Federal Government of its powers under the Constitution.

I wish further to add that as a Citizen my right to freedom of speech and expression

In the High Court at Kuala Lumpur.

No. 8.

is a fundamental liberty guaranteed by Article 10 of the Constitution and I have not infringed any of the restrictions that Parliament has by law imposed on that right."

Judgment of Thomson C.J.
13th October, 1961.

The Motion was heard ex parte the following day by Ong J., who made an Order nisi in the terms prayed and ordered service on the Minister.

(continued)
Document No.3.
Document No. 4.

On 18th September, 1961, a Notice of Motion was filed on behalf of the Minister asking that the Order nisi be discharged on the grounds that :-

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"(1) an order of prohibition does not lie against the decision of the Minister;

(2) If an order of prohibition does lie -

(a) the notice issued by the Registrar-General of Citizens was in the form prescribed by and upon the instructions of the Minister of the Interior and was in compliance with the requirements of Article 27 of the Constitution;

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(b) the grounds shown in the notice was a sufficient compliance with the requirements of paragraph (a) of Clause (1) of Article 25 of the Constitution

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and the said Applicant may be ordered to pay the costs of this application."

Document No. 5.

That Notice was supported by an affidavit by the Minister the material portion of which reads as follows:-

"In pursuance of Article 27 of the Constitution I decided to cause a Notice, a copy of which is Exhibit A referred to in the Affidavit of the Applicant, to be sent to the Applicant. The aforesaid Notice was in the form prescribed by me

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in rule 22 of the Citizenship Rules, 1960.

The Notice in the aforesaid prescribed form was on my decision sent to the applicant by the Registrar-General of Citizens."

In the High Court at Kuala Lumpur

No. 8.

Judgment of Thomson C.J.

13th October, 1961.

(continued)

Document No. 6.

10

A further affidavit by Enche Lim was then filed in which he set out certain facts relating to his professional career and political activities. I do not think the contents of this affidavit are very relevant to the present proceedings but in fairness to Enche Lim it should be said that in it he denied that he had acted "in any way suggestive of disloyalty or disaffection to the Government" and said he had always tried to "instil a sense of loyalty to the country" in Chinese students and urged them to learn the national language "as a means of promoting unity among the several races in the country". He also said that he had "always co-operated with and assisted the officers of the Government in its general policies on Education".

20

The Minister's Motion came on for hearing before me on 4th and 5th October, 1961, when I had the benefit of listening to most helpful arguments of very great clarity from Enche Ramani on behalf of Enche Lim and Tuan Syed Othman on behalf of the Minister of which I am happy to be able to take this opportunity of expressing my appreciation. In the event I was left in little doubt as to the course which should be taken. In view, however, of the importance of the issues involved I thought it advisable to take a little time for consideration.

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Before proceeding further it will be convenient to refer to the relevant provisions of the Constitution.

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The question of citizenship is dealt with in Part III of the Constitution (Articles 14 to 31 both inclusive).

Citizens are divided into three classes, that is to say citizens by operation of law, citizens by registration and citizens by naturalisation and Articles 14 to 22 set out the conditions governing the grant of citizenship of each of

In the High
Court at
Kuala Lumpur

No. 8.

Judgment of
Thomson C.J.

13th October,
1961.

(continued)

of these classes.

Articles 23 to 28 deal with the termination of citizenship by renunciation or deprivation. In particular, Article 25 provides that the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under the provisions of Article 17 "if satisfied that he has shown himself by act or speech to be disloyal or disaffected towards the Federation." The exercise of this power is subject to the provisions of Articles 25(3) and 27. Article 25(3) provides that no person shall be deprived of citizenship unless the Federal Government, "is satisfied that it is not conducive to the public good that that person should continue to be a citizen" and Article 27 provides that before making an order depriving a citizen of his citizenship under Article 25 the Federal Government shall give to the person against whom the order is proposed to be made "notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry". If any person does require to have the case referred to a committee of inquiry the Federal Government shall, and in any other case may, refer his case to a committee of inquiry consisting of a Chairman and two other members appointed by the Government for that purpose. Where there has been such a reference the committee must hold an inquiry in such manner as the Federal Government may direct and submit its report to the Government and the Government "shall have regard to the report in determining whether to make the Order."

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The Second Schedule (as now amended by Act No. 10 of 1960) provides that the functions of the Federal Government under Part III are to be exercised by such Minister of that Government as the Yang di-Pertuan Agong may direct and in that connection the Yang di-Pertuan Agong has nominated the Minister of Interior and Justice (Legal Notification (New Series) No. 33 of 1957 as amended by Legal Notification No. 40 of 1959.)

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The Second Schedule contains a number of other provisions relating to citizenship of which I think only those contained in section 4 and section 6 are relevant here. Section 4 (as replaced by Act No. 10 of 1960) reads as follows:-

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

20 It would seem that there is some sort of drafting error here. There is no such thing as Part III of the Schedule and it may well be that the word "of" immediately following the words "Part III" is a misprint for "and". If this were so the effect of the section would be to give the Minister power to delegate any of his functions under Part III of the Constitution but until the enactment of amending legislation to clarify the point of question must remain on the same footing as the questions of what song the Sirens sang or what name Ulysses
30 is, "puzzling" though perhaps "not beyond all conjecture."

40 Section 6 of the Schedule provides that the Minister may make rules and prescribe forms for the purpose of the exercise of his functions under Part III and under the Schedule. The rules at present in force are contained in the Citizenship Rules, 1960 (Legal Notification No. 310 of 1960). Much of these relates to the machinery for granting citizenship by registration and has no relevance to the present case. Rule 3, however, provides that the Minister may appoint a Registrar-General of Citizens "in order to give effect to the object of Part III of the Constitution and the Second Schedule thereto." Rule 22 provides that the notice given by the Federal Government to a person against whom an order depriving him of citizenship is proposed to be made under the provisions of Article 27 shall be in a form to be

In the High Court at Kuala Lumpur.

No. 8.

Judgment of Thomson C.J.

13th October, 1961.

(continued)

In the High
Court at
Kuala Lumpur.

No. 8.

Judgment of
Thomson C.J.

13th October,
1961.

(continued)

signed by the Registrar-General of Citizens which was in fact used in the present case and the material portions of which have been quoted.

At this stage I would pause and observe that in my view the question of whether the powers of the Minister under Article 25 can be exercised by the Registrar-General of Citizens or any other official does not arise in the present case. If and when that question ever does arise it will have to be considered in the light of such cases as Carltona Ltd., v Commissioners of Works & ors. *(1)* and unless and until something is done by the Legislature to clarify the provisions of section 4 of the Second Schedule to answer the question will present a task of no small difficulty. Here, however, there has in fact been no delegation and no attempt at delegation of any power. It is true that the Notice addressed to Enche Lim bears the physical signature of the Registrar-General of Citizens, but it is now clear from the Minister's affidavit, which of course, was not before Ong, J., when he made the order nisi, that it was the Minister himself who caused the Notice to be issued. In the circumstances it is clear that it was signed by the Registrar-General not in the purported exercise of any powers delegated to him but simply as the clerk or amanuensis of the Minister.

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This brings me to the main question at issue in the proceedings but before going further it is necessary to be clear as to just what that question is.

Here it is to be observed that much of the arguments employed in the case goes far beyond that question. In particular it does not have to be decided at this stage how far any order depriving a person of citizenship which has been made under Article 25 is open to examination by the Courts. When that question does arise presumably it will be considered in the light of the well-known

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(1) (1943) 2 A.E.R. 560.

cases of Liversidge v. Sir John Anderson & Anor
 (2) Nakkuda Ali v. M.F. De S. Jayaratne
 (3) and Attorney-General for Canada & anor
v. Hallet & Carey Ltd., & anor *(4)*

In the High
 Court at
Kuala Lumpur.

No. 8.

Judgment of
 Thomson C.J.

13th October,
 1961.

(continued)

10 What has to be considered here is the
 extent of the power of the Minister to take a
 step the taking of which is a condition
 precedent to the making by him of an order of
 deprivation, that step being to cause the
 holding of an Inquiry under Article 27. Such
 an inquiry is required to be held and the
 Minister is required to have regard to its
 report which clearly implies that the report
 is something he must consider in deciding
 whether he has attained satisfaction for the
 purposes of Article 25. The matters regarding
 which he must have attained such satisfaction
 are, of course, that the person against whom
 the order is made "has shown himself by act or
 20 speech to be disloyal or disaffected towards
 the Federation" (Article 25(1)(a).) and that "it
 is not conducive to the public good that he should
 continue to be a citizen" (Article 25(3).) In
 other words, the acts or speech of the person
 in question must be of such a nature that they
 show him to be disloyal or disaffected and these
 qualities must be made in such a way or to such
 a degree that the Minister is satisfied that it
 is not conducive to the public good that he
 30 should continue to be a citizen.

40 Now, it is clearly not necessary that the
 Minister should have actually attained
 satisfaction before he takes steps to cause
 an inquiry to be held for he is required to have
 regard to its report in determining, which
 means finally deciding, whether to make the
 order of deprivation. It is, however, nowhere
 stated in terms what his state of mental assent
 must be to such materials as may be before him
 before he is entitled to take steps to have the
 inquiry held. Enche Ramani has suggested that
 he must be in what he called a state of "prima
facie satisfaction." The expression "have
 reasonable grounds for believing" might equally
 well be used. In my view, however, this

(2) {1942} A.C. 206
 (3) {1951} A.C. 66

(4) {1952} A.C. 427

In the High
Court at
Kuala Lumpur.

No. 8.

Judgment of
Thomson C.J.

13th October,
1961.

(continued)

question is beside the point because it is clear from the wording of the Constitution itself that four conditions must be fulfilled. The first is that the Minister must have certain grounds of fact in his mind. The second is that these grounds must consist of acts or speech. The third is that the person against whom the order is proposed to be made should be informed what these grounds are. And the fourth is that these grounds of fact should be capable, if made out, of shewing as a matter of law disloyalty or disaffection towards the Federation. The question of whether or not it is conducive to the public good that the person involved should be deprived of his citizenship is, of course, a consequential question that cannot arise until and unless it is made out that there have been acts or speeches which shew disloyalty or disaffection and must depend on the degree of disloyalty or disaffection that is made out.

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In the present case the first three of the conditions that have been postulated have clearly been fulfilled. The Minister has in his mind certain grounds of fact and these consist of speech. He has stated them and he could not have stated them if he did not have them in his mind and there is no allegation that he has stated them otherwise than in good faith. He has informed Enche Lim what they are. The only question remaining to be decided is whether these grounds as stated are such as to be capable in law of shewing disloyalty or disaffection.

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I expressed that view as to the position in the course of discussion during the hearing of the case and I have since found support for it in the Australian case of The Queen v. Australian Stevedoring Industry Board. Ex parte Melbourne Stevedoring Co. Pty. Ltd. *(5)* In that case the High Court of Australia was concerned with proceedings similar to those

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in the present case to obtain an order of prohibition against the Australian Stevedoring Industry Board from holding an inquiry under the Stevedoring Industry Act, 1949, section 23 of which provides inter alia that if "after such inquiry as it thinks fit" the Board is satisfied that an employer is unfit to continue to be registered as such or has acted improperly the Board may cancel his registration. When the order nisi was made the inquiry had not yet commenced. In the event the order nisi was discharged for reasons which have no bearing on the present case, but the following passage occurs in the joint judgment of Dixon, C.J., William, Webb and Fullagar, JJ. (at p. 117):-

"The first point to observe is that it must always be open to the Board or its delegate to investigate the question whether a case exists for the exercise of its powers. There can be nothing wrong or unlawful in the board or its delegate entering upon an inquiry into any of the matters described by the three paragraphs of s. 23(1). It is therefore evident that no prohibition could go to restrain the holding of an inquiry directed to any one or more of those issues. There can be no foundation for a writ of prohibition unless and until it appears, whether from the course of the inquiry or from the preliminary statement of the matters to which the inquiry is directed, that there can be no basis for the exercise of the power conferred by s. 23(1) or that an erroneous test of the liability of the employer to the cancellation or suspension of his registration will be applied or that some abuse of authority is likely".

To proceed, the grounds which the Minister has in mind in the present case, which he has communicated to Enche Lim and upon which he proposes to invite the report of the Committee of Inquiry, have already been set out. They are that Enche Lim has made :-

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

In the High Court at Kuala Lumpur

No. 8.

Judgment of Thomson C.J.

13th October, 1961.

(continued)

In the High
Court at
Kuala Lumpur.

No. 8.

Judgment of
Thomson C.J.,

13th October,
1961

(continued)

the FEDERATION; and

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

These are allegations of speech. If made out, are they capable as a matter of law of shewing disloyalty or disaffection towards the Federation?

10

In this connection I have derived no assistance from authority. The provisions of the Constitution relating to deprivation of acquired citizenship because of disloyalty or disaffection are by no means unique. Similar provisions are to be found in section 20 of the British Nationality Act of 1948, in section 23 of the British Nationality and New Zealand Citizenship Act of 1948, in section 10 of the Indian Citizenship Act of 1955, in section 21 of the Australian Nationality and Citizenship Act of 1948 and in section 16 of the Pakistan Citizenship Act of 1951. In none of these jurisdictions, however, so far as I have been able to advise myself has the extent of the powers of the appropriate authority been litigated.

20

Approaching the question then ros integra, I do not think any useful purpose will be served by attempting to frame exhaustive definitions of "disloyalty" and "disaffection". To do so would in effect be to do no more than to substitute other words for the words of the Constitution itself and in view of the difficulty involved this might well be dangerous. But though definition be undesirable if not impossible some discussion is desirable of at least some of the attributes of these qualities. "Disloyalty" clearly involves some failure of a duty or something inconsistent with a duty, but what duty? "Disaffection" clearly involves some lack of affection or dislike, but clearly bare dislike is not enough. There must be something in the way of active enmity or hostility. Some small assistance may be derived from the terms of the oath required

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to be taken by applicants for citizenship by registration, "I will be a true loyal and faithful citizen of the Federation" (1st Schedule), but to say that disloyalty involves a failure to keep that promise is only to state the problem in another way.

In the High Court at Kuala Lumpur.

No. 8.

Judgment of Thomson C.J.,

13th October, 1961.

(continued)

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

30 What we are concerned with here is disloyalty or disaffection which would justify depriving a citizen of his citizenship and on that it is I think clear that at least one essential element in such disloyalty or disaffection must be something more than mere disapproval of existing constitutional arrangements or of the policy of those who for the time being are in control of the Government. After all the Constitution is not something that has been brought down from the heights of Pisgah nor do the persons who for the time being constitute its Government and lay down its policy enjoy
40 political immortality any more than they enjoy personal immortality. The Constitution itself contains in gremio the means by which it may itself be changed and the means by which what is popularly called the Government can be changed easily and without any fundamental damage being done, if such be the will of the citizens. Clearly, then, if a citizen merely dislikes and wishes to change any of the provisions of the Constitution or dislikes and wishes to change
50 the Government of the day in accordance with the

In the High
Court at
Kuala Lumpur.

No. 8.

Judgment of
Thomson C.J.

13th October,
1961.

(continued)

provisions of the Constitution designed to facilitate such a change or dislikes and wishes to have changed any part of the policy of Government and if he states his views publicly with a view to persuading his fellow citizens to operate the machinery of the Constitution in such a way as to bring about the changes he would wish to see them, to my mind, there can be no question of disloyalty or disaffection.

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

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In my view, it is in the light of those observations that the grounds stated by the Minister as showing disloyalty or disaffection on the part of Enche Lim must be examined. But clearly they must be examined not in detail but as a whole. Loyalty like intention is something which lies in the heart of man and cannot be seen. It can be inferred only from his overt acts and speech and in ascertaining whether or not it is to be inferred what must be considered is the sum total of his overt acts and speech in so far as they are known and are relevant.

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In the grounds alleged by the Minister these are individual allegations which considered in isolation would not in my view be capable of showing disloyalty or disaffection to the Federation. For example, it is very much to be doubted if "deliberate misrepresentations and inversion of Government education policy" goes much beyond describing substantial disagreement

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with that policy having regard to the ordinary modern language of political controversy. On the other hand to make emotional appeals of extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence is something which could well make out both disloyalty and disaffection on the part of anyone making such appeals. After all we cannot shut our eyes to the world in which we live, to the history of this country and the composition of its population. The Federation consists of eleven States each with a different history. But it also consists of a great number of individuals. I do not think I am trespassing any of the bounds set to the taking of judicial notice in saying that these individuals have come from many countries, that they speak many languages, that their mores and ways of living are very different, that they worship many Gods and that even those who worship the same God do so in different ways. For many years some sort of uniformity, some sort of community, was imposed on these people by the exercise of foreign suzerainty. Now that external pressure has been removed and for little over four years these people have had to exercise qualities of self-discipline, restraint and mutual tolerance without which the Federation of which they are members could not exist. The magnitude of the task involved may be appreciated by a consideration of the history of Great Britain since the disappearance of the Roman Colonial power some 1,500 years ago or of the history of India throughout the centuries. How then can it be said that the public use of language appealing to the heart and not to the head which is calculated to promote feelings of mutual ill-will and hostility among the people of various races who are citizens of the Federation to such an extent as to be likely to cause violence is not in its very nature sufficient, if proved, to make out disloyalty and disaffection to the Federation?

Some point has been made of Article 10 of the Constitution which provides inter alia that every citizen "has the right to freedom of speech and expression" a right, however, which Parliament may restrict by law in the

In the High Court at Kuala Lumpur.

No. 8.

Judgment of Thomson C.J.

13th October, 1961.

(continued)

In the High
Court at
Kuala Lumpur.

No. 8.

Judgment of
Thomson C.J.

13th October,
1961.

(continued)

interest of security and to provide for the protection of the rights of the individuals. It is said that if Enche Lim is to be deprived of his citizenship because of speeches that he has made, a restriction is thereby imposed on his constitutional right of freespeech. In my view the argument is entirely without substance. Article 25 says in terms that a citizen may be deprived of citizenship if he has shown himself to be disloyal or disaffected "by act or speech". It is the logical corollary to this argument based on Article 10 that disaffection or disloyalty can never be shewn by speech unless such speech be of a sort specifically forbidden by Parliament a result which could not reasonably have been intended. The truth is that Article 10 says that subject to certain restrictions a man may say what he likes; it does not say that in no circumstances whatever can what he says be used in evidence against him.

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In all the circumstances of the case and for the reasons which have been stated there would appear to be no reason in law why the proposed inquiry should not proceed. I would, therefore, discharge the order nisi made on 13th September, 1961, and order Enche Lim to pay the taxed costs of these proceedings.

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Kuala Lumpur
13th October, 1961.

Sd: J.B. Thomson.
CHIEF JUSTICE
FEDERATION OF MALAYA.

Enche Ramani (Enche D.S. Marshall with him)
for applicant.

Tuan Syed Othman D.P.P., for respondent.

No. 9. - ORDER DISCHARGING ORDER NISI
FOR PROHIBITION.

In the High
Court at
Kuala Lumpur.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

No. 9.

IN THE HIGH COURT AT KUALA LUMPUR.

ORIGINATING MOTION No. 24 OF 1961

Order
discharging
Order Nisi
for
Prohibition

In the matter of LIM LIAN GEOK
alias Lim Chai Koo, a Citizen
of the Federation of Malaya

13th October,
1961.

And

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In the matter of Article 25 of
the Constitution.

BETWEEN

Lim Lian Geok ... Applicant

And

The Minister of the Interior
Federation of Malaya. ... Respondent

BEFORE

THE HONOURABLE DATO SIR JAMES THOMSON

P.M.N., P.J.K.

CHIEF JUSTICE, FEDERATION OF MALAYA.

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IN OPEN COURT.

This 13th day of October, 1961

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UPON MOTION being made to Court by way of
Notice of Motion dated the 18th day of September
1961 and upon the said Notice of Motion coming
on for hearing on the 4th and 5th days of
October, 1961, AND UPON READING the Order Nisi
made herein on the 13th day of September, 1961,
the affidavit of Dato Dr. Ismail bin Dato Abdul
Rahman, Minister of the Interior, affirmed on
the 18th September, 1961 and the affidavit of
Lim Lian Geok affirmed on the 2nd October, 1961,
all filed herein AND UPON HEARING Tuan Syed
Othman bin Ali, Federal Counsel, for and on
behalf of the Respondent and Mr. R. Ramani
appearing with Mr. D.S. Marshall and Mr. C.
Selvarajah of counsel for the Applicant IT WAS

In the High Court at Kuala Lumpur

No. 9.

Order discharging Order Nisi for Prohibition.

13th October, 1961.

(continued)

32.

ORDERED that the matter do stand adjourned for judgment AND the matter coming on for judgment this 13th day of October, 1961, IT IS ORDERED that the Order Nisi made herein on the 13th day of September, 1961 be and is hereby discharged AND IT IS FURTHER ORDERED that the Applicant do pay to the Respondent the costs of these proceedings as taxed by the proper officer of this Court.

GIVEN under my hand and the Seal of the Court this 13th day of October, 1961.

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Sd: A.W. Au.
Senior Assistant Registrar,
Supreme Court,
Kuala Lumpur.

In the Court of Appeal at Kuala Lumpur.

No. 10.

Notice of Appeal.

13th October, 1961.

No. 10 - NOTICE OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No. 35 of 1961

BETWEEN

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LIM LIAN GEOK ... Appellant

AND

THE MINISTER OF THE INTERIOR,
FEDERATION OF MALAYA ... Respondent

(In the matter of Kuala Lumpur
Originating Motion No. 24 of
1961)

BETWEEN

LIM LIAN GEOK ... Applicant.

AND

30

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

TAKE NOTICE that Lim Lian Geok being dissatisfied with the decision of the

Honourable Dato Sir James Thomson, P.M.N., P.J.K., Chief Justice, given at Kuala Lumpur on the 13th day of October, 1961 appeals to the Court of Appeal against the whole of the said decision.

In the Court of Appeal at Kuala Lumpur

No. 10.

Dated this 13th day of October, 1961.

Notice of Appeal.

Sd: P.G. Lim
Solicitor for the abovenamed Appellant.

13th October, 1961.

(continued)

10 To,

The Senior Asst. Registrar,
High Court, Kuala Lumpur.

And to,

The Federal Counsel,
Attorney General's Chambers,
Kuala Lumpur.

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This Notice of Appeal was filed by Miss P.G. Lim, Advocate and Solicitor, whose address for service is Malayan Banking Building, 92 High Street, Kuala Lumpur.

No. 11. - MEMORANDUM OF APPEAL

No. 11.
Memorandum of Appeal

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

24th November, 1961.

F.M. Civil Appeal No. 35 of 1961

BETWEEN

LIM LIAN GEOK

Appellant

AND

THE MINISTER OF THE INTERIOR
FEDERATION OF MALAYA.

Respondent

In the Court
of Appeal at
Kuala Lumpur

(In the matter of Kuala Lumpur
Originating Motion No. 24 of 1961

BETWEEN

No. 11.

LIM LIAN GEOK

... Applicant

Memorandum
of Appeal.

AND

24th November,
1961.

THE MINISTER OF THE INTERIOR
FEDERATION OF MALAYA

... Respondent)

(continued)

Lim Lian Geok, the Appellant abovenamed
appeals to the Court of Appeal against the
whole of the decision of the Honourable Dato
Sir James Thomson P.M.N., P.J.K., Chief
Justice, Federation of Malaya given at
Kuala Lumpur on the 13th day of October 1961
on the following grounds :

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I. The learned Chief Justice was wrong
in law -

(a) in finding that the form of the
Notice issued to the appellant
under Rule 22 did not involve any
delegation of powers by the
Minister and that because of the
Minister's affidavit it was clear
that the Notice was signed by the
Registrar-General not in the pur-
ported exercise of any powers
delegated to him but simply as the
clerk or amanuensis of the Minister;

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(b) in stating that as an Inquiry was
required to be held under Article
27 and the Minister was required
to have regard to the report of the
Committee of Inquiry, it clearly
implied that the report was some-
thing he must consider in deciding
whether he has attained satisfaction
for the purposes of Article 25;

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(c) in regarding that the question of
whether or not it was conducive to
public good that the person involved
should be deprived of his citizen-
ship was of course, a consequential
question, that cannot arise until

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and unless it was made out that there have been acts or speeches which showed disloyalty or disaffection and must depend on the degree of disloyalty or disaffection that was made out;

In the Court
of Appeal at
Kuala Lumpur

No. 11.

Memorandum
of Appeal.

24th November,
1961.

(continued)

(d) in stating that as a matter of law an individual's conduct showed disloyalty or disaffection -

(i) if he acts and speaks in such a way as to excite his fellow citizens to disobey the laws rather than to change them;

(ii) if he behaves in such a way as to endanger the domestic peace and tranquillity or the enjoyment of law and order which the Federation must assure to its citizens if it is to continue to exist; and

(iii) if it is the natural and probable consequence of what he says and does that some citizens may be moved to effect changes in the persons making up or in the machinery of Government otherwise than in the way provided for by the Constitution itself; and

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

II. The learned Chief Justice failed to appreciate the argument addressed to him that the matters of complaint alleged against the appellant should be considered in the context of Article 10 of the Constitution guaranteeing to a citizen freedom of speech and, erroneously regarded such argument as urging that because of Article 10 there was a right of speech to a citizen which cannot in any circumstances be used in evidence against him.

In the Court
of Appeal at
Kuala Lumpur

No. 11.

Memorandum
of Appeal.

24th November,
1961.

(continued)

III. The learned Chief Justice ought to have held -

(a) that both in its form and in its content the Notice issued to the appellant was bad in law; and the matters of complaint stated therein even assuming them to be true, were not such as to be capable of attracting the altogether excessive penalty of deprivation of citizenship, having regard to the provisions of Article 25 of the Constitution; 10

(b) that the language of the Form made it clear, notwithstanding the affidavit of the Minister, that the Registrar-General purported to act and in fact acted as the delegate of the Federal Government and not as a mere amanuensis of the Minister;

(c) that the Minister's affidavit not having condescended to any particulars setting out the facts and circumstances on the faith of which he attained the requisite satisfaction, it was not possible to say whether there were good grounds or any grounds for such satisfaction; and 20

(d) that in any event the second ground stated in the Notice was by itself incapable under that Article of providing the required satisfaction to the Minister, because it merely alleged criminal offences against him which if proved would render him liable to punishment, in accordance with the law of the land and no more. 30

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

V. The learned Chief Justice in his approach to the problem of the evaluation of the acts and speeches of the appellant for the purpose of deprivation of citizenship, should have given its proper effect to the fundamental liberty of speech guaranteed by Article 10 to a citizen, by the Constitution, such liberty being limited only by the terms of 40

that Article.

VI. In the result the learned Chief Justice ought to have made absolute the Order Nisi of the 13th September, 1961.

Dated this 24th day of November, 1961.

Sd: P.G. Lim.
Solicitor for the Appellant.

To The Registrar,
Supreme Court,
Kuala Lumpur.

And to The Federal Counsel,
Attorney-General's Chambers,
Kuala Lumpur.

The address for service of the appellant is 2nd Floor, Malayan Bank Building, 92 High Street, Kuala Lumpur.

In the Court
of Appeal at
Kuala Lumpur

No. 11.

Memorandum
of Appeal.

24th November,
1961.

(continued)

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No. 12 - JUDGE'S NOTES OF ARGUMENT
(HILL J.A.)

14th December, 1961

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Ramani (Miss P.G. Lim and Mr. C.Selvarajah)
for Appellant.

Syed Othman for Respondent.

No. 12.
Judge's Notes
of Argument
(Hill J.A.)

14th December,
1961.

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Ramani: Ong's Order p. 4 13th September
- 18th September Minister's applica-
tion p 4-5 4th October before C.J. -
discharged p.31-32 Appeal is against
that Order - Constitutional importance
- nine issues. Proceedings began with
Notice - p.80-81- Appellant then
wrote p. - reply at p.83
Indication that Government stood by
the Notice; confirmed by Minister's
affidavit p.6. No particulars
given of the speeches - subjective
or objective - attitude was that none
should be given - two questions arise -
regarding the Articles of Constitution

In the Court
of Appeal at
Kuala Lumpur.

No. 12.

Judge's Notes
of Argument.
(Hill J.A.)

14th December,
1961.

(continued)

was notice good and valid - it was void
in the form given - in substance it is
incapable of supporting Minister's
powers under Article 25. Can that
notice be challenged at all. Has the
Court any power to deal with matter -
any limitations. C.J. dealt with
form and substance he held question
of prohibition was premature. If
notice void in form matter at end in
limine - acting on behalf of Federal
Government - p.80 these words repeated
- Article 25 - act of Federal Govern-
ment. Article 31 2nd Schedule (122)
- Minister's Ordinance 1951, - L.N.
New Series 33 - 15/51 where does
Registrar-General derive his powers -
Second Schedule did not originally
give Minister power to delegate -
then Act 10/60 - full functions to
Minister - S 4 and 6 - "of" in 4
should obviously be "and" - Maxwell
10th Ed. Cap. 9 - Minister therefore
has power to delegate (4) and to make
rules for the exercise of his functions.
L.N. 310 of 1st December 1960 p.535 -
Rules by Minister under sec. 6 - Form
of Notice at p. 564 - Form in order if
the Registrar-General had any of the
Minister's functions delegated to him
under Sec. 4 of 2nd Schedule and in
fact there has been no such dele-
gation - Notice therefore ultra vires
constitution L.N. 114(N.S.) p.199. 1957
Vol. Authority then exercised its
powers under Sec. 4 - but the Minister
has not in fact delegated any powers
at all to anyone - it is the duty to
act himself.

Rex v. Superintendent of Chiswick
Police Station (1918) 1. K.B. 578
(582) - notice void for want of
delegation by Minister.

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Judgment p.p 21 to 23 skirted
around the issue.

re: Matter of substance

Article 25 - clause (3) - cannot say
anything re citizenship (3) - essen-
tial provisions in Articles 25 and 27

no obligation on Minister to hold inquiry himself.

p.p 22 and 23 of judgment - not what Articles 25 and 27 say - Minister's satisfaction must be present before issuing notice.

Vol. 5 p. 26 - 27 Roland Burrows - "satisfied".

Nakkuda Ali's case (1951) A.C. 66.
"as they think fit" Roberts v. Hopwood 1925 A.C. 571.

"has reasonable cause to believe" 1942 A.C. 206 Liversidge's case.

"satisfy" Haward v. Hackney Union 14 T.L.R. 306.

Everett v. Griffiths (1920) K.B. 204

Mungoni v. Attorney-General of Northern Rhodesia 1960 A.C. 350

Attorney-General Canada v. Hallet & Carey Ltd. (1952) A.C. 444 - 5

Ross-Clunis v. Papodopoullou and Others (1958) 1. W.L.R. 546.

Courts will intervene if process is analogous to judicial proceedings.

Mervyn James 1956 - 122.

Clive Parry 1957 - 325.

Minister must be satisfied before issuing notice.

disaffection - 79 Commonwealth Law Report

101 Burns v. Ramsley.

"Disloyalty to the Federation" - the State not the Government.

p. 49 (a) and (b) same words as (b) and (c) in Article 149.

In the Court of Appeal at Kuala Lumpur.

No. 12.

Judge's Notes of Argument. (Hill J.A.)

14th December, 1961.

(continued)

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In the Court
of Appeal at
Kuala Lumpur

No. 12.

Judge's Notes
of Argument.

(Hill J.A.)

14th December,
1961.

(Continued)

Q.E. v. Ramachandra Narayan and
another

22 Bombay 152 Indian Decisions.

Article 149 "substantial body of
persons"

Article 25 "a citizen" - notice shows
that Minister was not making a valid
exercise of his power -

Propositions.

1. Disloyalty to Federation means
to the State as a whole not to
the Government of the day. 10
2. merely causing trouble by act or
speech which might lead to violence
may be a challenge to the executive
but it is not disloyalty to the
State.
3. Article 149 shows that in so far
as matters alleged in Notice even
Parliament has no power to legis-
late except when a substantial
body of persons is involved. 20
4. By necessary implication such acts
by a single person does not enable
Parliament to legislate against
them.
5. Therefore if it is an individual
who has acted as in Article 149
Government cannot invoke its
power under Article 25: 30

Internal Security Regulations.

Ordinance 14/48.

Wades Constitutional Law 3rd Ed. 329

Prohibition must issue -

Farquharson v. Morgan (1894) 1 K.B.

552 - no jurisdiction - (557).

§ 3 of Article 25 - continues to be a

citizen - must also be in the mind of the Minister - must be prima facie satisfied - p. 34 - 35 - four conditions 88 Commonwealth Law Reports 100 - supports his contention.

In the Court of Appeal at Kuala Lumpur

No. 12.

Article 10 - freedom of Speech - S2 limits rights.

Judge's Notes of Argument.

Basu Vol. 1 - p.159.

(Hill J.A.)

Dennis' case v. U.S. Vol. 341.

14th December, 1961.

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U.S. Reports 494 - clear and present danger test - one cannot forget the right to freedom of speech.

(continued)

(Cantwell v. Connecticut - book of lectures, Stanford comments).

Syed Othman :

Minister had only decided to issue notice - final decision would be made later - after report etc.

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Ministerial act to issue notice - only can be tested on bad faith.

(1950) 2 A.E.R. 245 - Thorneloe and Clarkson v. Board of Trade.

Affidavit - Minister caused notice to issue - Registrar-General alter ego of the Minister -

(1943) 2 A.E.R. 560 Carltona Ltd.

Ordinance 56/56 sec. 17.
no appeal made to Minister.

30

I.L.R. Calcutta 44 - p.19 Radha Shyam Basak v. Secretary of State for India

Freedom of Speech is subject to the law - Gour Vol. 1. - 560 - 2.

(1950) 1 Ch. Div. 435-40 Land Realisation Co. v. Post Master General

(1943) 2 A.E.R. 560 Carltona.

In the Court
of Appeal at
Kuala Lumpur

No. 12.

Judge's Notes
of Argument.

(Hill J.A.)

14th December,
1961.

(continued)

Ramani:

quasi judicial act by Minister.

Rex v. Manchester Legal Aid
Committee (1952) 2 Q.B. 413

Griffith & Street - 105.

11th Schedule 28(2).
Interpretation & General Clauses
Ordinance.

C.A.V.

Sd: R.D.R. Hill.
14th December, 1961.

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NO. 13. - JUDGE'S NOTES OF ARGUMENT
(GOOD J.A.)

No. 13.
Judge's Notes
of Argument
(Good J.A.)

Coram: Hill, J.A.
Good, J.A.
Hepworth, J.

14th December,
1961.

14th December, 1961

Ramani (Miss P.G. Lim and C. Selvarajah
with him) for Appellant.

Syed Othman for Respondent.

Ramani:

Page 4 - Order Nisi of Ong J.

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Pages 4-5 - Minister's application
to discharge the Order Nisi of
Ong J.

Pages 31 and 32 - Order of Thomson C.J.
discharging the Order Nisi.

The appeal involves questions
of great constitutional
importance.

Pages 80 and 81 Notice issued to Appellant.
(Ramani reads the notice).

In the Court
of Appeal at
Kuala Lumpur.

".....acting on behalf of the Federal Government....." are the vital words.

No. 13.

Pages 81 to 82-Appellant's letter to the Registrar-General after receipt of the notice.

Judge's Notes
of Argument
(Good J.A.)

Page 83 - Registrar-General's reply.

14th December,
1961.

10 It repeats the vital words. Government stands by the notice.

(continued)

Page 6 - Minister's affidavit. By that affidavit he did not choose to give anyone any particulars of the acts and speeches complained of.

20 The attitude of the Respondents before the C.J. was that the subjective satisfaction of the Minister could not be challenged. But (anticipating the argument) if it is an objective test the Courts can intervene. Two questions arise in this appeal:

- (1) Having regard to the specific Articles of the Constitution was the notice that was given a good and valid notice?

(Its validity is challenged in two ways:

(a) Void in form;

30 (b) Substance patently incapable of supporting the exercise of the Minister's powers under Article 25).

- 40 (2) Can that notice, or the exercise of the power of which that notice is evidence, be challenged at all? Have the High Court any powers at all to deal with the exercise of the power? If so, are there any limitations on the exercise of the power?

In the Court
of Appeal at
Kuala Lumpur.

No. 13.

Judge's Notes
of Argument

(Good J.A.)

14th December,
1961.

(continued)

Respondent's case :

- A. They claim that prohibition does not lie.
- B. If it lies, the notice is good in form and sufficient in substance.

The Chief Justice deals fully with B but not with A. He said that the question whether prohibition lies does not arise at this stage - it is premature. If the notice is not good in form, the matter is concluded in limine. The C.J. found that the form was good and then went on to examine the substance.

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- P. 80) - the vital words:
- P. 83) "acting on behalf of the Federal Government."

Article 25:

The act of deprivation is an act of the Federal Government.

20

Article 31:

The second Schedule is made supplementary to Part III, S1, L.N. (N.S.) 33/57 (F.S.L. 1957 p. 104). That Schedule was deleted and substituted by L.N. 40/59.

When you are faced with a notice issued by the Registrar General claiming to act on behalf of the Federal Government, where does he derive his powers?

Second Schedule - amended by Act 10/60.

30

Originally S4 of the 2nd Schedule created a Registration Authority. S6 provided for a division of functions between the Minister and the Registration Authority. The Minister was given no power to delegate, but the Registration Authority was. The amendment by 10/60 removed the Registration Authority and the Minister took over all the functions.

The present case is governed by the amended

40

Schedule which came into force on 6.12.60.

N.B. S6 - "his functions"

Obvious error in S 4, "Part III of this Schedule" should be "Part III or this Schedule".

(Maxwell "Exceptional Constructions").

The Minister has power under S 4 to delegate his functions under S6 to make rules for the purpose of his functions.

10 Form Q perfectly proper if the Registrar-General had had delegated to him any of the functions of the Minister. If the form prescribed by the Minister purports to make the Minister act on behalf of the Federal Government there is a link missing in the chain of delegation.

The Minister never delegated to the Registrar-General under S4.

20 L.N. (N.S.) 114/57 illustrates delegation under S4 before amendment.

p.6 - the Minister claims that it was not the act of the delegate at all but his own act.

The C.J. accepted the affidavit of the Minister and held that the question of delegation did not arise.

The question of delegation arose centrally and vitally - the notice was challenged at once.

30 The form was not issued on the Minister's directions - the Registrar-General expressly claims to be acting on behalf of the Federal Government.

Rex. v. Superintendent of Chiswick Police Station (1918) 1 K.B. 578

By analogy, I ask the Court to say: "Here is a power given to the Federal Government and conferred on the Minister by the 2nd Schedule. He is given power to delegate, but he has not

In the Court
of Appeal
at Kuala Lumpur.

No. 13.

Judge's Notes
of Argument.

(Good J.A.)

14th December,
1961.

(continued)

In the Court
of Appeal at
Kuala Lumpur.

No. 13.

Judge's Notes
of Argument.

(Good J.A.)

14th December,
1961.

(continued)

exercised it.

p.22 1128-32- How could the C.J. come to that conclusion in face of the document itself?

So much for the form: now for the substance of the notice.

Article 25. Clause 1 (a) arises. Not 1 (b) or 1 (c) or (2).

Clause (3) arises. The last part is of extreme difficulty and the paucity of material on Chinese citizenship makes it impossible even to guess.

10

Article 26 does not arise.

Article 27: Clause (3) "the Federal Government shall have regard to the report."

Clause (2) does not absolutely require the Minister to hold an inquiry - only to offer one to the person concerned. This is vitally important - because the C.J. read Articles 25 and 27 together and assumed that the Minister was obliged to hold an inquiry in every case.

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P. 23 11 10 - 16
11 31 - 41

Supposing the citizen does not opt for an inquiry, what then? When and where does the Minister get his satisfaction? The proper way is for the Minister to inform the citizen that he is satisfied etc but that he is required to give the citizen an opportunity of an inquiry. Therefore he must have achieved a state of satisfaction before issuing the notice.

30

Roland Burrows, Vol. V. 26 - 27.

One of the essential questions - how far does the expression "if satisfied" render the act liable to control by writ of certiorari etc.

Liversidge v. Sir John Anderson and another
(1942) A.C. 206.

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Nakkuda Ali v. M.F. de S. Jayaratne (1951)
A.C. 66.

In the Court
of Appeal at
Kuala Lumpur

"As they think fit" - Roberts v. Hopwood &
Others (1925) A.C. 578.

No. 13.

"Has reasonable cause to believe"-
Liversidge)
Nakkuda Ali)

Judge's Notes
of Argument.

(Good J.A.)

"Satisfied" - Harward v. Guardians of the
Poor of Hackney Union and
Frost Relieving Officer
14 T.L.R. 306.

14th December,
1961.

(continued)

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Fletcher v. Ilkestan Corpn (1931) 96 J.P. 7.

Everett v. Griffiths (1920) 3 K.B. 204.

Mungoni v. Attorney-General of Northern
Rhodesia (1960) A.C. 350.

Attorney-General for Canada v. Hallet & Carey
Ltd., A.C. 444.

Ross-Clunis v. Papodopoulos & Ors. (1958)
1 W.L.R. 546.

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If the process is analogous to a judicial
process the Courts will intervene.

Clive Parry - Citizenship Laws of the Common-
wealth 325.

Two points on which depriving authority must
be satisfied.

Are the acts alleged against him sufficient
to establish loyalty and disaffection?

Even if so, is his citizenship conducive to
the public good?

30

There must be some evidence of disloyalty or
disaffection on the part of the person him-
self.

Burns v. Ransley 79 Commonwealth L.R. 101.

per Dixon J. at 112. Shows that exciting dis-
affection and being disaffected are not the
same thing. To misrepresent and invert Govern-

In the Court
of Appeal at
Kuala Lumpur

No. 13.

Judge's Notes
of Argument.

(Good J.A.)

14th December,
1961.

(continued)

ment policy and to make emotional appeals do not in themselves involve disloyalty or disaffection.

In Article 25 (1) (a) "Federation" means the Federation as a State.

A person who attacks or criticizes the Government for the time being is not necessarily disloyal to the State. But see p. 80 S (a).

Article 149 of the Constitution, Clause (1)(b) and (c), would appear to be the source of the Minister's inspiration or that of his draftsman.

10

Q.E. v. Ramchandra Narayan and another
22 Bomb 152 & 159.

Difference in substance between disloyalty to the Federation (Article 25) and exciting disaffection (Article 149(i)). But note the limitations on Parliament's power - they must be in a position to recite that action has been taken by a substantial body of persons.

20

The citation from Article 149 shows that the Minister was not making valid exercise of his power under Article 25.

If an individual is supposed to have done the acts described in Article 149 then he must be dealt with under the ordinary law.

Five propositions :

- I. Disloyalty towards the Federation means disloyalty to the State as a whole, not to the Government of the day.
- II. Merely causing trouble by act or speech within the State might lead to violence may be a challenge to the coercive power of the executive but it is not disloyalty to the State.
Emotional appeals are permissible in party politics. And persons are entitled to urge the removal of a

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communal party.

III. In so far as the matters alleged in the notice are calculated to promote ill-will between the communities Parliament has no power to legislate in relation thereof unless the acts are within Article 149.

IV. Similar acts or threats by a single individual do not enable Parliament to legislate against him.

V. Where therefore it is a single individual who has acted in a way set out in Article 149 Government cannot invoke its power under Article 25. It is open to Government to deal with persons under the Internal Security Ordinance. Ordinance 14 of 1948 (Sedition) provides ample power :

Wade & Phillips 3rd Edition, 329.

If the Executive wants to deal with a situation like this it has the power and it is a misuse of Article 25 to invoke it.

The acts alleged against appellant are not acts of disloyalty or disaffection towards the Federation at all.

Many emotional appeals leading to violence are made at the hustings but the speaker is not deprived of his citizenship.

If these are the grounds they do not give the power to act under Article 25 at all.

If on the face of the document evidencing the exercise of the power it is apparent that there are insufficient grounds for the exercise of the power then the Courts must ex debito justitiae intervene.

Farquharson v. Morgan (1894) 1 Q.B. 552 @ 563 1.3.

In the Court
of Appeal at
Kuala Lumpur

No. 13.

Judge's Notes
of Argument.

(Good J.A.)

14th December,
1961.

(continued)

In the Court
of Appeal at
Kuala Lumpur

No. 13.

Judge's Notes
of Argument.

(Good J.A.)

14th December,
1961.

(continued)

2.30 p.m. Ramani continues

If the two matters stated in the notice were the matters present to the Minister's mind, they are not capable of supporting the notice.

Clause 25 (3) is a matter that must be in the mind of the Minister and must be weighed by him. The Committee of Inquiry is the forum in which the citizen shows cause: nothing is likely to happen there that would affect the Minister's view under (3). 10

Disloyalty might be excusable and clause (3) must be considered.

The Minister should state in the notice his satisfaction under clause (3). Failure to state it is a defect in substance in the notice.

P.P. - 23 - 24 20

P. 24 - "consequential". That is an erroneous approach to the construction.

p. 26

p. 27- 28 - I challenge that view. None of the matters necessarily shows disloyalty or disaffection.

p. 29 .

All the time the C.J. is under the impression that it is not yet time to consider these matters. 30

The C.J. ignored my argument on Article 149.

I addressed the same argument to him that I have put forward here.

p. 24, last S.

88 Commonwealth Law Reports 100 : (The

"Stevedoring" case).

Article 10 of the Constitution.

The right of freedom of speech is only cut down to the extent allowed by clause 2 (a). It can only be restricted by Parliament by law. I cited the comparable provisions of the Indian Constitution and I cited an Indian case.

Basu Vol. 1 159.

10 State of Madras v. Row (1952) A.I.R. (S.C.) 196.

Dennis v. U.S. 341 U.S.R. 494.

One cannot forget the existence of the guaranteed right to freedom of speech. Support for this is to be found in Article 149 as amended in 1960. Parliament bore in mind Article 10.

20 To the extent to which they amended Article 149 they increased the scope of Article 10 (a).

Cantwell v. Connecticut 310 U.S.R. 296.

It is not alleged against the appellant that he has ever incited to violence. This is not only a matter of Lim Lian Geok but a matter of much wider application.

Syed Othman :

Grounds of Appeal:

30 It was my submission in the Court below that when the notice was issued the Minister had already made his decision. But I now say that his decision will be taken after he has considered the report of the Committee of Inquiry.

The Minister's decision to hold an inquiry is a ministerial act which can only be challenged on bad faith.

It is not open to the person to whom

In the Court
of Appeal at
Kuala Lumpur

No. 13.

Judge's Notes
of Argument.
(Good J.A.)
14th December,
1961.

(continued)

In the Court
of Appeal at
Kuala Lumpur.

No. 13.

Judge's Notes
of Argument.

(Good J.A.)

14th December,
1961.

(continued)

notice is given to inquire as to the reasons for the Minister's being satisfied.

Thorneloe & Clarkson Ltd. & Others v. Board of Trade (1950) 2. A.E.R. 245.

Ground 1 (a). The Registrar-General did not sign the notice on his own behalf but on behalf of the Federal Government. Article 27 does not require that the Minister shall sign the notice, only that he shall give notice - which he caused to be given to the appellant.

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Carltona v. Works Commissioner (1943) 2 A.E.R. 560.

Before causing the notice to issue the Minister did address his mind.

Delegation of Powers Ordinance No. 56/56 s. 17(1).

The appellant has not exhausted his right of appeal.

20

Ground 1(b): I agree that there is not an absolute requirement that an inquiry should be held.

Ground 1(c): Article 25(3) - "unless" shows that this is a consequential consideration.

Meaning of disloyalty and disaffection

Radhna Shyam Basak v. Secretary of State of India I.L.R. Calcutta Vol.44

30

Ramani says the Yang di-Pertuan Agong and the Government does not mean the Federation. Government does not seek to put itself beyond criticism, but the criticism, however strong, must be within the law.

Gour Vol. I 556 & 562 "disaffection".

Article 149 has no bearing on the present case. If the acts enumerated

in Article 149(1) are committed by one person who is a citizen by registration or naturalisation, then action can be taken under Article 25 subject to Article 27.

In the Court
of Appeal at
Kuala Lumpur

No. 13.

The freedom of speech mentioned in Article 10 is subject to the restrictions imposed by law and Article 25 itself contains some of these restrictions.

Judge's Notes
of Argument

(Good J.A.)

14th December,
1961.

Ground III (c) - This was not raised.

Land Realisation Co. Ltd v. Post
Master General (1950) 1 Ch. 435 @ 440.

(Continued)

Carltona @ p. 564 (1943) 2 A.E.R.

Ground III (d). An act may be a crime and at the same time the offender may be liable to executive action. Prosecution and executive action are not mutually exclusive.

20 Ramani in reply

The act may be the act of the Minister but it can be a quasi-judicial act.

R. v. Manchester Legal Aid Committee
(1952) Q.B. 413.

Griffith & Street on Administrative
Law 105.

Carltona p. 562.

The Constitution provides its own
dictionary.

30 S. 28 (2) of the Interpretation and
General Clauses Ordinance applied (11th
Schedule).

C.A.V.

Sd: D.B.W. Good.

14th December, 1961.

In the Court
of Appeal at
Kuala Lumpur.

No. 14. - JUDGE'S NOTES OF ARGUMENT
(HEPWORTH J.)

No. 14.

Coram: Hill J.A.,
Good J.A.,
Hepworth, J.,

Judge's Notes
of Argument.

(Hepworth J.)

14th December 1961 - at Kuala Lumpur

14th December,
1961.

Mr. R. Ramani (Miss P.G. Lim and Mr. C. Selvarajah with him) for Appellant.

Tuan Syed Othman bin Ali, Federal
Council, for Respondent.

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Mr. Ramani :

Order Nisi 13.9.61, page 4

Application of Minister, pages 4 and 5.

Order Nisi discharged 13.10.61,
pages 31 and 32.

Appeal of wide importance.

Refers to Notice at pages 80 and 81.

Refers to Letter of 5.9.61, at
pages 81 to 82.

Refers to Reply of 6.9.61, at
page 83.

20

Refers to Affidavit of Minister
at page 6.

No particulars of speeches given,
presumably because Minister did
not consider he was required to
give particulars.

Two questions arise on appeal :

- (a) Having regard to Articles
was Notice given good and
valid?

30

This will be challenged as :-

- (i) Void as to form.
- (ii) In substance is incapable of supporting the exercise of the Minister's powers under the Article.

In the Court
of Appeal at
Kuala Lumpur

No. 14.

- (b) Can that Notice be challenged at all?

Judge's Notes
of Argument.

(Hepworth J.)

Respondent claims :-

14th December,
1961.

- (1) Prohibition does not lie.

- (2) If it does :-

(continued)

- (i) Notice in form required.

- (ii) Grounds sufficient compliance.

Court below did not decide whether prohibition did lie, because it was held that the question was premature.

- (a) Having regard to terms of Notice:-

- (i) Was it good in form?

Refers pages 80 and 81 to 82.

20 Page 81 line 2 "acting on behalf of Federal Government".

Page 83

Refers Article 25 - Agreed this Article applies.

Refers Article 31.

Refers Second Schedule.

L.N. (New Series) 33/57.

Minister was Minister of Interior and Justice.

30 Under Act 10/60 Minister was given power to delegate W.E.F. 1.12.60.

In the
Court of
Appeal at
Kuala Lumpur

No. 14.

Judge's Notes
of Argument.

(Hepworth J.)

14th December,
1961.

(continued)

Refers Sections 4 and 6 of Second
Schedule.

"Part III of this Schedule" is
obviously meant to be Part III
"and" this Schedule.

Maxwell, Interpretation of Statutes,
Chapter IX.

Section 6 limited to exercise of his
functions, not the functions of the
Federal Government. Therefore not
the exercise of the functions of the
delegate. 10

Refers L.N. 310 of 1.12.60, Citizen-
ship Rules, 1960. Notice at page
564 of L.Ns.

Notice in this form in order if any
functions delegated.

Delegate of Federal Government,
Section 1 - Government to Minister.

Section 4 Minister to delegate. 20

Minister never delegated his functions
to the Registrar-General.

Refers L.N. (New Series) 114 at page
199 of L.Ns.

Refers Affidavit of Minister.

Notice given "on behalf of Federal
Government" not "on behalf of Minister".

Rex v. Superintendent of Chiswick
Police Station (1918) 1. K.B. 578 at
pages 579 and 585. 30

Notice accordingly of no effect.

Refers Judgment at page 21 line 1 to
page 22 line 32.

This is contrary to what the Notice
alleges "on behalf of Federal Govern-
ment".

(ii) Was it good in substance?

Refers Article 25.

Essential that Minister should be satisfied (a) and (3).

Refers Article 27.

Minister not bound to hold inquiry but must offer an inquiry.

Judgment says Minister bound to hold inquiry.

And when Order made, no appeal.

Page 22 line 33 to page 24 line 4.

Refers Burrows' Words & Phrases, Volume 5, pages 26 and 27 - "Satisfaction".

Satisfaction must be "objective" and not "subjective".

Process of satisfaction is a judicial process.

Refers Nakkuda Ali v. Jayaratne (1951 A.C., 66 at pages 75, 76 and 77).

"As they think fit" - Roberts v. Hopwood (1925, A.C.578).

"Has reasonable cause to believe."

Liversidge v. Anderson (1942, A.C. 206).

Nakkuda Ali v. Jayaratne.

"Satisfied".

Harward v. Hackney (14, T.L.R.306)

Everett v. Griffiths (1920 3, K.B. 204.)

Mungoni v. Attorney-General of Northern Rhodesia (1960, A.C.350)

In the Court of Appeal at Kuala Lumpur

No. 14.

Judge's Notes of Argument.

(Hepworth J.)

14th December, 1961.

(continued)

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In the Court
of Appeal at
Kuala Lumpur.

No. 14.

Judge's Notes
of Argument.

(Hepworth J.)

14th December,
1961.

(Continued)

Attorney General of Canada v.
Hallet (1952, A.C.444 at page 445).

Ross-Clunis v. Papadopoulos (1958
I, W.L.R., 546).

Clive Parry, Citizenship Laws of
Commonwealth, page 325.

There is a difference between himself
being disloyal and inciting other
people to be disloyal.

Burns v. Ransley (79, Commonwealth
Law Reports, 101, at pages 112 and
115).

10

Matter in Notice cannot be disloyal
or disaffected.

Disloyalty to a party would not be
disloyalty to the Federation.

Refers Notice page 80.

Where did Minister obtain inspiration
for alleging those acts

Queen-Empress v. Ramchandra Narayan
(22, Bombay 152, at p. 159).

20

Refers Article 149. Shown Minister
not making valid exercise of his
power under Part III.

The substance of the Notice depends
on :-

(1) Disloyalty towards Federation
means disloyalty to State as a
whole not of the Government of
the day;

30

(2) Merely causing trouble by act or
speech within the State between
communities or races is not
disloyalty to the State;

(3) Article 149 shows that in so far
as matters alleged in Notice are
calculated to promote ill-will
between communities Parliament

has no power to legislate in respect thereof unless a substantial body of persons is involved;

In the Court of Appeal at Kuala Lumpur

No. 14.

Judge's Notes of Argument.

(Hepworth J.)

14th December, 1961.

(continued)

(4) Similar acts or threats by a single individual does not enable Parliament to legislate against them;

(5) Where a single individual has acted in way set out in Article 149, the Government cannot invoke its power under Article 25.

10

Refers Sedition Ordinance, 1948 - "seditious tendency", Section 3.

Wade, Constitutional Law, 3rd Edition, page 329.

(b) Can that Notice be challenged at all?

Farquharson v. Morgan ((1894) 1, Q.B. 552, at pages 556, 557, 561).

20

Adjourned at 12.40 p.m.

Resumed at 2.30 p.m.

Mr. Ramani continues :-

Refers Article 25 (3).

Not purpose of Constitution that everybody disloyal should cease to be a citizen.

Absence of satisfaction that it is conducive to the public good that that person should continue to be a citizen is another fault in the Notice.

30

Refers Judgment page 23 line 45 to page 24 line 36.

Refers Judgment page 27 line 27 to page 29 line 46.

In the Court
of Appeal at
Kuala Lumpur

No. 14.

Judge's Notes
of Argument.

(Hepworth J.)

14th December,
1961.

(continued)

Refers Queen v. Australian Stevedoring
(88, C.L.R., 100, at pages 102, 117).

Refers Article 10.

Refers Judgment page 29 line 47.

Commentary on Constitution of India.

Dennis v. U.S. (Vol. 841, U.S. Reports
494).

Right to free speech must be balanced
against the needs of the State.

The Creative Law of the Supreme Court
page 84.

10

Tuan Syed Othman :

Issue of Notice was decision of
Minister.

Paragraph 5 of Affidavit, page 6.

Ministerial act only which can only
be questioned on the ground of bad
faith. We are dealing with decision
to give notice under Article 27 not to
deprive under Article 25. No bad
faith alleged.

20

Refers Memorandum of Appeal paragraph
1(a).

Minister acting for Federal Government.

Notice according to the Rules.

Minister caused Registrar-General to
issue notice.

Carltona case ((1943) 2, A.E.R. 560,
at page 563).

Section 17 Delegation of Powers Ordinance, 30
1956.

Written law includes Constitution by Interpretation and General Clauses Ordinance.

In the Court of Appeal at Kuala Lumpur

Appellant did not appeal to Minister under Section 4 of Second Schedule.

No. 14.

Memorandum of Appeal page 34, paragraph (b).

Judge's Notes of Argument.

(Hepworth J.)

Memorandum of Appeal paragraph 1(d) - Freedom of speech must be within the limits of the law.

14th December, 1961.

Gour's Penal Law of India, page 562 meaning of "disaffection".

(continued)

Refers Article 149. This Article has no bearing at all.

If acts referred to in Article 149 are done by one person they constitute disloyal acts.

Article 25 is a restriction on Article 10 and is meant to be.

Refers Section 4 of Interpretation and General Clauses Ordinance.

Memorandum of Appeal III(c).

Land Realisation v, Post Master General (1950 1, Ch.D.440).

Carltona's case, page 564.

Memorandum of Appeal III (d). Act can be a crime and render the person liable to action under Article 25. They are not mutually exclusive.

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Mr. Ramani :-

Hicking v. Manchester ((1952) 2 Q.B., 413 at page 428).

Griffith & Street, Administrative Law at page 105.

In the Court
of Appeal at
Kuala Lumpur

Carltona's Case at page 562.

11th Schedule of Constitution page 149.

No. 14.

(Signed) T.R. HEPWORTH
JUDGE.

Judge's Notes
of Argument.
(Hepworth J.)

14th December, 1961.

14th December,
1961.
(continued)

No. 15.
Judgment of
Hill J.A.

NO. 15. - JUDGMENT OF HILL J.A.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

4th January,
1962.

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No. 35 of 1961.

(K.L. Originating Motion No. 24 of 1961.)

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LIM LIAN GEOK

Appellant

v

THE MINISTER OF THE INTERIOR,
FEDERATION OF MALAYA.

Respondent

Cor: Hill J.A.
Good J.A.
Hepworth J.

On the 14th August, 1961, the Appellant
received the following notice :

RDFM (Cit) 6212B Conf.

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CONSTITUTION OF THE FEDERATION OF
MALAYA CITIZENSHIP RULES, 1960

Rule 22 - FORM Q

NOTICE

To Mr. LIM LIAN GEOK alias LIM CHAI KOO
of 52/2 Jalan Raja Muda Musa, Kampong Bahru,
KUALA LUMPUR.

In the Court
of Appeal at
Kuala Lumpur

No. 15.

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

Judgment of
Hill J.A.

4th January,
1962.

(continued)

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

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

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

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

Dated this 12th day of August, 1961.

Registrar-General of Citizens
of the Federation of Malaya.

(SEAL).

In the Court
of Appeal at
Kuala Lumpur

No. 15.

Judgment of
Hill J.A.

4th January,
1962.

(continued)

After an exchange of letters with the Registrar-General, the Appellant filed a notice of motion in the High Court at Kuala Lumpur that the Minister of the Interior be prohibited from referring the case to a Committee of Inquiry.

On the 13th September Ong J. made an Order Nisi that the Minister of the Interior, Federation of Malaya, be and is hereby prohibited from referring the Case of the abovenamed Applicant to a Committee of Inquiry under Article 27(2) of the Constitution until this Order shall be made absolute or be discharged. 10

The next step was the filing of a Notice of Motion by the Federal Counsel on behalf of the Minister that the Order of Prohibition made by Ong J. should be discharged.

This application was supported by an affidavit of the Minister of the Interior and it is perhaps as well here to set out in full that affidavit. 20

"I, ~~Dr. Dato~~ Ismail bin Dato Abdul Rahman, a Federal Citizen of full age residing at 20B, Maxwell Road, Kuala Lumpur, do hereby affirm and say as follows :-

1. I am the Respondent abovementioned. I am the Minister of the Interior in the Government of the Federation of Malaya. 30

2. On the direction of the Yang di-Pertuan Agong I am the Minister who exercises the functions of the Federal Government under Part III and the Second Schedule of the Federal Constitution.

3. In pursuance of Article 27 of the Constitution I decided to cause a Notice, a copy of which is exhibit A referred to in the Affidavit of The Applicant, to be sent to the Applicant. The aforesaid Notice was in the form prescribed by me in rule 22 of the Citizenship Rules, 1960. The aforesaid rules were published as Legal Notification No. 310 in the Federal Government Gazette of 1st December, 1960. 40

4. The Notice in the aforesaid prescribed form was on my decision sent to the applicant by the Registrar-General of Citizens of the Federation of Malaya who is a civil servant in my Ministry.

In the Court
of Appeal at
Kuala Lumpur

No. 15.

5. I am satisfied that the act and speech of the applicant justify my decision to proceed under Article 27 of the Federal Constitution."

Judgment of
Hill J.A.

4th January,
1962.

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On the 4th October, 1961, the parties appeared before the learned Chief Justice, and on the 13th of that month the Chief Justice discharged the Order Nisi. It is against that judgment that this appeal has been brought.

(continued)

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In this judgment, for reasons which I hope will be apparent later, I propose only to deal with one ground of appeal, namely, to put it briefly, that both in its form and in its content the notice issued to the Appellant was bad in law.

It was Mr. Ramani's contention, and I quote from the Memorandum of Appeal, that the matters of complaint stated in the Notice :

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" x x x x x x
even assuming them to be true, were not such as to be capable of attracting the altogether excessive penalty of deprivation of citizenship, having regard to the provisions of Article 25 of the Constitution;

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- (b) that the language of the Form made it clear, notwithstanding the affidavit of the Minister, that the Registrar-General purported to act and in fact acted as the delegate of the Federal Government and not as a mere amanuensis of the Minister;
- (c) that the Minister's affidavit not having condescended to any particulars setting out the facts and circumstances on the faith of which he attained the requisite satisfaction, it was not

In the Court
of Appeal at
Kuala Lumpur

No. 15.

Judgment of
Hill J.A.

4th January,
1962.

(continued)

possible to say whether there were
good grounds or any grounds for such
satisfaction;

and

- (d) that in any event the second ground stated in the Notice was by itself incapable under that Article of providing the required satisfaction to the Minister, because it merely alleged criminal offences against him which if proved would render him liable to punishment, in accordance with the law of the land and no more."

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At the risk of being tedious I think it is desirable in order to preserve a sequence to set out the relevant Articles of the Constitution and subsequent legislation of leading up to the actual issue of the Notice.

The relevant portions of Articles 25 and 27 of the Constitution read as follows:-

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

- (a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation;
- (b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or
- (c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the

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currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced."

In the Court
of Appeal at
Kuala Lumpur

No. 15.

Judgment of
Hill J.A.

4th January,
1962.
(continued)

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

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It is necessary to bear in mind that Dato Ismail bin Dato Abdul Rahman, the Minister of the Interior, is the Minister who on the direction of the Yang di-Pertuan Agong exercises the functions of the Federal Government under Part III and the Second Schedule of the Federal Constitution (See Paragraph 2 of his Affidavit) and this is not a matter that is in issue.

These functions the Minister has never delegated and therefore it is unnecessary to consider Section 4 of the Second Schedule to the Constitution nor the drafting or printing error that occurs in this Section.

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I will endeavour to deal first with the form of the Notice. Section 6 of the Second Schedule authorises the Minister to make rules and prescribe forms for the purposes of the exercise of his functions under Part III and the Schedule. Section 6 is as follows :

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

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By rule 22 of the Citizenship Rules, 1960 (L.N. 310, 1st December, 1960 p. 535) the Minister prescribed the form of Notice which the Appellant received. Rule 22 reads as follows:

"The Notice given by the Federal

In the Court
of Appeal at
Kuala Lumpur

No. 15.

Judgment of
Hill J.A.

4th January,
1962.

(continued)

Government to a person against whom the deprivation order is proposed to be made under the provisions of Article 27 of the Constitution shall be in the Form Q set out in the Schedule to these Rules."

The Notice is found at Q in the Schedules to the Rules.

It was the Appellant's contention that the Notice could only be in order if the Registrar-General had had any of the Minister's functions delegated to him under Section 4 of the Second Schedule and that as there had been no such delegation by the Minister the Notice was void. In view of the wording of Section 6 of the Second Schedule I might have found this argument persuasive but for the hiatus in it regarding the Minister's affidavit and Rule 22 of the Citizenship Rules. Rule 22 concerns a "Notice given by the Federal Government" and it clearly follows in my view that neither by accident nor design is there any delegation of the Minister's functions in fact or in law.

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I am therefore of the opinion that in so far as its form is concerned the notice served on the Appellant was in order.

There remains the question of its substance or content. The procedure is based on Article 25 and 27 of the Constitution and at the point or stage at which this matter had reached when it came before the High Court I do not think that any Division of the Court has jurisdiction to investigate or consider the matter beyond the issue of the notice. As I see it, and I quote from the judgment of the learned Chief Justice, the question that "has to be considered here is the extent of the power of the Minister to take a step the taking of which is a condition precedent to the making by him of an order of deprivation, that step being to cause the holding of an Inquiry under Article 27"

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Most of the arguments put forward

in this Appeal go very far beyond that question in my view and consequently I do not propose to refer to them much less to endeavour to arrive at any decision regarding their merits.

In the Court
of Appeal at
Kuala Lumpur

No. 15.

10 There is no question but that the Minister's affidavit must be accepted. Before the Notice was issued certain conditions had to be fulfilled in accordance with the wording of the Constitution. They were set out with clarity and precision by the learned Chief Justice in his judgment and I cannot do better than repeat them here : He stated :-

Judgment of
Hill J.A.

4th January,
1962.

(continued)

20 "Four conditions must be fulfilled. The first is that the Minister must have certain grounds of fact in his mind. The second is that these grounds must consist of acts or speech. The third is that the person against whom the order is proposed to be made should be informed what these grounds are. And the fourth is that these grounds of fact should be capable, if made out, of showing as a matter of law disloyalty or disaffection towards the Federation."

30 The learned Chief Justice was of opinion, as I am, that the first three conditions were clearly fulfilled. There has, I am glad to state, been no allegation that the Minister acted otherwise than in good faith.

I therefore come to the final question to be decided whether the grounds stated in the Notice are in compliance with Article 25 and capable in law of showing disloyalty or disaffection.

40 I feel myself that the grounds stated in the Notice could have been more happily worded and that the reference in (a) to the Yang di-Pertuan Agong and the Government should have been omitted. With regard to (b), it is premature in my view to endeavour to form any opinion without details and particulars of the alleged emotional appeals whether they show the Appellant to

In the Court
of Appeal at
Kuala Lumpur

No. 15.

Judgment of
Hill J.A.

4th January,
1962.

(continued)

be disloyal or disaffected towards the Federation and to what extent. There are clearly circumstances when appeals of this nature could show that the maker of them was disloyal or disaffected.

It would appear too that the words used in Article 149 (1)(c) of the Constitution were repeated in (b). I think this was unfortunate and it gave the Appellant another cause for criticism of the Notice. All that Article 27(1) requires is notice of the ground on which the order is proposed to be made. In other words to set out whether it is ground (a), (b) or (c) of Article 25. No particulars or details are required to be given and in my opinion the notice should have been confined to a bare reference to ground (a) in Article 25(1). It is, I think, significant that though Article 27 refers to Articles 24, 25 and 26 and these Articles between them contain a number of grounds, the word "ground" is only used in the singular in Article 27 and I feel that to extend in this context the meaning of ground beyond that of basis or foundation to include particulars, details, circumstances or allegations would be incorrect. Nevertheless, I cannot conceive that on this point the Appellant could have been left in any doubt that the above ground was alleged against him. What other meaning could the notice have conveyed to him. Surely not that he was in communication during a war with an enemy or that he had been sentenced to imprisonment or to a fine. In my view the Notice clearly and unequivocally indicated that Article 25(1)(a) is intended.

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I am therefore of the opinion that both in form and content the Notice served on the Appellant was a proper one.

Earlier in this judgment I stated that I would deal only with this question and there I will leave the matter. I find support for this approach and opinion in the Australian case of The Queen v.

Australian Stevedoring Industry Board. Ex parte Melbourne Stevedoring Co., Pty. Ltd. (88 C.L.R. 100), a case that was cited to and approved by the learned Chief Justice.

In the Court of Appeal at Kuala Lumpur

No. 15.

I would therefore dismiss the Appeal with costs to the Respondent here and in the Court below.

Judgment of Hill J.A.

Sgd: R.D.R. HILL
(R.D.R. HILL)
JUDGE OF APPEAL.
FEDERATION OF MALAYA.

4th January, 1962.
(continued)

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Kuala Lumpur.
4th January, 1962.

Ramani, Miss P.G. Lim and C. Selvarajah for Appellant.

Syed Othman Ali for Respondent.

NO. 16. - JUDGMENT OF GOOD J.A.

Cor: Hill J.A.
Good J.A.
Hepworth J.

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I have had the benefit of reading the judgment of Hill J.A. and I agree with all that he has said, but I take the opportunity of stating some additional reasons for arriving at the same result.

No. 16.
Judgment of Good J.A.

4th January, 1962.

By clause (1) of Article 25 of the Constitution the Federal Government is empowered to deprive of his citizenship a person who is a citizen by registration or by naturalisation on any of the grounds set out in sub-paragraphs (a), (b) and (c). Each of these grounds is capable of being broken down into a number of alternatives which do

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In the Court
of Appeal at
Kuala Lumpur

No. 16.

Judgment of
Good J.A.

4th January,
1962.

(continued)

not very much differ one from another: for example, a person may be deprived of his citizenship under sub-paragraph (a) by reason either of his actions or of his words, where such actions or words have shown him to be either disloyal or disaffected towards the Federation. The sub-paragraph thus contains four alternative grounds, but in general it may be said that sub-paragraph (a) creates the ground of disloyalty, sub-paragraph (b) the ground of trafficking with the enemy during a war and sub-paragraph (c) the ground of conviction for a serious criminal offence. 10

Article 27 sets out certain conditions precedent to the making of an order under Article 25; and, as I see it, the only purpose for which the supervisory jurisdiction of the Court can be invoked at this stage is to ascertain whether the essential preliminary steps have properly been taken according to law. The Government is not yet committed to depriving the appellant of his citizenship; it has only announced its intention of doing so if the appellant does not within a specified time claim that his case be referred to a committee of inquiry as provided by Article 27. If the appellant does so claim - he has not yet done so but has elected to bring these proceedings instead - no order can be made affecting his status as a citizen until the Government has considered the committee's report. It is, therefore, premature to discuss the sufficiency of the ground on which it is proposed to make the order; if, indeed, this can ever be discussed forensically, as to which I express no opinion. 20 30 40

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

As to its form, the validity of the

notice has been attacked by the appellant on the ground that it was issued, without any delegation of power, by the Registrar-General of Citizens and not by the Minister by whom His Majesty the Yang di-Pertuan Agong has directed that the functions of the Federal Government under part III of the Constitution shall be exercised. In my opinion this submission must fail. The Registrar-General has not purported to exercise any of the functions of the Federal Government. The notice recites that certain matters have been represented to the Government and that the Government proposed to make an order under Article 25 depriving the appellant of his citizenship. There is no exercise of function here by the Registrar-General. All that he has done is to act as the instrument or mouthpiece by which the intended action of the Government, and the ground upon which it is intended, has been communicated to the appellant. The discretionary functions of the Government have been exercised by the Minister directed in that behalf by His Majesty under paragraph 1 of the Second Schedule to the Constitution. The obligatory function of giving notice to the person affected is expressed in the words of Article 27(1) as "..... the Federal Government shall give notice....." but such notice is not, in my opinion, invalidated by the fact that it is given by a civil servant "acting on behalf of the Federal Government" and signed by him, especially when the Minister has, by rules made by him under paragraph 6 of the Second Schedule, prescribed that form of notice. The Minister's affidavit of the 18th September, 1961 makes it perfectly clear that the making and issuing of the notice was his own act and not that of the Registrar-General.

As to the content of the notice, the wording of the ground of intended deprivation has been partly derived from Article 149 of the Constitution, which has nothing to do with deprivation of citizenship; but this does not, in my view, invalidate the notice so long as it gives the appellant sufficient notice, at this stage, of the ground upon which the Government proposes to reply.

In the Court
of Appeal at
Kuala Lumpur

No. 16.

Judgment of
Good J.A.

4th January,
1962.

(continued)

In the Court
of Appeal at
Kuala Lumpur

No. 16.

Judgment of
Good J.A.

4th January,
1962.

(Continued)

The question is, how much information is the Government obliged to give, before an inquiry is held, as to the ground on which it is proposed to make an order of deprivation.

The relevant words of Article 27(1) are "notice in writing informing him of the ground on which the order is proposed to be made". The same expression, "the grounds", occurs in the corresponding legislation of all the Commonwealth or former Commonwealth territories where the giving of such notice is required by law. The requirement is by no means universal: it is to be found in the legislation of the United Kingdom, India, New Zealand, Singapore and South Africa. In every case the Article or Section in question is preceded by another corresponding more or less to our Article 25, in which are set out distinct grounds of deprivation. I understand the word "ground" in Article 27(1) to relate to the distinct grounds set out in Article 25, which are the only grounds upon which a person may be deprived of his citizenship. Article 27(1) and Article 25 must be construed in relation to one another, and I would construe the words of Article 27(1) - "informing him of the ground on which the order is proposed to be made" - as meaning "informing him on which of the grounds set out in Article 25 the order is proposed to be made." If I am right, it follows that it would have been sufficient if the notice had merely informed the appellant that it was proposed to deprive him of his citizenship on the ground of acts (or speech) showing him to be disloyal (or disaffected) towards the Federation. Anything further is surplusage, but there could be no misunderstanding in the mind of any person reading the contents of the notice that what was intended was deprivation on ground (a) in Article 25(1). In my opinion that is sufficient. The particular allegations will emerge at the inquiry if the appellant elects to ask for one. This is nowhere explicitly stated, but it is implicit in the pro-

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cedure: there cannot be an inquiry unless there is something to inquire into, and it cannot be a proper inquiry unless the appellant is told what is alleged against him.

In the Court
of Appeal at
Kuala Lumpur

No. 16.

Judgment of
Good J.A.

4th January,
1962.

(continued)

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I am fortified in this view by a comparison of Article 27(1) with Article 151(1)(a). Article 151(1)(a) deals with restrictions on preventive detention, and provides that the authority on whose order any person is detained shall inform him of the grounds of his detention and (subject to the national interest) of the allegations of fact on which the order is based. So that a person who is deprived of his liberty by order of the Minister under the Internal Security Ordinance, 1960, may be told, for example that he is detained on some such general grounds as "subverting the youth of the Federation" or "disseminating pro-Communist propaganda"; but he is entitled in addition to a statement containing specific allegations of fact so that he can make adequate representations against his order of detention. The omission of any such requirement from Article 27(1) suggests to me that it was not intended that, at this stage of the proceedings, the person affected should be informed of anything more than the bare ground of intended deprivation, and in my opinion this requirement has been sufficiently complied with by the contents of the notice in question in the present case.

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For these reasons I would dismiss the appeal with costs.

Sgd D.B.W. GOOD.
(D.B.W. GOOD)
JUDGE OF APPEAL,
FEDERATION OF MALAYA.

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Kuala Lumpur.
4th January, 1962.

Ramani, Miss P.G. Lim and C. Selvarajah
for appellant.

Syed Othman Ali for Respondent.

In the Court
of Appeal at
Kuala Lumpur

No. 17.

Judgment of
Hepworth J.

4th January,
1962.

NO. 17. - JUDGMENT OF HEPWORTH J.

Coram : Hill J.A.
Good J.A.
Hepworth, J.

I have had the advantage of reading the Judgments of the President and of Mr. Justice Good. It would be a waste of time for me to say the same things all over again so I shall confine myself to saying that I agree with everything that they have said and that I have nothing to add.

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Dated at Penang this 1st day of
January, 1962.

Sd: J.R. HEPWORTH.
JUDGE,
FEDERATION OF MALAYA.

Delivered at Kuala Lumpur on 4th January,
1962.

No. 18:
Order dis-
missing
Appeal.
4th January,
1962.

NO. 18. - ORDER DISMISSING APPEAL

20

BEFORE :
THE HONOURABLE MR. JUSTICE HILL B.D.L.,
JUDGE OF APPEAL;

THE HONOURABLE MR. JUSTICE GOOD
JUDGE OF APPEAL;

AND

THE HONOURABLE MR. JUSTICE HEPWORTH

IN OPEN COURT,

This 4th day of January, 1962.

THIS APPEAL coming on for hearing on
the 14th day of December, 1961, in the

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presence of Mr. Ramani (with him Miss P.G. Lim and Mr. C. Selvarajah) of counsel for the Appellant and Tuan Syed Othman bin Ali, Federal Counsel, for and on behalf of the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel for both parties as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment and the same coming on for judgment this day in the presence of Counsel for both parties as aforesaid IT IS ORDERED that the appeal be and is hereby dismissed AND IT IS ORDERED that the Appellant do pay to the Respondent the costs of this Appeal and the costs in the Court below as taxed by the proper officer of the Court, respectively AND IT IS FURTHER ORDERED that the sum of dollars five hundred (\$500/-) deposited by the Appellant in the High Court at Kuala Lumpur as security for the costs of the Appeal be paid out to the Respondent towards his taxed costs of the Appeal.

GIVEN under my hand and the Seal of the Court this 4th day of January, 1962.

Sd: Shiv Charan Singh.

Assistant Registrar,
Court of Appeal,
Federation of Malaya.

In the Court
of Appeal at
Kuala Lumpur

No. 18.

Order
dismissing
Appeal.

4th January,
1962.

(continued)

NO. 19. - ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL TO HIS
MAJESTY, THE YANG di-
PERTUAN AGONG

Not printed.

No. 19.
Order granting
Leave to Appeal
to His Majesty,
the Yang di-
Pertuan Agong.
17th January,
1962.
(not printed)

In the Court
of Appeal at
Kuala Lumpur

NO. 20. - ORDER ALLOWING FINAL LEAVE TO
APPEAL TO HIS MAJESTY, THE
YANG DI-PERTUAN AGONG.

No. 20.

IN THE SUPREME COURT OF THE FEDERATION OF
MALAYA

Order allowing
Final Leave to
Appeal to His
Majesty, the
Yang di-Pertuan
Agong.

IN THE COURT OF APPEAL AT KUALA LUMPUR
FEDERATION OF MALAYA CIVIL APPEAL NO. 35
OF 1961

15th May, 1962.

BETWEEN

LIM LIAN GEOK ... Appellant 10

AND

THE MINISTER OF THE INTERIOR,
FEDERATION OF MALAYA ... Respondent

(In the matter of Kuala Lumpur

Originating Motion No. 24 of 1961

Between

Lim Lian Geok ... Applicant

And

The Minister of the Interior,
Federation of Malaya ... Respondent) 20

BEFORE :

The Honourable Dato Sir James Thomson
P.M.N., P.J.K., Chief Justice,
Federation of Malaya;

The Honourable Mr. Justice Hill B.D.L.,
Judge of Appeal;

and

The Honourable Mr. Justice Good,
Judge of Appeal.

IN OPEN COURT

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This 15th day of May, 1962.

10 UPON MOTION made unto this Court this day by Mr. K.A. Menon (with him, Mr. C. Selvarajah) on behalf of Mr. R. Ramani of Counsel for the Appellant in the presence of Enche Harun M. Hashim, Federal Counsel, for the Respondent AND UPON READING the Notice of Motion dated the 12th day of April, 1962 and the affidavit of Lim Lian Geok affirmed on the 12th day of April, 1962 and filed herein in support of the Motion AND UPON HEARING Counsel as aforesaid for the parties:

20 IT IS ORDERED that the Appellant abovenamed be and is hereby granted final leave to appeal to His Majesty the Yang di-Pertuan Agong from the Order of the Court of Appeal dated the 4th day of January, 1962. 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 15th day of May, 1962.

sd: Shiv Charam Singh
sd: Assistant Registrar

Court of Appeal,
Federation of Malaya.

COURT OF APPEAL FEDERATION
OF MALAYA (SEALED)

In the Court
of Appeal at
Kuala Lumpur

No. 20.

Order allowing
Final Leave to
Appeal to His
Majesty the
Yang di-Pertuan
Agong.

15th May 1962.

(continued)

Exhibit
A

E X H I B I T S

Notice from
Registrar of
Citizens to
Applicant.

EXHIBIT A. - NOTICE FROM REGISTRAR OF
CITIZENS TO APPLICANT.

12th August,
1961.

RDFM (Cit) 6212 Conf.

CONSTITUTION OF THE FEDERATION OF MALAYA
CITIZENSHIP RULES, 1960.

Rule 22 - FORM Q.

NOTICE

To Mr. LIM LIAN GEOK alias LIM CHAI KOO

of 52/2, JALAN RAJA MUDA MUSA, KAMPONG BAHRU,
KUALA LUMPUR.

10

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

- (a) deliberate misrepresentation and
inversion of Government Educa-
tion Policy in a manner calcula-
ted to excite disaffection against
the Yang di-Pertuan Agong and the
Government of the FEDERATION; and
- (b) emotional appeals of an extreme
communal nature calculated to
promote feelings of ill-will and
hostility between different races
in the Federation likely to cause
violence.

20

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

30

NOW, THEREFORE, I, Ibrahim bin Ali,

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

Exhibit
A
Notice from Registrar of Citizens to Applicant.

12th August, 1961.

(continued)

Dated this 12th day of August, 1961.

(SEAL)

Registrar-General of Citizens of the Federation of Malaya.

20 This is the Exhibit marked 'A' referred to in the Affidavit of Lim Lian Geok sworn to before me this 12th day of September, 1961 in O.M. No. 24 of 1961.

Sd: Ho Wai Kwong.
Commissioner for Oaths.
Supreme Court, Kuala Lumpur.

30 EXHIBIT B. - LETTER, APPLICANT TO REGISTRAR OF CITIZENS

No. 25-7, Jalan Raja Muda
Musa,
Kampung Bharu.
KUALA LUMPUR.

5th September, 1961.

Exhibit
B
Letter, Applicant to Registrar of Citizens

5th September, 1961.

The Registrar-General of Citizens,
Federation of Malaya,
KUALA LUMPUR.

Sir,

I have duly received on the 14th

Exhibit
B

Letter,
Applicant
to Registrar
of Citizens.

5th September,
1961.

(continued)

August your Notice of the 12th August.

Though it purports to be in accordance with the Form provided under the Rules made by the Minister, I am advised that the power to deprive one of his citizenship is under the Constitution vested in the Minister alone, and he is not empowered to delegate that function to any other official or authority under any of the Sections of the Second Schedule to the Constitution. With utmost respect, therefore, I wish to point out that there would appear to be no authority in you to issue the Notice.

10

I therefore respectfully request that the Notice be withdrawn and a proper Notice served on me if it is still the Federal Government's intention to deprive me of my Citizenship.

I shall be grateful for your reply in the course of the week, or at all events before the time limited under your Notice expires.

20

I am, Sir,
Your obedient servant.
Sd: Lim Lian Geok.

Lim Lian Geok.

This is the Exhibit marked 'B' referred to in the Affidavit of Lim Lian Geok sworn to before me this 12th day of September, 1961, in O.M. No. 24 of 1961.

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Sd: Ho Wai Kwong.
Commissioner for Oaths,
Federation of Malaya,
Supreme Court,
Kuala Lumpur.

EXHIBIT C. - LETTER, REGISTRAR OF CITIZENS
TO APPLICANT.

Exhibit
C
Letter,
Registrar of
Citizens to
Applicant.

Fail kita:(5) in RDFM(Cit) 6212 Conf.

JABATAN PENDAFTARAN,
PERSEKUTUAN TANAH MELAYU
BANGUNAN PERSEKUTUAN
PETALING JAYA
SELANGOR

6th September,
1961.

6th September, 1961.

10 Mr. Lim Lian Geok alias
Lim Chai Koo,
No. 25-7, Jalan Raja Muda Musa,
Kampong Bharu,
Kuala Lumpur.

Sir,

I am directed to refer to your letter
of the 5th September 1961.

20 2. I am to invite your attention to the
fact that the Notice dated the 12th day of
August, 1961, which was sent to you is in
accordance with Rule 22 of the Citizenship
Rules, 1960. This Notice is issued by the
Registrar-General of Citizens of the Feder-
ation of Malaya acting on behalf of the
Federal Government and is in accordance with
the Constitution.

30 3. I am further to invite your attention
to the fact that the period of one calendar
month from the date of service upon you of
the Notice runs from the 14th August, 1961.

I am, Sir,
Your obedient servant.

Sd: Ibrahim
(Ibrahim bin Ali, MCS)
REGISTRAR-GENERAL OF CITIZENS
OF THE FEDERATION OF MALAYA

40 This is the Exhibit marked 'C' referred to
in the Affidavit of Lim Lian Geok sworn to
before me this 12th day of September, 1961,
in O.M. No. 24 of 1961.

sd: Ho Wai-Kwong.
Commissioner for Oaths.
Supreme Court, Kuala Lumpur.

IN THE PRIVY COUNCIL

No. 23 of 1962

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

B E T W E E N

LIM LIAN GEOK

Appellant
(Applicant)

- AND -

THE MINISTER OF THE INTERIOR,
FEDERATION OF MALAYA

Respondent
(Respondent)

RECORD OF PROCEEDINGS

Wray, Smith & Co.,
1 King's Bench Walk,
Temple,
London E.C.4.

Respondent's Solicitors.

Graham Page & Co.,
41 Whitehall,
London S.W.1.

Appellant's Solicitors.
