THE SINGAPORE STATUTE BOOK*

IT is frequently asserted that the criminal always returns to the scene of his crimes. I had always been dubious of the truth of that aphorism until this evening, and I had perhaps better allay the fears of some of those present this evening by assuring them that I have a confirmed onward passage to Botany Bay whence I proceed tomorrow to complete my sentence of transportation. Before I depart, however, I would like to share with you some desultory thoughts on the Singapore Statute Book, even though none are original and few are new. They are offered only on the basis that it is well from time to time to remind ourselves of our position, and as I shall suggest this is a suitable occasion to do so.

Now this gathering has assembled to celebrate the twenty-fifth anniversary of the Malaya Law Review, and I take this opportunity of congratulating the editor and his colleagues on having reached such a momentous milestone, and you may well ask yourselves what has the Singapore Statute Book to do with the silver jubilee celebrations of the Malaya Law Review. Now it so happens that this Orwellian year sees many little anniversaries and the one which I am privately celebrating this evening, in addition to that of the Malaya Law Review, is the sesquicentennial anniversary of the Singapore Statute Book, for, as I shall argue this evening, the Singapore Statute Book may be regarded as having had its origin 150 years ago — on 22 April 1834, to be exact. A new Revised Edition of the Singapore Statutes is, so I am informed, in train, so that this is perhaps not a wholly inauspicious moment to look again at the origin and development of the Singapore Statute Book and to assess its current form and structure.

Let me commence by commenting that there is, of course, no such book. The Singapore Statute Book is, as is its English equivalent, the Parliament Roll, a myth, and I would add that it takes a very hardened academic to lecture on something which does not exist.

> Heuston, speaking of the English Parliament Roll, observed:[1]
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> The "Parliamentary Roll", whatever exactly it might have been, disappeared in England a century ago, though even good authors sometimes write as if it still exists. Since 1849 there has been no "Roll", simply two prints of the Bill on durable vellum by Her Majesty's Stationary Office, which are signed by the Clerk of the Parliaments and regarded as the final official copies. One is preserved in the Public Record Office and one in the library of the House of Lords.

* This article reproduces the text of a Public Lecture delivered at the Faculty of Law, National University of Singapore on 10 February 1984 to mark the twenty-fifth anniversary of the *Malaya Law Review*. The lecture style has been retained.

1 *Essays in Constitutional Law* (2nd ed. 1964) at p. 18.

Much the same appears to be true of Singapore. There is no single book in which are written all the Statutes and only the Statutes. Lawyers, even practitioners are, however, accustomed to the many fictions with which the law abounds, and it is convenient sometimes to speak *as if* such a book did exist: to assume the existence of a notional statute book, and it is this notional book of which I am speaking this evening.

The nearest equivalent to such a book would appear to be a full set of annual volumes of legislation. If that is the case then the question arises as to how far back one should go, *i.e.* what constitutes a full set of annual volumes of legislation. It is my argument this evening that we should go back 150 years — to 1834 — and I must now try to explain and justify my starting point.

I start in 1834 because it was in that year that the relevant provisions of the Indian Charter Act of 1833 [2] came into force under the terms of which the Governor General of India in Council was first vested with legislative authority over all the territories administered by the East India Company, including therein, of course, the Straits Settlements, and therefore Singapore. Section 43 of the Act provided:

> the said Governor General in Council shall have power to make Laws and Regulations for repealing, amending or altering any Laws or Regulations whatever now in force or hereafter to be in force in the said Territories or any Part thereof, and to make Laws and Regulations for all Persons, whether British or Native, Foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the Jurisdictions thereof, and for all Places and Things whatsoever within and throughout the whole and every part of the said Territories.

This wide ranging grant was subject to a limited number of exceptions which would appear to be somewhat narrower than those subsequently imposed on colonial legislatures by the Colonial Laws Validity Act,[3] and was of course shared with that of the English Parliament, of which we will speak later.

There had, of course, been earlier attempts to legislate for Singapore. In 1823 Raffles purported to issue a number of Regulations for his newly established settlement. In the view of one writer, Emily Hahn, so effective was Raffles as a legislator that: "Until Singapore was captured and occupied by the Japanese in 1942 they, i.e. [The Regulations] still served and with a few minor changes served well".[4] That is, of course, rubbish. That Raffles had any authority to legislate for Singapore is in principle improbable. At that time, although he held the courtesy title of Lieutenant-Governor, Bencoolen, over whose destinies he was supposed to preside, was but a Residency, and he had no power to legislate for Bencoolen, let alone for Singapore. In any case in the following year Singapore was joined, with Malacca, to the then Presidency of Prince of Wales' Island (as Penang was then

[2] 3 & 4 Will. IV c. 85.
[3] 28 & 29 Vic. c. 63.
[4] *Raffles of Singapore* (1946) at p. 512.

officially known) to form the Straits Settlements,[5] and all trace of Raffles' so-called Regulations disappeared, to be but recently disinterred and published in the pages of the *Malaya Law Review* as a matter of antiquarian interest.[6]

A second attempt to legislate for Singapore was made in 1830 by the Governor and Council of Prince of Wales' Island to which, as we have just noted Singapore was now joined. Now although Prince of Wales' Island was a Presidency, and had been one since 1805, it was unusual in that with but one small exception, the Governor and Council thereof, possessed no legislative power, either under the First Charter of Justice of 1807 or even under the Second Charter of 1826. The one exception derived from the provisions of the Charter Act of 1813.[7] That Act conferred on all Governors in Council, specifically including Prince of Wales' Island, power to impose duties of customs and other taxes, and in furtherance of that power section 99 provided that:

> it shall and may be lawful for such Governor General in Council and Governors in Council respectively, to make Laws and Regulations respecting such Duties and Taxes, and to impose Fines, Penalties and Forfeitures, for the Non-payment of such Duties and Taxes, or for the Breach of such Laws or Regulations, in as full and ample manner as such Governor General in Council respectively, may now lawfully make any other Laws or Regulations, or impose any other Fines, Penalties or Forfeitures whatsoever; and all such Laws and Regulations shall be taken Notice of without being specifically pleaded as well in the said Supreme Court and Recorders Courts and Court of Judicature at Prince of Wales Island respectively, as in all other Courts whatsoever, within the said British Territories.

One may note in passing the marginal difficulty that since the Governor in Council was only empowered to make Laws or Regulations under that provision "in as full and ample manner as [they] may now lawfully make any other Laws or Regulations", and since the Governor in Council of Prince of Wales' Island *had* no other power to make any laws or regulations, it could have been argued that the grant of power was somewhat empty of substance. It was not in fact so argued. The specific reference to Prince of Wales' Island seems to have been regarded as sufficient to make it clear that the Governor in Council thereof could indeed make laws and regulations under that section. And they did so, and in 1830 they re-drafted earlier regulations so made and extended them to both Singapore and Malacca.

Just how limited this power was, was made clear by Malkin R. in *Sassoon* v. *Wingrove*[8] in which the validity of one of these Regulations— the so-called Singapore Land Regulation — was challenged. The Recorder had little difficulty in holding that the Regulation was *ultra vires:*

> In seems to admit of no question that the Regulation is not within the Statute, as not being one for the imposition of duties and taxes,

5 The title of the settlements varied in the early years, that of the "Straits Settlements" emerging as the one most consistently used.
6 (1968) 10 M.L.R. 248.
7 53 Geo. III c. 155.
8 (1834) Leic. 388.

> and it is not even contended that it can be supported except on the authority of that Statute on the footing of which it clearly appears by its title and preamble to be passed. Now I think it quite clear that the real object of this regulation was to regulate the tenure and transfer of land, and not to impose a duty on it, although for the purpose of defraying the expense of the office to be constituted for its enforcement certain fees were imposed and to an amount which would probably make it profitable to the Government.

It should be added, however, that this Regulation nevertheless acquired a sort of retrospective validity by virtue of the provision of section 2 of Act 10 of 1837 passed by the Governor General of India in Council. That section provided that:

> every person holding land in any of the Settlements aforesaid, under a grant or title registered in conformity with the provisions of the said Regulations, shall be entitled to hold such land for such terms and on such conditions as are specified in such grant or title.

The other regulations — eight of them — were regarded as valid and were enforced in cases such as *Edwards* v. *East India Co.*[9] and *Lim Beh* v. *Opium Farmer.*[10] Any of them which had not been repealed by 1889 were however repealed by the Statute Law Revision Ordinance of that year.[11] The text of these Regulations were reconstructed and published in the *Malaya Law Review.*[12]

The Charter Act of 1813 did therefore confer legislative power of a sort on the Presidency of Prince of Wales' Island and that power was exercised with respect to Singapore, but the power was so limited in its extent that it scarcely qualifies to stand at the commencement of the Singapore Statute Book.

One may perhaps compare the attenuated authority of Prince of Wales' Island with the plenary power of the Governor General of India in Council. In *R.* v. *Burah*[13] the Judicial Committee of the Privy Council, speaking of the "Legislative Council of India", said:

> The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises, whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which affirmatively, the legislatively powers were created, and by which negatively they are restricted. If what has been done is legislation, within the general scope of

9 (1840) 3 Kyshe 6.
10 (1842) 3 Kyshe 10.
11 Ord. No. 8 of 1889.
12 (1971) 13 M.L.R. 294.
13 (1878) 3 App. Cas. 859 at p. 904.

> the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited … it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

Not only, therefore, was the legislative authority of Prince of Wales' Island a puny thing compared with that of the Governor General of India in Council, it was also, so far as Singapore was concerned, of remarkably short duration, for in 1830, shortly after the Regulations above referred to were passed, Prince of Wales' Island ceased to be a Presidency and whatever limited legislative powers it possessed were lost.

The Straits Settlements having thus lost whatever legislative power Prince of Wales' Island had possessed by virtue of its Presidency status under section 99 of the Charter Act of 1813, fell under the authority of the Governor General of Bengal, and it appears to have been assumed that the Straits Settlements then came within the powers which the Governor General possessed to issue Regulations for the Presidency of Fort William and for Bengal.

Now the Governor General of Bengal possessed legislative authority under two statutory provisions, apart from the Charter Act of 1813 to which we have just referred. The first under section 36 of the Regulating Act of 1773 which provided:[14]

> it shall and may be lawful for the governor-general and council of the said united company's settlement at Fort William in Bengal, from time to time, to make and issue such rules, ordinances, and regulations, for the good order and civil government of the said united company's settlement at Fort William aforesaid, and other factories and places subordinate, or to be subordinate thereto, as shall be deemed just and reasonable (such rules, ordinances, and regulations, not being repugnant to the laws of the realm) and to set, impose, inflict and levy, reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances, and regulations; but nevertheless the same, or any of them, shall not be valid, or of any force or effect, until the same shall be duly registered and published in the said supreme court of judicature, which shall be, by the said new charter, established, with the consent and approbation of the said court.

Second under section 23 of the so-called Act of Settlement of 1781 which provided, with rather more economy of wording that:[15]

> the governor general and council shall have power and authority, from time to time, to frame regulations for the provincial courts and councils.

In point of fact very little use was made of the legislative authority conferred by the Regulating Act of 1773 and the whole vast body of Bengal Regulations was based on the power conferred by the Act of 1781 and whilst this power was the least appropriate for any attempt by the Governor General of Bengal to legislate for the Straits Settlements it was the power which was used for this purpose. At least four such Regulations were issued — of which three merely amended

[14] 13 **Geo.** III c. 63.
[15] 21 **Geo.** III c. 70.

earlier Prince of Wales' Island Regulations. Their validity was, however, highly suspect, and Malkin, the Recorder was most dubious, for although their validity does not appear to have been judicially challanged, he wrote about the matter thus:[16]

> Now, I very much doubt whether, even if the Bengal Government has *prima facie* the power contended for in places which might from time to time become subordinate to them, it would apply to the Straits Settlements. In these the King, by his Charter, had fixed the law, and had abstained from giving any power to alter it. It would be a very large construction of the power given to the Company to vary the government and to annex these settlements to any other Presidency, to say that it implied the right of subjecting them not merely to a different administration, but to a new legislature.
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> But, besides this, I do not know where the supposed power of the Bengal government originates. They had no legislative authority except what was expressly given to them; and I know of no delegation of such power except that contained in the statute 13 Geo. III c. 63 s. 36 and the subsequent statutes grounded upon it, which enable them to make Regulations for the good order and civil government of the settlement at Fort William and other factories and places subordinate or to be subordinate thereto, and that given by the statute 21 Geo. III c. 70 s. 23, and the subsequent Acts grounded on it, which gives the power of framing "Regulations for the provincial courts and councils". It is upon these latter provisions that the power of legislation for the mofussil is supposed to depend.
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> Now, I am not aware that the former Acts have ever been supposed to extend to such a case as that of the Straits Settlements since their annexation to Bengal; but, at all events, if the Regulation is to be maintained under them, it is void for want of registration, not here, but at Calcutta. If, on the other hand, the second class of statutes is referred to, they only extend to the making of Regulations for provincial courts and Councils, they can have no effect where none such exist, as is the case here.

Whatever may have been Malkin's opinion it remains true that at least one of the Bengal Regulations appears to have been thought to have been in force until 1886, for in that year it was repealed by the Straits Settlements Registration of Imports and Exports Ordinance.[17] Section 2 of the Ordinance provided that:

> Upon the coming into operation of any Regulations made by the Governor in Council under the provisions of this Ordinance, Indian Regulation III. A.D. 1833 … shall be repealed but all officers holding office under the repealed Regulation shall continue to hold their offices and to act under the Regulations to be made under this Ordinance.

Despite this the Bengal Regulations have even less claim to constitute the beginning of the Singapore Statute Book than do the Prince of Wales' Island Regulations.

16 Special Report of the Indian Law Commissioners 1843. No. 2 Letter dated 6 July 1835.
17 Ord. No. 1 of 1886.

Having thus dismissed Prince of Wales' Island and Bengal from contention I must now eliminate one other contender for anniversary honours, namely the English Parliament. It is true that the English Parliament, although it lost the American colonies on the issue of taxation, never abandoned its claim to imperial legislative authority, and would therefore in its own eyes, have had legislative authority over Singapore at least from 1824 the date on which the island was ceded in full sovereignty, and indeed it was by an Act of the English Parliament that Singapore was transferred to the East India Company that very year.[18] Yet this legislative authority was but sparingly exercised and the English Parliament appears more in the guise of a *deus ex machina* interfering with the Singapore Statute Book — usually in the interests of obtaining imperial uniformity over a limited number of matters or to implement international agreements — than constructively contributing to its development, although in the interests of accuracy one should note that the 1828 Act[19] amending the criminal law of the East India Companies' possessions is of course earlier than that of the legislation passed by the Governor General of India in Council. Despite this it seems not unreasonable to assert that the English Parliament, although it has, from time to time, contributed to the contents of the Singapore Statute Book — of which we shall speak in due course — cannot claim the honour of constituting its origin. Having thus laboriously eliminated all rivals I am left with the Governor General of India in Council as the sole survivor and possessor of the field as being entitled to anniversary honours.

That being the case we may assert, to go back where we started, that a full set of annual volumes of Singapore legislation is one which goes back to 1834, and we may ask the question whether Singapore is supplied with such a commodity. The answer is Yes, or to be more accurate it would be possible for such a set to be assembled, for the Superintendent of Government Printing in India and the Government Printer of the Straits Settlements and then Singapore published every year an annual volume of legislation passed in the proceeding year. Admittedly many of the early volumes are now as rare as hen's teeth, but by means of the marvels of the photocopier the National University of Singapore, Law Library does — with but one slight exception — have a full set.

The exception relates to the Acts of the Governor General of India in Council. These are not held by the University Law Library in the form of annual volumes of legislation but in the form of a "revised edition" published by Theobald. Now Theobald, following the practice of all editors of revised editions of legislation does not print the full text of Acts which by the date of the revised edition have been repealed — although he does provide a synopsis of such repealed Acts.

I draw attention to this deficiency not, of course, in any sense of criticism but merely as an academic *jeu d'esprit*, for a practitioner would have to be very unlucky to have pass over his desk a brief which took him back to an Indian Act the text of which was not printed in the revised edition of Theobald — and even if such a brief did arrive the inevitable telex to London would soon remedy the deficiency.

18 5 Geo. IV c. 108.
19 *9* Geo. IV c. 74.

Reference to Indian Acts encourages me to open a brief parenthesis to draw your attention to a problem which has but recently been very close to my heart, namely the problem of determining which Acts passed by the Governor General of India in Council were regarded as applicable in the Straits Settlements and thus formed part of the Singapore Statute Book. During the years from 1834 to 1867 the Governor General in Council passed nearly 1,000 Acts (I know because I have counted them) and many of these had, of course, neither relevance for, nor application to, the Straits Settlements. Surprisingly, determining which of those Acts were applicable is a matter of some difficulty, for draftsmen of Indian Acts at that time did not always draft with that degree of precision which we today would regard as desirable, and indeed on occasion seemed even to forget that the Straits Settlements fell within their bailiwick. For their part the authorities in the Straits Settlements seemed sometimes to pick and choose from among the Indian Acts those, which, from tune to time, took their fancy. The Gazettes of the time would from time to time, print the text of Indian Acts, but what they printed seemed more often than not to reflect their need to fill up space rather than any serious attempt to decide which of the Acts were really applicable.

As Braddell remarked: "Some of the Indian Acts are of such a character that nothing short of a judgment of the Supreme Court can determine whether they apply to the Straits or not".[20]

At all events so great was the confusion that under the Statute Law Revision Ordinance 1889,[21] Commissioners were appointed to inquire into the matter and they were empowered to publish a volume containing the text of any Indian Acts that were to be regarded as being in force: any Act not included in the said volume were forthwith to cease to be applicable. It should be stressed that the Commissioners were not appointed to undertake a piece of academic research: they were appointed to tidy up the Straits Settlements Statute Book. This they did. They selected those Acts, or parts of Acts, which in their view should continue in force: and they repealed the rest.

You will find in Volume III of the 1955 Revised Edition of the Laws of Singapore a table entitled "Chronological Table of Indian Acts": It isn't. It is a listing of those Acts which were reprinted in the volume published by the Commissioners appointed under the Statute Law Revision Ordinance 1889 indicating the subsequent fate of those Acts. If a purely personal plug may be permitted a full chronological table of Indian Acts indicating those applicable to the Straits Settlements has only just been completed by the former law librarian here, Elizabeth Srinivasagam and myself and will be included in the *Sesquicentennial Chronological Tables of the Written Laws of the Republic of Singapore 1834-1984* to be published by the Malaya Law Review to mark the twenty-fifth anniversary of the Review and the 150th anniversary of Singapore Statutes.

Having spoken at length of the Indian Acts I must confess that their significance to the practitioner of today is somewhat limited. Of the 300 or so Indian Acts that we have identified as having been applicable to the Straits Settlements only one remains on the Statute

20 Proceedings of the Legislative Council for the Straits Settlements for 1878.
21 Ord. No. 8 of 1889.

Book today — the Wills Act[22] — passed in 1838 and still going strong. All the others have passed from the scene, their grave tended only by a handful of academic lawyers — although it should perhaps be added that the last to go did not depart this scene until 1969.

In any case Acts passed by the Governor General of India in Council after 1 April 1867 ceased to be applicable to the Straits Settlements when they ceased to be part of the Indian administration and was constituted as a separate Crown Colony with its own Legislative Council from which until 1942 the series of Straits Settlements Acts and Ordinances emanated, continuing to add to and substract from the contents of the notional statute book which had commenced with the legislative activities of the Governor General of India in Council.

The years 1942 to 1946 saw some dramatic changes when the island fell under military administration and such legislation as was passed was issued by the military authorities none of which made any permanent mark on the statute book.

With April 1, 1946 came the establishment of the then Colony of Singapore with its own Legislative Council which forthwith commenced its own contributions to the statute book which it had inherited from the Straits Settlements under the various provisions for insuring continuity of law. None of the many and momentous political changes which occurred in the years that followed had vital impact on the statute book save that during the years 1963 to 1965 when Singapore formed part of Malaysia, Malayan and Malaysian legislation became applicable either by extension of earlier legislation or by direct enactment during the relevant years. Short though this period was, during those years a number of significant additions were made to the Singaport Statute Book.

Since 1965 the Singapore Parliament has continued the good work of adding to and mercifully, sometimes, taking away from the statutes in force in the Singapore Statute Book.

Thus far I have spoken only of the statutes themselves, but what of subsidiary legislation? This is a subject which, in this context, sometimes receives, I would venture to suggest, insufficient emphasis, justified by the argument that it is of but minor importance. With this view I would disagree. Let me take, as but one example, the Singapore Passport Act.[23] The Act occupies but two pages of the current revised edition of the statutes, but the gist and pith thereof can be paraphrased in as many lines thus: Singapore citizens may obtain Singapore passports on such terms and conditions as the Minister may by Regulation prescribe.

Now one cannot in this day and age take exception to this form of legislation. Parliamentary time is short: Regulations may be more easily made and revoked than statutes. The point remains that the sum and substance of the Singapore law relating to passports is not to be found in the Act, but in the subsidiary legislation made thereunder, and the argument can therefore be mounted that in so far as

22 Cap. 41.
23 Act No. 51 of 1970.

it is necessary to maintain a full set of statutes it is equally necessary to maintain a full set of subsidiary legislation.

Let us therefore glance briefly at the facilities actually available for maintaining a full set of subsidiary legislation, ignoring, as we reasonably may, subsidiary legislation made under Indian Acts which today could hardly be said to possess even antiquarian charm.

The situation is much the same as for the statutes, that is to say a full set could be compiled, but the only way to do so would be to collect a full set of Gazettes, and again the University Law Library here, which is the only library with which I am familiar, does possess such a full set.

We have been speaking, using a dental analogy, of full sets, but it must be conceded that for many, indeed possibly most, purposes such a set would be neither useful nor usable, and what a practitioner wants — apart from more money — are those indispensible editions of legislation, both statutory and subsidiary, which are currently in force. Before, however, we turn to discuss such editions, allow me briefly to advert to the importance of having available full sets of legislation. Many legal problems depend for their solution not upon the statutes which are currently in force, but upon those of yesteryear. The problem of the validity of a will or a marriage may arise many decades after the will was drawn or the marriage celebrated. Issues involving land title may well take the practitioner even further back into the past. Quite apart, therefore, from what is usually dismissed, with varying degrees of contempt, as mere academic interest, a full set of legislation remains an indispensibly necessary tool for both courts and practitioners, although I would not suggest that every practitioner needs to maintain such a set in his office.

Let us therefore turn to those indispensibly necessary revised editions of legislation, both statutory and subsidiary, which is currently in force. The usefulness of such editions depends upon two factors: they must be up to date, and they must be comprehensive.

There is, of course, really no solution to the problem of keeping legislation up to date. The law changes from day to day: publishing becomes increasingly more difficult and more expensive. Some countries can achieve a weekly publication: for most a monthly publication has to suffice. Various devices have been tried from time to time. First we had the pocket supplement which went out of fashion when they stopped making pockets large enough, but more especially when someone discovered the beatitude of loose-leaf which was for a while regarded as a universal panacea in this field. Now I have nothing against loose-leaf systems — some of my best friends are very loose-leaf—the trouble is that the use of a loose-leaf format does not of itself solve any problems unless it is accompanied by an organisation at one end to arrange for the regular issue and distribution of replacement pages, and an organisation at the other end to arrange for the pages to be replaced, preferably in the right place. If that organisation is not present then the operative word in a loose-leaf system is indeed loose — and too often loose can become lose.

The ultimate solution is probably already on, or even over the horizon, provided by the marvels of modern technology — the by now

ubiquitous computer. It will not, I suppose be long before all legislation is stored in the memory of some elephantine computer, providing instant up-date of the law. It will not, of course be an unmixed blessing, for there will be a new terror added to counsel's task in court. One can easily imagine a situation in which the judge with one eye on his V.D.U. and one ear tuned into counsel's argument, interrupting him with the comment; "Mr. So-and-So, that might have been the position when you started your argument, but the law has just changed." All those lovely leather bound volumes will disappear, libraries will be no more and the law will have lost some of its charm, at least for people like me. Mercifully that is still some years away, and we may return to the present and look at the situation with regard to revised editions of statutes in Singapore.

Here the situation is in reasonably good shape. Starting with Theobald's editions of Indian Acts there have been, by my count, eight editions of the Singapore Statute Book, with a ninth in process of being prepared, which maintains a respectable average of one every fifteen years. These editions are kept up to date by the Acts supplement to the Gazette and by annual volumes of legislation, so that within the limits of practical reality no one has too much to complain about.

Turning to subsidiary legislation the picture is, at the moment, rather more gloomy. The first and only revised edition of the subsidiary legislation appears to have been that published in 1905. An attempt was made in the 1930's by the then Solicitor-General to produce a second such edition, but it appears never to have been completed. No attempt appears to have been made since then, but there is every reason to hope that this grave omission will be remedied in the very near future.

It is, however, on the score of completeness that the various revised editions of the Singapore Statutes most signally fail to pass the test. The point with respect to which the revised editions lack comprehensive coverage lies in but one word — a word which has haunted me now for twenty years — the word is reception.

It is a fact that if a visitor to Singapore, wishing to become acquainted with the laws thereof, purchases, at no little expense, a set of Singapore Statutes, he will not get all that he needs. After flipping through its handsome pages he may well comment — have you no law relating to Sale of Goods, Marine Insurance, Partnership, Bills of Lading? He must then be taken by his hot little hand and it must be explained to him that because of the operation of section 5 of the Civil Law Act, the statutes relating to such matters are not to be found in the Statutes of Singapore, but in the Statutes of England.

The Statutes of Singapore, no matter how many volumes you collect, are not complete unless you add thereto the statutes of England. Let us suppose that our visitor — having presumably an open ended expense account — then purchases a set of the statutes of England. He may, not unreasonably, ask for some guidance on which of those statutes are applicable within Singapore — and in so asking he has reached the ultimate mystery of the Singapore legal system. It is into this ultimate mystery that I now wish to plunge, bearing in mind as I do so that, as Lord Cranworth sighed in *Wicker* v. *Hume:*[24]

[24] (1858) 7 H.L.C. 124.

> Nothing is more difficult to know than which of our laws is to be regarded as imported into our colonies_____Who is to decide whether they are adapted or not? That is a very difficult question.

Now English statutes come in all sorts of shapes and sizes and may become applicable to Singapore in all sorts of different ways. Allow me to touch upon some of them.

First there are those English statutes passed before 1826 and applicable under the interpretation placed upon the Charters of Justice. It is a fact, regrettable in the eyes of some, inevitable in the eyes of others, that the Supreme Court has consistently adhered to the view, more implicitly than explicitly, that the effect of the Second Charter of Justice was to introduce into the Straits Settlements English Law (although this evening I speak only of the statutes) as they stood in 1826, in so far as they were suitable to the local circumstances of the time and subject to such local legislation as existed, and this has remained the position notwithstanding the many changes that have befallen the island over the last 150 years and more.

This implies that the English Statute Book, from the Statute of Merton 1235 down to 1826 needs to be scrutinised to see which of the thousands of statutes passed during that period are applicable to Singapore. Some questions have been resolved: an unknown number remain unresolved. It would appear to be true that few Singapore practitioners seem to be unduly perturbed by this: they are but rarely seen agonizing over the applicability of English statutes — being, it would appear, more concerned over the arrival of English silks — and the conclusion that some would draw, would be that whatever the situation may have been in the dim and distant past, the matter has now been satisfactorily resolved. Unfortunately that may be but a superficial conclusion — it may reflect no more than the well-known principle that what the eye does not see the heart does not grieve over. The lack of *angst* may reflect not satisfaction but merely ignorance.

Quite apart from statutes applicable under the interpretation placed upon the Charters of Justice, and whose continued applicability is based upon an unstated assumption of continuity, we have a body of English statutes whose application is based upon section *5* of the Civil Law Act which as originally enacted as section 6 of the Civil Law Ordinance 1878 read as follows:[25]

> In all questions or issues which may hereafter arise or which may have to be decided in this Colony with respect to the law of partnerships, joint stock companies, corporations, banks and banking, principals and agents, carriers by land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Colony or hereafter to be enacted.
>
> Provided that nothing herein contained shall be taken to introduce into this Colony any part of the law of England relating to the

[25] Ord. No. 4 of 1878.

> tenure or conveyance or assurance of, or succession to, any land or other immoveable property, or any estate right or interest thereon.

I will not weary you by quoting the amendments by which this curious provision has been propped up in a somewhat desperate attempt to preserve its life for a few more years, for the substance of what we are concerned with is contained in the unamended provision.

Whatever may be the interpretation placed upon this section, and as the various attempts at interpretation make clear there is obviously room for considerable difference of opinion, it remains true that the effect of the section is to render English statutes falling within the ambit of the section, applicable within Singapore unless there is Singapore legislation dealing with the same matter. Unlike those English statutes applicable under the interpretation placed on the Charters of Justice, however, this is a continuing reception provision in the sense that English statutes if they satisfy whatever are regarded as the relevant criteria will become applicable even if only passed the day before yesterday, as it were. Just which statutes fall within this category remain unknown. Some issues have been resolved: many others remain uncertain.

There is yet a third category of English statutes which are applicable to Singapore, namely those passed before 1963 and which applied by paramount force by virtue of express words or necessary intendment. One example of such an Act may perhaps be permitted — the Copyright Act 1911.[26] That that Act was an imperial Act applicable to Singapore was clear by section 25(1) thereof which provided:

> This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's Dominions.

Now the Copyright Act 1911 was repealed in England by the Copyright Act 1956,[27] which unlike the Act of 1911 was not an Act which applied outside the United Kingdom by virtue of its own provisions. Section 31 of the 1956 Act merely provided that its provisions might be extended by Order in Council. No Order in Council extending the provisions of the 1956 Act to Singapore was ever made. However paragraph 41 of the Seventh Schedule of the 1956 Act provided that:

> In so far as the Act of 1911 or any Order in Council made thereunder forms part of the law of any country other than the United Kingdom at a time after that Act has been wholly or partly repealed in the law of the United Kingdom, it shall so long as it forms part of the law of that country, be construed and have effect as if that Act had not been so repealed.

and this provision was extended to Singapore, with some modifications, by the Copyright Act 1956 (Transitional Extension) Order 1959. Section 1 of the Order provided that:

[26] 1 & 2 Geo. V c. 46. The argument on this point is reproduced from my Introduction to the *Tables of the Written Laws of Singapore,* which since the Introduction has been omitted from the loose-leaf edition of the Tables may perhaps be repeated here.

[27] 4 & 5 Eliz. II c. 74.

> Subject to the modifications specified in the Schedule hereto, the provisions of the Act so specified shall extend to... all colonies.

and the only provision specified in the Schedule which was thus extended is paragraph 41 of the Seventh Schedule, which we quoted above. The conclusion appears to be that as a result of all this tortuous drafting, the English Copyright Act 1911 is a statute which applies in Singapore.

The example of the Copyright Act, which it should be pointed out provides a relatively simple illustration of an imperial Act, is instructive of the extraordinary complexity of the problem of determining whether such statutes are applicable.

Unfortunately the story does not end there for scattered throughout the statutes of Singapore are other provisions which may well be interpreted as bringing about the application of still further English statutes. A few examples must suffice. Section 5 of the Criminal Procedure Code provides that:[28]

> As regards matters of criminal procedure for which no special provision has been made by this code or by any other law for the time being in force in Singapore the law relating to criminal procedure for the time being in force in England shall be applied so far as the same does not conflict or is not inconsistent with this Code and can be made auxiliary thereto.

Section 79 of the Women's Charter provides:[29]

> Subject to the provisions contained in this Part of this Act, the courts shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings.

The Supreme Court of Judicature Act provides in section 62(1) that:[30]

> The Registrar, the Deputy Registrar and Assistant Registrars shall subject to the provisions of this Act or any other written law have the same jurisdiction, powers and duties as Masters of the Supreme Court, Clerks of Criminal Courts, Registrars and like officers in the Supreme Court of Judicature in England and, in addition, such further jurisdiction, powers and duties as may be prescribed by Rules of Court.

Even the Singapore Armed Forces Act 1972 provides in section 201 that:[31]

> The Queens Regulations for the Army or the Royal Air Force of the United Kingdom and the Queen's Regulations of the Royal Navy of the United Kingdom shall, insofar as they are not inconsistent with the provisions of this Act or of any Regulations made thereunder or any General Orders of the Ministry of Defence,

28 RS(A) No. 2 of 1980.
29 Cap. 47.
30 Cap. 15.
31 Act No. 17 of 1972.

> continue to apply to the Singapore Armed Forces constituted under this Act.

This list of examples sounds, of course, very impressive, but I would not be thought to suggest that the reality is as complex as theory suggests. Indeed I suspect that were one to look into the matter carefully — a not inconsiderable task — the number of English statutes that were found to have significance would be relatively small. It is not, however, the actual number of statutes involved that is significant, but rather the uncertainty that such provisions generate, for provisions such as those I have referred to constitute hidden traps in that, depending upon how they are interpreted, they may attract the application of English statutes. Legislation in this form possesses a certain charm for a hard pressed draftsman, but, and especially when as is usually the case the "reception" is "subject to the provisions of this Act", very little charm for anyone else, for what the draftsman is in effect saying to the profession and the judiciary is — You sort it out for yourselves! This can induce considerable uncertainty as to which English statutes are applicable. More important from our point of view, however, is the fact that even in those cases about which there is but little doubt, the text of such statutes is not to be found in any printed collection of Singapore statutes — apart from the somewhat derisory attempt made in Volume VIII of the 1955 revised edition of the Statutes: whilst clearly it would be impossible to print the text of any statute about whose applicability there remained any doubt.

In my view any such statutes as are applicable within Singapore form part of the notional statute book, in that they are applicable by Singapore courts, in cases to which Singapore law itself is applicable (a *caveat* which I enter merely to exclude the conflict situation) in all cases falling within the ambit of those provisions which call for their application. That is to say that in my view they form part of Singapore law of which the Judges, theoretically at least, are required to take judicial notice — although precisely how they are supposed to do this is not very clear. I suppose one could argue that they constitute a rather special part of Singapore law of which the judges have no notice and which must be, therefore, I suppose, specifically pleaded. The really Draconian solution is to deny that they form part of the Singapore Statute Book at all, which is tantamount to saying that they are not part of Singapore law, although if they are not, then what the judges are doing applying them in cases governed by Singapore law, remains unclear.

The problem of the applicability of English statutes in Singapore is not dissimilar from that of the problem of the application of Indian Acts to the Straits Settlements which we referred to earlier; and indeed Braddell's comment on the Indian Acts applies with even greater force to English Acts. If a mere transient may be permitted to make a suggestion, it would appear not wholly unreasonable to suggest that it should receive the same solution as that which the problem of Indian Acts received, that is to say an authoritative determination of which English statutes are applicable, such as has been accomplished in other countries faced with the same problem, the text of which should preferrably be printed in The Singapore Statutes, and as a consequence a sweeping away of all reception provisions.

This evening we have been speaking of anniversaries. It should perhaps not be forgotten that in the not too distant future Singapore will be celebrating the twentieth anniversary of its emergence as an independent Republic, and it can surely be suggested with safety that a wholly independent statute book is the only one that is consistent with the independence of the Republic.

In closing, for fear not all lectures must come to an end, I would wish to argue that the problems of the Singapore Statute Book — as indeed of any Statute Book — are not matters of mere academic philandering. Concern with such mundane matters may not be as glamorous as the more popular pastime of trying to mould the law closer to one's ideological desires. Indeed in the view of many such preoccupations with full sets, such concern with comprehensive coverage smacks, as an activity of intellectual philately, and yet it has, I would claim a significance, modest though it may be.

In attempting to seek some higher ground by reference to which I can justify this discourse, I would select the principle *ignorantia iuris non excusat.* If this principle is to apply to everyone — except of course members of the legal profession — then there must be (or so I would argue) a duty on somebody somewhere to ensure that all the primary materials of the law are available and easily available to all who run and hopefully read.

The Israelites had their X Commandments, the Romans had their XII Tables, I am not aware that it was ever suggested that somewhere there were other commandments or other tables which might or might not be applicable and which therefore it was not thought necessary to inscribe on the tablets of the law. The printed and published edition of Singapore Statutes, should, I would suggest, faithfully reflect the notional Statute Book which I have been attempting to describe.

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