

BOOK REVIEWS

THE PRIVY COUNCIL CASES MALAYSIA, SINGAPORE, BRUNEI, 1875 - 1990.
Visu Sinnadurai (Ed.). [Kuala Lumpur: Professional Books, and
London: Sweet & Maxwell. 1990. Five volumes. Hardcover: S\$960.00.]

FOR the first time, all available decisions by the Judicial Committee of the Privy Council¹ from Malaysia, Singapore and Brunei² have been collected from their disparate sources and published as a separate series of law reports.³ This fact alone makes the publication (which was eight years in the making)⁴ an extremely important one which should be on the shelf of every practising lawyer in the Commonwealth in general and Malaysia, Singapore and Brunei in particular. The value of such a work to a researcher and an academic is also obvious.

This series of reports comprises a total of five volumes - four substantial tomes of the reports themselves and a slim fifth volume which is a consolidated index cum digest, all handsomely bound. The first volume also contains a valuable introduction by the editor, Professor Dato' Dr. Visu Sinnadurai.⁵ This introduction contains very useful background information and is self-contained, for, as the author points out, important documents have been reproduced in full because of their relative inaccessibility.⁶ The index volume is very comprehensive. It contains both chronological as well as alphabetical tables of cases.⁷ The respective tables of cases and legislation considered would also prove useful to both practitioner and academic alike. There is also a digest of cases arranged by subject-matter. In this regard, however, it is unfortu-

¹ Hereafter the Privy Council.

² And, of course, their antecedents: for example, the Straits Settlements. See, generally, the introductory essay by the editor: *infra*, note 5.

³ Hereafter referred to as *PCC*. Judgments delivered up to 1 October 1990 are included: *ibid.*, Vol. 1, p. 13.

⁴ *PCC*, Vol. 1, p. 12. See, also, *infra*, note 14.

⁵ Presently Commissioner of Law Revision Malaysia and Professor of Comparative Law (and formerly, Dean) at the Faculty of Law of the University of Malaya: see title pages. The introduction is entitled "Appeals to the Judicial Committee of the Privy Council from Malaysia, Singapore and Brunei: An Introduction": *PCC*, Vol. 1, pp. 75 to 114.

⁶ *PCC*, Vol. 1, pp. 13 and 75.

⁷ Including both appellants' and respondents' names, the former being distinguished from the latter by boldprint. It should be noted that both the chronological and alphabetical tables also appear at the beginning of Volume 1. In addition, each of the four substantive volumes has a separate chronological table of cases reported in that particular volume itself.

nate that the headnotes were not reproduced: they would have made for fuller reference prior to actual consultation of the report itself. This omission is, however, a matter of personal preference: it could, for example, be argued that the volume would have become overly cumbersome if the headnotes were included and that the various subject-headings, their relevant sub-headings, as well as the catchwords in the digest itself, would give the reader an adequate indication of the subject-matter of the respective cases. This volume also contains a brief bibliography of books and articles. The scope of the bibliography is clear on its face: it is confined to works *vis-a-vis* the Privy Council in the local context. It is suggested, however, that a more general bibliography might also be usefully included in a subsequent edition of this work. Although the Privy Council sits only as the court of the country concerned,⁸ it is equally clear that its decisions are of relevance to other Commonwealth jurisdictions as well.⁹ General works on the Privy Council might thus also be relevant. Finally, this particular volume might have included alternative citations in both the local and English reports. Although not absolutely crucial, such an inclusion would have made the work more complete.¹⁰

Turning to the actual reports themselves, it is noted (as already alluded to above) that not a few judgments have already been published in a variety of other reports." This should not, however, detract from the significance as well as utility of the work. The only other significant occasion when an attempt was made to collect decisions of the Board together as a *general*¹² work was the series in the *Law Reports* which had a rather short lifespan.¹³ The present work is, in contrast, wholly comprehensive in chronology. In the editor's own words:¹⁴

⁸ See Bartholomew (1952) 1 I.C.L.Q. 392.

⁹ And see, generally, the discussion below.

¹⁰ At least in so far as academics are concerned, since certain journals require citations from the *Law Reports*, whenever available! Even practitioners, however, might find such a facility of at least some use from time to time – e.g., to locate possible counsels' arguments, as to which see, *infra*.

¹¹ Cf. Sinnadurai, *PCC*, Vol. 1, p. 12. See, also, the acknowledgments: *ibid.*, p. 20.

¹² *I.e.*, as a collection of Privy Council judgments from more than one country: in fact, the series mentioned at, *infra*, note 13, included decisions from *diverse* jurisdictions. In this sense, therefore, the present publication is narrower in scope, but is still extremely useful. On comments for expansion of the scope of the project, see, *infra*.

¹³ See the six volumes of the *Law Reports - Privy Council Appeals* from 1865 to 1875. Thereafter, all Privy Council cases were reported together with House of Lords decisions - in the *Appeal Cases* series of the *Law Reports*. But *cf.* the unique situation in India, where there was a separate series under the aegis of the Council of Law Reporting: the *Law Reports - Indian Appeals*, which stretched from Volume 1 in 1873-4 to Volume 77 in 1949-50. Preceding that series were the now-famous reports by Moore. Holdsworth points to some overlap between Moore's reports and the *Law Reports - Privy Council Appeals*, simply because Moore reported for the Council of Law Reporting as well: see XV *H.E.L.*, p. 257, note 5.

¹⁴ *PCC*, Vol. 1, p. 12 (emphasis added).

... the publication of these judgments, a complete collection of which is only available in the Archives of the Privy Council Office in London was undertaken. Over a period of three years, with the kind assistance of the Registrar and his staff at the Privy Council Office *all* these judgments were collected. The arduous task of editing, headnoting and preparing the text for publication took another few years. In all, this Work has taken eight years to complete.

The source of the headnotes is, however, unclear; it appears that, if not written *de novo*, at least some differences must exist compared to the headnotes in other reports.¹⁵ But this may, in the final analysis, be a relatively unimportant point in view of, first, the fact that the actual judgment is all-important and, secondly, that a cursory glance at cases familiar to the present writer reveals, in any event, that the headnotes do accurately reflect the holdings in the respective cases - as far as headnotes generally go. Indeed, in confirming the views just proffered, the learned editor states - a few paragraphs following - that "[t]he format ..., and the style in which the headnotes and catchwords are presented are different to those available in any other law reports. The catchwords, the headnotes and the relevant quotations from the judgments of the salient principles of law enunciated in a particular case have all been written and edited to better serve the practitioner's needs. It is this, I believe, that makes the series of law reports distinct from the others."¹⁶ It is unfortunate, however, that counsels' arguments (sometimes available in the *Law Reports* series)¹⁷ were not also reproduced - although not authoritative, such arguments can be both helpful and interesting.

¹⁵ See the main text at, *supra*, note 14.

¹⁶ PCC, Vol. 1, p. 12.

¹⁷ A random selection of cases that contain such arguments include: *Yeap Cheah Neo & Ors. v. Ong Cheng Neo & Ors.* (1875) 1 PCC 1, (1875) L.R. 6 P.C. 381; *Mahomed Syedol Ariffin. Yeoh Ooi Gark* (1916) 1 PCC 141, [1916] 2 A.C. 575; *Cheang Thye Pin & Ors. v. Tan Ah Loy* (1919) 1 PCC 163, [1920] A.C. 369; *Khoo Hooi Leong v. Khoo Hean Kwee (No. 1)* (1926) 1 PCC 243, [1926] A.C. 529; *Khoo Hooi Leong v. Khoo Chong Yeok (No. 2)* (1930) 1 PCC 327, [1930] A.C. 346; *Isaac Penhas v. Tan Soo Eng* (1953) 1 PCC 621, [1953] A.C. 304; *Mary Ng v. The Queen* (1958) 2 PCC 87, [1958] A.C. 173; *Sze Hal Tong Bank Ltd. v. Rambler Cycle Co. Ltd.* (1959) 2 PCC 105, [1959] A.C. 576; *Aberfoyle Plantations Ltd. v. Khaw Bian Cheng* (1959) 2 PCC 117, [1960] A.C. 113; *Sajan Singh v. Sardara Ali* (1959) 2 PCC 129, [1960] A.C. 167; *Hong Guan & Co. Ltd. v. Jumabhoy & Sons Ltd.* (1960) 2 PCC 145, [1960] A.C. 684; *Stephen Kalong Ningkan v. Government of Malaysia* (1968) 2 PCC 531, [1970] A.C. 379; *Public Prosecutor v. Yuvaraj P.* (1969) 2 PCC 583, [1970] A.C. 913; *Wah Tat Bank Ltd. v. Chan Cheng Kum (No. 2)* (1975) 3 PCC 119, [1975] A.C. 507; *Teh Cheng Poh v. Public Prosecutor, Malaysia* (1978) 3 PCC 435, [1980] A.C. 458; *Bankers Trust International Ltd. v. Todd Shipyards Corporation* (1980) 3 PCC 585, [1981] A.C. 221; *South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturing Employees Union* (1980) 3 PCC 611, [1981] A.C. 363; *Ong Ah Chuan v. Public Prosecutor* (1980) 3 PCC 649, [1981] A.C. 648; *Haw Tua Tau & Ors. v. Public Prosecutor* (1981) 3 PCC 717,

The reports in the first four volumes are arranged in chronological order.¹⁸ An alternative would have been to effect arrangement according to the subject-matter. This is, however, not, in the reviewer's view at least, a crucial point since the overlap of subject-matter (amongst other things) would have rendered use of the index imperative in any event. Further, as has already been stated, the index (in Volume 5) is excellent. What would have further enhanced the value of the reports, however (had time been available), would have been the inclusion of citations to lower court decisions, where available. Arguably, the Board's view of the law in any particular case is the final one. However, lower court judgments often help illuminate issues of law and fact that may either be unfortunately obscured (even at the Privy Council stage) or may not arise (for some reason or other) for consideration by the Board itself.

What, then, of the future? Two points may be made in this regard. First, some commentary on each case would have been ideal. Such commentary could have focused not only on the specific holding(s) in the case itself but also could have placed the case in the context of that particular sphere of local law; the nature of judgments does not often accomplish this as well as academic commentaries. In the opinion of Lord Goff at least, such commentators have the function of synthesising the law.¹⁹ However, the practical constraints on the accomplishment of such a task are acknowledged. Many specialist commentators would have had to be invited and their efforts coordinated, thus holding up production. Now that the reports have been published, they might provide the foundation from which a companion volume of commentary with regard to each area of the law may ultimately be produced. These volumes would, in any event, provide excellent grist for the academic's mill in the form of both articles or even a volume of essays if an exact companion volume cannot be produced. This leads to yet another suggestion: given the successful collection of Privy Council cases from Malaysia, Singapore and Brunei, might not other countries (even those who no longer have appeals to

[1982] A.C. 136; *Jamil bin Harun v. Yang Kamsiah bte Meor Rasdi & Anor.* (1984) 4 PCC 241, [1984] A.C. 529; *Bank Negara Indonesia 1946 v. Lariza (Singapore) Pte. Ltd.* (1987) 4 PCC 721, [1988] A.C. 583; and *Joshua Benjamin Jeyaratnam v. Law Society of Singapore* (1988) 4 PCC 731, [1989] A.C. 608. Reports of counsels' arguments may also be found from time to time in the older local reports: see, e.g., *Khoo Hooi Leong v. Khoo Chong Yeok (No. 2)* (1930) 1 PCC 327, [1930] A.C. 346, [1930] S.S.L.R. 127; and *Tan Ah Boon v. The State of Johore* (1936) 1 PCC 457, [1936] M.L.J. 187.

¹⁸ The chronology of reports is as follows;

Volume 1 - 1873 to 1954

Volume 2 - 1955 to 1972

Volume 3 - 1973 to 1981

Volume 4 - 1982 to 1990

¹⁹ See Lord Goff, "The Search for Principle" (1983) 69 Proceedings of the British Academy, 169.

the Privy Council²⁰) consider similar collections: there could, in other words, be a series of collected Privy Council decisions from various Commonwealth jurisdictions, of which this would be the first 'instalment'. Given the obvious academic as well as practical utility of such a move, it is suggested that it be not a pipe dream but a reality which academics and publishing houses should strive toward.

Secondly, there is the issue of *updating*. This is, in fact, a rather thorny issue. It could, on the one hand, be argued that given the fact that only Singapore and Brunei presently retain appeals to the Privy Council (and only in limited circumstances at that in so far as the former is concerned), a sizeable supplement would take years to produce and that given the fact that such decisions would be published, in any event, in the local law reports, a supplement is not required. It could, on the other hand, be argued that some supplement might be useful for the sake of completeness. If the publication had, however, been in looseleaf format, this would have posed less of a problem. A compromise is suggested: the publishers could produce a looseleaf binder into which subsequent decisions could be placed, which binder and materials would be made available to existing as well as future purchasers of this publication at a nominal fee.

Finally, in view of the abolition of Privy Council appeals in Malaysia²¹ and the drastically reduced role of the Board in Singapore, would the significance of this series of reports be reduced, at least in so far as these two countries are concerned? The influence of the Privy Council as the highest appellate court in both Singapore and Malaysia for an extremely long period of time makes such decisions of continued value. Indeed, quite apart from constituting an historical record of the Board's enormous contribution to the laws of Malaysia, Singapore and Brunei, as well as providing source material for legal scholars adopting a broader perspective, the fact that the Board comprises both Law Lords as well as eminent judges from other Commonwealth jurisdictions ensures a quality of jurisprudence that cannot be ignored.²² And strictly from the perspective of judicial precedent, although I have ventured to suggest elsewhere that decisions of the Board from *other* jurisdictions should not bind local courts,²³ it is clear that decisions of the Privy Council from the country concerned (even after abolition) have a role to play and may even be binding.²⁴ One cannot also ignore the plain fact that English law is clearly the foundation of the Singapore, Brunei

²⁰ Indeed, Malaysia has already abolished all appeals to the Privy Council, whilst Singapore has recently effected restrictions on such appeals. And see, generally, the discussion, *infra*.

²¹ And, indeed, most other Commonwealth jurisdictions generally.

²² See Sinnadurai, *PCC*, Vol. 1, pp. 11 to 13.

²³ See Phang, "'Overseas Fetters': Myth or Reality?" [1983] 2 M.L.J. cxxxix.

²⁴ See, generally, Phang, Rajah & Tan, "The Case for a Re-Appraisal and Re-Statement of the Doctrine of Stare Decisis in Singapore" (in 3 parts) [1990] 2 M.L.J. at pp. lxxxix, xcvi, and cxiii, respectively.

and (perhaps to a lesser extent) Malaysian legal systems. The clear arguments for autochthonous development²⁵ cannot entail a total abandonment of English rules and principles, much less decisions by the Privy Council, lest the baby be thrown out together with the bathwater. And where the most general level of analysis is involved, the quality of Privy Council judgments (already mentioned above) must carry a not inconsiderable amount of weight.²⁶ All these (as well as other) arguments mean that the present work is, and will continue to be, of signal importance; it marks a milestone in the legal literature of the region.

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JUDICIAL MANAGEMENT. By CHOONG AND RAJAH. [Singapore: Butterworths. 1990. xxiii + 285 pp. (including index). Hardcover: S\$195.00.]

THIS book is written by two practitioners who have close links with academia. T.C. Choong was for many years a lecturer in the Faculty of Law at the National University of Singapore, while V.K. Rajah is an adjunct lecturer with the Faculty. The book fails to state to what date the law is at but a dating of the foreword at 3 January 1990 and a reference in the foreword to an English case reported in the *Times* (of London) newspaper of the same date leads to the conclusion that the law is as stated to that date or a few days after (assuming that the report was obtained from the relevant issue of the *Times*, and not from a facsimile copy which took a few days to arrive in Singapore).

The book covers the following aspects of judicial management - alternatives to judicial management; petitioning for a judicial management order; the interim period following the petition; the consequences of the judicial management order; the judicial manager's appointment, powers and duties; the rights of creditors; strategic implications of judicial management for creditors; impact on banking practice; security considerations and documentation; practice and procedure; and law reform.

Judicial management is a recent change in the law which provides for essentially the rescue of companies in financial difficulties. Without such provisions, the fate of insolvent companies would usually be liquidation, with rescue through a scheme of arrangement or a compromise being rather remote possibilities. Basically, judicial

²⁵ See, e.g., Phang, *The Development of Singapore Law - Historical and Socio-Legal Perspectives* (1990), especially at pp. 91 to 96.

²⁶ On generality and specificity in the context of autochthonous development, see Phang, "Of Generality and Specificity: A Suggested Approach Toward the Development of an Autochthonous Singapore Legal System" (1989) 1 S.Ac.L.J. 68.