

## PROHIBITION AND THE JUDICIAL FUNCTION

In *Re Ong Eng Guan's Application* (1959) 25 M.L.J. 92, an order of prohibition was sought to restrain a Commissioner appointed under the (Singapore) Inquiry Commissions Ordinance from conducting his inquiry on the ground that he was biased. Rose C.J. held that the Commissioner was not so biased as to rule him out of performing a judicial function, and he also further held that whether the Commissioner was biased or not prohibition could not be granted as the Commissioner was appointed to inquire into facts and make a report (including recommendations) but had no power to determine the rights of subjects.

The holding that no amount of bias would lead to an order of prohibition in such a case, though it cannot be said to conflict with any authority, is somewhat provoking. It is suggested, with respect, that too much emphasis has been placed on the connection between the two orders of prohibition and certiorari.

Obviously, certiorari cannot be obtained against such a Commissioner because certiorari is a remedy which involves the reviewing and possible quashing of an order, and such a Commissioner makes no order. It is true that it is generally assumed that if proceedings are not suitable for control by certiorari, it follows that they are not susceptible of restraint by prohibition. However, prohibition does not involve the review of an order and the range of proceedings amenable to prohibition may be wider than those amenable to certiorari. Indeed there seems to be no reason beyond its historical origin why certiorari should be confined to reviewing orders, and legislation extending it to the reviewing of reports would not create any difficulties. There are many cases where compliance with the rules of natural justice is desirable and intended even though no order is to result from the proceedings. (Compare *Estate and Trust Agencies (1927) Ltd. v. Singapore Improvement Trust* (1937) 6 M.L.J. 161, 167, [1937] S.S.L.R. 109, 123, *per* Lord Maugham (Privy Council).) One might say, therefore, that prohibition should lie in any proceedings where it is intended that they should be of a character complying with the rules of natural justice, and that a strong candidate for being included in this category would be any proceedings where questions of fact have to be determined after hearing witnesses on oath, where cross-examination is allowed, and where persons affected are represented by counsel who make submissions to the adjudicator. Probably no one would dissent from the proposition that the Inquiry Commissions Ordinance aims at unbiased investigation.

The fact that in cases where the bias became apparent too late in the proceedings for prohibition to be sought there would be no remedy by way of certiorari seems to be an argument for extending certiorari to appropriate cases rather than for denying prohibition where it might be useful.

L. A. SHERIDAN.<sup>2</sup>

1. LL.B. (Leeds); LL.M. student and part-time tutor in Malayan Legal History in the University of Malaya in Singapore.
2. LL.B. (London); Ph.D. (Belfast); of Lincoln's Inn, Barrister-at-Law; Professor of Law and Head of the Law Department in the University of Malaya in Singapore.