" HAS REASON TO BELIEVE "

The decision in *Re Ong Yew Teck* [1] will probably put an end to further h*abeas corpus* applications under the Singapore Criminal Law (Temporary Provisions) Ordinance, 1955. It marks the end of a long trail of attempts to impugn detention orders made under this ordinance and the Preservation of Public Security Ordinance, 1955, on various grounds. It is envisaged that all conceivable grounds of impeaching such orders have by now been exhausted by test actions in the Court.

The issue in this case turned on two grounds — one new and one tried. Firstly, it was contended by the applicant that the person who arrested him had no reason to believe that there were grounds for the arrest as required by section 55(1) of the ordinance, because he had merely acted on the orders of a superior officer; as such the arrest was illegal. Hitherto, it had been the Governor-in-Council's (now the Yang di-Pertuan Negara's) or the Minister's belief that had been impugned. The novelty in the present case lies in impeaching the belief of the arresting officer. However, this attempt went in the footsteps of its precursors. The court disposed of the point by holding that it was the superior officer who carried out the arrest through the instrumentality of his subordinate and he obviously had grounds so to act. The second point raised is the old ground whether the court could go behind the particular officer's belief that he had grounds for the arrest, *viz.* whether section 55(1) of the Criminal Law (Temporary Provisions) Ordinance, imposes a subjective or an objective test. Inevitably both *Liversidge* v. *Anderson*[2] and *Nakkuda Ali* v. *Jayaratne*[3] were considered. Lord Radcliffe delivering the judgment of their Lordships in the latter case[4] made it quite clear that the decision in *Liversidge* v. *Anderson, supra,* does not lay down any general rule as to the construction of such phrases as " has reasonable cause to believe." In the light of Regulation 18B, the expression was held to impose a subjective test but in the setting of other legislation it may well mean that "if A.B. has reasonable cause to believe" is equivalent to "if there is in fact reasonable cause for A.B. so to believe." In *Nakkuda Ali's* case the latter interpretation was given to the expression "has reasonable grounds to believe" i.e. an objective test was adopted by the Privy Council. It would therefore appear that the effect of these two cases is to establish that in every case the degree of discretion conferred by an ordinance must be determined with reference to the legislation in question. Chua J. following this line of approach, held that since the Ordinance precludes the disclosure of facts prejudicial to the public interest, and having regard to the whole context and attendant circumstances of the Ordinance, the legislature could not have intended section 55 to establish other than a subjective test; to hold otherwise would lead to an impasse. It is quite futile for the court to insist that "has reason to believe" imposes an objective test because, since it cannot ask for the material evidence necessary for its decision, such a ruling would be ineffective.

However it is submitted that this need not necessarily be so if the Court had desired otherwise. Firstly, the interpretation that "has reason to believe" is a subjective term is logically questionable. This applies equally to the majority judgment in *Liversidge* v. *Anderson, supra.* In fact Lord Atkin's powerful dissenting judgment in that case, gives a far more accurate and undistorted interpretation of the expression, though whether it was wiser in the circumstances of the time is quite another matter. At any rate it is logically cogent.

The second query is directed to section 53 of the Criminal Law (Temporary Provisions) Ordinance, 1955, which reads, "Nothing in this Ordinance. . . . .shall require the Minister or any public servant to disclose facts which he considers it to be against public interest to disclose." In the instant case the Court gave it a subjective

1. [1960] 26 M.L.J. 67.
2. [1942] A.C. 206.
3. [1951] A.C. 606.
4. at p. 76,

interpretation and held that as such, section 55, when read in conjunction with section 53, must be given a subjective interpretation too. Yet it is submitted, section 53 is not wholly incapable of being read as enabling the Court to look into whether there were in fact sufficient grounds to justify non-disclosure on grounds of public interest. A comparison with section 125 of the Evidence Ordinance (Cap. 4) is provocative. The section reads, "No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure." The Courts have held that in contradistinction to section 124 of the Evidence Ordinance, section 125 does not preclude them from examining the communications claimed to be privileged. (See *Governor-General* v. *Peer Mohammad*.[5]) Section 53 of the Criminal Law (Temporary Provisions) Ordinance is not dissimilar in terminology, to section 125 of the Evidence Ordinance, and thus had the court so desired, by an exercise of judicial gymnastics, it could still have gone quite legitimately into the validity of the detention order, by regarding sections 55 and 55(1) as laying down objective tests.

The case serves to illustrate very clearly that the judicial process is highly creative, and that judges do not merely declare the law as the Blackstonian theory would have us believe. We have in this case a decision which is in complete accord with the whole *raison d'etre* of the Criminal Law (Temporary Provisions) Ordinance, 1955, which was passed with the intention of vesting in the appropriate authorities extraordinary powers enabling them to dam effectively the flood of gangsterism which at one time almost paralysed a whole city. A decision otherwise, though perhaps more accurate logically, would obstruct the administration in implementing a measure which though unpopular, is indispensable to the continued existence of the Rule of Law.

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5. A.I.R. (1956) E.P. 228.