

THE HONOURABLE MR. JUSTICE TAN AH TAH
AN APPRECIATION

I

From one aspect, law is to be observed as a set of absolute principles beyond argument, as a reflection of moral values created by dedicated philosophers and upheld by the finest, most learned and most altruistic amongst us. As we cast our eyes to these Olympian heights, our judges appear as men not far removed from gods; like priests, they are the custodians of the almost magical principles that have come down to us from Plato, Aristotle, Locke, Montesquieu and the rest; and in that rarified atmosphere their function is to interpret and apply the law in accordance with well-tried canons, principles that represent a kind of traditional wisdom. Indifferent to political realities, they reach decisions without reference to the effect of those decisions: so that whether this effect be beneficent or not, their purity never falls for question.

Another, and opposing, aspect lies in the mundane, some might even assert the cynical. Expediency is all; the law is but an instrument that can and should be used by governments in order to create, not absolute justice — for that is beyond the wit of man — but economic and social justice. From this aspect, it is the duty of the judiciary constantly to interpret and re-interpret law in the light of the changing, contemporary demands of society, as reflected in the policies of a representative government. Western ideals may be good enough for a Western environment: but they may well be utterly inappropriate to the needs, demands and pressures of a rapidly changing society under stresses quite unknown to the common law of England.

To assert all this is not to argue that those Olympian heights are particularly hospitable to the common man, or that expediency is desirable. What the two opposing views suggest is that there is virtue in a middle path, if that can be found. In some cases — say, *The Queen v. Liyanage*¹ at one end, or *The Government of Kelantan v. The Government of the Federation of Malaya*² at the other — it cannot be found, and the point of principle enshrined in the case can in no way be the subject of compromise.

Such cases are, however, exceptional. For the most part, the middle ground is that with which we become most familiar, in our studies of the law reports. After all, by their hierarchy, by the traditions of the class to which they belong, both judges and advocates tend to be traditionalist in sentiment and on the right in politics. In the nature of our legal system it seems that this must be so. For the most part

1. (1962) New Law Reports 313.

2. [1963] M.L.J. 355.

trained in a Western tradition, they adhere to and in many ways represent values that belong to Western society, to a culture whose values are already in decay — or at very least, under rapid transformation. Some can and do develop an astuteness to understand the cultural values that are emerging; and their judgments reflect these in a sometimes happy, sometimes unhappy marriage between traditional and novel standards; but they are few.

For the tightrope is difficult to negotiate, the winds that blow fitful and uncertain, and the middle way — as many a Buddhist will tell us — is not easy to discover, although the system is such that of necessity we tend to the familiar, the known and the certain. For a maintenance of these qualities we will pay the price they demand, even if in doing so we lose on occasion the sense of excitement, the thrill of revelation.

II

In that middle way is, for good reasons, to be found that judge most popular with those stern critics, practising lawyers, as well as with those open-hearted fellows, the litigants who maintain the system we enjoy. The middle way is not so easy to attain as might be supposed: patience, skill and caution might be said to be the qualities required of a judge within it — and of course these qualities lack the picturesque virtues of those found on the distant Olympian heights. The young lawyer naturally favours the adventurous judge. When this volume was in course of preparation one of our colleagues made a survey of some of the decisions of the judge who is the subject of this volume and, showing a shrewd sense of psychology for so youthful a spirit, made the following comment upon their author:

“He is content to tread well-beaten paths set by precedent, and appears loath to pursue at length any new line of inquiry. A quick decision would be given which may be correct, but one would have at times welcomed a more detailed and adventurous examination of the issues involved. While his judgments tend to be brief, their merit lies in the fact that they are always clear and strictly to the point. Irrelevant arguments are never pursued, and His Lordship cannot be criticised as having a tendency to ‘cavil on the ninth part of a hair’. The learned judge’s style is formal without being ostentatious, lucid and readable. One experiences no difficulty in following the thread of an argument or understanding a particular turn of phrase. However, the style does not reveal much of the man, whose character and philosophy are either studiously hidden or inherently retiring.”

But, then, one would indeed remember the gentle tiff between Lord Denning and Lord Asquith, so beautifully recorded in the King’s Bench reports of 1951:³

“If you read the great cases of *Ashby v. White*, *Pasley v. Freeman* and *Donoghue v. Stevenson*,” said Lord Denning, “you will find that in each of them the judges were divided in opinion. On the one side were the timorous souls who were fearful of allowing a

3. *Candler v. Crane, Christmas and Co.* [1951] 2 K.B. 164, at pp. 178, 195. And, of course, we all then remembered what happened to *Candler v. Crane, Christmas and Co.* thirteen years later.

new cause of action. On the other side there were the bold spirits who were ready to allow it if justice so required. It was fortunate for the common law that the progressive view prevailed." To which Lord Asquith made his famous reply: "I am not concerned with defending the existing state of the law or contending that it is strictly logical — it clearly is not. I am merely recording what I think it is. If this relegates me to the company of 'timorous souls', I must face that consequence with such fortitude as I can command."

Well, we suspect that judges must be split into rather more complex groups than Lord Denning ever had in mind: and can it be, after all, that even in the case of that holder of progressive views Time has exacted, and is exacting its own toll: a toll which brings us from our Olympian heights to the quieter valleys favoured by such souls as can command a certain fortitude? It is not easy, in these days of changing values, to hold on to the traditional, the old, the correct, the morally sound, to what is not novel, exciting or adventurous.

Yet if society is to preserve any stability at all, the job must be done. It is not a spectacular one, and the rewards are few enough: but we hope that this volume will serve as a tribute to one whose qualities of patience, skill and dedication to the law are well-known, not only to the bar but to the public at large. On the occasion of the twenty-first anniversary on the bench of the Honourable Mr. Justice Tan Ah Tah, we dedicate to him these pages.

III

Mr. Tan Ah Tah was born on 30 May 1906 in Penang. After a period at Penang Free School, under a memorable teacher, Mr. A.W. Frisby, he went to Christ College, Cambridge (where Winfield lectured) as a Queen's scholar. Leaving England with several degrees and membership of the Inner Temple, he returned to Penang and spent some ten years in practice there with the firm of Logan, Ross and Samuel.

We think that this decade exercised an invaluable influence upon the development of the legal personality of the learned judge: for it imparted a catholic sense of the law as embracing all aspects of human behaviour. Be that as it may, in January 1941 Mr. Tan Ah Tah was appointed to the Straits Settlements Legal Service as Deputy Commissioner of Estate Duties, and was firmly embarked on a career that was to take him to the distinction "of being the first local-born Colonial Legal Service officer to be appointed Acting Puisne Judge to preside on the Bench of the Colony of Singapore", as the *Malayan Law Journal* noted in July 1954. That day lay still far in the future, however; in the period in between Mr. Tan Ah Tah became in 1946 Commissioner of Estate Duties in Singapore; and in 1954 he was appointed to his first purely judicial office, that of District Judge in Singapore.

Of that period Mr. M.W. Maxwell, speaking on behalf of the junior bar in 1954, referred to "the tact and consideration and helpfulness" invariably extended by Mr. Tan Ah Tah when sitting in the District Court. Indeed, Mr. Justice Tan Ah Tah considers that "being a District Judge is ideal training for the Bench." That the tact, consideration and helpfulness referred to by Mr. Maxwell persisted, as an integral

part of the character of Mr. Justice Tan Ah Tah, those who have appeared before him can testify: for when in July 1954 he was appointed as acting Puisne Judge (an appointment confirmed in October 1955) those qualities were not diminished by his elevation, but seemed rather to have become accentuated.

A further distinction befell Mr. Justice Tan Ah Tah when, with effect from 20 December 1963, he was appointed a Judge of the Federal Court of Malaysia. That Court was an appellate tribunal hearing appeals from the High Courts of West Malaya, Singapore and the Borneo territories in Kuala Lumpur, Ipoh, Penang, Kuching, Kota Kinabalu and Singapore. However, on the occasion of the divorce of Singapore from Malaysia, work as a Federal Judge ceased.

In November 1971 Mr. Justice Tan Ah Tah formally retired from the bench. However, his departure was saved by the Constitution (Amendment) Act of that year. Under the amending Act the President, acting on the advice of the Prime Minister, can direct a Judge of the Supreme Court of Singapore who has ceased to hold office, whether on retirement or otherwise, to sit again as a Judge, for such period or periods as the President may specify. In consequence — the President having issued an appropriate direction — the proceedings to mark Mr. Justice Tah Ah Tah's retirement on 19 November 1971 had the unique character of *vale atque ave* or, as the learned judge said, *chai chien* (再見). In the course of those proceedings Mr. G. Starforth Hill addressed an observation to Mr. Justice Tan Ah Tah, which is worth recording here. "During that time [on the Bench of the High Court]" he said, "you have made a very substantial contribution to the jurisprudence of this country, combining at the same time judicial wisdom and experience, as it grew, with humanity and understanding, qualities which individually, my Lord, are hard to find, but in combination are almost unique. Your career on the Bench, too, my Lord, has in a way exemplified the transition from the old to the new — from the old Singapore to the new Singapore." This is indeed a concise description of Mr. Justice Tan Ah Tah's career, both in the area of his contribution to the development of local law, and in relation to the span of his career.

IV

Elsewhere in this volume we publish a list of the reported judgments of Mr. Justice Tan Ah Tah, broken down into various subject headings. From this list the reader can obtain some idea of the wide range of cases heard by him, ranging from those involving Muslim law to such matters as the Internal Security Act 1960.

In an interview, we commented upon this range of cases and enquired of the learned judge whether he had any preference for any particular area of the law. After meditating upon the question, he observed that he had no particular preference for any especial area of law: for he found — and the comment was revealing of himself as a lawyer — interesting aspects in all cases. Thus, he noted, while the law of landlord and tenant might appear unattractive at first, when one considers that a particular area of that law affects the rights and liabilities of the parties appearing in a case: then, indeed, that area acquires a lively significance. His zest for the law — perhaps a legacy of his years in private practice — is revealed in that comment.

That experience in private practice has been of assistance to him over the years Mr. Justice Tan Ah Tah admitted; and when we asked him whether he considered such experience desirable in a candidate for high judicial office, he offered the opinion that it did help. We think it is significant that he graduated (as it were) to the bench by way of private practice and periods as Commissioner of Estate Duties and Official Assignee and Public Trustee. These latter duties may be said to constitute part of the judicial processes of the courts: so that in the course of his career Mr. Justice Tan Ah Tah has never at any time been directly involved in the processes of prosecution.

Opinions on the matter of course vary, and too rigid a system of entry to the bench would obviously deprive us of many brilliant men — several members of the Singapore bench spring to mind. Too close an identification with the prosecution process can, however, on occasion leave its mark on a man, unless leavened with and tempered by other experience. In that regard the career of Mr. Justice Tan Ah Tah suggests that a variety of experience grounded in private practice is an admirable basis for judicial work. We know that a system of judicial appointment based on political rewards tends to produce (according to a former U.S. Attorney General, Herbert Brownell) the “gray mice” of the judicial establishment, “ordinary likeable people of small talent”. This was not true of the experience or of the Service from which Mr. Justice Tan Ah Tah emerged.

Yet experience of law and life in itself is of little value to a judge unless it has produced the judicial temperament. Here, the subdued manner of Mr. Justice Tan Ah Tah conceals the thoughtfulness of one much concerned with society, the anxiety of a modern man desirous — within the limitations imposed upon him by his judicial office — of assisting in improving the lot of others. As an example of this concern, he is Chairman of the Council of Governors of the Cheshire Homes, President of the Singapore Boy Scouts Association (Stamford District) and co-patron (with Sir John Gielgud) of the Singapore Stage Club.

When asked of memorable cases, Mr. Justice Tan reflected, then referred to *Vasudevan Pillai*:¹ a case that went up to the Privy Council, where the Judicial Committee agreed with Mr. Justice Tan, the trial judge. It must indeed be singularly pleasing to have one's judgment confirmed by a distant battery of powerful judicial intellects.

Other cases springing to mind were on the criminal side. In particular, the appeal of *Sunny Ang*² dealt with a case of murder without a body; and in a more recent case Mr. Justice Tan Ah Tah heard at first instance, together with Mr. Justice Choor Singh, the case of a mistress murdering the wife of her lover: another unusual circumstance. That case is reported on appeal,³ when the appeal was dismissed and the accused was subsequently hanged — probably (the record is obscure) the first woman to be hanged in Singapore.

In discussion we found Mr. Justice Tan had stimulating ideas on the Civil Law Act: a measure in which, he suggested, a more precise definition of what English law is received in and forms part of the law

1. [1968] 2 M.L.J. 16. A note appears on this case, *infra*, p. 173.

2. [1966] 2 M.L.J. 195. A note appears on this case, *infra*, p. 182.

3. [1972] 2 M.L.J. 75.

of Singapore is necessary. Indeed, he implied that the whole position under the Act should be the subject of careful examination. When, for example, a lawyer in Singapore is unable to offer any definite opinion on such a basic question as that of, say, the age of majority (beyond the statement that in a question relating to a commercial matter it is eighteen, and in any other case twenty-one: an answer worthy of the Delphic oracle) there is indeed something amiss. We hope that the matter soon falls for review: when, perhaps, the learned judge himself could preside over any body looking into and making recommendations on the reception of English law in Singapore.

V

In this brief essay we have endeavoured to give a picture in the mind, as it were, of a judge who in his quiet but effective way has assisted in maintaining stability, continuity and tradition in the Republic over a critical and testing time. The stresses of politics over the past two decades could have seriously affected, indeed prejudiced beyond repair, the integrity of the Singapore bench. That this has not happened, and that in the international perspective created and maintained by its own appellate structure the reputation of the Singapore courts has been successfully upheld, has been due to the wisdom and skill of the judge we honour here, of his colleagues, and of those who appoint them. In his turn he has provided a model to which others may look for strength, support and inspiration: for, when all is said and done, it is not the adventurous souls who best serve the system we enjoy. The litigant seeks to embark upon no new adventure, but simply to obtain that justice which it is the object of our system to administer; for him, the faithful, conscientious and impartial judge offers the best safeguard and remedy. As long as such men as Mr. Justice Tan Ah Tah are on the bench, such a litigant need have no fear.

We are grateful to all those who have contributed to this volume. While there is no obvious common thread to the articles within it, all contributors share, we believe, an affection for the judge in whose honour this edition is published, and to whom it is dedicated in the hope that for many more years he will be with us and, in his quiet and unassuming way, continue to assist in the development of a local jurisprudence.

R. H. H.

C. A. Y.

An Anecdote

A delightful incident involving Mr. Justice Tan Ah Tah occurred on a social occasion shortly after the sitting of the Court of Criminal Appeal when a European lady gushingly told him: "Oh, Mr. Tan Ah Tah, I am so glad to meet you! You know, I am not related to 'X', but I am so relieved you quashed his conviction. Wasn't it a terrible thing?" "Yes, Madam," came the quiet reply, "in the case of 'X' not only was he not guilty, he may even have been innocent".

DAVID MARSHALL

MR. JUSTICE TAN AH TAH's REPORTED JUDGMENTS

ADMINISTRATIVE LAW

Vasudevan Pillai & Anor. v. The City Council of Singapore [1968] 2 M.L.J. 16.

Sithambaran v. Attorney-General [1972] 2 M.L.J. 175.

AGENCY

Bankers & Traders Insurance Co. Ltd. v. Allied Insurance Services [1969] 1 M.L.J. 81.

BANKING

Gian Singh & Co. Ltd. v. Banque de L'Indochine [1972] 1 M.L.J. 146 at p. 147.

BILLS OF LADING

Bank Negara Indonesia v. Kie Hock Shipping Co. Ltd.; Bank of China & Ors. 3rd Party: Hong Lian Trading Co. Ltd. 4th Party [1963] M.L.J. 138.

CARRIAGE OF GOODS BY AIR

The Borneo Co. Ltd. v. Braathens South American & F.E. Air Transport A.S. [1960] M.L.J. 201.

Shriro (China) Ltd. & Ors. v. Thai Airways International Ltd. [1967] 2 M.L.J. 91.

COMPANY LAW

Re Asian Organisation Ltd. [1961] M.L.J. 295.

Re Fraser & Neave Ltd. Tan Keng Siong v. Tan Hock Kiang & Ors. [1967] 2 M.L.J. 282.

Re Hume Industries (Far East) Ltd. Hume Industries (F.E.) Ltd. v. Humes Ltd. [1974] 1 M.L.J. 167.

CONTRACT

The Singapore Harbour Board v. Austasia Line Ltd. [1961] M.L.J. 229.

Capitol Limited v. Ow Leung & Ors. [1965] 2 M.L.J. 145.

Robin & Anor. v. Goh Boon Choo [1965] 2 M.L.J. 215 at p. 220.

CONVEYANCING

Robin & Anor. v. Goh Boon Choo [1965] 2 M.L.J. 215 at p. 220.

CRIMINAL LAW AND PROCEDURE

- Salha v. Reg.* [1959] M.L.J. 110.
Lee Ah Cheong v. Reg. [1959] M.L.J. 123.
Ghani. Jonit v. Regina (No. 2) [1959] M.L.J. 225.
Lena v. Regina [1961] M.L.J. 258.

CRIMINAL TRIAL

- Suha bin Haji Serat v. Reg.* [1956] M.L.J. 252.

CUSTODY OF ILLEGITIMATE CHILD

- Re Miskin Rowter* [1963] M.L.J. 341.

DAMAGES

- Pay Eng Kee v. Ramasamy* [1963] M.L.J. 177.
Lim Chuan Cheng v. The Borneo Co. Ltd. [1964] M.L.J. 351 at p. 357.
Ang Tiong Seng v. Goh Huan Chir [1970] 2 M.L.J. 271.

DEBTORS, ARREST

- Ashoka Traders v. Gobind P. Vasandani* [1972] 1 M.L.J. 144.

DIVORCE

- L. v. L.* [1956] M.L.J. 145.

ESTATE DUTY

- Re Syed Ahmad Alsagoff, Deed.* [1963] M.L.J. 39.

FAMILY LAW

- Ng v. Lim* [1969] 1 M.L.J. 139.

GAMING

- Reg. v. Chew Thia Hiang & Ors.* [1958] M.L.J. 17.
Reg. v. Ang Tian Seng [1958] M.L.J. 21.

HOUSING AND DEVELOPMENT ORD., 1959

- Yong Nam v. Housing & Development Board* [1966] 2 M.L.J. 258.

HUSBAND AND WIFE

- Lim Yam Heng v. Choo Swee Choo (f)* [1955] M.L.J. 176.
Re Lee Gee Chong Deceased; Tay Geok Yap & Ors. v. Tan Lian Cheow [1965] 1 M.L.J. 102 at p. 114.

INCOME TAX

- A.B. Ltd. In re,* [1957] M.L.J. 143 at p. 151.
P.Q.R. v. The Comptroller of Income Tax, Singapore [1961] M.L.J. 273.
Comptroller of Income Tax v. R.S.T. [1962] M.L.J. 216.
S.T.U. v. The Comptroller of Income Tax [1962] M.L.J. 220.
Q. v. Comptroller of Income Tax, Singapore [1969] 1 M.L.J. 225.
Comptroller of Income Tax v. S. & Co. (Pte.) Ltd. [1972] 2 M.L.J. 234 at p. 239.

INSURANCE

Yong Moi & Anor. v. Asia Insurance Co. Ltd. [1963] M.L.J. 329.
Bankers & Traders Insurance Co. Ltd. v. Allied Insurance Services
[1969] 1 M.L.J. 81.

INTERNAL SECURITY ACT, 1960

Lim Kim Hong & Ors. v. Public Prosecutor [1966] 1 M.L.J. 191.

LAND LAWS

Koh Peng Moh v. Tan Chwee Boon [1962] M.L.J. 353.
Fong Chong Cheng v. The Public Trustee [1967] 2 M.L.J. 262.

LANDLORD AND TENANT

Khadijah binte Abdullah v. S.I.A. Alsagoff [1957] M.L.J. 90 at p. 96.
The Happy World Ltd. v. Estate & Trust Agencies (1927) Ltd. & Anor. [1958] M.L.J. 155.
Cheong Chin Nam (Property) Ltd. v. Chio Giok Poh (m.w.) [1958] M.L.J. 212.
Ng Chik Puah v. Chop Hoe Thong [1962] M.L.J. 349.
Kian Seng & Co. v. Ban Hin Lee Bank Ltd. & Ors. [1964] M.L.J. 207.
Low Teck Cheng v. Leong Wah; Lim Kay Poh 3rd Party, [1964] M.L.J. 372.
Ponnudurai v. Javatileka [1965] 2 M.L.J. 185.
United Overseas Bank Ltd. v. Sin Bian Sea Transport [1968] 2 M.L.J. 69.
Bank Negara Indonesia v. Philip Hoalim [1972] 1 M.L.J. 233 at p. 237.

MASTER AND SERVANT

Lim Chuan Cheng v. The Borneo Co. Ltd. [1964] M.L.J. 351 at p. 357.
Vasudevan Pillai & Anor. v. The City Council of Singapore [1968] 2 M.L.J. 16.

MERCANTILE LAW

Hong Teck Guan & Anor. v. Lam Soon Cannery Ltd. [1959] M.L.J. 207.

MONEY LENDING

Karuppiah v. Kehar Singh [1965] 2 M.L.J. 58.

MUSLIM LAW

Re Mutchilim alias Ashrin, decd.; Haji Mawar v. Attorney-General [1960] M.L.J. 25.

NEGLIGENCE

Tan Geok Tee v. Kho Hock Choo (w) & Anor. [1958] M.L.J. 138.
The Singapore Harbour Board v. Austasia Line Ltd. [1961] M.L.J. 229.
Mohamed Hashim v. Lim Ah Too & Anor. [1969] 2 M.L.J. 205.
Ang Tiong Seng v. Goh Huan Chir [1970] 2 M.L.J. 271.

PARTNERSHIP

Ting Tien Kwang & Ors. v. Kong Sung Seng & Ors. [1964] M.L.J. 427 at p. 429.

Tham Kok Cheong & Anor. v. Low Pui Heng [1966] 2 M.L.J. 52.

PENAL CODE

Ling Ngan Liong v. Public Prosecutor [1964] M.L.J. 20.

Sunny Ang v. Public Prosecutor [1966] 2 M.L.J. 195.

PORT AUTHORITY

Wing Tai Garment Manufactory (Singapore) Ltd. v. The Port of Singapore Authority [1972] 1 M.L.J. 198.

PRACTICE AND PROCEDURE

N.V. Koninklijke Paketvaart Maatschappij (Royal Packet Navigation Co. Ltd.) v. Yee Chang & Co. Ltd. [1959] M.L.J. 97.

The "Vanda" [1960] M.L.J. 283.

Chua Wah Keow v. Ng Ho Huat & Anor. [1961] M.L.J. 321.

Pay Eng Kee v. Pamasamy [1963] M.L.J. 177.

Lee Lian Choo v. Lee Kar Choo [1964] M.L.J. 363.

Mahmood bin Ghani v. Seow Sin Hwa [1967] 1 M.L.J. 277.

Shriro (China) Ltd. & Ors. v. Thai Airways International Ltd. [1967] 2 M.L.J. 91.

The Mutual Life Insurance Company of New York v. The Saint Christopher (Owners); The Saint Christopher [1969] 1 M.L.J. 213.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Humphrey v. Humphrey [1956] M.L.J. 201.

SALE OF GOODS

Mohamed Mydin v. Ramiah [1965] 1 M.L.J. 33.

SHIPPING

Kwangtung Provincial Bank v. Osaka Shoshen; and Ban Hin Lee Bank Ltd., Third Party Osaka Shoshen Kaisha v. Ban Hin Lee Bank Ltd. [1957] M.L.J. 179 at p. 182.

Chan Buck Kia v. Naga Shipping & Trading Co. Ltd. [1963] M.L.J. 159.

The Mutual Life Insurance Company of New York v. The Saint Christopher (Owners); The Saint Christopher [1969] 1 M.L.J. 213.

TRADE MARK

McAlister & Co. Ltd. v. Pasuma (1960) Ltd. & Ors. [1961] M.L.J. 298.

White Hudson & Co. v. Asian Organization Ltd. [1965] 1 M.L.J. 186.

TRUST AND TRUSTEES

Re Syed Ahmed Alsagoof, Decd. [1960] M.L.J. 147.