HABEAS CORPUS IN SINGAPORE

Due to rapid political changes and the appalling waves of crime over the recent years, Singapore was compelled to pass the Preservation of Public Security Ordinance, 1955,[1] and the Criminal Law (Temporary Provisions) Ordinance, 1955, empowering public officers with sweeping powers, including the much debated wide power of arrest. Consequently there has been a series of applications to the High Court for the writ of habeas corpus *ad subjiciendum et recipiendum* by people who were arrested under either of the above two Ordinances. Practically all of them failed in their application. My humble view is that they will continue to fail. It is with this apprehension that this article is written, laying out the assessed position of an intended applicant for the writ of habeas corpus.

Never before has the High Court of Singapore been more called upon to perform its ancient function of standing between the executive and the members of the public. There were medieval precedents for resistance by the judges against arbitrary acts which were contrary to the principles of the common law.[2] To prevent its functions being usurped, the court strongly resented any move by the administration to place its officers above the law. This sort of spirit finds it difficult to flourish today in view of our law. There was a marked retreat in each habeas corpus case. All the grounds arising from the two Ordinances on which the success of an applicant depended were utterly defeated in battles which did not receive the best from both sides. Here I shall endeavour to discuss these grounds and show how each met its death in the recent cases on habeas corpus.

Ultra Vires

In *Re Choo Jee Jeng,*[3] counsel for the applicant struck at the root of section 3(1) of the P.P.S.O. as he contended that the Singapore Legislative Assembly, being a subordinate legislature, had no extra-territorial jurisdiction[4] and therefore had no power to legislate that — "if the

1. For the rest of this article it will be called the P.P.S.O.
2. W. S. Holdsworth, *History of the English Law,* vol. 2, pp. 561-564. In 1550, there was an instance when the common law judges refused to obey the orders of the Council because they considered that such obedience would be a breach of their oaths to obey the law.
3. (1959) 25 M.L.J. 217.
4. See *Macleod* v. *A.-G. for New South Wales* [1891] A.C. 455-458.

Governor in Council[5] is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security *of Malaya*[6] or the maintenance of public order therein or the maintenance therein of essential services, it is necessary so to do, the Chief Secretary[7] shall by order under his hand make an order directing that such person be detained for any period not exceeding two years." [8] It was therefore contended that section 3(1) was ultra vires the Legislative Assembly established in Singapore by the Singapore Order in Council, 1955. This argument was rejected.[9]

The contention on the point of ultra vires took a new road in the subsequent case of *Re Lee Yew Seng.*[10] The applicant was detained under the Criminal Law (Temporary Provisions) Ordinance, 1955. Under sections 47 and 48 of this Ordinance an order of arrest made by the Minister must be referred to an Advisory Committee which must then make a written report and recommendations to the Yang di-Pertuan Negara. The Yang di-Pertuan Negara may cancel or confirm such an order. But the Advisory Committee is appointed by the Minister himself.[11] In this case there were irregularities in the constitution of the two appointed Advisory Committees. The appointment was not officially notified in the Government *Gazette.* A joint secretary was appointed to attend to the two Advisory Committees though there was no provision in the Ordinance to that effect. The identities of the members, except the two chairmen, of the Committees were undisclosed. Therefore rule 3 of the Criminal Law (Advisory Committee) Rules, 1958,[12] dealing with the constitution of the Advisory Committee was ultra vires the Ordinance. The court, in refusing to accept the above contention by the applicant, said: "... the procedure, followed by the Minister, in general, by the Rules that he has made

5. Now the Yang di-Pertuan Negara: s.3 of the Preservation of Public Security (Amendment) Ordinance, 1959.

6. Italics are mine.

7. Now the Minister for Home Affairs: s.3 of the Preservation of Public Security (Amendment) Ordinance, 1959.

8. S.3(1), P.P.S.O.

9. Ambrose J. rejected the above contention. By s.2 of the Interpretation and General Clauses Ordinance (Cap. 1), "Malaya" is defined to include the State of Singapore and the Federation of Malaya. See also s.52 of the Singapore Constitution Order in Council. In reply to the maxim "extra territorium jus dicenti impune non paretur" he relied on Earl Jowitt's *Dictionary of English Law* and an article by Professor H. A. Smith in (1923) 1 *Canadian Bar Rev.* 338, 349-50. But see criticism by L. A. Sheridan in (1960) 23 *M.L.R.* 77.

10. (1960) 26 M.L.J. 37.

11. S. 51.

12. Made under s.59(l), Criminal Law (Temporary Provisions) Ordinance, 1955.

under section 59 of the Ordinance is not contrary to natural justice and is not ultra vires. Moreover I do not consider that the applicant, in particular, has suffered any substantial injustice by reason of the procedure that have been followed."[13]

Subjective/Objective tests on Statutory Phrases like "is satisfied...", "has reason to believe...", etc.

Both the P.P.S.O. and the Criminal Law (Temporary Provisions) Ordinance, 1955, purported to grant to public officers statutory discretion in deciding whether certain persons should be detained. Section 3 of the P.P.S.O. allows arrest "if the Yang di-Pertuan Negara *is satisfied* with respect to any person..."[14] Section 47 of the Criminal Law (Temporary Provisions) Ordinance, 1955 says:

> Whenever the Minister is satisfied with respect to any person, whether such person be at large or in custody, that such person has been associated with activities of a criminal nature, the Minister may with the consent of the Public Prosecutor —
>
> (*a*) If he is satisfied that it is necessary that such person be detained in the interests of public safety, peace and good order, by order under his hand direct that such person be detained for any period not exceeding one year from the date of such order; or
>
> (*b*) if he is satisfied that it is necessary that such person be subject to the supervision of the police, by order direct that such person be subject to the supervision of the police for any period not exceeding three years from the date of such order.[15]

In addition section 55(1) provides:

> Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has *reason to believe*[16] there are grounds which would justify the detention of such person under section 47 of this Ordinance.

This kind of statutory discretion has aroused a great deal of dissatisfaction from the detainees who, more often than not, strongly feel that their detentions are unjustified. At least they must be given a chance to know specifically what wrongs they have committed. The fate of a detainee hangs on the court's interpretation of the statutory words which create the ministerial discretion. A detainee would definitely contend that the objective test should be adopted by the court. An objective test is one which is established by appeal to the common consensus of opinion. Therefore if a minister "is satisfied" or "has reasonable cause to believe" he must, under such a test establish

13. *Per* Rose, C.J., 26 M.L.J. 40.

14. Amended by s.3 of the Preservation of Public Security (Amendment) Ordinance, 1959.

15. Substituted by Ordinance 56 of 1959.

16. Italics are mine.

facts which show the reasonableness of his "satisfaction" or "belief." On the other hand the subjective test does not depend on the common consensus of opinion. A minister's statement that he is "satisfied" or "has reasonable cause to believe" is conclusive. The court could not inquire beyond this so long as it is the intention of the legislature. This is the line which our court has taken. The intention of the Singapore Legislative Assembly must prevail. "The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed."[17] It should be noticed that in practice the intention is ascertained by our court from the words of the statutes only, and not from any other external aids. This is an application of the strict interpretation rule which demands that when statutory words are "plain and clear" then they must be adhered to even if it results in absurdity and injustice.[18] It is humbly submitted that this method of interpretation should not apply to phrases like "is satisfied" and "has reason to believe" as contained in the P.P.S.O. and the Criminal Law (Temporary Provisions) Ordinance. These phrases are far from being "plain and clear." On the contrary, they are some of the most doubtful statutory phrases which ever confront the courts.

By section 380 of the Criminal Procedure Code it is required that the writ of Habeas Corpus shall contain a copy of all the causes of the prisoner's detainer endorsed on the writ or on a separate schedule annexed to it. But this requirement is defeated by the court's interpretation of the P.P.S.O. and the Criminal Law (Temporary Provisions) Ordinance that it is not allowed to examine the truth of the return to the writ. This hurls us back to the old English eighteenth century attitude. In the eighteenth century, the writ disclosed a terrible defect in that the court found itself powerless to examine the truth of any return made by a gaoler. Steps were taken to remedy it. In 1758, a bill was put before the House of Lords who in their turn consulted the judges. They were of the opinion that the court was concerned not with the truth of the return, but with its sufficiency in point of law to justify a detention. A golden opportunity was lost. Therefore it means that so long as the detention order complies with the procedure of the relevant ordinance it amounts to a complete answer to a writ of habeas corpus. Despite section 3 of the Habeas Corpus Act, 1816, this old eighteenth century attitude is clearly reflected in the twentieth century case of *Greene* v. *Secretary of State for Home*

17. *Per* Holmes J. in *Johnson* v. *United States* (1908) 163 F. 30, 32 and Viscount Simon in *Emperor* v. *Sarma* (1944) L.R. 72 I.A. 57, 71.

18. *Lord Fitzgerald-Hornsey* v. *Monarch Bldg. Society* (1889) 24 Q.B.D. 1, 5; Lord Esher in *St. John, Hampstead* v. *Cotton* (1886) 12 App. Cas. 1, 6; Maxwell, *Interpretation of Statutes,* 10th ed., p. 5.

Affairs,[19] where it was held that so long as the return to the writ be sufficient in law it was unnecessary for the Home Secretary to submit an affidavit so that the court could examine into the truth of the facts. This means that the Home Secretary was not bound to justify to any court the grounds on which he conceived himself to have reasonable cause to order the detention.

In *Re Choo Jee Jeng*[20] learned counsel for the applicant submitted that where a statute required that a public officer should be satisfied of something before exercising a statutory power, if it could be shown that there were no grounds on which he could be so satisfied, the court might infer either: (a) that he did not honestly form that view or (b) that, in forming it, he could not have applied his mind to the relevant facts. In other words, counsel for the applicant was asking the court to apply the objective test. The learned counsel based his contention on the Privy Council case of *Ross-Clunis* v. *Papadopoullos.*[21] This high authority was brushed aside without any discussion on it. It was held that the above two inferences could not be drawn since a statement of the grounds of detention had been supplied to the applicant in accordance with section 5(2) of the P.P.S.O. and, this being so, the applicant had failed to establish that there was no ground on which the governor could be satisfied. At this juncture would it not be pertinent that the adequacy of the grounds be considered? The facts which influence the public officer's opinion that he should arrest someone must be adequate otherwise the opinion arrived at is not honest. Only the adequacy of facts can vouch the honesty of opinion.

However in the later case of *Re Ong Yew Teck*[22] there was a slight sway of the court's attitude. It indicated that it might examine the sufficiency of the grounds of detention. It lamented that it would be futile to examine the matter further[23] since information was confidential under section 53.[24] One may infer that had the information been made available the court would examine the adequacy of the grounds of detention. However, would this lament be necessary if the court heard the case in camera?[25] In *Re Choo Jee Jeng*[26] this was flatly refused even though the statement of the grounds, as supplied to

19. (1941) 58 T.L.R. 53.
20. (1959) 25 M.L.J. 217.
21. [1958] 2 All E.R. 23, 33.
22. (1960) 26 M.L.J. 67.
23. 26 M.L.J. 69.
24. Criminal Law (Temporary Provisions) Ordinance, 1955.
25. Keeton: "Liversidge v. Anderson," (1942) 5 *M.L.R.* 162, 171.
26. (1959) 25 M.L.J. 217.

the detainee, was no secret at all. This was in effect an extension of the fluid principle of "subjective test" in *Liversidge* v. *Anderson*[27] to apply to the question of whether the grounds of detention are adequate. Thus it gives the minister absolute discretion to determine what are the grounds which are sufficient to justify a detention.

In *Re Ong Yew Teck* a final attempt was made to induce the court to adopt the objective test on phrases like "the Minister is satisfied," "has reason to believe" and the like. "After all, words such as these are commonly found when a legislature or law-making authority confers powers on a minister or official. However read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power. But if the question whether the condition has been satisfied is to be conclusively decided by the man who wields the power, the value of the intended restraint is in effect nothing."[28] In *Re Ong Yew Teck,* the applicant was detained under sections 47 and 55(1) of the Criminal Law (Temporary Provisions) Ordinance, 1955. This time the learned counsel for the applicant tried to adopt a new line of argument in that instead of arguing that the objective test should be applied to the Yang di-Pertuan Negara[29] or the Minister, he contended it should be applied to the police detective who actually arrested the applicant.[30] He alleged that the police detective himself at the time he made the arrest had no "reason to believe" there were grounds which would justify the detention of the applicant under section 47 of the Ordinance and consequently the arrest was illegal. The court would not have this and shifted back the whole test to the D.S.P.[31] who ordered the arrest. The police detective was a mere instrument of the D.S.P. who acted within section 55(1) and he had "reason to believe" that there were grounds which would justify the detention of the applicant under section 47. Here the court put a full stop to the matter, refusing to examine the existence of the facts which constituted the "reason to believe." It is interesting to note that in this latest case, the battle had narrowed down to two authorities only: (i) *Nakkuda Ali* v. *Jayaratne*[32] (a Privy Council case) and (ii) *Liversidge* v. *Anderson*[33] (a House of Lords case). The applicant placed all his stakes on the former authority. In that case the respondent, the Controller of Textiles in Ceylon, cancelled the applicant's textile licence under regulation 62 of the Defence (Control of Textiles) Regulations, 1945. Regulation 62

27. [1942] A.C. 206.

28. *Per* Lord Radcliffe, *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66, 77.

29. Formerly the Governor-in-Council but amended by Ordinance 56 of 1959.

30. S.55(l), Criminal Law (Temporary Provisions) Ordinance, 1955.

31. Deputy Superintendent of Police.

32. [1951] A.C. 66.

33. [1942] A.C. 206.

expowered the Controller to do so "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer." The Judicial Committee of the Privy Council decided that the words "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer" were to be treated as imposing a condition that there must in fact exist such reasonable grounds, known to the Controller, before he could validly exercise the power of cancellation. However, the Solicitor-General on the other hand contended that section 55(1) imposed a subjective test, in other words that the court could not inquire into the grounds of the belief which led to the arrest of the applicant. In support of this contention he cited the case of *Liversidge* v. *Anderson.* In that case the plaintiff, who had been detained under the Defence (General) Regulations 1939, regulation 18B, of the United Kingdom, brought an action against the Home Secretary for false imprisonment and that case directly involved a question as to the meaning of the words (in regulation 18B): "if the Secretary of State has reasonable cause to believe any person to be of hostile associations ..." It was held by the House of Lords, Lord Atkin dissenting, that the court could not inquire into the grounds for the belief which led to the making of the detention order.

Confronted with the two above authorities, the principles of which are poles apart, the court attempted to strike a happy medium which did not turn out so happily. It said that in every case the degree of discretion conferred by a statute or regulation must be determined in reference to the statute or regulation in question. In other words the intention of the legislature must prevail, whether good or bad.[34] The key to this intention was found in section 53 of the Ordinance:—

> Nothing in this Ordinance or in any rules made under section 59 of this Ordinance shall require the Minister or any other public servant to disclose facts which he considers it to be against the public interest to disclose. [35]

The learned Mr. Justice Chua said: "I now come to the crucial point. Who is to decide the issue of 'reason to believe'? D.S.P. Ong Kian Tong himself or the Court? If it is for the Court to decide then the Court must have all the material evidence before it otherwise it would be futile to ask the Court to decide. It is quite clear that the information that D.S.P. Ong has are confidential. . ." (and then he quoted section 53).[36]

34. See p. 326, *ante.*

35. Would it not be against the interest of the public that their members could be so easily arrested and gaoled?

36. 26 M.L.J. 69.

It is to be observed that the decision of the learned judge was heavily based on section 53, though at first glance it appeared to be based on an interpretation of sections 47 and 55(1). Therefore it is humbly submitted that to pronounce[37] that section 55(1) imposes a "subjective test" is an inaccurate expression of the learned judge's mental process. The true ratio decidendi is thus obscured. There was also a tinge of strange hint that his lordship would be prepared to examine the evidence, the adequacy of the ground of detention, the bona fides of it, etc., had he not been hindered by section 53.

The court could have also said that the action of the Minister was purely administrative and therefore not open to judicial review.[38] The main question is: Is the minister in arriving at the decision under a duty to act judicially? He is under such a duty if in exercising his discretionary power he has to hear evidence and base his decision on it. He is not if in arriving at a decision he has to consider the question of arrest only from the point of policy and expediency.[39] But when a minister of Singapore is "satisfied" and orders the arrest of a person, he is obviously satisfied of the sufficient proof of facts on which a man is to be arrested. To arrive at this, he must decide on evidence and not on consideration of policy or expediency. No doubt the minister is entitled, when making an Order, to take into consideration questions of policy as the order is an administrative act. But before he comes to the decision to issue the order he has to consider and weigh the evidence before him. In this particular instance he is under a duty to act judicially. It is submitted that this is the correct approach as adopted by Gunasekara J. in *Subramaniam* v. *Minister of Local Government and Cultural Affairs.*[40]

After the case of *Re Ong Yew Teck* one is left wondering whether a House of Lords decision is of greater weight than one from the Judicial Committee of the Privy Council. The court in this case and in the former case of *Re Choo Jee Jeng* clearly leaned in favour of the former. It is humbly submitted that since the Judicial Committee of the Privy Council is the highest organ of our hierarchy of courts, its decision should have binding force in those cases. It is true that we in Singapore (and also Malaya) have no precedent to this effect but we may draw guidance from other Commonwealth countries, *e.g.* in

37. 26 M.L.J. 69, last paragraph: "For these reasons I am of opinion that S.55(l) imposes a subjective test and as D.S.P. Ong Kian Tong honestly supposed that he had reason to believe the required thing this Court cannot go behind his statement that he had such reason to believe."

38. Keeton: (1942) 5 *M.L.R.* 162, 170, 171.

39. *Carltona, Ltd.* v. *Commissioners of Works* [1943] 2 All E.R. 560; *R.* v. *Manchester Legal Aid Committee* [1952] 1 All E.R. 480, 490.

40. (1957) 59 N.L.R. 254, 260.

Australia, the Supreme Court of Victoria (Full Court) declared that decisions of any English court, except those of the Privy Council were not binding on it.[41] "The Judicial Committee of the Privy Council is by Imperial Statute placed, as to matters within its jurisdiction, in effect at the head of the judicial system of every British possession outside the United Kingdom, and as to all matters within its jurisdiction we are bound by its decisions."[42] From, here a further step should be advanced. It has been seen that when the Privy Council is considering an appeal from State A, it could be influenced by a previous appeal case from State B.[43] However I am not denying the fact that the Privy Council is also influenced by English cases. In fact in practice the Privy Council seems to place its own decision on an appeal from a dominion at par with a decision of the House of Lords.[44]

Logically, on the ground of uniformity, there is as much reason for following decisions of the Privy Council on appeals from the supreme courts of Canada, New Zealand, Australia, Ceylon or South Africa, all of which like our own are or have been under the common corrective power of the Privy Council. Therefore our court at all events should not be zealous in following decisions of an English court and much more so a decision which the Privy Council itself has seriously doubted.

The reception of this House of Lords case of *Liversidge* v. *Anderson* had been taken too much for granted. The necessary laborious reassessment of it is lacking. It is humbly submitted that there are at least two main features in this case by which it could be distinguished from *Re Ong Yew Teck.*[45] First, it could be pointed out that there is a difference between the phrase: (i) "reasonable cause to believe" which was the main bone of contention in *Liversidge* v. *Anderson,* and (ii) "in respect of whom he has reason to believe" in section 55(1). In (i) the phrase gave the executive a much wider discretion than (ii). In (ii) the language itself shows that the discretion is narrow and positive, reaching a point which demands an explanation. Second, the legislation involved in *Liversidge* v. *Anderson* was "delegated legislation" passed in time of war. But this was not so in *Re Ong Yew Teck.* Lord Atkin's dissenting speech could have won the day had the conditions been otherwise. It is worth noting that Lord Atkin in his dissenting judgment relied heavily on a lengthy list of decisions of non-delegated legislation passed during peace time,

41. *Gannon* v. *White* (1886) 12 V.L.R. 589; 8 A.L.T. 46.

42. *Per* O'Connor J., *Brown* v. *Holloway* (1909) 10 C.L.R. 89, 102.

43. See *Hasham* v. *Senab* [1960] 2 W.L.R. 374.

44. *Commissioner of Stamp Duties of N.S.W.* v. *Francis Harmsworth Way* [1952] A.C. 95. See also *Ex parte Dunne* (1873) 13 S.C.R. (N.S.W.) 210.

45. (1960) 26 M.L.J. 67.

embodying similar phrases like "...arrest without warrant of any persons etc. ..." Lord Atkin said:[46]

> I select a list of thirteen statutes from the valuable work on Police Law by Dr. Moriarty, the late chief constable of Birmingham, 6th ed., pp. 16, seq.
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> " Aliens Restriction Acts, 1914 and 1919, Aliens Order 1920, art. 19: Any person who acts in contravention of this order or is reasonably suspected of having so acted may be arrested without warrant by any constable."
>
> " Diseases of Animals Act, 1894, s. 43: A constable may stop and detain any person . . . reasonably suspected of being engaged in committing an offence against the Act . . ."
>
> " Army Act, 1881, s. 154: On reasonable suspicion a deserter or absentee without leave may be arrested without warrant."
>
> " Children and Young Persons Act, 1933, s. 13 ... a constable may arrest without warrant any person . . . whom he has reason to believe has committed an offence if he believes such a person will abscond." Note the two beliefs, one qualified, the other not.
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> " Criminal Law Amendment Act, 1912 s. 1: A constable may arrest without warrant any person whom he shall have good cause to suspect of having committed . . . any offence ..."
>
> " Dangerous Drugs Act, 1920, s. 14: Any constable may arrest without warrant any person who ... is reasonably suspected by the constable of having committed ... an offence ... if he has reasonable ground for believing that that person will abscond ..."
>
> Note by contrast "Firearms Act, 1937, s. 6: ... If any person refuses to give his name or address or is suspected of giving a false name or address or of intending to abscond the constable may arrest him without warrant."
>
> " Municipal Corporations Act, 1882, s. 193: A borough constable may while on duty arrest any idle or disorderly person . . . whom he has just cause to suspect of intention to commit a felony."
>
> " Official Secrets Act, 1911, s. 6: Any person . . . who is reasonably suspected of having committed ... an offence, may be arrested without warrant."
>
> " Pawnbrokers Act, 1872, s. 34: A pawnbroker may detain any person offering in pawn any article which he reasonably suspects to have been stolen . . ."
>
> " Penal Servitude Act, 1891, s.2, sub-s. 1: Any constable may arrest without warrant any holder of a convict's licence . . . whom he reasonably suspects of having committed any offence."
>
> " Offences against the Person Act, 1861, s. 66, and Malicious Damage Act, 1861, s. 57: Any constable may arrest without warrant any person whom he shall find loitering in any highway . . . whom he shall have good cause to suspect of having committed or being about to commit any felony mentioned in these two Acts."
>
> " Road Traffic Act, 1930, s. 28: A constable may arrest without warrant . . . any person reasonably suspected of taking ... a motor vehicle without the owner's consent . . ."
>
> Can any person doubt that in respect of these powers given by statute to arrest for suspicion or belief of offences or intentions to commit offences other than felonies the constable is in exactly the same position as in respect of his

46. *Liversidge* v. *Anderson* [1942] A.C. 206, 229.

common law power to arrest on reasonable suspicion of felony, and that there is an "objective" issue in case of dispute to be determined by the Court?

Would one say that the facts of *Re Ong Yew Teck* have no connection whatsoever with Lord Atkin's dissenting judgment?

Bona Fides

No matter which test, subjective or objective, is accepted yet the statutory discretion must be exercised in good faith. The question of good faith is closely woven into the "grounds" which lead a minister to be so "satisfied." In *Ross-Clunis* v. *Papadopoullos*[47] both the Judicial Committee of the Privy Council and the appellant accepted that good faith was essential in "satisfying" (but unfortunately mala fides was not alleged by the respondents-applicants).

Though their lordships in that case did not accept the objective test they did say that they could look into the facts and see whether there was any ground on which the appellant could be so "satisfied." Then if this was not so the court was prepared to infer, *inter alia,* that he (the public officer) did not *honestly* (bona fide) form that view. This view was wholly thrown out in *Re Choo Jee Jeng* without leaving us any impression of our court's own version of what was "bona fide." A vacuum is thus created. "None the less, the court, at any rate exercising its powers of habeas corpus, has power, as has been clearly laid down in cases which have arisen under this regulation, to see that the powers conferred upon the Home Secretary have been rightly exercised under this regulation, and to ensure that the powers conferred upon him have been exercised honestly and bona fide, and not merely under some pretence of using the regulation for the purpose of detaining some person on some other grounds altogether."[48] It may be true to say that the two Ordinances created wide statutory discretions, yet the court should still overrule the exercise of such discretion if not made bona fide.[49] "Where in a multitude of Acts, something is left to be done according to discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise, the act done would not fall in that spirit of the statute. 'According to his discretion' mean...according to the rules of reason and justice, not private opinion, according to law and not humour; it is to be not arbitrary, vague and fanciful, but legal and regular; to be exercised, not capriciously, but on judicial grounds, and for substantial reasons." [50]

47. [1958] 2 All E.R. 23, 33.

48. *Per* Tucker *J., Stuart* v. *Anderson & Morrison* [1941] 2 All E.R. 664, 670D.

49. R. v. *Brighton Corp., ex parte Shoosmith* (1907) 96 L.T. 762 (C.A.).

50. Maxwell, *Interpretation of Statutes,* 10th ed., p. 123.

Alternative Remedy

It was declared in *Re Choo Jee Jeng:* "If the Ordinance did not impose a subjective test, I would have refused a writ of habeas corpus on the ground that an alternative remedy was available and that a writ of habeas corpus not being a writ of course might be refused for that reason ... "[51] No doubt if there is an alternative remedy open to the prisoner the writ does not apply.[52] But neither the Advisory Committee[53] nor the Appeal Tribunal[54] provides any alternative remedy. Each is purely an administrative organ with power not to adjudge on the legality of the arrest (as a court of law would) but only to recommend whether the detention should be continued. Section 5(1) of the P.P.S.O. provides that "the Governor in Council[55] may make rules as to the manner in which appeals may be made and for regulating the procedure of Appeal Tribunals." Section 5(4) of the P.P.S.O.[56] then says the "Decisions of the Appeal Tribunal shall be final and shall not be called into question in any Court." This takes the whole matter out of court; and then reinforced by the "hands off" attitude of the Court, a citizen good or bad, is at the mercy of the executive who is the policeman, judge, jury and executioner.

The ancient writ of habeas corpus is not dead. It is still existing, only devoid of its contents. There is a wind blowing from another direction. In the old days men used to resort to the courts when they were aggrieved by detentions under any legislation. But now they will be turned away as "there is an alternative remedy." The court is bent on giving effect to the intentions of the legislature. Whether the intentions are good or bad is immaterial. Law and ethics are two separate conceptions. The result of this is that all orders under the two Ordinances have the effect of "Lettres de Cachet." [57]

JOHN TAN CHOR-YONG. *

51. 26 M.L.J. 219. The learned Mr. Justice Ambrose cited *Ex parte Corke* [1954] 2 All E.R. 440.

52. *Ex parte Corke* [1954] 2 All E.R. 440. See also *R.* v. *Commanding Officer of Morn Hill Camp, Winchester, ex parte Ferguson* [1917] 1 K.B. 176.

53. S. 51, Criminal Law (Temporary Provisions) Ordinance, 1955.

54. Ss. 5, 6 and 7, P.P.S.O., amended by Ordinance No. 65 of 1959.

55. Now the Yang di-Pertuan Negara (Ordinance No. 65 of 1959).

56. Now repealed and re-enacted by s. 5 of Ordinance No. 65 of 1959.

57. "Per Speciale Mandatum Regis:" *The Case of the Five Knights* (1627) 3 S.T. 1.

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