JAPANESE OCCUPATION AND *Ex Post Facto* LEGISLATION IN MALAYA. By S. K. Das, M.A., LL.B., of Gray's Inn, Barrister-at-Law. [Singapore: Malayan Law Journal, 1960. xiv and 148. M $20.00.]

The occupation by the Japanese of countries in Southeast Asia such as Burma, Indonesia, Malaya, Philippines and Thailand during the Second World War and the subsequent liberation by the Anglo-American allied powers has given rise to a number of legal problems which had no parallel in the history of those countries. International law itself was found to be inadequate and the legal governments of the occupied countries had to resort to a number of legislative measures to deal with the new problems.

In his monograph Mr. S. K. Das sets out how the government of Malaya attempted to solve the complicated legal problems by passing *ex post facto* legislation. First, the author states the law that prevailed in the various jurisdictions in Malaya before the Japanese occupation, the legal, judicial and administrative changes made during the occupation, the problems which arose as a result of non-conformity with pre-existing law, the legislation enacted after the war in order to solve those problems and the views taken by the courts in the absence of specific legislation on the matters before them. Then he makes a comparative study of cases decided in other jurisdictions under similar conditions. One of his purposes in doing so is "to show that remedial legislation was the only effective means to enable a flustered mind to find a plausible answer."[1]

Among the problems examined by the author are included the status of the inhabitants during the occupation, the legal effect of their contractual rights and obligations created or incurred during the occupation, the validity or otherwise of transactions affecting pre-occupation rights and liabilities, the relationship between the absentee owner and his pre-occupation agent resident in Malaya, the validity and enforceability of judgments and orders passed by the occupation courts, the legality of the Japanese currency issued during the occupation period, and liability for crimes committed during the Japanese occupation. The author makes no pretension of being able to deal with all these problems comprehensively. However, he has made a thorough analysis of the more important aspects of the problem within the space available.

To assist those readers who are not acquainted with the Malayan legal system, the author makes a brief mention, at the beginning of his book, of the different jurisdictions in Malaya and the law applicable thereto prior to the Japanese occupation. He then outlines the changes that were made by the Japanese during the occupation and by the British government after the liberation in 1945.

In Malaya, as in Burma, no revolutionary changes were made in the pre-existing municipal law contrary to the rules of international law. All laws that were in force before the occupation were to be respected subject to such alterations and amendments as might be made in case of conflict or variance. It was, however, pointed out by the author that in the administration of criminal justice the occupation authorities went far beyond the permissible limit. Perhaps the most revolutionary change brought about by the occupying power both in Malaya and Burma was the declaration of the Japanese currency as the sole currency in those countries.

1. See page 13.

In the course of his study the author makes occasional references to the judgments and orders passed by the Burmese High Court and the Supreme Court,[2] for both Malaya and Burma encountered more or less the same problems. Thus, in examining the status of agents and trustees resident in occupied Malaya the author mentions the case of *R.M.M.R.M. Perichiappa Chettyar* v. *Ko Kyaw Than*[3] in which Mr. Justice Blagden observed that there was nothing illegal about the plaintiff acting as an agent and that "His Majesty had no right at common law to expect the unfortunate inhabitants of his territory who have come for the time being under the power of his enemies to denude themselves of assets, cease from gainful occupation, and starve, just because he has been unable to afford them the protection which he had afforded them." He also cites the case of *T. N. Ahuja* v. *H. H. Sen Gupta*[4] in which it was held that a British subject in enemy subjugated British territory is not in the category of enemy, and that subjugation does not abrogate a contract of agency between the British subject in the subjugated area and another British subject who has escaped his fate. The author also examines the question of agency of necessity and makes a comparative study of the Burmese decisions on the matter.[5]

In the field of the administration of criminal justice the author points out that in Malaya during the occupation period political crimes and other serious offences were tried by a Japanese judge with the Japanese public prosecutor seated next to him. He also observes that "a trivial complaint against a member of the public, however innocent, was magnified into a heinous political crime, of lack of co-operation, defiance of authority and underground activity.[6] He says that "mere accusation of having listened to foreign radio broadcasts, which were totally banned, was enough to set the vast machinery of the Kempeitai into feverish activity."[7] Thus it will be seen that the situation in the occupied Malaya was very much the same as the situation that prevailed in Burma during the war.

Another important question discussed by the author is that of the validity of judgments and orders passed by the occupation courts. In this regard the author makes frequent references to Burmese rulings. He cites with approval the case of *The King* v. *Mg Hmin*[8] wherein Acting Chief Justice Dunkley observed that "so long as those courts are constituted in accordance with the Municipal Law of the occupied country they are validly constituted courts, and if the law administered by these courts is the municipal law of the occupied country their decisions are valid and binding on the lawful government and the inhabitants of the country and should be given effect to."

Perhaps the most important legal question that Malaya had to tackle was the position of Japanese currency notes issued during the war. As in Burma, Malaya was flooded with occupation currency and the principal legal question that had to be decided was the validity of that currency as a medium of exchange in an occupied territory. It is correctly pointed out by the author that it is a universal and necessary

2. See, for example *Ahuja* v. *H. H. Sen Gupta.* Civil Appeal No. *2* of 1946; *A.S.N.S.* v. *Mg Poh Khin,* Civil Reference No. 2 of 1943; *Chan Taik* v. *Dooply,* [1948] B.L.R. (H.C.) 454; *Hoke Wan* v. *Mg Ba San,* [1947] R.L.R. 398; *King* v. *Mg Hmin,* [1946] R.L.R. 1; *Ko Mg Tin* v. *U Goh Man,* [1947] R.L.R. 149; *Mg Hla Mg* v. *Ko Mg Mg,* [1947] R.L.R. 1; Mo Pa v. *Daw In,* [1947] R.L.R. 316; *Perichiappa Chettyar* v. *Ko Kyaw Than,* [1949] B.L.R. (S.C.) 64; *Ramaswami Iyengar* v. *Velayudhan Chettiar,* [1952] B.L.R. (S.C.) 25; *U San Wa* v. *U Ba Thin,* [1947] R.L.R. 78; *L. Shin Yu v. J. K. Behara,* [1948] B.L.R. 596.

3. Civil First Appeal No. 34 of 1947.

4. Civil Appeal No. 2 of 1946.

5. See *R.M.M.R.M. Perichiappa Chettyar* v. *Ko Kyaw Than,* [1949] B.L.R. (S.C.) 64; and *S.K.A.R.S.T. Chettyar Firm* v. *P.S.A.P. Alagan,* [1952] B.L.R. (H.C.) 59.

6. See page 21.

7. *Ibid.*

8. 1946 R.L.R. 1.

practice for an occupying power to establish a parallel currency bearing a definite exchange ratio to pre-occupation currency.[9] However, after the liberation of Burma and Malaya by the allied powers the Japanese currency was declared to have no validity. The effect of such a declaration, as is well known, has been disastrous. The declaration caused great hardship to the innocent inhabitants of the occupied countries who had to abide by the laws and orders made by the occupying power. The ruling that Japanese currency had no value in Burma was made by the High Court in *Chan Taik* v. *Dooply*[10] in which Mr. Justice San Maung observed that "although it was within the competence of the Japanese military authorities to issue their own military notes in order to supplement the lawful currency of the country as a measure to restore and ensure public order in accordance with Article 43 of the Hague Regulations, it was entirely beyond their competence to issue an Ordinance such as the Burma Monetary Arrangements Ordinance, 1942, equating their currency to the lawful currency of the country." It was, therefore, held that the so-called Japanese currency was never legal currency in Burma. The hardships suffered by debtors and creditors on account of the said ruling had prompted the High Court to recommend legislation fixing the value of Japanese notes in different areas of Burma during different periods of the Japanese occupation.[11] It was perhaps because of this recommendation that the Japanese Currency (Evaluation) Act[12] was passed. Thus in *U Maung Maung* v. *Daw Thein*[13] it was held that a promissory note executed in consideration of Japanese currency was a valid promissory note and that it was a negotiable instrument within the meaning of section 4 of the Negotiable Instruments Act.[14]

According to the provisions contained in the Japanese Currency (Evaluation) Act, the Japanese currency was valued on a gradually reducing scale. Thus, for example, for the year 1942 the Japanese currency was valued at par with pre-occupation currency. The value was, however, lowered gradually for subsequent years so that in 1945 the value of the Japanese currency was only 5% of that of pre-occupation notes. Regarding the debts and contractual obligations incurred or entered into during the Japanese occupation it is stipulated that if any such debt or contractual obligation remained unsatisfied or undischarged at the time of the British military occupation, such debt or obligation shall be satisfied or discharged by payment in currency notes or coins to be calculated in accordance with the value of Japanese currency notes as enacted in a schedule contained in the Act. However, if any debt or obligation had been paid or discharged wholly or partly in Japanese currency notes during the Japanese occupation and if such payment had been accepted by the creditor it was deemed to be payment in legal currency as if the Japanese currency notes were legal currency notes at the time the payment was made.

The situation in Malaya as stated by the learned author is, however, different. Post-war legislation in that country draws a distinction between "pre-occupation debt" and "occupation debt." In the case of occupation debt payments made during the occupation period partly as *pro tanto* discharge and outstanding balance is liable to be revalued, in accordance with scale, either as on the date of demand or as at the twelfth day of August, 1945 whichever of such dates is earlier in time. If on a revaluation the unsatisfied occupation debt amounts to less than $100 in Malayan currency, nothing is deemed payable.

Thus it will be seen that both Malaya and Burma are confronted with more or less identical legal problems arising out of the Japanese occupation. Similar problems

9. See page 101.
10. [1947] R.L.R. 149.
11. See *Ko Ma Tin* v. *U Gon Man,* [1947] R.L.R. 149.
12. Act XXXVI of 1947.
13. [1949] B.L.R. (H.C.) 197.
14. *Id,* at 199.

were faced by such other occupied countries as the Philippines.[15] The present study by the learned author was first published in 1958 and 1959 in the *Malayan Law Journal.* As observed by the Hon'ble Sir James Thomson, Chief Justice of the Federation of Malaya, in his foreword, Mr. Das has made a notable contribution to the development of international law and the value of his work cannot be judged by the size of his book but by the clarity of his analysis and the objectivity of his approach. The book is of special interest to the international lawyer since it throws a flood of light on the problems encountered by occupied territories and the practical solutions made by the legislatures and courts of the respective countries.

HLA AUNG.

15. See E. Maung, "Occupation Notes in Burma and the Philippines," *The Rangoon University Law Society Magazine* (1951-52) at 9. See also Lauterpacht, *Annual Digests and Reports of Public International Law Cases* (1946) at 371; *Ibid.* (1951) at 590. 661.