CIVIL LAW (AMENDMENT No. 2) ACT, 1979 (No. 24)

SECTION 5 OF THE CIVIL LAW ACT: SNARK OR BOOJUM?*

I. Its Origin

He had bought a large map representing the sea,
Without the least vestige of land:
And the crew were much pleased when they found it to be
A map they could all understand.[1]

Ever since the foundation of Singapore, the importance of having an efficient system of commercial law has been a subject of lively concern: and indeed, as early as 1837 Sir Benjamin Malkin used the subject as one demanding the existence of a legally-trained judge within the Straits Settlements, when he noted that:

> The peculiar importance of having a Professional Judge in the Straits, arises, in my judgment, out of the Commercial character of the Settlements there, and the resort thither of Foreigners of all nations. An erroneous decision on the regularity or irregularity of the presentment of a Bill of Exchange, or the sufficiency of the notice of its dishonor, would compel a Merchant to make payments at Singapore which he ought to be able to recover from the next party to the Bill in London, but could not, because there they would require real regularity. This is a case not unlikely to arise.[2]

The commercial character of the Settlements clearly dictated the creation or adoption of laws designed to further that commercial character. To create such a body of law was a project to cause a draftsman to turn pale; but there did exist, in the English law regarded as introduced by the Charters of Justice, such a convenient body: a body in rapid course of development, under the stimulus of the Industrial Revolution and overseas trade.

In view of the notion of the general adoption of English law as the basic law of Singapore which emerged from 1819 onwards, there appears to have been no especial impetus towards the explicit adoption of the commercial law of England. The position in Singapore seems to have developed in the manner explained by Thomas Braddell, Attorney General of the Straits Settlements, on 8 May 1878, when he reported to the Secretary of State on the Civil Law Ordinance (IV of 1878). In that report he stated:

> At present, cases involving points of Mercantile law are, by usage not by any written law, decided by our Court on the authority of reported cases in the Superior Courts of England. There are few statutory provisions for Mercantile law, nearly the whole body of the law is the result of the decisions of the Courts.

From this observation, it is clear that a fairly flexible approach to the application of English law had been adopted: one justifying the view

* This note is based in part upon my experiences as a member of a working party on section 5 of the Civil Law Act, set up by the Attorney-General. The note represents, however, only my own views, although these have inevitably been coloured by the views of my colleagues.

1 This and the other quotations at the head of each section are of course from Carroll's *The Hunting of the Snark.*

2 Cited in the *Report of the Indian Law Commission* of 31 August 1838, para. 22.

of Professor G.W. Bartholomew, that "[t]o apply common law and equity without statute would be to apply but half of English law."[3] However, the situation was not satisfactory and Braddell continued, in his report, to outline the solution adopted in the Civil Law Ordinance of 1878:

> Now some of these decisions [of the Superior Courts of England] no doubt may depend wholly or partly for their force on English Statute law, and as we have not all the Statutes in force, it has been considered advisable to adopt the Ceylon Ordinance [22 of 1866], which puts our Court on the same footing as the Courts in England, and thus prevent questions as to the validity of Judgments of our Court, on the ground that they are not authorized by any law in force in the Colony.

The Ceylon Ordinance referred to was presumably an amendment to an earlier Civil Law Ordinance (No. 5 of 1852) and sections 2 and 3 of that Ordinance as amended are set out in Appendix I to this note.

Such, then, was the origin of section 5 of the present Civil Law Act. Enacted in 1878, it was an instance of statute law catching up with or, perhaps, confirming the practice of the Courts. It did not, curiously enough, appear in the original Bill, which was designed to adopt certain provisions of the English Judicature Acts of 1873 and 1875, as part of the legislative reforms introduced in the Straits Settlements in 1878. The clause relating to the reception of commercial law — such a pivotal point of the law of contemporary Singapore — was introduced at the Committee stage of the Bill, apparently (on an interpretation of the observations of the Attorney General) *ex abundante cautelae.* In such a fashion can a major law reform take place.

The section on reception of English commercial law of course reappeared in the consolidating measure of 1909, without further comment,[4] and has continued in force, with minor amendments, until the present time. The text of section 5 is set out in Appendix II to this note, with the amendments that are the subject of this note set out in italics.

II. Its Interpretation

They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway-share;
They charmed it with smiles and soap.

Such an all-embracing and succinct provision as section 5[5] inevitably became the subject of litigation, and from 1882[6] onwards the term "mercantile law generally" in particular fell under judicial review. What English law was thereby imported? Van Someren, in his Commentary[7] and Bartholomew[8] review the situation. In 1912 Hyndman-

3 *The Commercial Law of Malaya,* 27.
4 For *Objects and Reasons,* see *S.S. Government Gazette* of 18 June 1909, 1290.
5 I refer throughout to the number of the present section, which was originally section 6 of the Civil Law Ordinance of 1878.
6 *Penang Foundry Co.* v. *Cheah Tek Soon* (1882) 1 Ky. 559.
7 *The Courts Ordinance, Civil Procedure Code, Civil Law and Divorce Ordinance, annotated:* by R.G. van Someren. Third edition (1926) by G.S. Carver, 986-8.
8 *Op. cit.*, 77-99.

Jones CJ. took the view that the words "mercantile law" were not *ejusdem generis* with the words preceding them;[9] in 1884[10] and 1887 [11] it was held that the English Trade Marks Registration Act and the English Trade Marks Act were not invoked by the section. Lord Tenterden's Act was held to be applicable, as was the Infants' Relief Act of 1874: and so matters went, until in 1919 came the well-known case of *Seng Djit Hin* v. *Nagurdas Purshotumdas and Co.*, which exploded what van Someren correctly calls "a serious misconception" as to the effect of section 5.

The term "mercantile law" tended (and tends) to mesmerise lawyers called upon to interpret the section. Exactly what criteria should be adopted in determining in which cases English mercantile law is to apply has been a source of some confusion, and it cannot be affirmed that time has served to diminish the confusion. In 1884 Wood J. said:

> I doubt however if the words 'mercantile law generally'... have reference to anything so specific and so exceptional as the registration of trade-marks; they must I think, be held to have reference only *to the buying and selling of merchandise* (my italics).

Three years later Goldney J. observed:

> Before I would say that the provisions of the English Trade Marks Act were incorporated among the Ordinances of [Singapore] in the wholesale way suggested ... I would require words more specific than those used in the section.

Some guidance was offered by the Privy Council in the case of *Shaikh Sahied bin Abdullah Bajarei* v. *Sockalingam Chettiar*,[12] where the words of Sproule Ag. C.J., in the Court of Appeal, were cited with approval by Lord Atkin:

> They [the English Moneylenders Act 1900-1927] are a very special municipal series of legislative provisions creating procedure and machinery and setting up restrictions and sanctions which are quite impossible of application in our case.

In that case, Lord Atkin made an effort to clarify the term:

> No doubt all legislation is in one sense municipal; but for the purpose of the [Civil Law Act] there seems to be a clear distinction between legislation which has the effect of modifying the general principles of any branch of municipal law, and legislation which is intended to regulate the exercise in England only of particular activities by providing for registration, licences, procedure, and penalties which can only be carried into effect in England itself. Such law is not capable of extension to [Singapore].

So the English Moneylenders Acts were held not to be invoked by the section.

As Chan Sek Keong has said,[13] "Not being a term of art, it ["mercantile law"] lacks the required precision for general agreement

9 *Ngo Bee Chan* v. *Chia Teck Kim* (1912) 2 M.C. 25.
10 *Vulcan Match Co.* v. *Jebson and Co.* (1884) 1 Ky. 650.
11 *Fraser and Co.* v. *Methersole* (1887) 4 Ky. 269.
12 (1933) M.L.J. 81.
13 "The Civil Law Ordinance, section 5(1): A Re-appraisal" [1961] M.L.J. lvii at lxi.

in the peripheral areas." A further point he makes, and an important one, is that:

> The application of an English Statute in any one case does not lead to its importation at all. Whether it is applicable again in a later case does not depend upon a prior decision holding it to have been applicable in a different set of facts; it depends on whether the issue raised is one with respect to mercantile law.

Certainty is not to be expected, of such a provision as section 5: and the foregoing observation is probably true of all aspects of section 5.

The Privy Council case of *Seng Djit Hin* brought a ray of light upon a darkening scene, and one well explained by van Someren in his annotation to section 5:[14]

> Until it was dissipated by the Privy Council in 1923 a serious misconception had existed as to the effect of this section. It had always been understood to mean that where an issue had arisen with respect to one of the named branches of law, then the English law on that subject was to be administered. In other words, if an issue arose on the law of marine insurance, it was thought that the English marine insurance law would be applied. The Privy Council pointed out that this is not what the section says. In the given circumstances it is the whole of the law of England which is to be administered. Thus, in any issue relating to marine [?insurance] the whole law of England is administered, and not merely the English Marine Insurance Law. This important decision may have far reaching effects which have not yet been appreciated.

Seng Djit Hin of course invoked English emergency legislation, even though other "emergency" legislation had been promulgated locally.

So, there are those who echo the sentiment of Mark Twain, that the more one explains the section, the less one understands it. To quote Chan Sek Keong[15] again, the two Privy Council cases "only provide contradictory and obfuscating paradigms for future guidance." The trouble has been, I suspect, that we have expected too much from the draftsman, and too much from the judiciary. A 'blanket' application of one branch of the law of another country (even another common law country) inevitably causes difficulties in interpretation. What may perhaps be most significant, in the series of cases upon the section, is the reason for the "serious misconception" referred to by van Someren: for until 1923, lawyers were reading into section 5 what they thought it meant, not what it said: in other words, they assumed that it was more limited in its scope than in fact it was.

III. Its Weaknesses

> ' *'Tis a pitiful tale,' said the Bellman, whose face'*
> *Had grown longer at every word:*
> *'But, now that you've stated the whole of your case,'*
> *More debate would be simply absurd.*

The weaknesses of section 5(1) have become obvious enough over the years: although why section 5(2) (now 5(2)(*a*)) (which excludes the invocation of any part of English land law) has not occasioned

[14] *Op. cit.*, 987.
[15] *Op. cit.* The author sets out all the cases on the subsection, in his article.

any difficulty is something of a mystery. Apart from the difficulty of identifying "mercantile law generally", the misinterpretation of the subsection exposed by *Seng Djit Hin* led lawyers in the wrong direction: and once back on the path, the ray of sunlight accorded by that case was soon left behind.

Chan Sek Keong in 1961 described section 5(1) as "a wasting asset. Its obsolescence grows with the years...." To the extent that a slow but continuous process of local legislation was taking place, and thereby limiting the operation of the subsection, this was and is true. Even so, there is no local law on "partnerships" such as the English Act of 1890; but in the realm of "corporations" the local legislature has enacted laws on companies [16] and finance companies;[17] "banks and banking" are largely covered by local laws;[18] the law on "principals and agents" is generally a matter of common law, but there is no local equivalent to the Factors Act of 1889; however, "carriers by air, land and sea" are, again, largely covered.[19] In the realm of "marine insurance, average, life and fire assurance" there is little local legislation, apart from the Insurance Act,[20] and a few particular forms of insurance in the law relating to workmen's compensation, hire purchase and motor vehicles: so that there is no equivalent to the English Marine Insurance Act of 1906 nor, indeed, to such English Acts as the Life Assurance Act of 1867, and the Policyholders Protection Act of 1975. Similarly, in the realm of "mercantile law generally" (looking at the term in a necessarily wide sense) there is no local legislation similar to such basic laws as the English Sale of Goods Act 1893, the Misrepresentation Act of 1967, the Supply of Goods (Implied Terms) Act of 1973 and the Unfair Contract Terms Act of 1977. While, therefore, section 5(1) represents the backbone of Singapore mercantile or commercial law, and covers an extremely wide area of English statute and common law, it is (in spite of the diminishing area of law invoked by section 5(1) still yoked to the chariot of English law in certain significant areas: a law constantly changing in a manner of which most of us in Singapore are ignorant, until long after the event.

As long as the policy of English law changed but slowly, there was little cause for concern and Singapore could safely follow in the wake of English statute law. Such was the position in 1878 and, indeed, in 1909. Today, however, new pressures are at work. England has become a part of the European Community, and Singapore a part of ASEAN; in addition, in England the law has been moving into areas of consumer protection affecting many areas of the law relating to "the buying and selling of merchandise." The tempo of change has increased, is increasing, and seems unlikely to diminish. In this situation some check on the broad scope of section 5(1) was inevitable, for an observer could never be sure that a "mercantile law" enacted in England (and not gazetted in Singapore) would be of the kind suitable to the circumstances of Singapore: and in this context, the emphatic wording of the subsection (*"the law ... shall be the same ..."*)

16 Companies Act (Cap. 195).
17 Finance Companies Act (Cap. 191).
18 Banking Act (Cap. 182); see also Chapters 5, 25, 62, 64, 195 and 245.
19 Air Navigation Act (Cap. 87); Railways Act (Cap. 91); Carriage of Goods by Sea Act (Cap. 184); and see also Caps. 6, 172 and 173.
20 Cap. 193; cp. English Insurance Act 1974.

left no room for manoeuvre: even the most "creative" of judges would have difficulty in escaping from the bond of such wording and be compelled to apply English law, regardless of local circumstances.

A further weakness of section 5(1) lay in the final phrase, displacing English law if "other provision is or shall be made by any law having force in Singapore." In this context, the nature and extent of any local provision could well cause difficulties in determining whether it successfully displaced English law. Further, the Interpretation Act offers no definition of "law" (although "written law" is defined) and the word can be assumed (following the analogy of definition flowing from the Constitution of Malaysia) to include the common law itself and all cases declaratory of it. The more it is examined, therefore, the more perplexing are the problems posed by section 5(1). It is difficult enough to ascertain whether a particular English statute applies under it, or not: it is even more difficult to lay down any criteria on which such an Act will or will not apply.

IV. Its Amendment

They roused him with muffins — they roused him with ice —
They roused him with mustard and cress —
They roused him with jam and judicious advice —
They set him conundrums to guess.

It was against this background that, in 1979, section 5 was reviewed. The alternative policies that could be adopted in relation to an amendment of the Act were:

(a) a repeal of section 5, or

(b) an amendment of section 5, introducing —

(i) a "cut-off" date, so that, with effect from an appointed day, no further English law would be adopted under the section (a device adopted in Sarawak in 1949, Sabah in 1951 and West Malaysia in 1956)[21] or

(ii) minor amendments linked with the enactment of substantive legislation on the particular matters mentioned in the subsection.

A repeal of section 5 appeared out of the question, for such a repeal would have to be coupled with the immediate enactment of legislation on all subjects covered by the section: an impossible task, for both draftsmen and legislature. This disposed of, the next question was, whether a "cut-off" date should be introduced and, if so, whether machinery for a table of subsequent English statutes should be imported into the Act: such table being brought up to date from time to time, as necessary.

Consideration suggested the desirability of preserving the basic principles of section 5, and keeping any amendments thereto to a minimum. The policy of a continuing reception of English commercial

[21] And the subject of a nice comment by Lord Russell of Killowen in *Lee Kee Chong* v. *Empat Nombor Ekor (N.S.) Sdn. and Ors.* [1976] 2 M.L.J. 93 at 95. The implications of Lord Diplock's comments in the Privy Council appeal from Hong Kong *(de Lasala* v. *de Lasala* [1979] 2 All E.R. 1146 at 1153) may now need local study. He said, "Looked at realistically … decisions [of the House of Lords on the interpretation of recent common legislation] will have the same practical effect as if they were strictly binding." [See, *post*., p. 377 *et. seq*., (Ho Peng Kee)—Ed.]

law, coupled with its gradual replacement by local law, seemed a sound one to pursue, the more so as this is unlikely to cause any major concern within a commercial community linked with English law by a variety of common forms [22] and contemporary contacts: while the task of scrutinizing the English statute book and introducing any necessary reforms in local law would be likely to retard the progress of local law, and its steady enlargement in an independent fashion.

Such a decision followed a review of English statutes on, or affecting mercantile law generally. Indeed, at one time it was thought possibly desirable to devise, and insert in the Act, a list of the English statutes to be considered in force, or not in force, in Singapore. In this context the following items were reviewed:

English Acts of Parliament regarded as possibly or probably in force ***or*** *not in force included:*

In force	*Not in force*
Bills of Lading 1855	Carriers 1830
Policies of Assurance 1867	Married Women's Property 1882
Infants Relief 1874	Limited Partnership 1907
Factors 1889	Bankruptcy 1914
Partnership 1890	Law Reform (Married Women and Tortfeasors) 1935
Sale of Goods 1893/1979	Companies 1948
Marine Insurance 1906	Consumer Protection 1961
Maritime Conventions 1911	Trade Descriptions 1968
Disposal of Uncollected Goods 1952	Family Law Reform 1969
Misrepresentation 1967	European Communities 1972
Powers of Attorney 1971	Unfair Trading 1973
Unsolicited Goods and Services 1971	Consumer Credit 1974
Banking and Financial Dealings 1971	Insurance 1974
Unfair Contract Terms 1977	Patents 1977
Civil Liability (Contribution) 1978	

In addition, there were (and are) a number of English statutes, covering a variety of topics ranging from occupiers' liability to sex discrimination, where it was difficult, if not impossible, to offer any definite answer: and even in relation to items in the two lists noted, there were frequent doubts as to the propriety of their inclusion. What did emerge, in the course of a survey of English statute law, was that it might be possible to extract a few rough criteria, basic yardsticks by which it might be possible to make an informed guess at whether an English statute might fall within the scope of the section. This, and nothing more.

In consequence it was considered that there was little or no merit in annexing to the Act any list of English statute law, and that the basic criteria offered the best solution that could be arrived at, as a practical expedient pending the (long-term) establishment of a comprehensive commercial code of law for Singapore. Such was the solution proposed, and now embodied in the Act, as (to quote the Minister for Home Affairs) "the first of a series of measures...

[22] There seems to be an increasing use of standard forms of contract, based on English precedents, which in turn often reflect international practice.

to make [the] commercial law [of Singapore] more easily ascertainable and less dependent on legislative changes taking place in Britain."[23]

In moving the second reading of the Bill, the Minister observed that section 5 was "one of the most difficult and complicated provisions to construe in Singapore's statute books" and that "despite a number of judicial decisions, including two Privy Council cases, there is still considerable uncertainty about its precise scope of application. This is not surprising," he added, "as even the two Privy Council cases were incompatible with each other. Because of the uncertainty, it had become difficult at times to say whether a particular piece of English legislation was or was not applicable to Singapore. While this might not have been of such great consequence in the past, it is becoming increasingly a serious problem, especially after the entry of Britain into the European Economic Community."

It is in relation to the general thrust of the policy of English commercial law, therefore, that there is cause for anxiety. Entry into the European Community is already having a significant effect upon the English statute book, and in the realm of commercial law this is likely to continue. Further, in England itself, pressure groups of various kinds have influenced the development of this branch of the law. While, therefore, there is probably no reason to reject the reforms now taking place in that area, the knowledge of such reforms and, indeed, the climate of opinion in which they are taking place, is not as yet common to Singapore. Some degree of caution appears essential in a 'blanket' reception of alien law, and the amendment of 1979 is designed, it seems, to introduce a few useful limitations.

These are outlined in the *Explanatory Statement* to the Bill, which opens with that type of ingenuous statement often found in such documents ("The main purpose of this Bill is to amend section 5 … so as to clarify the scope of application of the section and to eliminate certain unintended effects and doubts arising from the wording of the existing provision"). Whether this admirable objective is achieved or, for that matter, ever could be achieved., is a matter of doubt. Of the amendments made, I think it likely that the new subsection 3(a) is the most important. This is referred to in the *Explanatory Statement* as "a declaratory provision to make explicit that the law of England to be administered may be qualified by local circumstances." Declaratory or not, this provision gives that freedom of manoeuvre necessary to a court invited to apply legislation designed for another territory, other people. Its introduction appears long overdue.

This apart, the most significant changes lie in the new subsection (2)(b). Under this new subsection the following English law will not fall within the scope of section 5(1):

> (a) any law giving effect to a treaty or international agreement to which Singapore is not a party;
>
> *(b)* any law regulating (whether by registration, licensing or other method of control, or the imposition of penalties) the exercise of any business or activity.

[23] *Straits Times,* 24 September 1979. See also Singapore *Parliamentary Debates,* vol. 39, no. 7: in Appendix III, where reference is also made to the repeal of section 6 of the Act.

Insofar as *(a)* is concerned, this is clearly aimed at legislation under the Treaty of Rome and the European Communities Act 1972: but it will also cover legislation giving effect to treaties to which Singapore is not a party. Where treaties to which Singapore and the United Kingdom are parties are implemented by English law, there is no objection, it seems, to their adoption — presumably on the basis that, sooner or later, Singapore will itself promulgate parallel local legislation. As for *(b),* the words used echo those of Lord Atkin in the *Shaikh Sahied* case; obviously, where English legislation requires for its enforcement bureaucratic machinery that does not exist in Singapore, it would hardly be apt to regard it as in force here. Apart from the commonsense of the matter, there is a New South Wales precedent dating from 1838 to the effect that an English Act will not be applicable "from want of machinery to carry it into effect."[24] Ten years later another case[25] held an English Act inapplicable in the same territory "not because its provisions [were] in their nature inapplicable but because machinery for its application [was] wanting." It appears from the latter case that even if local officers exist with the same titles as those in England, their existence does not necessarily imply the existence of such "machinery".

The curious amendment to subsection (1) is, clearly, based on the case of *Seng Djit Hin,* and represents an attempt to return to what the position was thought to be prior to that case. It is to be hoped that the amendment will simplify the problem of classification. "What is needed," writes Professor Bartholomew,[26] "is a criterion by which it can be determined when a question or issue has arisen with respect to mercantile law, and to this problem the courts have never really addressed themselves." The new amendment may make it a little easier for the courts: but the basic problem remains, and the criteria for adoption cannot (it seems to this writer) be classified much further, if at all.

As for the new subsections (2)(c) and (3)(*b*), these are presumably designed to explain and clarify the operation of the last words in subsection (1), under which the English law will apply "unless in any case the provision is or shall be made by any law having force in Singapore." If there is in Singapore a "corresponding" law, then the English Act is ousted. Whether there was any need to offer such a test as that in subsection (3)(*b*) is a nice point: the more so, as it is often difficult to determine "the purpose or purposes of [a] written law." Yet, given the need to clarify the section, it may be worth a try, in spite of the difficulties that seem here likely to arise.

The Act, even as amended, gives no other guidance on the vexed issue of severability, that is, on the question whether one part of an English statute may be applicable, but not the rest of it. In this context, the safer guide appears to be Lord Atkin, who favoured the doctrine that an English Act "must be judged as a whole", and that "[t]o take one or two sections of such an Act [as the Moneylenders Act 1927], divorced from their context, is to apply a new law,

[24] *R.* v. *Schofield* (1838) Legge 97. I have extracted this, and the reference in footnote 25, from *The Australian Digest 1825-1933.* Incidentally, of *R.* v. *Schofield* the *Digest* observes (10,526), "There are no legally recognised poor in New South Wales."
[25] *Ryan* v. *Howell* (1848) Legge 470.
[26] *Op. cit.*, 87.

which is not the law of England, and so abstracted might never have been introduced into England at all": but that was in 1933; he was thinking of a somewhat special Act, involving a licensing system; and times, and drafting styles, have changed. Now that we find basic principles of law sometimes tucked away in the technical details of a statute, it may well be possible to distinguish between law modifying the general principles of a branch of municipal law, and law intended to regulate the exercise of an activity by way of registration, licensing or penalties.

Such a distinction would be likely to invoke that degree of flexibility of approach necessary to keep the law alive and related to contemporary conditions: but only the courts can reach such a conclusion. In the meantime, we are left with two schools of thought, one adopting the "all or nothing" policy of wholesale adoption or rejection, the other what might be termed the "curate's egg"[27] ("good in parts") policy of severability. I believe that local practitioners favour the former, so that such a statute as the Family Law Reform Act 1969 has not been regarded as applicable under the section. However, subject to subsection (3)(a), the writer suggests that the "curate's egg" approach is now possible, and may well be necessary in relation to the new English Sale of Goods Act (in force on 1 January 1980) which provides for the consolidation of the law relating to the sale of goods. However, I have not yet seen a copy of the Act, and offer the view from a condition of deplorable ignorance.

V. Its Future

In the midst of the word he was trying to say,
In the midst of his laughter and glee,
He had softly and suddenly vanished away —
For the Snark was *a Boojum, you see.*

The ultimate objective must of course be the creation of a complete code of commercial law for the State. That day is far off. A table of priorities is in course of resolution, I believe, and there is reason to hope that the next major measure in this area will be a Sale of Goods Act. In the meantime, section 5 remains. It cannot be said that all the problems inherent in the section have been resolved; it cannot even be affirmed with any substantial degree of confidence that they have been certainly diminished by the amendments of October 1979, for only time can answer such a question. What can be said is that a careful and cautious effort has been made to limit too wide an operation of the section, and that, in the process, several useful and (to this writer) necessary criteria have been imported. These should enure to the advantage of those falling back upon the section.

All the same, I can sum up my own opinion on the section. It looks like a Snark. It has been hunted with thimbles, sought with care, pursued with forks and hope. Yet, now that I look at it again, my worst suspicions are confirmed. It really is a *Boojum,* after all.

R.H. HICKLING

[27] See *Punch,* vol. cix (1895), 222.

Appendix I

The Civil Law Ordinance of Ceylon (*5 of 1852*)

Law of England to be observed in maritime matters.

2. The law to be hereafter administered in Ceylon in respect of all contracts or questions arising within the same relating to ships and to the property therein, and to the owners thereof, the behaviour of the master and mariners, and their respective rights, duties, and liabilities, relating to the carriage of passengers and goods by ships, to stoppage *in transitu,* to freight, demurrage, insurance, salvage, average, collision between ships, to bills of lading, and generally to all maritime matters, shall be the same in respect of the said matters as would be administered in England in the like case at the corresponding period, if the contract had been entered into or if the act in respect of which any such question shall have arisen had been done in England, unless in any case other provision is or shall be made by any enactment now in force in Ceylon or hereafter to be enacted.

Law of England to be observed in all commercial matters.

3. In all questions or issues which may hereafter arise or which may have to be decided in Ceylon with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land, life and fire insurance, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any enactment now in force in Ceylon or hereafter to be enacted:

Provided that nothing herein contained shall be taken to introduce into Ceylon any part of the Law of England relating to the tenure or conveyance, or assurance of, or succession to, any land or other immovable property, or any estate, right, or interest therein.

Appendix II

Section 5 of the Civil Law Act, showing the amendments effected by the Civil Law (Amendment No. 2) Act 1979 (24 of 1979) in italics

Law of England to be observed in all commercial matters.

5.(1) *Subject to the provisions of this section,* in all questions or issues which arise or which have to be decided in Singapore with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law *with respect to those matters* to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any law having force in Singapore.

(2) Nothing *in this section* shall be taken to introduce into Singapore —

(a) any part of the law of England relating to the tenure or conveyance or assurance of, or succession to, any immovable property, or any estate, right or interest therein;

(b) *any law enacted or made in the United Kingdom, whether before or after the commencement of the Civil Law (Amendment No. 2) Act 1979* [i.e., 5 October 1979] —

(i) *giving effect to a treaty or international agreement to which Singapore is not a party; or*

(ii) *regulating the exercise of any business or activity by providing for registration, licensing or any other method of control or by the imposition of penalties; and*

(c) *any provision contained in any Act of Parliament of the United Kingdom where there is a written law in force in Singapore corresponding to that Act.*

(3) *For the purposes of this section —*

(a) *the law of England which is to be administered by virtue of subsection (1) shall be subject to such modifications and adaptations as the circumstances of Singapore may require; and*

(b) *a written law in force in Singapore shall be regarded as corresponding to an Act of Parliament of the United Kingdom under paragraph (c) of subsection (2) if (notwithstanding that it differs, whether to a small extent or substantially, from that Act) the purpose or purposes of the written law are the same or similar to those of that Act.*

Appendix III

Speech of the Minister for Home Affairs (Mr. Chua Stan Chin) on the second reading of the Civil Law (Amendment No. 2) Bill on 21 September 1979, from Singapore Parliamentary Debates, vol. 39, no. 7, col. 445-448.

The main purpose of this Bill is to amend section 5 of the Civil Law Act so as to clarify the scope of application of the section and to eliminate certain unintended and undesirable effects and doubts arising from the existing provision. Section 5 of the Civil Law Act is well known to lawyers as it provides for the general reception in Singapore of English mercantile law. It is a provision which is of vital importance to our business community. Yet it is one of the most difficult and complicated provisions in our statute book to construe. In spite of a number of judicial decisions, including two Privy Council cases, there is considerable uncertainty as to the precise scope of application of the section. This is not surprising as even the two Privy Council cases were incompatible with each other. Because of the uncertainty as to the precise scope of application of section 5, it has become difficult at times to say whether a particular piece of English legislation is or is not applicable to Singapore.

While this might not have been of such great consequence in the past, it is increasingly becoming a serious problem, especially after the entry of Britain into the European Economic Community in 1973. There is and will be an increasing tendency as a result of such entry to harmonise English commercial law with European Common Market law on like subjects. Even on the domestic plane, the tempo of legislative activity in the United Kingdom in the field of commercial law has greatly accelerated in recent years. To give just one example, a great deal of complicated legislation has been enacted in the field of consumer law in the UK in the past few years. Some of the legislative changes in the UK may not be quite appropriate to the needs and circumstances of Singapore; but under section 5, as it stands, we may find ourselves automatically bound by these legislative changes in the UK.

There is, therefore, a definite and urgent need to re-examine section 5 closely not only with a view to reducing its uncertainty and obscurity but also to ensure that Singapore will not be automatically bound by legislative changes in the UK where these changes are not suitable to our needs and circumstances. Accordingly, a Working Committee of experts chaired by the Attorney-General studied and gave careful consideration to the problems arising from section 5. The Bill is the result of the recommendation of that Committee.

The Bill amends section 5 in the following respects:

(1) It makes clear that the reception under section 5 is only confined to English mercantile law and not extended, as was suggested in one Privy Council case, to English law as a whole.

(2) It ensures that no law enacted or made in the UK which purports to give effect to a treaty or international agreement to which Singapore is *not* a party will be applicable here. Under the existing

section, UK legislation giving effect to international treaties to which Singapore is not a party may conceivably be applicable here; this is clearly an unsatisfactory state of affairs.

(3) Any UK law regulating the exercise of any business or activity by providing for registration, licensing or any other method of control or by imposition of penalties will be specifically excluded from application here.

(4) No provision contained in a UK Act of Parliament will be imported here if there is a corresponding written law in force in Singapore, i.e. a written law which serves the same or similar purpose or purposes as the UK Act.

(5) Express provision is inserted to make it clear that the UK law which is to be held applicable in Singapore may be qualified by local circumstances. All these exceptions and qualifications are desirable to clarify the scope of section 5 and to ensure that it does not have any unintended or adverse effects here.

I can assure hon. Members of this House that although the Bill is a short one its drafting has been far from easy. The Bill preserves the close connection between our commercial law and English commercial law. At the same time, it seeks to provide greater clarity and guidance in the interpretation of section 5 of the Civil Law Act and to ensure that the reception of English commercial law will be subject to certain limitations which are necessary and desirable. It does not, of course, attempt to achieve the impossible, i.e. to eliminate all problems of interpretation of the section.

The Bill also seeks to repeal section 6 of the Civil Law Act which relates to the requirement that a contract for the sale of goods of the value of $100 or upwards must be evidenced in writing to be enforceable. This provision is outmoded and has no practical value today. The sum of $100 is quite insignificant today, and many contracts for the sale of goods exceeding this sum are daily entered into orally. There is no justification for rendering such contracts unenforceable merely because they are not evidenced in writing. In the UK this evidentiary requirement was done away with as long ago as 1954.

This Bill may not excite great public interest because of its technical nature, as you can see, Mr. Speaker, Sir. Nevertheless, it should prove to be a very useful measure for lawyers and businessmen. It is the first of a series of measures which we hope to introduce to make our commercial law more easily ascertainable and less dependent on legislative changes taking place in the UK.