

91365

1967/21  
(2)

Appeal No. 17 of 1967

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N THE PUBLIC PROSECUTOR

UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED**  
LEGAL STUDIES  
**15 MAR 1968**  
25 RUSSELL SQUARE  
LONDON, W.C.1.

Appellant

- and -

OOI WAN YUI alias  
WONG KAM CHIN

Respondent

10

C A S E FOR THE APPELLANT

RECORD

1. This is an Appeal by Special Leave from the Judgment and Order of the Federal Court of Malaysia Holden at Kuala Lumpur (Appellate Jurisdiction) (Syed Sheh Barakbah, Chief Justice, Malaya, Ong Hock Thyę, Judge, Federal Court, Malaysia; Ismail Khan, Judge, High Court Malaya) dated the 12th day of July 1966 by which Judgment and Order the Respondent's appeal against his convictions and sentences by the High Court in Malaya at Muar in the State of Johore (S.S. Gill, Judge) on the 26th day of March 1966 upon 3 charges under the Internal Security Act 1960 (No. 18 of 1960) was allowed and his said convictions and sentences were quashed.

59.

39.

2. The Respondent was charged as follows:-

"1st Charge

That you between the 2nd day of September, 1964 and the 7th day of September, 1964 in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. 245 of 17th August, 1964, namely, Tenang, Kampong Labis, in the District of Segamat, in the State of Johore, consorted with members of the Indonesian Armed Forces who carried firearms and ammunitions in contravention of

2.

20

30

RECORD

the provisions of section 57 of the Internal Security Act, 1960, in circumstances which raised a reasonable presumption that you intended to act with such members of the Indonesian Armed Forces in a manner prejudicial to the public security and you have thereby committed an offence punishable under section 58 (1) of the Internal Security Act, 1960."

"2nd Charge

10

- 2. That you between the 2nd day of September, 1964 and the 7th day of September, 1964 in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. No. 245 of 17th August, 1964, namely Tenang Kampong Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession firearms, to wit, one sten gun No. MK 2 FG 5174, without lawful authority and that you have thereby committed an offence punishable under section 57(1)(a) of the Internal Security Act, 1960."

20

- 3. "3rd Charge

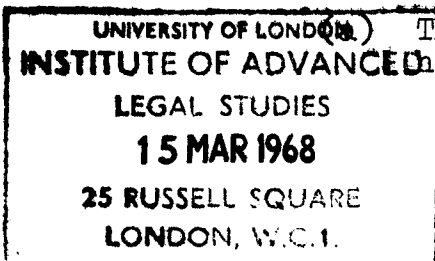
That you between the 2nd day of September, 1964 and the 7th day of September, 1964, in a Security Area as proclaimed by the Yang Di-Pertuan Agong vide Federal L.N. No. 245 of 17th August, 1964, namely, Tenang, Kampong Labis, in the District of Segamat, in the State of Johore, without lawful excuse had in your possession ammunition, to wit, 353 rounds of 9 mm ammunition, and two hand grenades, without lawful authority and you have thereby committed an offence punishable under section 57 (1) (b) of the Internal Security Act, 1960."

30

- 3. The Respondent at his trial raised no question as to the jurisdiction of the Court to try him or as to his status, and upon arraignment pleaded not guilty to the charges.

40

- 4. The principal grounds of this Appeal are:



That the Federal Court was in error in holding that the Respondent was a

91365

10 prisoner of war within the meaning of the Geneva Conventions Act 1962 (No. 5 of 1962) and as such was entitled to protection under the Geneva Convention Relative to the Treatment of Prisoners of War (The Third Schedule to the Act). In so holding the Federal Court was running counter to its own previous decisions on broadly similar facts in the cases of Teo Boon Chai alias Tey Ah Sin v. Public Prosecutor, Malaysia and Lee Hoo Boon v. Public Prosecutor, Malaysia which cases, it is submitted, were correctly decided.

20 (b) That the Federal Court was in error in holding that in the circumstances of the case a burden lay upon the prosecution to prove that the Respondent was disentitled to be treated as a prisoner of war under the Act. It is submitted that it was for the Respondent to show that he was entitled to the protection of the Act and this he never did.

30 (c) If, contrary to the Appellant's submission, there was any onus upon the prosecution to show that the Respondent was disentitled to be treated as a prisoner of war under the Act, such onus was discharged.

5. The following statutory provisions are material:-

57.(1) Any person who without lawful excuse, the onus of proving which shall be on such person, in any security area carries or has in his possession or under his control -

- 40 (a) any fire-arm without lawful authority therefor; or
- (b) any ammunition or explosive without lawful authority therefor,
- shall be guilty of an offence against this Part and shall be punished with death.

RECORD

58.(1) Any person who in any security area consorts with or is found in the company of another person who is carrying or has in his possession or under his control any fire-arm, ammunition or explosive in contravention of the provisions of section 57, in circumstances which raise a reasonable presumption that he intends, or is about, to act, or has recently acted, with such other person in a manner prejudicial to public security or the maintenance of public order shall be guilty of an offence against this Part and shall be punished with death, or with imprisonment for life. 10

Courts of Judicature Act 1964

s.22(1) Every High Court shall have jurisdiction to try all offences committed - 20

- (a) within its local jurisdiction;
- (b) on the high seas on board any ship or aircraft registered at any place in Malaysia;
- (c) by any person who is a Federal citizen or a citizen of any State in Malaysia or a subject of the Ruler of any State in Malaysia on the high seas or on any aircraft; 30

Evidence Ordinance

s.103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

s.106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. 40

Geneva Conventions Act 1962

s.2. In this Act, unless the context otherwise requires -

.....  
"protected prisoner of war" means a person protected by the convention set out in the Third Schedule to this Act;

s.4.(1) The Court before which -

10

(a) a protected prisoner of war is brought up for trial for any offence . . . . . shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in sub-section (2), so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused and the prisoner's representative.

20

Third Schedule

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

30

Article 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

RECORD

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof. 10

Article 4

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy: 20

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions: 30

(a) that of being commanded by a person responsible for his subordinates; 40

- (b) that of having a fixed distinctive sign recognizable at a distance;
- (c) that of carrying arms openly;
- (d) that of conducting their operations in accordance with the laws and customs of war;

10

.....

Article 17

.....

20

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints or both of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

30

.....

Article 84

40

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of

RECORD

the particular offence alleged to have been committed by the prisoner of war.

. . . . .

Article 87

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts. 10

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed. 20

. . . . .

Article 100 30

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend. 40



10 The death sentence cannot be pronounced against a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

20 6. The case for the prosecution was that on the 7th September, 1964 at 4 p.m. Captain Sanders (P.W.14) of A Company, 1/10 Gurkha Rifles was in his Company Headquarters in a school in the Tanang, Labis area when an observation post reported seeing 3 persons across the valley from the Company Headquarters. Captain Sanders saw the 3 men and put in an immediate attack upon them. After a brief burst of fire he and his men captured 2 Chinese and killed an Indonesian. The Respondent was one of the 2 Chinese taken prisoner. He "was dressed in olive green shirt and trousers, commonly known as jungle-green, and was wearing what appeared to be a pair of ammunition boots." The 2 captured Chinese and the dead Indonesian were taken to the school where their arms, ammunition and equipment were checked. The Respondent who, when Captain Sanders' men opened fire had been seen to be carrying a Sten gun, on arrival at the school identified his weapons and equipment. Subsequently the 2 captured Chinese and the dead Indonesian together with their arms ammunition and other equipment were taken to Labis Police Station.

33.

34.

40 7. A statement made by the Respondent to A.S.P. Lim Teong Kooi (P.W.13) was held to be admissible and produced in evidence as Exhibit P.10. In this statement the Respondent said that he was born in Lam Wua, Hokkien, China. He lived in China with his mother till he reached the age of 12 years. Before he was born his father came to Malaya to earn a living, but sometime in 1948, when the Respondent was 12, his father came to China and brought the Respondent and his mother to Malaya "where we settled down in Trong". He received a Chinese education for 6 years at See

78.

RECORD

Sin Chinese School in Trong, and after leaving school went into partnership with a friend in the rubber business. Due to lack of experience and knowledge of the business they had to close the shop and since then he had been doing various odd jobs.

79. The statement went on to describe how in 1959 the Respondent became a member of the Labour Party of Malaya in Taiping and in 1961 was elected pro-tem Chairman of the Labour Party of Malaya, Trong Branch. Subsequently he was persuaded by a friend that the Labour Party of Malaya could never hope to capture the Government by constitutional means but could only do so by force of arms, and joined a clandestine organisation "whose aim was to liberate Malaya from British and American imperialism". 10

The rest of the statement described how he left for Indonesia at the end of May, 1964, underwent military training there, was parachuted into Johore on the 2nd September, 1964, and was in the company of another Chinese, Lee Hoo Boon, and an Indonesian soldier when the 3 of them came under fire from the security forces, the Indonesian was killed and he and Lee Hoo Boon were captured. 20

15, 18, 21. 8. Three members of the Indonesian Armed Forces gave evidence for the prosecution. These were Corporal Sadikon (P.W.10) Ahman Surahman (P.W.11) and Lieutenant Sutikno (P.W.12). These witnesses described how on the 1st September 1964 a force of 48 paratroopers left Indonesia in a Hercules plane belonging to the Indonesian Air Force and flew to Malaya. Lieutenant Sutikno (P.W.12) was in command. Each of the paratroopers wore a camouflage uniform and was armed. The force was divided into 8 sections of 6 persons each. The Respondent and Ahman Surahman (P.W.11) were paratroopers in Section 7, of which Corporal Sadikon (P.W.10) was the leader. 30 40

The paratroopers baled out from the plane at about 2 a.m. on the 2nd September, 1964 and landed at Tenang, Labis in the State of Johore. After landing Lieutenant Sutikno met one of his men with whom he remained in the jungle for about 20 days before they were both captured.

Corporal Sadikon met Ahman Surahman and another paratrooper with whom he remained until they were captured about 25 days later.

The evidence of Lieutenant Sutikno (P.W.12) as to the recruitment and training of the force under his command was as follows:-

10                    "In February 1964 I was given special instructions to train some volunteers to form a special force to be known as Pasokan Gerak Tjepat. All the P.G.T. members were Indonesians. They were trained in jungle guerilla warfare and sabotage work. In July, 1964 I trained some Malayan Chinese in the Rhio Islands in the use of arms, handgrenades and explosives. The purpose of this training was to carry on a confrontasi campaign against Malaysia." 22.

The witness in his evidence thus described the objectives of the expedition:-

20                    "The purpose of my bringing out my team to Malaya was to liberate Malaya from neo-colonialism by doing sabotage work in order to crush the economy of Malaysia. We were to blow up bridges, railway lines and special buildings." 23.

30                    9. At the conclusion of the case for the prosecution, the learned trial Judge held that there was a case for the Respondent to answer and called on him for his defence. The Respondent elected to make a statement from the dock. In this he thus described the circumstances in which he went to Indonesia, underwent military training and participated in the expedition:- 37.

40                    "Some time in May, 1964 I was invited by some friends to go for a swim at Pantai. We went out by boat towards the sea. In the evening when it was quite dark, we headed for the shore. Unfortunately we came across an Indonesian boat which stopped our boat and forced all of us into that Indonesian boat. Then we were taken to a certain island where we were detained for one week. After that we were taken by 37.

RECORD

37. boat to a big military camp. I was then forced to take part in drill and training in the use of fire-arms. At first I refused to undergo training. The Indonesians assaulted me. So I was compelled to undergo training. I thought of escaping from this military camp but the Indonesians had sentries all over the place. I could not find an escape route.

In the course of 3 months' training I also underwent a course in parachute jumping. Each time I went out for parachute jumping I was fully equipped with a gun and ammunition and other things. 10

38. On 1. 9.64 I was told to get ready for parachute jumping practice at night. I was asked to equip myself fully for that practice. I went into a lorry with several others. The lorry was driven to a certain aerodrome. We reached the aerodrome at nightfall. At a given signal we were instructed to jump. I jumped out with all the others in the plane and landed at a place which I later came to know was Malaya." 20

10. No witnesses were called on the Respondent's behalf and at no time in the course of the trial was any suggestion made that he was a prisoner of war or entitled to be treated as such.

39. 11. On the 26th March, 1966 the Respondent was convicted and sentenced to death on each of the 30  
36. 3 charges. (During the hearing the 2nd charge had been amended without objection by the defence, by the deletion of the words "No. MK2. FG 5174" after the words "Sten gun").

49. 12. By Petition of Appeal dated the 2nd May, 1966 the Respondent appealed against his said convictions and sentences to the Federal Court of Malaysia upon inter alia the following ground:

"In any event the evidence adduced by the prosecution and the defence has the effect of giving your appellant the status of a protected prisoner of war within the meaning of the Geneva Conventions Act 1962 and ought to be treated as such." 40

13. The Federal Court dealt with the Respondent's appeal and also with the similar appeal of one Oie Hee Koi in a single judgment.

The principal judgment of the Court (with which Syed Sheh Barakbah C.J. Malaya and Ismail Khan J. concurred) was delivered by Ong Hock Thye F.J. on the 12th July, 1966.

59.

10 The learned Federal Justice dealt with both appeals upon the footing that the evidence showed that the appellants were members of the Indonesian Armed Forces, that this raised a presumption that they were entitled to be treated as prisoners of war, that it was for the prosecution to disprove this and that it had failed to do so.

Dealing with both cases he said:

20 "The appellants' claim to be prisoners of war makes it necessary to refer to the definition of that term in Article 4 of the Third Schedule to the Geneva Conventions Act, 1962, the relevant portion of which reads:

62.

"Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

30 (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces."

40 "This category includes members of volunteer corps forming part of the armed forces of a Party to the conflict and the evidence for the prosecution leaves no room for doubt that the appellants were in fact members of the Indonesian Armed Forces commanded by Lieutenant Sutikno, whether volunteers or conscripts. That being the case, the appellants ought prima facie to be regarded as

RECORD

prisoners of war unless there were circumstances which disentitled them to treatment as such."

He then proceeded to deal with the case of the Respondent and said:

66. "The onus clearly did not rest on him to prove that he was not a subject of His Majesty or that by reason of his past residence he was owing allegiance at the time he joined the Indonesian Armed Forces, or during the period specified in the charges against him." 10

He went on to say that long residence alone was insufficient to found allegiance, citing the case of Joyce v. Director of Public Prosecutions 1946 A.C. 347 and concluded:

68. "We are accordingly of the opinion that, in the case of Ooi Wan Yui, the prosecution had failed to prove that he was a person owing allegiance at any relevant time: consequently he should have been held to be a prisoner of war and entitled to the same treatment as was accorded to Lieutenant Sutikno and the Indonesians under his command none of whom were put on trial for any offence under the Internal Security Act, 1960. Moreover and in particular, the trial had failed to comply with the mandatory provisions of Articles 87, 100 and 104 of the Third Schedule to the Act of 1962. His appeal is therefore allowed and the conviction and sentence quashed." 20 30

14. The Appellant respectfully submits that the Federal Court approached the matter in a wholly wrong way and that the Geneva Convention Relative to the Treatment of Prisoners of War, which, when applicable, is given legislative effect by Act No. 5 of 1962, has no application to the facts of the present case. The Appellant was clearly a resident of and domiciled in Malaysia, where also the acts which were proved against him were committed. The Appellant was thus (assuming that there was an armed conflict to which Malaysia was a party) in the position of 40

an inhabitant of an invaded country who lends assistance to the invader. Accordingly, even if the Convention was otherwise applicable, nevertheless upon its proper construction, the Appellant was a defector to the enemy, and as such was not entitled to its protection. It is submitted that the long established principles of customary international law would clearly exclude the Appellant from the protection afforded to prisoners of war and that the Convention is to be interpreted in the light of these principles and as giving expression and effect to them.

15. It is further submitted that in any event and upon any view the evidence showed prima facie the commission of offences which fell within the ordinary jurisdiction of the Court and the only question left was whether the Respondent was entitled to an immunity or exemption from the general law by reason of his having a special protected status. The offences alleged were within the territorial jurisdiction of the Court as stated by S.22(1) of the Courts of Judicature Act 1964 and the Respondent was a person subject to the enactment under which he was charged, that is to say, sections 57 and 58 of the Internal Security Act 1960.

These sections apply to "any person" of whatever nationality, citizenship or status, and, it is submitted, whether he be civilian or military, although in an appropriate case it may be open to an accused by virtue of other legislation to show that he enjoys some special protected status. That this is so is shown, it is submitted, both by the express language and the manifest intention of the enactment. Section 58 makes it an offence to consort with a "person who is carrying or has in his possession or under his control any fire-arm, ammunition or explosive in contravention of section 57". If the members of an invading military force are to be excluded from the operation of section 57, then their carrying arms would not constitute a contravention of this section and no offence would be committed under section 58 by any person, whatever his nationality or allegiance, who consorted with them. This, it is submitted, would be contrary to and defeat

RECORD

the plain intention of the enactment, which would not operate to remedy the mischief aimed at where this was sufficiently open and blatant. It is submitted that section 57 applies to all persons who commit the offence therein defined, whatever their status may be, and that section 58 has the same application.

Accordingly, prima facie the Court has its ordinary jurisdiction to try offences against these sections by whatsoever persons committed unless there is something to oust such jurisdiction. Where the Geneva Conventions Act 1962 is applicable, the effect of Article 84 of the 3rd Schedule would be to oust the jurisdiction of the Court, but it is submitted that for this consequence to follow the facts making the Act applicable to the particular case must be clearly shown. In the present case no such facts were shown.

10

16. It is submitted that, the prosecution having proved by the evidence it adduced all the ingredients of the offences charged and that they were committed within the territorial jurisdiction of the Court, it was for the Respondent to prove the facts which gave him a protected status or conferred on him an immunity or exemption or ousted the ordinary jurisdiction of the Court. This he did not do. On the contrary, he adduced no evidence as to his status or allegiance and at no time during his trial did he raise the defence that he was a prisoner of war or challenge the jurisdiction of the Court.

20

30

17. It is submitted that the case of Joyce v. Director of Public Prosecutions 1946 A.C. 347, upon which reliance was placed by the Federal Court, but where the issue was whether the accused's acts outside the realm constituted any offence at all, afford little assistance in the present case, where acts expressly made criminal by the statute were carried out by the accused within the realm and the jurisdiction of the Court.

40

18. It is respectfully submitted that there was no evidence before the Court that the Respondent was entitled to be treated as a prisoner of war



10 within the meaning of the Geneva Convention (The  
Third Schedule of the Geneva Conventions Act  
1962). There was in particular no evidence that  
if there was either a "declared war" or an "armed  
conflict" between Malaysia and any other Power,  
that other Power was a "High Contracting Party"  
or had "accepted and applied" the provisions of  
the Geneva Convention so as to make the  
Government of Malaysia bound by it and so give  
the material provisions of the Third Schedule  
any legislative force. The Federal Court might  
have been entitled, had it thought fit, to have  
received further evidence upon these matters by  
reason of section 61(1) of the Courts of  
Judicature Act 1964, but it was not entitled,  
in the Petitioner's submission, to take  
judicial notice of or to make any assumptions  
about them.

20 19. It is further submitted that in any event,  
if it was incumbent upon the prosecution to  
show that the Respondent owed allegiance to  
Malaysia at the time of the acts charged, it did  
show this upon the evidence. This established  
that the offence was committed in that country,  
where, it is submitted, the Respondent was  
shown to be domiciled and ordinarily resident,  
where he had lived all his life and from which he  
had been only temporarily absent before the  
offences were committed. There was no evidence  
30 before the Court that the Respondent had  
decided to emigrate or change his allegiance.  
Indeed, his statement from the dock suggested  
the contrary, the gist of it being that he had  
no intention of leaving the country but was  
taken to Indonesia against his will and by force.

40 20. The Appellant respectfully submits that  
this Appeal should be allowed and the Judgment  
and Order of the Federal Court of Malaysia of  
the 12th day of July 1966 should be set aside  
and the Respondent's convictions and sentences  
in the High Court on Malaya at Muar in the State  
of Johore of the 26th day of March 1966 should  
be restored for the following amongst other

59. 71.

39.

R E A S O N S

1. BECAUSE the Respondent was not a prisoner  
of war within the meaning of the Geneva  
Conventions Act 1962.

RECORD

2. BECAUSE the Respondent was a defector to the enemy and as such was not entitled to be treated as a prisoner of war.
3. BECAUSE the Respondent was in breach of his duty of allegiance to His Majesty the Yang Di-Pertuan Agong and was accordingly upon a proper construction of the Geneva Conventions Act 1962 and by the law of nations to which such Act gives expression and effect not entitled to the protection of the Act. 10
4. BECAUSE it was for the Respondent to show that he enjoyed the status and privileges of a prisoner of war and this he did not do.
5. BECAUSE no facts or circumstances were shown to oust the Court's jurisdiction to try the offences charged according to the ordinary processes of law.
6. BECAUSE there was no evidence that if there was either a "declared war" or an "armed conflict" between Malaysia and any other Power, that other Power was a "High Contracting Party" or had accepted and applied the provisions of the Geneva Convention so as to make the Government of Malaysia bound by it and so give the material provisions of the Third Schedule any legislative force. 20
7. BECAUSE if there was any onus upon the prosecution to prove that the Respondent owed allegiance to His Majesty the Yang Di-Pertuan Agong, it discharged such onus. 30
8. BECAUSE if there was any onus upon the prosecution to prove that the Geneva Conventions Act 1962 had no application, it discharged such onus.
9. BECAUSE the Judgments of the Federal Court of Malaysia in the cases of Teo Boon Chai alias Tey Ah Sin v. Public Prosecutor and Lee Hoo Boon v. Public Prosecutor were correct for the reasons therein stated and the Federal Court should have followed these decisions in the present case. 40

MONTAGUE SOLOMON.

Appeal No. 17 of 1967  
IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL  
ON APPEAL FROM THE FEDERAL  
COURT OF MALAYSIA  
(APPELATE JURISDICTION)

B E T W E E N

THE PUBLIC PROSECUTOR

Appellant

- and -

OOI WAN YUI alias  
WONG KAM CHIN

Respondent

C A S E    F O R    T H E    A P P E L L A N T

---

STEPHENSON HARWOOD & TATHAM,  
Saddlers' Hall,  
Gutter Lane,  
Cheapside,  
London, E.C.2.

Appellant's Solicitors