

Roland St. John Braddell

The
Law of the
Straits
Settlements
A Commentary

A Reprint of the 1915 Edition

With an Introduction by
M. B. Hooker

Oxford University Press

THE LAW OF THE STRAITS SETTLEMENTS

A Commentary

ROLAND ST. JOHN BRADDELL,
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of the Straits Settlements*

With an Introduction by
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Kuala Lumpur
OXFORD UNIVERSITY PRESS
Oxford New York Melbourne
1982

Oxford University Press
Oxford London Glasgow
New York Toronto Melbourne Auckland
Kuala Lumpur Singapore Hong Kong Tokyo
Delhi Bombay Calcutta Madras Karachi
Nairobi Dar es Salaam Cape Town
and associates in
Beirut Berlin Ibadan Mexico City Nicosia

© T. L. Braddell 1966
Introduction © M. B. Hooker
First published by Kelly & Walsh Ltd., 1915
Second edition 1931
Third edition published by
Oxford University Press 1982

ISBN 0 19 582559 4

Printed in Singapore by Koon Wah Printing (Pte) Ltd.
Published by Oxford University Press, 3, Jalan 13/3,
Petaling Jaya, Selangor, Malaysia

INTRODUCTION

SIR ROLAND ST. JOHN BRADDELL (1880–1966) was the third generation of Malaya's most prominent legal family. His grandfather (Thomas Braddell) was the first Attorney-General of the Straits Settlements (1867–82), his father (Sir Thomas de Multon Braddell) was also Attorney-General and later Chief Judicial Commissioner of the Federated Malay States (1913–17).

Braddell was educated at King's School, Canterbury and at Worcester College, Oxford where he took his B.A. in the Honours School of Jurisprudence. He was admitted to the Bar (Middle Temple) in 1905 and returned immediately to Singapore where he was admitted as an advocate and solicitor in 1906. He served as Municipal Commissioner (1914–18) and on the Housing Commission (established in 1918) which was responsible for an extensive programme of slum clearance and rehousing. Between the wars he was a member of the Statute Law Revision Committee and a prominent member of the profession. A list of the important cases in which he argued is given in [1966] 2 M L.J. at p. xxxiv. During the same period he published *The Legal Status of the Malay States* (1931), an examination of sovereignty and of the relations between the Rulers of the Malay States and the Crown. It remains authoritative to this day. He later took a prominent part in the negotiations which led to the formation of the Federation of Malaya. He was made a *Datuk* of Johore in the 1930s and a British knighthood was conferred on him in 1948.

Further biographical details can be obtained from the following: [1966] 2 MLJ, p. xxxiii, also *JMBRAS* XLI (2) 1968.

In addition to *The Legal Status of the Malay States* (1931) and the present book, Braddell also published *A Commentary on the Gaming Houses Ordinance* in 1911, with a second edition in 1932, which was

for long a standard work. But his interests were not confined only to law. In a period of thirty years, from 1921 to 1951 he published a number of papers in the Journals of the *SBRAS* and *MBRAS*, almost all of which were concerned with the study of 'ancient times' in the Malay Peninsula and the Straits of Malacca. (A complete list can be found in the *Index Malaysiana* (1970) pp. 14–15.) Perhaps the most representative example of this work is a long paper (one amongst eighteen or so) published in *JMBRAS* XV (1 & 3), 1937. Braddell's purpose was to outline the history of the Peninsula (in this paper up to the 'pre-Funan' . . . the middle of the 3rd century A.D') and his method was to explain the traditions which survived in the Peninsula by reference to Indian and Chinese material. The traditions in this instance he illustrated from the *Hikayat Merong Mahawangsa* (Kedah Annals) using Low's translation of 1849. Thus, the reference to Rama takes him into the *Puranas* and the historical evidence which they provide as to the surrounding areas. To this he adds contemporary philology as to the phonetic changes which took place at various periods so as to identify particular places in the Peninsula. He uses the work of G. E. Gerini (published in 1909) in this sort of analysis.

He deals similarly with the evidence from the Chinese descriptions of the area compiled in embassies and voyages. This takes him into a discussion of French work on Indo-China, into Chinese history and Indo-Chinese history, from about 100 BC. He analyses the whole of this material, Indian, Chinese and also Ptolemaic, through evidence provided in his own time by art history, the diffusion of religion or religious forms and the reconstruction of trade routes.

While Braddell's exposition drew a rather waspish comment from Winstedt (*JMBRAS* XV.3.1937, pp. 142–4), it is an undeniable achievement, all the more creditable from someone whose only formal training was in law. It should come as no surprise, therefore, that the breadth of Braddell's intellectual interests and professional

activities should make his *The Law of the Straits Settlements* an outstanding book.

It was originally published in Singapore by Kelly and Walsh in 1915 and a second edition was produced in 1931 in two volumes. The earlier edition has been chosen for reprinting because it is superior in style, description and analysis to the later, which tends to be verbose, a fault of Braddell's later historical writing of which Winstedt was highly critical. Further, the extra material included in the 1931 version is easily available elsewhere in Straits legal publishing. In short, the 1915 edition is the better book and shows Braddell's ability at its best.

It comprises four chapters and five appendices. The chapters are: Legal History, Modifications of English Law, Institutions of Government, and The Judiciary and the Bar. Together they constitute the first comprehensive descriptions of English legal history in the Straits. There had, of course, been partial attempts at legal history earlier—those of Norton-Kyshe in 1886 and Napier in 1898—but both were comparatively limited in scope and subject matter.

The five appendices are: Treaties; Acts of Parliament; Letters Patent, Instructions and Standing Orders; Cases on Straits Ordinances; and the Applicability of English Statutes. Together the appendices provide the essential data of Straits legal history. But this is not just a convenient collection; the 'Cases on Straits Ordinances' and the 'Applicability of English Statutes' are much more than a mere collection. Between them they represent (in summary form) a rationalization of nearly one hundred years of precedent in subjects ranging from bankruptcy, to gaming, to evidence, to property; and stretching in time from 13 Ed. I c.45, to 32 Hen. VIII c.34 to Car. II c.7, and through the Georges to 58 and 59 Vic. c.25. On the statute side, each entry is annotated as being 'law' or 'not law' (with the occasional *semble!*), the whole representing in short form a considerable analysis of rather difficult precedent. In short, even in

the appendices, which are raw data, Braddell's talent for explanation and summary in the very best sense of these terms is apparent. Legal historians owe him a considerable debt on this account, and one would wish that historians also would take advantage of the materials provided.

Reverting now to the four chapters which Braddell wrote, they provide an outstanding originality of approach to English legal history in the Far East. Legal history is not just a chronology as it was for Norton-Kyshe, and even to some extent, Napier, but a history of ideas on such themes as 'modification and redefinition', 'institutions' and 'exposition'. These together comprise Braddell's definition of legal history. It is important to remember that such a breadth of view was uncommon at the time, especially in a colonial context. It is not too much to suppose that the intellectual curiosity which led Braddell to his oriental history, as opposed to his (English) legal history, gave him a wider perspective for the latter to its and our advantage. It was an advanced approach for its time, or even now for that matter, when one looks at contemporary writing, and it has remained influential in two spheres.

First, on the history side, his chapters on the institutions of government and the judiciary are the only reasonably complete accounts available.

Second, on the modern side, his study of the principles of modification of English law remains still the primary exposition from which all the later studies must begin. This is especially important in his discussion of cases on Chinese law (see also his paper in *SBRAS LXXXIII* (1921) at p. 153) and to a lesser extent on Islamic law. His exposition of these laws as at the turn of the century has almost come to be taken as the definitive description.

Finally, it is worth noting that in 1970 an annual lecture called the 'Braddell Memorial Lecture' was founded in the University of Singapore. It has now been renamed the 'Tun Razak Memorial Lecture', in memory of the late prime minister of Malaysia, and I am

sure that this is a change of name which would have met with Braddell's approval. The subject of the lecture is the same—the laws of Malaysia and Singapore, which Braddell helped to create and formulate and Tun Razak helped to uphold.

Eliot College
University of Kent at Canterbury
November 1981

M. B. HOOKER

PREFACE.

In 1898, SIR WALTER JOHN NAPIER, D.C.L., late Attorney-General of this Colony, published a short treatise, entitled "An Introduction to the Study of the Law administered in the Colony of the Straits Settlements." This work, which was of the greatest value and dealt with a subject never before attempted, has become out of date during the sixteen years which have elapsed since its publication; furthermore, it only purported, as its title expresses, to be an introduction to the subject with which it dealt. The need of a book of its description is, however, obvious; and accordingly, I projected the writing of the present work which is intended to bring SIR WALTER NAPIER'S book up-to-date and to expand it. I wrote to SIR WALTER NAPIER for his permission to use his book, which he most courteously accorded me.

I have not attempted to acknowledge throughout this book my indebtedness to the "Introduction"; to have done so would have entailed countless footnotes. I considered it better to make full acknowledgement in my Preface; and I have, therefore, the greatest pleasure in extending to SIR WALTER NAPIER my most grateful thanks for his permission to use his book as I chose, and for the abundant use which I have made of it.

I desire also to extend my thanks for facilities accorded to me, and for assistance given to me, to SIR JOHN ANDERSON, G.C.M.G., K.C.B., the Hon. Mr. R. J. WILKINSON, C.M.G., the Hon. Mr. G. A. GOODMAN; to Mr. W. FOSTER, C.I.E., Keeper of the Records at the India Office, who gave me every assistance in my use of the Straits Settlements Records preserved there; and finally to the Government of this Colony for financial assistance given to me in the publication of this work.

I shall be much obliged to my readers if they will point out any mistakes which may have occurred in this work or make any suggestions for the second edition which will be entailed after the labours of the Statute Revision Commission, of which I am a member, have been completed.

SINGAPORE, 1915.

R. ST. J. B.

DEDICATION

THIS WORK IS DEDICATED
TO
MY FATHER
SIR THOMAS DE MULTON LEE BRADDELL,
KNIGHT BACHELOR,
CHIEF JUDICIAL COMMISSIONER OF THE
FEDERATED MALAY STATES,
TO WHOM I OWE EVERYTHING.

* INDEX OF CASES.

A		PAGE.
Abdullah, in the goods of, (2 Ky. Ec. 8)	.. ..	15, 27, 80, 91
Abdul Latif v. Mahomed Meerah Lebe, (4 Ky. 249)	.. ..	37
Adoomah Kakah v. Lebby Dain, (1 Ky. 438)	.. ..	94
Advocate-General of Bengal v. Ranee Saweneye Dosse, (9 Moo I. A. 398)	.. ..	19
A.-G. for Canada v. Cain & Gilhula, (22 T.L.R. 757)	.. ..	109
A.-G. v. Chew Sin Yong and anor., (4 Ky. 648)	.. ..	44
A.-G. v. Chew Sin Yong and anor., (4 Ky. 680)	.. ..	44
A.-G. v. Great Eastern Railway Co., (L.R. 11 Ch. D. 449)	.. ..	112
A.-G. v. Seven Barrels of Gunpowder, (4 Ky. 688)	.. ..	44
A.-G. v. Stewart, (2 Mer. 143)	.. ..	75
A.-G. v. Wemyss, (4 Ky. 10)	.. ..	44, 117
A.-G. v. de Wind, (1 Ky. 303)	.. ..	37
Allagappah Chetty and anor. v. Tunku Allum bin Sultan Allie Iskander Shah, (1 Ky. 520)	.. ..	100
Anderson v. Gorrie, (L.R. 1895, 1 Q.B. 668)	.. ..	123
Aratoon Apar, the, v. the Hebe, (1 S.L.J. 34; 2 S.L.J. 118, 145)	.. ..	71
Armoogum and ors., <i>in re</i> , (4 Ky. 327)	.. ..	60, 90
Armootah Pillay v. Fatimah Bee, (4 Ky. 416)	.. ..	94
Ashbury v. Ellis, (L.R. 1893, A.C. 339)	.. ..	109
Auty v. Hutchinson, (6 C.B. 266)	.. ..	116
B		
Bahama Islands, <i>in re</i> , (L.R. 1893, A.C. 138)	.. ..	99
Barnes v. Foley, (5 Burr. 2711)	.. ..	118
Barton v. Taylor, (L.R. 11 A.C. 197)	.. ..	114
Bell v. Salleh, (S.L.R. N.S. 31)	.. ..	119
Blackwood v. R., (L.R. 8 A.C. 82)	.. ..	109
Bowen v. Morris, (2 Taunt. 374)	.. ..	116
Bryan v. Arthur, (11 A. & E. 108)	.. ..	99
C		
Calder v. Halket, (2 Moo. I. A. 293)	.. ..	123
Cameron v. Kyte, (3 Knapp 332)	.. ..	98
Campbell v. Hall, (1 Cowp. 204)	.. ..	15, 24
Campbell v. Hart, (20 St. Tr. 239)	.. ..	99

* This does not include those referred to in Appendices IV. & V.—R.B.

	PAGE.
Canterbury <i>v.</i> A.-G., (1 Ph. 306)	117
Carne <i>v.</i> Long, (2 de G., F. & J. 75)	76
Cashin <i>v.</i> Murray, (4 Ky. 435)	113
Catchatoor Galastaun, in the goods of, (Leic. 26)	33
Catterall <i>v.</i> Sweetman, (1 Rob. Eccl. 304)	111
Cauder Mohuddeen, in the goods of, (Leic. 281)	33
Caunter, in the goods of, (2 Ky. Ec. 20)	33
Caunter <i>v.</i> East India Co., (1 Ky. 12)	30
Cheang Cheow Lean Neo <i>v.</i> Low Kim Pong <i>v.</i> anor., (5 S.S.L.R. 22)	62
Chew Phya, the, (2 Ky. Ad. 19 & 29)	40
Chi Yuen, <i>in re</i> S.S., (3 Ky. 181)	44
Chin Kwai <i>v.</i> R., (6 S.S.L.R. 30)	64
Choa Choon Neo <i>v.</i> Spottiswoode, (1 Ky. 216)	73, 74, 76
Chong Long's Estate, <i>in re</i> , (W.O.C. 13)	81
Chong Moh & Co. <i>v.</i> S.S. "Camelot," (1 S.S.L.R. 119)	71
Choo Ang Chee <i>v.</i> Neo Chan Neo and ors., (12 S.S.L.R. 120)	33, 45, 68, 86, 87, 88, 90, 91
Chop Hong Guan and ors. <i>v.</i> S.S. "Amherst," (1 S.S.L.R. 157)	71
Chu Siang Long's Estate, <i>in re</i> , (W.O.C. 11)	86, 92
Chulas and Kachee <i>v.</i> Kolson binte Seydoo Malim, (Leic. 462)	85, 92, 93, 94
Claydon <i>v.</i> Green, (L.R. 3 C P. 511)	112
Collector of Sea Customs, Madras <i>v.</i> Punnari Chitambaram, (I.L.R. 1 Mad. 89)	124, 125
Commissioners of Stamps <i>v.</i> Hope, (L.R. 1891, A.C. 476)	109
Cooke <i>v.</i> Maxwell, (2 Stark. 183)	101
Cross <i>v.</i> Williams, (7 H. & N. 675)	116
D	
Dalrymple <i>v.</i> Dalrymple, (2 Hagg. 59)	83
Davidson <i>v.</i> Ord, (1 Ky. 205)	125
Dickson <i>v.</i> Combermere, (3 F. & F. 527)	114
Doyle <i>v.</i> Falconer, (I.L.R. 1 P.C. 328)	114
Duncan <i>v.</i> Findlater, (6 Cl. & Fin. 894)	118
Dunn <i>v.</i> Macdonald, (L.R. 1897, 1 Q.B. 555)	115, 116
Dunn <i>v.</i> R., (L.R. 1896, 1 Q. B. 116)	114, 115
E	
Eechi and anor., <i>v.</i> Tijah, (4 S.S.L.R. 138)	37
Ee Hoon Soon <i>v.</i> Chin Chay Sam and ors., (1 S.L.J. 147)	25
Egeria, the, (2 Ky. Ad. 10)	71
Ethergee, in the goods of, (1 Ky. xix)	10
F	
Fatimah <i>v.</i> Armootah, (4 Ky. 225)	94
Fatimah <i>v.</i> Logan and ors., (1 Ky. 255)	5, 18, 75, 94
Feather <i>v.</i> R., (6 B. & S. 257)	117

INDEX OF CASES

xiii

	PAGE.
Fenton <i>v.</i> Hampton, (11 Moo. P.C.C. 347)	113, 114
Fraser & Co. <i>v.</i> Nethersole, (4 Ky. 269)	48
Fray <i>v.</i> Sir Colin Blackburn, (3 B. & S. 576)	124

G

Gilmour <i>v.</i> Ng Chin Keng, (unreported)	106
Glynn <i>v.</i> Houston, (2 Man. & Gr. 337)	99
Gould <i>v.</i> Stuart, (L.R. 1896, A.C. 575)	115
Graham <i>v.</i> Public Works Commissioners, (L.R. 1901, 2 K.B. 781)	115
Grant <i>v.</i> Secretary of State for India, (L.R. 2 C.P.D. 445)	114
Grenville-Murray <i>v.</i> Clarendon, (L.R. 9 Eq. 11)	117

H

Haji Abdullah and ors. <i>v.</i> Khoo Tean Tek and ors., (1 Ky. 500)	44
Haleemah <i>v.</i> Bradford, (Leic. 383)	33, 92
Haleemah & Haminah, infants, <i>in re</i> , (Leic. 308)	96
Harding <i>v.</i> Commissioners of Stamps, (L.R. 1898, A.C. 763)	109, 111
Harries <i>v.</i> Davies, (L.R. 10 A.C. 279)	110
Hass <i>v.</i> Choo Chy Hok, (3 Ky. 152)	38
Hawah <i>v.</i> Daud, (Leic. 253)	92, 93
Hennessy <i>v.</i> Wright, (L.R. 21 Q.B.D. 509)	100
Henty <i>v.</i> R., (L.R. 1896, A.C. 567)	109
Hill <i>v.</i> Bigge, (3 Moo. P.C.C. 465)	98, 99
Hodge <i>v.</i> The Queen, (L.R. 9 A.C. 117)	108
Hunt <i>v.</i> Fripp, (L.R. 1898, 1 Ch. 675)	111
Huttenbach <i>v.</i> Wright, (2 S.S.L.R. 50)	104

I

Inche Mahomed Nor <i>v.</i> Hadjee Abdullah, (1 S.S.L.R. 58)	95
Ing Ah Mit, in the goods of, (4 Ky. 380)	88
Ismail bin Savoosah <i>v.</i> Madinasah Marican, (4 Ky. 315)	29, 32

J

Jamaludin <i>v.</i> Hajee Abdullah, (1 Ky. 503)	91
Javah bin Kachi and anor. <i>v.</i> Sahria and ors., (4 Ky. 413)	37
Jeddah, the, (2 Ky. Ad. 35)	40
Jemalah <i>v.</i> Mahomed Ali, (1 Ky. 386)	29, 32
Jemidah <i>v.</i> Haji Ahmat, (4 S.S.L.R. 171)	37
Jin Yeo Tong <i>v.</i> A.-G., (10 S.S.L.R. 10)	44

K

Kader Mydin and ors. <i>v.</i> Haji Abdul Kader, (1 Ky. 489)	44
Kader Meydin <i>v.</i> Shatomah, (Leic. 260)	94
Kalimah <i>v.</i> Haji Baba, (4 S.S.L.R. 167)	37

	PAGE.
Kamoo v. Bassett, (1 Ky. 1)	41
Karpen Tandil v. Karpen, (3 S.S.L.R. 58)	85, 90
Khoo Seok Haing v. Khoo Wee Team and anor., (1 Ky. 633)	33
Khoo Sian Tean v. A.-G., (unreported)	100
Khoo Tiang Bee <i>et uxor</i> v. Tan Seng Guat, (1 Ky. 413)	87, 92
Kielley v. Carson, (4 Moo. P.C.C. 63)	114
Kinloch v. Secretary of State for India, (L.R. 7 A.C. 619)	117
Ko Bo An v. Punghulu Shaik Beenan, (1 Ky. 273)	119
Koh San Tee and ors. v. S.S. "Penang," (2 S.L.J. 120)	71
Kwang Tung, S.S. v. S.S. "Ngapoota," (5 S.S.L.R. 1)	71
Kwang Tung, S.S. v. S.S. "Ngapoota," (5 S.S.L.R. 94)	71

L

Lane v. Cotton, (12 Mod. Ca. 473)	118
Lao Leong An, in the goods of, (Leic. 418; 1 S.S.L.R. 1)	87, 92
Le Cain, in the goods of, (1 S.S.L.R. 153)	33
Lee Joo Neo v. Lee Eng Swee, (4 Ky. 325)	88
Lim Ah Yong v. Khoo Khay Chan, (Leic. 384)	33
Lim Chooi Hoon v. Chok Yoon Guan, (1 S.S.L.R. 72)	89
Lim Chye Peow v. Wee Boon Tek, (1 Ky. 236)	70
Lim Seng Ee v. Wray and anor., (4 Ky. 240)	119
Lu Thien, <i>in re</i> , (S.L.R. n.s. 10 & 20)	102, 110, 182

M

M. v. G., (8 S.S.L.R. 82)	70
Macleod v. A.-G. for New South Wales, (L.R. 1891 A.C. 455)	109
Mahomed Ally v. Scully, (1 Ky. 254)	36
Mayor of Lyons v. East India Co., (1 Moo. P.C.C. 175)	75
Meghraj v. Zakir Hussain, (I.L.R. 1 All. 280)	123
Meh Allang, in the goods of, (W.O.C. App. iii, 2)	87
Meyer v. Coldenburg and anor., (4 Ky. 596)	60
Miles, <i>re</i> Virginia Eleanor, (8 S.S.L.R. 18)	63
Montagu v. van Diemen's Land, (6 Moo. P.C.C. 489)	101
Moothoo Raman Chetty v. Aik Kah Pay and anor., (9 S.S.L.R. 115)	62
Moraiss v. de Souza, (1 Ky. 27)	15, 27, 33
Mostyn v. Fabrigas, (1 Cowp. 161)	99
Muckdoom Nina Marican, in the goods of, (4 Ky. 119)	33
Musgrave v. Pulido, (L.R. 5 A.C. 111)	98, 100
Mymoonah v. Haji Mahomed Ariff, (1 Ky. 353)	60

N

Ngo Bee Chan v. Chia Teck Kim, (unreported)	46
Niblett, <i>re</i> W.C., (S.L.R. n.s. 58)	128
Nicholson v. Mounsey, (15 East 384)	118
Nonia Cheah Yew v. Othmansaw Marican and anor., (1 Ky. 160)	89
Noordin v. Shaik Mahomed Meah Noordin Shah and anor., (10 S.S.L.R. 72)	94

	PAGE.
Omichund v. Barker, (Willes 538)	82
Ong Cheng Neo v. Yeap Cheah Neo and ors., (1 Ky. 326. L.R. 6 P.C. 381)	6, 14, 23, 41, 45, 75
Oriental Bank Corporation, <i>in re</i> , (54 L.J. Ch. 330)	109

P

Palangee v. Tye Ang, (1 Ky. xix)	10
Palamappah Chetty v. Lian Poh, (1 Ky. 548)	111
Palmer v. Hutchinson, (L.R. 6 A.C. 619)	116
Parankusam v. Stuart, (2 Mad. H.C.R. 396)	124
Payne v. R., (L.R. 1902 A.C. 552)	109
Pen v. Baltimore, (1 Ves. Sen. 444)	117
Penang Foundry Co. v. Cheah Tek Soon, (1 Ky. 559)	47
Phillips v. Eyre, (L.R. 6 Q.B. 1)	99, 103, 109
Pootoo v. Valee Uta Taven and anor., (1 Ky. 622)	90
Powell v. Apollo Candle Co., (L.R. 10 A.C. 282)	107, 108
Priddy v. Rose, (3 Mer. 86)	117
Prosser v. Allen, (Gow 117)	116
Puteh, <i>in re</i> , (11 S.S.L.R. 78)	59

R

R. v. Beh Hooie and anor., (3 Ky. 103)	64
R. v. Burah, (L.R. 3 A.C. 889)	107, 108
R. v. Chan Ah Soo, (7 S.S.L.R. 85)	64
R. v. Chia Kuck Chia, (13 S.S.L.R. 1)	43
R. v. Crewe, Earl of, <i>ex parte</i> Sekgome, (L.R. 1910, 2 K.B. 576)	60
R. v. Kwek Chang Seng, (6 S.S.L.R. 35)	64
R. v. Loon, (W O.C. 3)	69
R. v. Low Lau Sew, (4 Ky. 76)	49
R. v. Mabot and ors., (4 Ky. 638)	112
R. v. Marais, <i>ex parte</i> Marais, (L.R. 1902 A.C. 51)	111
R. v. Mount, (L.R. 6 P.C. 283)	42
R. v. Ng Lin Chee, (4 S.L.J. 69)	102
R. v. Noquedah Allong and ors., (2 Ky. Cr. 3)	32
R. v. Nya Alu and ors., (4 Ky. 169)	43
R. v. Ojir and anor., (4 Ky. 122)	93
R. v. Pantalini, (4 Ky. 695)	126
R. v. Rabia, (4 Ky. 513)	94
R. v. Secretary of State for War, (L.R. 1891, 2 Q.B. 326)	117
R. v. Sim Boon Lip, (7 S.S.L.R. 4)	89
R. v. Treasury, (L.R. 7 Q.B. 387)	117
R. v. Wee Huat, (2 Ky. Cr. 103)	109
R. v. Willans, (3 Ky. 16)	4, 5, 8, 15, 27, 35, 74, 81-85, 93
R. v. Yeoh Boon Leng, (4 Ky. 630)	89
Ragunada Ran v. Nathumani, (6 Mad. H.C.R. 423)	124, 125
Raleigh v. Goschen, (L.R. 1898, 1 Ch. 73)	118

	PAGE.
Robertson, <i>ex parte</i> , (11 Moo. P.C.C. 288)	102, 114
Rodyk v. Williamson, (2 Ky. Ec. at p. 9)	14, 27, 28
van Rooyen v. van der Reit, (2 Moo. P.C.C. 177)	116
Ross v. Rees, (S.L.J. N.S. 29)	70
Rowning v. Goodchild, (3 Wils. 443)	118
Russell, in the goods of, (2 Ky. Ec. 9)	12

S

Safeah v. Adaykalavan Chitty, (8 S.S.L.R. 102)	91
Sahríp v. Mitchell and anor., (Leic. 466)	24, 37
Salmah v. Fatimah and Soolong, (1 Ky. 421)	93
Salwath Haneem v. Hadjee Abdullah, (2 S.S.L.R. 57)	95
Samuel Bros. v. Whetherly, (L.R. 1907, 1 K.B. 709)	116
Scully v. Scully, (4 Ky. 602)	29, 70
Shellumbrum Chetty v. Phillip Jones, (1 Ky. 204)	115
Shenton v. Smith, (L.R. 1895, A.C. 229)	114, 115
Sheriff of Penang, <i>in re</i> , (1 Ky. 426)	111
Sheriffa Essah, in the goods of, (4 Ky. 98)	95
Sherifa Shaika v. Haughton, (4 Ky. 533)	49
Sinclair v. Broughton, (L.R. 9 I.A. 152)	124
Sinyak Rayoon, <i>in re</i> , (4 Ky. 331)	29, 45, 95
Sirdar Gurdyal Singh v. Rajah of Faridkote, (L.R. 1894 A.C. 670)	109
Sittee Mariam, <i>in re</i> , (2 Ky. H.C. 38)	70
Smith v. Nicholls, (5 Bing. N.C. 208)	99
Solayappa Chetty and Shaik Salim's Contract, <i>in re</i> , (3 S.S.L.R. 36)	91
Spilsbury v. R., (L.R. 1899, A.C. 392)	60
Stock v. Harris, (5 Burr. 2709)	118
Sultan bin Hashim v. Lamsah, (5 S.S.L.R. 61)	62
Sutton v. Sutton, (L.R. 22 Ch. Div. 511)	112
Syed Awal v. Syed Ali, (1 Ky. 438)	60
Syed Mohamed Alsagoff v. Haji Mahomed Taib and anor., (5 S.S.L.R. 76)	62

T

Tan Kim Hong v. Tan Kim Keng and ors., (5 S.S.L.R. 94)	62
Tan Kieng v. On Phaik, (5 S.S.L.R. 77)	48
Tan Lian v. Hussein bin Mahomed, (S.L.R. N.S. 5)	37
Tan Seng Qui v. Palmer, (4 Ky. 251)	67
Taserip v. Ricard, (4 Ky. 214)	119
Tengah Chee Nachias v. Nacodah Merican and ors., (4 Ky. 267)	33
Teyen v. Ramlal, (I.L.R. 12 All 115)	123, 124
Than Pujem Luem v. Song Kee Lian and ors., (9 S.S.L.R. 68)	90
Thompson v. Shakespear, (1 de G. F. & J. 399)	76
Tijah v. Mat Alli, (4 Ky. 124)	93
Tilonko v. A.-G. for Natal, (L.R. 1907 A.C. 93 & 461)	110
Tobin v. R., (16 C.B. N.S. 310)	117
Trimble v. Hall, (L.R. 5 A.C. 342)	111
Tunku Mahmoud v. Tunku Alli, (5 S.S.L.R. 96)	67

INDEX OF CASES

xvii

V

PAGE.

Vadamalia Pillay <i>v.</i> Shetthay Amah, (W.O.C. 41; Leic. 270)	..	..	69
Veeramah <i>v.</i> Sawmy, (W.O.C. 38; Leic. 421)	..	..	69
Vinayak Divakar <i>v.</i> Bai Itcha, (3 Bom. A.C. 36)	..	..	126
Vulcan Match Co. <i>v.</i> Herm, Jebsen & Co., (1 Ky. 650)	..	..	48

W

Walsh <i>v.</i> R., (L.R. 1894, A.C. 144)	..	..	109
Warrender <i>v.</i> Warrender, (9 Bligh n.s. 89)	..	..	84
Washi, the (2 Ky. Ad. 44)	..	..	40
Wee Lalah <i>v.</i> Oh Kam, (3 Ky. 126)	..	..	64
Whitefield <i>v.</i> Le Despenser, (Cowp. 754)	..	..	118
Willis <i>v.</i> Gipps, (5 Moo. P.C.C. 379)	..	..	101, 122
Woodruff <i>v.</i> A.-G. for Ontario, (L.R. 1908, A.C. 508)	..	..	109
Wyatt <i>v.</i> Gore, (Holt N.P. 299)	..	..	101

Y

Yeo Ah Kim <i>v.</i> Lee Too Tye, (S.L.R. n.s. 72)	..	..	64
Yeoh Him and ors. <i>v.</i> Yeoh Cheng Kang and ors. (4 Ky. 204)	..	..	60
Yeoh Him and ors. <i>v.</i> Yeoh Cheng Kang and ors., (4 Ky. 500)	..	..	44
Yeap Cheah Neo <i>v.</i> Ong Cheng Neo, (1 Ky. 344)	..	..	73
Young <i>v.</i> Adams, (L.R. 1898, A.C. 469)	..	..	114, 115
Young <i>v.</i> Waller, (L.R. 1898, A.C. 661)	..	..	115