THE INTERNAL APPLICATION OF INTERNATIONAL LAW IN MALAYSIA: A MODEL OF THE RELATIONSHIP BETWEEN INTERNATIONAL AND MUNICIPAL LAW

There is no lack of scholarly inquiry into the international legal practices and perspectives of newly independent states[1]. Most of these studies however have focused on the performance of new states in arenas of interaction external to their own territory and the claims put forward for changes in the structures and substance of the international law creating processes. It is the purpose of this contribution to eludicate the procedures in Malaysia facilitating the application of international law in internal arenas.

In addition to describing the mechanisms of incorporation, such a study involves a consideration of the continuing impact of English law concepts in Malaysia, the manner in which the constitution attempts to defuse federal-state conflicts endemic in this area of the law and the nature of the complex relationship between municipal law and international law. The lack of comprehensive Malaysian practice and the fact that many Malaysian techniques for incorporation have foreign models mean that the methods of the comparatist have been freely adopted.

I. THE APPLICATION OF CUSTOMARY INTERNATIONAL LAW

A. *The Role of Section 3 of the Civil Law Act 1956 (Revised-1972)*

Section 3(1) of the Civil Law Act purports to state comprehensively the sources of law from which the courts in Malaya can draw. Apart from statutes, these are "the common law of England and the rules of equity as administered in England on the 7th day of April, 1956". The provisions for Sabah and Sarawak do not differ materially, at least for present purposes. The primary problem arising from this formulation can be stated simply: unless customary international law can be regarded as part of the common law of England there would appear to be no room for its application by the courts in Malaysia. Common law, on the one hand, is founded upon a body of principles developed from the judicial precedents of the common law courts. These tribunals were the first centrally organized judicial

[1] See, for example, Anand, *New States and International Law* (1972) and *Asian States and the Development of Universal International Law* (1972); Lissitzyn, *International Law in a Divided World* (1963); Falk, 'The New States and International Legal Order" 118 *Hague Recueil* 7 (1966).

institutions in England. They applied law that was "common" to all of England in contra-distinction to the local laws applied by the feudal and communal courts that preceded them. International customary law, on the other hand, is a general practice of states accepted as law. It requires certain minimum uniformities of behavior and its sources are the acts and words of legislatures and officials, both national and international. Its subject matter is as wide as the areas of interaction between states. The relation between municipal law generally and customary international law is complex and a matter of some controversy[2]. Conventionally, the view of courts on the nature of the relationship can be categorized under one of two heads. The dualist theory views the two systems as distinct. One system recognizes and applies norms of the other on an optional basis. Proponents of the competing monist theory see national and international law as two parts of the same legal system. They argue that national courts should be bound to apply customary international law norms. Conflict between the rules of the two systems are explained away as evidence of the primitive nature of international law. English judicial decisions provide some support for both theories, although neither one appears to have had much effect upon the actual trend of decision.

On the crucial question of whether custom forms part of the common law as opposed to the whole of English law, Blackstone had this to say:[3] "The law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law and is held to be a part of the law of the land." No clear judicial affirmation of Blackstone's view, which clearly purports to incorporate custom into the common law, can be found. In *R.* v. *Keyn*[4], the Court had to consider whether the Central Criminal Court had jurisdiction over a German captain who had been indicted for manslaughter as a consequence of a collision in British territorial waters. Cockburn L.J. adopted a dualist view of the relationship between the two regimes by assuming that the court had no jurisdiction by English law and then proceeding first to find the applicable rule of international law and then to determine further if Britain had assented to it. It is doubtful however whether the majority of judges in *Keyn* directed their minds to the precise issue in question and the case is therefore an ambiguous precedent[5]. In

[2] see *infra* p. for an attempt to elucidate the relationship by defining law as a process of decision-making.

[3] Blackstone, *Commentaries* (16th ed.) (1825) Vol. IV, Chap. 5, p. 67.

[4] [1876] 2 Ex. D. 63, 202-203.

[5] See Brownlie *Principles of Public International Law* (2nd ed.) (1973). p. 47.

West Rand Central Gold Mining Ltd. v. *R.*[6] the issue was drawn more clearly and Lord Alverstone, C.J., dealt with it at some length. In holding that international law forms part of the law of England he appears to have adopted a monist view; his only reservation being that the international law in question must be "proved by satisfactory evidence, which must show either that the particular proposition put forward has been recognised and acted upon by our country or that it is of such a nature, and has been so widely and generally accepted that it can hardly be supposed that any civilized nation would oppose it".[7] This qualification, it should be emphasized, is relevant only to the evidentiary problem inherent in the application of custom in internal courts. In delivering the judgment of the Privy Council in *Chung Chi Cheung* v. *The King*,[8] Lord Atkin harks back to the dualist-optional incorporation view and at the same time raises a more serious difficulty in defining the relationship between custom and common law. He said:

> "So far at any rate, as the Courts of this country are concerned international law has no validity save in so far as its principles are accepted and adopted by our own code of substantive law or procedure. The Courts acknowledge the existence of a body of rules which nations accept amongst themselves. On any judicial issue they seek to ascertain what the relevant rule is, and, having found it, they will treat it as incorporated into the domestic law, so far as it is not inconsistent with rules enacted by statutes or finally declared by their tribunals."

The last six words of this extract are ambiguous. Do they purport to draw a distinction between common law and customary law and subordinate the latter to the former? It is tentatively submitted that their effect is only to re-emphasize the application of the doctrine of *stare decisis* in this area of the law. Thus in *Bank of Ethiopia* v. *National Bank of Egypt and Liquori*[9] Clauson J. felt bound to hold that the act of a *de facto* recognized government cannot be impugned on the ground that it was not the rightful but a usurping government. This followed from the Court of Appeal decision in *Luthor* v. *Sagor*[10] and disallows the Court, for example, from considering the fact that the Italian annexation of Ethiopia was contrary to the Covenant of the League of Nations or that customary law on the issue had otherwise evolved after *Luthor* v. *Sagor*. Such an interpretation of the relationship between municipal law and international law is open to criticism because it ignores the modalities of change in

[6] [1905] 2 K.B. 391.

[7] *Ibid.*, p. 407.

[8] [1939] A.C. 160, 167-168.

[9] [1937] Ch. 513.

[10] [1921] 3 K.B. 532.

international customary law. These are necessarily different from the techniques developed by the common law because the latter operates in a vertical legal order and the former in a horizontal legal order. To ignore this distinction prevents the common law from evolving with changing principles of custom.

The Courts in Malaysia, both before and after independence, appear to have applied customary law when the occasion arose without reference to the Civil Law Act limitations. In *Sockalingam Chettiar* v. *Chan Moi*[11] the Malayan Union Court of Appeal had to determine the legality under international law of certain letters of administration given to the appellant by the Japanese during the period of their occupation of Malaya. Evans J., after surveying the writings of the publicists concluded that the letters of administration were in accordance with international law.[12] More recently in the celebrated decision in *Public Prosecutor* v. *Oie*[13] the Privy Council on an appeal from the Federal Court in Malaysia, held that Malaysian Chinese, born or settled in Malaysia but whose nationality had not been proven, were not entitled to be treated as prisoners of war upon their capture during the Indonesian confrontation period for infiltration into Malaysian territory while armed and accompanied by Indonesian military personnel. Although the main issue revolved around the interpretation of the Geneva Conventions of 1949, Lord Hodson, speaking for the Board, commented that "the position of the accused was covered *prima facie* by customary international law."[14] In practice then the Civil Law Act has not proved to be a formal barrier to the application of custom by Malaysian Courts, although in theory there has been no attempt to rationalize its application.

II. APPLICATION OF INTERNATIONAL AGREEMENTS AND DECISIONS OF INTERNATIONAL ORGANIZATIONS

A. *Doctrine of Incorporation*

In Britain, treaties likely to effect private rights must receive parliamentary consent in the form of statutory incorporation of their provisions.[15] Treaties, in other words, are not self-executing. The rationale for this procedure, which has not been subjected to serious criticism, is that because the treaty making prerogative rests in the crown alone, it is only through the incorporation procedure that Parliament can assert its will before the treaty becomes internally binding. The Malaysian constitution

[11] [1947] M.L.J. 154.

[12] See also *R.* v. *Alsagoff* [1946] 2 M.C. 191.

[13] [1968] 1 M.L.J. 148.

[14] *Ibid.*, p. 149. See also *Lee Hoo Boon* v. *P.P.* [1966] 2 M.L.J. 167.

[15] *Walker* v. *Baird* [1892] A.C. 491.

clearly envisages the adoption of British practice on this issue. Article 76(1)(a) enables Parliament to make laws "for the purpose of implementing any treaty, agreement or convention between the Federation and any other country or any decision of an international organisation of which the Federation is a member." Since treaties in Malaysia are entered into on executive authority alone, the policy reasons supporting the doctrine of incorporation in Britain apply equally in Malaysia.

An interesting point, which the courts in Malaysia have yet to face squarely, concerns the priorities in cases of conflict between two federal acts, one of which incorporates a treaty. In Britain the problem is easily soluble by reference to the doctrine of parliamentary sovereignty. Since no Parliament there can bind its successor, the later statute prevails. In Malaysia, however, where the constitution is the supreme law of the land this doctrine is not applicable. On principle, it is submitted, the Act of Parliament effectuating a treaty should be given priority. Any other solution results in the anomolous situation whereby a state is bound internationally to act one way but bound internally to act in another way. For illustration of the inevitable consequences flowing from such conflicts of obligation reference may be made to the well known case of *Mortensen* v. *Peters*.[16] Officials acting under statutory authority seized Danish fisherman on a Norwegian vessel in international waters. When it was urged upon the High Court in Scotland that the enabling statute violated international law, the Court responded that "for us an Act of Parliament duly passed by Lords and Commons is supreme and we are bound to give effect to its terms"[17]. Following this decision protests from Norway caused the British government to review the fines imposed and release the man it had imprisoned for violation of the statute. Eventually the Government found an alternative method to regulate fisheries that was more in line with their obligations under international law. The conflict is even more acute where a violation of treaty is involved because from an international legal perspective, it is no defence that internal law prohibits treaty obligations from being carried out. In the United States, however, it has long been judicially recognized that as between conflicting international and municipal law obligations internal effectiveness will be given to that expression which is later in time. The Supreme Court justified its position in *Whitney* v. *Robertson*:[18]

[16] 14 Scots L.T.R. 277 (1906). See *infra* p. 213 for discussion of this case in another context.

[17] *Ibid.*, p. 281.

[18] 124 U.S. 190, 194 (1888).

> "By the constitution a Treaty is placed on the same footing and made of like obligation with an Act of legislation. Both are declared by that instrument to be the supreme law of the land and no superior efficacy is given to either one over the other. When the two relate to the same subject the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but if the two are inconsistent, the one last in date will control the other . . . . . If the country with which the Treaty is made is dissatisfied with the action of the legislative department, it may present its claim to the executive head of the government, and take such other measures as it may deem essential for the protection of its interests. The courts can afford no redress."

From a realistic perspective it is difficult to envisage Malaysia taking a substantially different posture on this issue. To do so would imply an *a priori* subrogation of national interests to international interests, a state of affairs which will not come about as long as the international legal system is composed of sovereign states.

B. *Problems of Federation*

Unlike Australia and the United States, where the courts were obliged to construct compromises between the powers of the federal government to make treaties and the power of the state legislatures to regulate matters within their constitutional competence,[19] the Malaysian constitution provides a clear solution to the problem faced by a federation regarding its competence to make and implement treaties. Article 74(1) defines the legislative competence of the Federal Parliament in broad terms to include, *inter alia*, external affairs, defence, citizenship, finance, trade, shipping, fisheries, navigation, communication, health, labor, conservation of animals and planning. Article 76(1) goes even further by providing the Federal Parliament with the competence to enact legislation for the purpose of implementing treaties even if the subject matter would otherwise be within the sole competence of a state. The only limits on the Federal Parliament to prescribe in this area are contained in Article 76(2), which provides first that the Federal Parliament shall not make any laws in respect to Muslim law, Malay custom and native law and custom in the Borneo States; and second that in exercising its power to implement treaties on matters normally within state competence, the government of any state concerned shall be "consulted." The broad range of subjects now covered by treaties and the even broader range envisaged for future agreements as interaction and inter-dependence among nations continues

[19] See *R. v. Burgess* (1936) 55 C.L.R. 608; *Missouri v. Holland* 252 U.S. 416 (1920).

to embrace new areas of concern confirm the importance of such comprehensive federal competence in this area.

C. *Decision of International Organisations*

The power of the Malaysian Parliament to implement "decisions" of international organisations is ambiguous. First, it is unclear why it was considered necessary to grant such a power in view of the Parliament's broad competence; and second, the definition of the word "decision" in this context is difficult to establish. In respect to the first issue, the power of Parliament under Article 76(1) to implement decisions of international organisations is just as broad as it is in the case of treaties. It is unlikely that the framers of the constitution in promulgating this provision in 1957 foresaw that the matters enumerated on the state list – agriculture, forestry, turtles and riverine fishing – would come under consideration and "decision" by international organisations and that they therefore sought to provide Parliament with the necessary powers of implementation. Whatever the intent of Parliament was, many of these matters on the State List are now under study by the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO), so that in theory the provision could prove useful even though in practice any implementation of such decisions would more than likely take the form of a treaty, as is the case with "decisions" of the International Labour Organisation (ILO). Concerning the definition of the word "decision" in this context, Sir Ivor Jennings, commenting on a similar provision in the Indian constitution, concluded that "the word decision cannot mean a binding decision for the assumption is that legislation is required to implement it"[20]. It is submitted that this interpretation is incorrect. Even treaties need implementation and yet they are considered binding. The word "decision", when used in this context must be interpreted in international organizational terms. Most United Nations actions are specifically labelled in the Charter as recommendations, resolutions or directives. They are not binding in the sense that member states are under a legal obligation to carry them out. The Organization does, however, have limited powers of decision in certain matters, including the expulsion and suspension of members, the promulgation of measures necessary to maintain or restore international peace and security and the power to end mandates and trusteeships. Other organizations also exercise decision making powers. The International Civil Aviation Organisation, for example, issues binding decisions on matters affecting safety and navigation in international flights and decisions of the International Court of Justice are binding on those members who accept its jurisdiction. It is in this latter sense that the term "decision" should be interpreted.

[20] Jennings, *Some Characteristics of the Indian Constitution (1961), p. 165.*

III. THE APPLICATION OF INTERNATIONAL LAW IN INTERNAL POLITICAL ARENAS

No survey of international law applying procedures could purport to be comprehensive without emphasising the importance of the role of the legal adviser in political decision making and the ways in which international law is there accepted or rejected, applied or distinguished, in the everyday conduct of foreign affairs. The first point to make is that the ethos of international law at the national level lies in the practice of states, not in the decisions of courts. The real importance in examining decisions of courts, it is submitted, is not because in themselves they assume great importance but because of the influence they exert on political decision makers through the instrumentality of the legal adviser. Laymen, and not a few municipal lawyers, assume that the only job of the legal adviser to the Foreign Office is to justify what the politician decides to do. When a decision has been made, it is indeed the legal adviser's task to argue his government's case as well as it permits; but it is too little appreciated that the legal adviser serves another and sometimes adverse function. It is his job to remind the politician of the responsibility of his government to the needs of international order. He tells the decision maker whether proposed action conforms to international norms, how deep an inroad into accepted doctrine a non-conforming decision would make, how difficult it would be to justify, how likely it is that the justification would be accepted, and which alternative policy formulation is a less clear violation.[21] The cynic might still respond that the advice given by the legal adviser is conditioned by his own perspective of what is in the national interest. Such a view is only partialy correct. It fails to take into consideration the fact that the legal adviser has been trained as an international lawyer with all the exposure and conditioning to international community interests and values that such training provides. Few international lawyers, at whatever level they are located, depart from their primary allegiance to the growth of international legal order. It is true that the law is in a stage of development in which its relationship with policy is particularly close, that the direction in which the law should develop is largely a question of policy, so that national interests play a large role in the formulation of legal norms; but the legal adviser's conceptions of public policy considerations are those considerations of policy recognized by international law as being valid because they do not violate the basic interests of the international community in the maintenance of peace and stability. The loyalty of the legal adviser then, is not to fixed rules of law which he feels must be perpetuated, but to the underlying principles and methods of the international legal system.

[21] See further, Henkin "International law and the Behavior of Nations" *Hague Recueil* 1971, 187-188 (1965).

In Malaysia, the international legal adviser's office is located in the Attorney General's Chambers and not in the Foreign Office. The rationale for this minority practice is to insulate the legal adviser from the highly political atmosphere in the Foreign Office in the conviction that his opinions will therefore reflect greater independence and allegiance to the law. These are valid considerations but such a practice inevitably removes the legal adviser from the center of power and therefore tends to de-emphasize the role of law in political decision making. This is in contrast to a system where the legal adviser is an integral part of the Foreign Office regularly attending staff meetings at the Ministry and taking full part in the deliberations. Furthermore, this practice appears unrealistic in so far as it implies that law and politics are unrelated and that legal decisions can properly be taken in a political vacuum.

IV. THE RATIONAL FOR THE APPLICATION OF INTERNATIONAL LAW IN INTERNAL ARENAS

Having surveyed and assessed the methods through which international law is applied in Malaysian courts and by the Foreign Office, it is now necessary to explain why states feel it incumbent on them to apply international law at all. At the heart of the matter is the much debated question of the true relationship between municipal law and international law. The suggestion is frequently put forward that when policies prescribed on an international level, like custom and treaty, are applied internally, such policies cease to be international law and are "transformed" into municipal law. It is submitted that this categorization is little more than a statement of preference for the dualist as opposed to the monist view of the relationship between the two systems[22]. Both theories, it is submitted, pre-suppose a definition of law as an aggregate of rules rather than a process of decision, in which rules form only a part. A fuller description of the legal process would embrace the *intelligence* function (facts made available to the decision maker), the *recommendation* function (promotion of particular policy alternatives), the *prescription* function (establishment of authoritative legal norms), the *invocation* function (the claims made the parties for application of the prescription to specific facts), the *application* function (the relation of the prescription to a specific dispute), the *termination* function (how the prescription is withdrawn) and the *assessment* function (appraisal of the process according to desired policy alternatives). An understanding of the legal process demands inquiry into what entities perform each function, what procedures are available for the performance of each function and

[22] See Starke, *Monism and Dualism in the Theory of International Law* 17 B.Y. I.L. 68 (1936).

what the effects of each function are from international and national perspectives.[23]

From the vantage point of law as a process of decision, the problem of defining the relationship between international and municipal law becomes clearer. The two processes are interpenetrating. At the intelligence, recommendation and assessment stages one finds public international organisations like the World Health Organization (WHO), the Inter-Governmental Maritime Consultative Organization (IMCO), the Islamic Conference, The Association of South East Asian Nations (ASEAN) and non-governmental organizations like Amnesty International, the International Red Cross and powerful multinational companies exercising influence on national decision makers who prescribe and usually apply municipal law. Conversely in the case of a treaty, where the prescription is international, the intelligence, recommendation and invocation is likely to be national. The indispensable role of assessment is frequently performed at both levels. In the case of the Antarctic Treaty, for example, an ongoing assessment is provided for in the form of continuing consultations among signatory states. At the date of termination, moreover, any contracting party may call a conference to review the operation of the Treaty. Assessment, in this instance, would presumably lead to new intelligence and recommendation and the process of decision would begin anew. There is even a continuing interpenetration of decision makers themselves in arenas like the United Nations, the International Court of Justice or the International Labour Organisation (ILO). The result of this cross fertilization is that each system shapes the norms of the other even though the "rule" making functions are distinct. The influence of international law on national law then is a function not so much of the particular arrangements for incorporation described in the sections above, but rather of the infiltration of international law into the very process by which national law is made. Taken together with the potential and threatened retaliations, both violent and non-violent, which nations have at their disposal to drive other nations' decision makers toward conformity, the reason for the application of international law in internal arenas comes into focus.

For purposes of illustration it is convenient to refer again to the English case of *Mortensen* v. *Peters*, the facts of which are outlined above.[24] Although the appellant argued that the British statute prohibiting fishing

[23] For deeper insight see McDougal and Laswell *Legal Education and Public Policy: Professional Training in the Public Interest* 52 Yale L.J. 203 (1943) and McDougal *International Law, Power and Policy: A Contemporary Conception* 82 *Hague Recueil* 137 (1953).

[24] *Supra*, p. 208.

in the whole of the Moray Firth -- whose headlands were seventy miles apart – contravened international law, the Court was obliged to apply the statute and upheld the appellant's conviction. In the event, however, protests from the Norwegian government caused the British government to review the penalties imposed and withdraw the legislation in favor of a scheme to regulate foreign fishing beyond the three mile limit prohibiting only the landing and sale of fish in the United Kingdom[25]. Even though no "rule" of international law was applied by the courts or prescribed by Parliament as such, the impact of international law on British municipal law is undeniable. It can only be fully appreciated however from the perspective of law as a process of decision. The Norwegians operated through recommendation, invocation and appraisal to influence the prescription, application and termination of British municipal law.

The potential reciprocities and threatened sanctions that drive a decision maker to conform were unusually well articulated by Mr. Justice Jackson of the United States Supreme Court in *Lauritzen* v. *Larsen*[26]. In that case the Court interpreted Congressional legislation restrictively so as not to conflict with customary international law relating to the law of the flag. He said:

> "International or maritime law in such matters as this does not seek uniformity and does not purport to restrict any nation from making and altering its laws to govern its own shipping and territory. However it aims at stability and order through usages which considerations of comity, reciprocity and long range interest have developed to define the domain which each nation will claim as its own. Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transactions and the states or governments whose competing laws are involved. The criteria, in general, appear to be arrived at from weighing the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority. It would not be candid to claim that our courts have arrived at satisfactory standards or apply those that they profess with perfect consistency. But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact we hold to be sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

[25] Trawling in Prohibited Areas Prevention Act, 1909.

[26] 345 U.S. 571, 582 (1953).

A closely related factor in promoting internal application of international law is the well recognized practice among states of appealing from the non-application or mis-application of international law in internal arenas to international arenas of both political and judicial character, where defects in municipal legal systems are no excuse for breach of an international obligation. The implication for national decision makers at the prescription, application and termination stages of such community sanction in the form of an advice judgment or organized community political decision is clear and results in the same kind of inhibitions described by Mr. Justice Jackson. Together these varied forms of constraint and reciprocal interaction expose the superficiality of conventional statements of the relationship between the two legal systems. Within the limitations of a world community based firmly on the sovereignty of its primary subjects, these factors encourage both the application of international law in internal arenas and the development of effective techniques to facilitate its reception.

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EVIDENCE OF CHILDREN

Section 133A of the Evidence Act 1950, reads as follows:—

"Where in any proceedings against any person for any offence, any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the Court, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and his evidence, though not given on oath, but otherwise taken and reduced into writing in accordance with section 269 of the Criminal Procedure Code of the Federated Malay States or the corresponding provision of the Criminal Procedure Code of Sabah or Sarawak, as the case may be, shall be deemed to be a deposition within the meaning of that section:

Provided that, where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him."

This section was added to the Evidence Ordinance, 1950 by virtue of the Evidence Ordinance (Extension) Order 1971, made by the Yang di-Pertuan Agong under powers conferred by section 74 of the Malaysia Act. The order in effect extended the operation of section 136 of the Sarawak Evidence Ordinance (Cap. 54) throughout the Federation with effect from the 1st of November, 1971. Section 136 of the Sarawak Ordinance itself followed the provisions of section 38 of the English Children and Young Persons Act, 1953. The section only applies to the unsworn evidence of children.

Prior to 1971 the law applicable to the evidence of children in Malaysia followed the English and the local law relating to accomplice evidence.

In *Lee Mion* v. *Public Prosecutor of Johore*[1] the accused had been convicted of the offence of rape on a girl of about eleven years of age. On appeal it was contended that the conviction should be quashed on the ground that the unsworn evidence of the girl was not corroborated in any material particular implicating the accused. The appeal was allowed and Huggard C.J. in his judgment said[2] —

"In England it is expressly provided by Statute that no person

[1] [1934] M.L.J. 124.

[2] *Ibid.*