

JUDICIAL DECISIONS OF TUN MOHAMED SUFFIAN
ON THE
MALAYSIAN CONSTITUTION.

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PREFACE

The Constitution of Malaysia is the supreme law of the land.¹ The judiciary is entrusted with the responsibility of reading life into the Constitution which is otherwise a mere piece of paper. Words and phrases of the Constitution exert their meaning, force and authority through a complex judicial process of the interpretation of the document. Woodrow Wilson, former President of the United States, once declared that the country looks for "statesmanship" in its judges, because the Constitution was not a "mere lawyer's document" but the "vehicle of the nation's life."² The same is true of the country's expectations of the judiciary in Malaysia.

Judges used to maintain that they interpret the law as they find it. Mr. Justice Kamal Mustafa Bokhary³ points out in one article⁴ that "while finding out the law, its meaning and contents, the judges no doubt, bring to bear their own understanding of law." The Court, bit by bit, through the process of judicial interpretation, is making or laying down fundamental law. The Court always has available to it alternative principles of constitutional interpretation - broad or narrow - as well as alternative lines of precedent, with the outcome that the court enjoys a "freedom" which is "virtually legislative in scope in choosing the values which it shall promote through its reading of the constitution."⁵ It is against

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1. See Article 4 of the Federal Constitution.
 2. Quoted by Leonard W. Levy, The Supreme Court Under Earl Warren, 1972, p.5
 3. Judge, Lahore High Court, Lahore.
 4. Kamal Mustafa Bokhary J., "The Role of Judiciary in a Developing Country", 1977 1 M.L.J. xxvi
 5. The words of Edward S. Corwin as quoted by Leonard W. Levy, op. cit. at p.10

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CHAPTER I

INTRODUCTION

A. OBJECTIVE OF THE STUDY.

This study proceeds from the theoretical framework to the analysis of the achievements of Tun Suffian, former Lord President of the Federal Court of Malaysia, in the development of the Malaysian Constitution. The writer proceeds from a preliminary consideration of the functions of the judiciary and moves on to a study of the judge's experience and judicial philosophy which mould his judicial decisions. This leads to the formulation of a framework that guides the substantive investigation which is undertaken under heads most susceptible to convenient treatment.

The Malaysian Constitution by the very nature of its comprehensive scope and its being intended for an indefinite future must perforce be worded in general and broad terms which are capable of varying interpretations. Words, engrossed on parchment and demanding to be respected as words may hinder constitutional development as well as protect the state. Like all his brethren, Suffian performed the task of 'balancing' competing views while extracting life from the cold letters of the law. The judge's position is similar to that of "a musical composer (who) follows certain rules of harmony but applies them a thousand supple variations."¹ Eventhough the performer enjoys far less freedom than the creator, there is always a room wide enough for manoeuvre which the judge enjoys whilst indulging in that delightful game of judicial interpretation. Literal or liberal approach is an open choice.

1. Broadus Mitchell, A Biography of the Constitution of the United States, New York Press, 1975, xii

The judiciary is a guardian of the Constitution which is the supreme law of the land. The Federal Constitution is the cornerstone of this legal system. The Court is looked upon to uphold the Rule of Law and to promote constitutionalism.