

### APPENDIX 3

#### GENERAL BENNETT'S ESCAPE

ON 17th November 1945 Mr Justice Ligertwood was appointed by the Prime Minister of Australia to be a Commissioner to inquire into and report on the circumstances of and connected with the action of General Bennett in relinquishing his command and leaving Singapore; whether at the time Bennett had the permission of any competent authority for such action; whether Bennett was, and if so when, a prisoner of war; whether it was Bennett's duty to remain with the forces under his command; whether in all the circumstances Bennett was justified in relinquishing his command and leaving Singapore.

The Commission opened its sittings in public on 26th November and sat continuously until 13th December 1945. The transcript of the evidence covered 480 pages of foolscap.

In Part I of his subsequent report, Mr Justice Ligertwood set out what he considered to be the material circumstances relating to General Bennett's action. He found that:

"In relinquishing his command and leaving Singapore General Bennett did not have the permission of any competent authority. There was, in fact, no competent authority who could give him such permission. General Percival could not do so because he had signed the capitulation under which he had agreed that General Bennett as one of the troops under his command would be surrendered. Even the Australian Government could not have given him such permission because it was within the competence of General Percival to agree that General Bennett as one of such troops would be surrendered, and the capitulation bound the Australian Government as much as it did General Percival.

"At the time General Bennett left Singapore he was not a prisoner of war in the sense of being a soldier who was under a duty to escape. He was in the position of a soldier whose commanding officer had agreed to surrender him and to submit him to directions which would make him a prisoner of war.

"Having regard to the terms of the capitulation I think that it was General Bennett's duty to have remained in command of the A.I.F. until the surrender was complete.

"Having regard to the terms of the capitulation I find that General Bennett was not justified in relinquishing his command and leaving Singapore."

Part II of the report dealt with the reasons and motives which actuated General Bennett in deciding to escape. In this the Commissioner found:

"(a) General Bennett was the first Australian General to meet the Japanese in battle in jungle conditions.

- “(b) He acquired valuable information and experience in Malaya relating to Japanese strategy and tactics and evolved successful counter measures.
- “(c) He genuinely believed that Australia was in peril and that it was of vital importance to the safety of the country that he should return to take a leading part in its defence.
- “(d) He genuinely, but in my opinion mistakenly, believed that immediately upon the cessation of hostilities the whole of the British Forces on Singapore Island had been surrendered to the Japanese and that he was a prisoner of war under a duty to escape if he could.
- “(e) He genuinely, but in my opinion mistakenly, believed that the terms of the Cease Fire order requiring the troops to remain in their positions was a Japanese order directed to prisoners of war and one which he was in duty bound to disregard if he saw the opportunity of escaping.
- “(f) He genuinely believed that he had done all he could for his men and that if he remained he would be immediately segregated from them and could not give them any further assistance.
- “(g) The escape was a hazardous enterprise and involved no reflection on General Bennett's personal courage.
- “(h) He did in fact bring back valuable information to Australia which was used in the training of the A.I.F. in jungle warfare.
- “(i) His decision to escape was inspired by patriotism and by the belief that he was acting in the best interests of his country.”

In 1948 an eminent military lawyer, Lieut-Colonel Fry,<sup>1</sup> published in the University of Queensland Law Journal (and later in pamphlet form) a lengthy examination of the “Legal aspects of the departure of Major-General Gordon Bennett from Singapore”. Fry's summary of his conclusions was:

The Royal Commissioner decided that the Bukit Timah memorandum was a capitulation, but did not state clearly whether it made provision for an unconditional or conditional surrender. Nevertheless, whether it was or was not a “capitulation”, conditional or unconditional, would seem to be immaterial in applying the rules of international law to General Bennett's departure from Singapore.

The material point seems to be whether surrender (conditional or unconditional) took place at 2030 hours on 15th February. If so, General Percival and his forces at that hour became prisoners of war, and as such were each individually entitled to attempt to escape; and any stipulation to the contrary would be inconsistent with the Prisoners of War Convention and customary laws of war, and, therefore, invalid. The Royal Commissioner was of opinion that the surrender did not take place at 2030 hours on 15th February. He seems to have based his decision upon the view that the Bukit Timah memorandum should be interpreted to mean the surrender was not to occur unless and until General Percival's forces were “behind the wires” of prisoner of war camps. The Bukit Timah memorandum does not expressly say this, and his opinion does not seem to be supported by international practice, convention or text-writers.

<sup>1</sup> Lt-Col T. P. Fry, ED, QX6266. DJAG HQ I Aust Corps 1940-41; LSO HQ III Corps 1942-44; AD of Research, LHQ 1944-45. Barrister; of Ascot, Qld; b. Brisbane, 19 Jun 1904. Died 24 Sep 1952.

The rules of international law and facts of this particular case provide reasonable grounds for holding an opinion, contrary to the Royal Commissioner's findings, that unconditional surrender took place at 2030 hours on 15th February, and that at that moment the personnel of General Percival's forces acquired the status of prisoners of war.

If, however, the Royal Commissioner was correct as to the time of surrender, and if, therefore, General Bennett was not a prisoner of war at 2200 hours on 15th February, what at that moment were his status, rights and duties? The Royal Commissioner seems to have held that, at that moment he was neither a prisoner of war nor a combatant, but a soldier who must obey Japanese orders, including an implied Japanese command not to escape. That is, he had the status, rights or duties of neither a prisoner of war nor combatant. This idea that, by means of a "capitulation" the victor can, by a simple device of postponing the moment of surrender, deprive enemy soldiers of their status of combatants without substituting for it that of prisoners of war would seem to be without validity as a principle of international law, and capable of opening the flood-gates to wholesale evasion of international safeguards.

The Royal Commissioner based his report on an interpretation of international law, and did not discuss General Bennett's action from the standpoint of Australian military law, which placed him under no inflexible obligation to remain on Singapore Island.

Whatever may be thought of the validity of the Royal Commissioner's findings and views in General Bennett's case, the dramatic nature of the General's escape and public interest excited by the inquiry have made it essential for the future guidance of Australian soldiers to remove their present doubts. It is suggested this can only now be done by the issue of clear, unequivocal instructions as to the precise time at which, in each possible set of governing circumstances, they are as soldiers obliged by the law of their country to attempt to escape. These instructions should make clear the circumstances in which international law and the customs of nations will afford them protection.