FEDERATION OF MALAYA ORDINANCES, 1950.

Ordinance No.

1 ... The Malayan Auxiliary Air Force Ordinance, 1950.
2 ... The Courts (Amendment) Ordinance, 1950.
3 ... The Ports (Amendment) Ordinance, 1950.
4 ... The Juvenile Courts (Validation of Orders) Ordinance, 1950.
5 ... The Prevention of Corruption Ordinance, 1950.
6 ... The Municipal (Amendment) Ordinance, 1950.
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9 ... The Social and Welfare Services Lotteries Board Ordinance, 1950.
10 ... The Merchandise Marks Ordinance, 1950.
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12 ... The Arbitration Ordinance, 1950.
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17 ... The Revised Edition of the Laws (Annual Supplements) (Amendment) (Johore) Ordinance, 1950.
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19 ... The Industrial Rehabilitation (Finance) (Amendment) Ordinance, 1950.
20 ... The Legal Representation of His Majesty's Forces Ordinance, 1950.
21 ... The Licensing of Bicycles (State and Settlement Legislatures Competency) Ordinance, 1950.
22 ... The Malayan Royal Naval Volunteer Reserve Ordinance, 1950.
23 ... The Pilots Enactment (Application to Trengganu) Ordinance, 1950.
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40 ... The Criminal Procedure Code (Straits Settlements) (Amendment) Ordinance, 1950.
41 ... The Estate Duty (Transitional Provisions) (No. 2) (Amendment) Ordinance, 1950.
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48 ... The Titles to Land (Occupation Period) (Amendment) Ordinance, 1950.
49 ... The Debtor and Creditor (Occupation Period) (Amendment) Ordinance, 1950.
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54 ... The Income Tax (Amendment) Ordinance, 1950.
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64 ... The Social and Welfare Services Lotteries Board (Clarification) Ordinance, 1950.
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70 ... The Stamp (Amendment) Ordinance, 1950.
71 ... The Supply (1951) Ordinance, 1950.
72 ... The Malayan Railway Supply (1951) Ordinance, 1950.
73 ... The Johore Ports and Shipping Enactment (Amendment) Ordinance, 1950.
74 ... The Merchant Shipping (Amendment) (No. 2) Ordinance, 1950.
75 ... The Widows and Orphans Pensions (Amendment and Extended Application) Ordinance, 1950.
76 ... The Required Records and Accounts Ordinance, 1950.

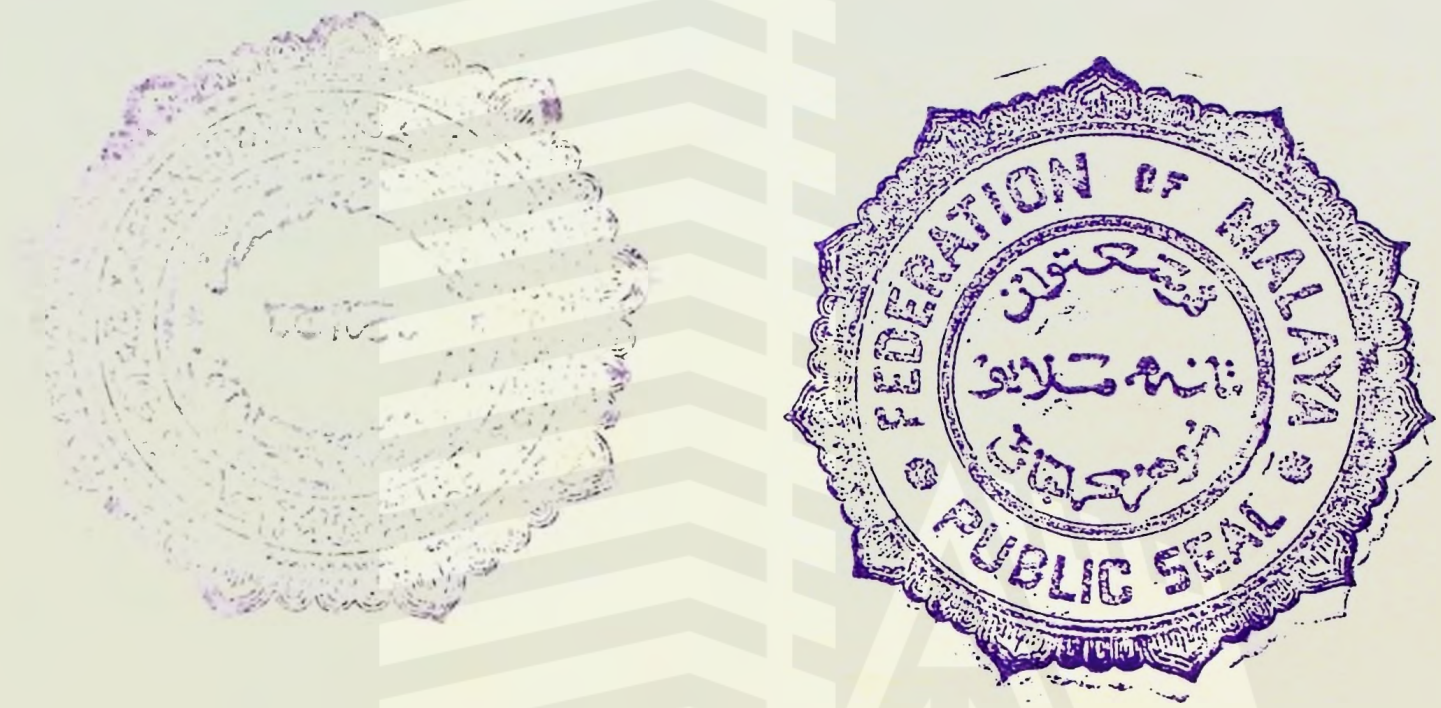
FEDERATION OF MALAYA.

No. 1 of 1950.

THE MALAYAN AUXILIARY AIR FORCE ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent



Witnesses to the affixing of the Rulers' Seal:

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
High Commissioner.

.....*Sultan of Selangor.*

17th April,
.....~~February~~, 1950.

27th February, 1950.

An Ordinance to establish an Auxiliary Air Force for the defence of Malaya.

[1st May , 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Malayan Auxiliary Air Force Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"Actual Service" means service of a member of the Force whilst called out under the provisions of section 18 of this Ordinance or called out under the corresponding provisions of any written law of the Colony relating to the Force;

"Air Officer Commanding" means the Air Officer Commanding, Royal Air Force, Malaya, or if there is no such officer the officer for the time being in Command of the Royal Air Force in Malaya;

"The Commander" means the officer appointed under sub-section (1) of section 7 of this Ordinance to be in executive command of the Force;

"Commissioned Officer" means an officer of the Force appointed under a commission from the High Commissioner or, in the case of an officer of the Singapore Section, from the Governor of the Colony;

"The Federation Section" means the Section of the Malayan Auxiliary Air Force raised and maintained within the Federation under the provisions of section 3 of this Ordinance;

"The Force" means the Malayan Auxiliary Air Force, consisting of the Federation Section and of the Singapore Section;

"The Singapore Section" means such section of the Force as may be raised and maintained in the Colony under the provisions of any written law in the Colony relating to the Force corresponding to section 3 of this Ordinance;

"Unit" means a unit of the Federation Section constituted under section 4 of this Ordinance or a unit of the Singapore Section constituted under the corresponding provisions of any written law in the Colony relating to the Force.

Constitution of the Federation Section of the Malayan Auxiliary Air Force.

3. (1) There shall be raised and maintained, in conjunction with the Colony, an auxiliary air force for the defence of Malaya to be called "the Malayan Auxiliary Air Force".

(2) One section of such force shall be raised in the Federation and shall be known as "the Federation Section of the Malayan Auxiliary Air Force".

(3) Save as hereinafter provided, the Federation Section shall be raised and maintained at the expense of the Federation out of moneys provided by the Legislative Council.

(4) In each year the expenditure proposed to be incurred upon the Federation Section shall be included in the total of the estimates of the expenditure proposed to be incurred on Local Forces.

(5) The aircraft and equipment used by the Federation Section and the spare parts for the repair of such aircraft and equipment shall be such aircraft, equipment or spare parts the property of His Majesty as may be lent to the Section and such aircraft, equipment and spare parts as may be provided by the Federation.

(6) The cost of officers and personnel of the Royal Air Force attached to the Federation Section shall be borne in such manner as may be agreed between His Majesty and the Government of the Federation.

(7) The High Commissioner may, from time to time, at his discretion, and subject to such terms (if any) as may be agreed between the Government of the Federation and the Government of the Colony, place any aircraft or equipment or spare parts belonging to the Federation at the disposal of the Singapore Section.

(8) Any aircraft or equipment belonging or lent to the Federation may be used by any member of the Force in the course of his duties.

Constitution of units of the Federation Section.

4. The Federation Section shall consist of such units as the High Commissioner may from time to time direct and the High Commissioner may at any time disband any unit so constituted.

Constitution of a Reserve of Officers.

5. The High Commissioner may constitute for the Federation a Reserve of Officers which shall consist of—

(i) officers of the Federation Section who, having completed not less than five years' service with the Force and having expressed a desire to transfer to such Reserve, are so transferred;

(ii) officers of the Federation Section who, having satisfied the Commander that, by reason of previous training, they can perform efficiently the duties of officers, and that, by reason of age or special circumstances, they are unable to join or continue in a unit constituted under section 4 of this Ordinance, have been appointed by the High Commissioner to the Reserve;

(iii) officers of the Singapore Section, who are members of any Reserve of Officers constituted under the corresponding provisions of any written law in the Colony relating to the Force, and who have, by agreement between the High Commissioner and the Governor of the Colony, been transferred by the High Commissioner to the Reserve constituted under this section. Any officer so transferred shall, thereupon, be deemed, for all purposes, to be an officer of the Federation Section, so long as he remains a member of such Reserve.

Officers of the Federation Section.

6. (1) Officers of the Federation Section, other than officers transferred under the provisions of section 13 of this Ordinance, shall be appointed by the High Commissioner by commission or by warrant, and such commission or warrant shall not be deemed to be vacated by the death or retirement of the High Commissioner by whom it was issued.

(2) The High Commissioner may appoint, by commission, such persons as he deems fit, to be Honorary Air Commodores of the Federation Section, but such honorary rank shall not carry with it any executive command.

Command.

7. (1) The High Commissioner and the Governor of the Colony, jointly, may appoint, by notification in the *Gazette*, a fit and proper person, who shall be an officer of the Royal Air Force, to be Commander of the Force. Such Commander shall have executive command over the Federation Section:

Provided that, if such Commander is not the Air Officer Commanding, such Commander shall be under the orders and general direction of the Air Officer Commanding.

(2) Notwithstanding the provisions of sub-section (1) of this section where,

(*a*) all or any part of the Federation Section has been called out under section 18 of this Ordinance; or

(*b*) the Federation Section or any part thereof, though not called out, is training, exercising or operating with the Royal Air Force,

the Air Officer Commanding may place the Federation Section or any part thereof, so called out or training, exercising or operating, under the temporary command of any officer of the Royal Air Force.

(3) The High Commissioner may appoint such officer of the Federation Section as he thinks fit to be in command of any unit of the Federation Section.

Persons eligible for enrolment.

8. (1) Every male person who is a British subject or a Federal citizen shall, subject to the provisions of this Ordinance and of any rules made thereunder, be eligible for enrolment in the Federation Section.

Persons not eligible for enrolment.

(2) The following persons shall not be eligible for enrolment:

(*a*) persons serving as regular members of the Royal Navy, Army or Air Force;

(*b*) members of the Police Force of the Federation or of the Colony;

(*c*) members of the Singapore Section or of any other local force or volunteer force of the Federation or of the Colony.

Period of enrolment.

9. (1) Every member of the Federation Section other than a commissioned officer shall be enrolled for such period as may be prescribed by rules made under this Ordinance.

(2) Except when on Actual Service, any member of the Federation Section may, on his application, be discharged by the officer in command of his unit, subject to the approval of the Commander.

(3) Notwithstanding such discharge, a member of the Federation Section shall not be exempted from trial or punishment for any offence under section 20 of this Ordinance.

High Commissioner may dismiss.

10. The High Commissioner may, with or without assigning any reason therefor, dismiss any member from the Federation Section.

Discharge of airmen.

11. The officer in command of a unit of the Federation Section, with the approval of the Commander, may discharge any member of his unit (other than commissioned officer) on the ground that he is not likely to become an efficient member of the Force. A member so discharged shall forthwith return his arms, uniform and equipment in good condition to the officer in command of his unit or person authorised by him to receive them.

Service required of members of the Federation Section.

12. (1) A member of the Federation Section shall undergo such training as may be prescribed by rules or regulations made under this Ordinance.

(2) Such rules or regulations may prescribe instruction, training and exercise on land or sea or in any aircraft whether belonging to the Federation or not and whether within or without the limits of the Federation or the territorial waters thereof.

(3) A member of the Federation Section on actual service shall perform such services as he may be called upon to perform whether within or without the limits of the Federation or of the territorial waters thereof.

Transfer from Singapore to Federation Section.

13. Any member of the Singapore Section, who takes up permanent residence within the Federation, may, with the consent of the Governor of the Colony, be transferred to and shall thereupon become a member of the Federation Section by order of the Commander and, if an officer, shall, on transfer, subject to the approval of the High Commissioner, have the same rank and seniority for the purposes of command and discipline as he had in the Singapore Section immediately before such transfer.

Occasions when members are under Air Force discipline.

14. Every member of the Federation Section—

(*a*) when attached to or otherwise acting as part of or with the Royal Air Force; or

(*b*) when on Actual Service in any place,

shall be subject to the provision of the Air Force Act and all other laws for the time being in force for the government of the Royal Air Force.

Pay and allowances when on Actual Service.

15. All members of the Federation Section on Actual Service shall be entitled to such pay or allowances as may be prescribed by rules made by the High Commissioner in Council.

Relief to families of persons called out.

16. All members of the Federation Section on Actual Service shall, during the period of their absence on such service, be entitled to such relief for their wives and families as may be fixed by the High Commissioner in Council.

Provision for members disabled on service and widows and families of those killed on service.

17. All members of the Federation Section wounded or injured when on Actual Service or when called upon to aid the police in a Civil disturbance, and the widows and families of any such members killed or who die of wounds received during such service, or from illness directly attributable to such service, shall be entitled to such pensions or gratuities as may be fixed by the High Commissioner in Council.

Power to declare state of emergency.

18. The High Commissioner may, when in his opinion a state of emergency exists, call out all or any part of the Force in the Federation.

Obstructing the Force, and aiding or inducing member of Force to dereliction of duty.

19. Any person who—

(*a*) knowingly and wilfully obstructs any portion of the Force or any member thereof in the performance of any service or duty under this Ordinance or under any rules or regulations made under this Ordinance; or

(*b*) knowingly agrees with, or induces or attempts to induce any member of the Force to neglect or to act in conflict with his duty as a member of the Force; or

(*c*) who knowingly is a party to, or aids or abets, or incites to the commission of any act of indiscipline or any act whereby any lawful order given to any member of the Force or any law or regulation with which it is the duty of any member of the Force to comply, may be evaded or infringed; or

(*d*) without lawful authority wears the uniform or part of the uniform or any badge or emblem of the Force or of any Section of the Force or falsely represents himself as entitled to wear such uniform, badge or emblem,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred dollars.

Offences by members of the Force.

20. (1) Any member of the Federation Section who, when he is not subject to the Air Force Act—

(*a*) fails without just cause (the proof whereof shall lie upon him) to attend at any time or place lawfully appointed by proper authority for instruction, training or exercise; or

(*b*) when in uniform or on duty or undergoing instruction, training or exercise is drunk or is guilty of insubordinate conduct; or

(*c*) without proper authority and permission, gives, sells, pledges, lends, or otherwise disposes of, or loses by neglect, or causes damage to any arms, ammunition, accoutrements, clothing, supplies or any other article or thing (whether similar to any of those specified or not) entrusted to or held by him or in his charge for the service of the Force, or fails to deliver up such property when so required by the officer in command of his unit; or

(*d*) does any act to hazard or to cause any stranding, loss or any damage to any aircraft, launch, or other craft whatsoever used for any purpose of the Royal Air Force or of the Force,

shall be guilty of an offence and shall be liable, on conviction before the officer in command of his unit, to a fine not exceeding twenty-five dollars.

(2) Any person convicted of an offence against paragraph (*c*) or (*d*) of sub-section (1) shall, in addition to any other punishment, be liable to be ordered to pay, by way of compensation, a sum of money not exceeding one hundred dollars or the cost of replacement or repair of the article disposed of, lost, damaged or not delivered up, whichever is the less, and such sum shall be deemed to be a fine.

(3) No sentence or order given or made under sub-sections (1) or (2) of this section shall have effect until it has been confirmed in writing under the hand of the Commander.

(4) The payment of any sum imposed by way of fine or compensation or both under this section shall, upon the application of the officer in command of the unit, be recovered and enforced by any Magistrate's Court having criminal jurisdiction in the place in which such fine is imposed or compensation ordered, in the same manner as such Court could recover or enforce the payment of such fine or compensation under the law relating to criminal procedure in force in such place, if such fine or compensation had been imposed or ordered to be paid by such Court.

Violent behaviour on duty.

21. (1) When a member of the Federation Section is drunk or guilty of any violent or insubordinate behaviour whilst on duty or under instruction, the senior officer or non-commissioned officer present shall have power to arrest and confine him until the conclusion of such duty or instruction:

Provided that nothing in this section shall authorise a non-commissioned officer to arrest or confine a commissioned officer.

(2) "Under instruction" for the purposes of this section means any occasion on which a member of the Section is present under orders, whether in uniform or not.

Command and discipline of members of the Singapore Section in the Federation.

22. (1) Subject to the provisions of sub-section (2) of this section, where any members of the Singapore Section, when not subject to the Air Force Act, are serving in the Federation as a unit or body, they shall be under the orders of their own officers present with them, but subject to the control of the senior officer of the Force present and serving as an officer of the Force whether such senior officer be a member of the Federation Section or of the Singapore Section, and such members shall be subject to the same rules and as far as possible perform the same duties as when on service in the Colony:

Provided that any powers of punishment or of enforcing punishment conferred upon any officer of the Singapore Section by the provisions of any written law in force in the Colony relating to the Force corresponding to section 20 of this Ordinance or to

any rule made under this Ordinance shall, if such officer be absent from the Federation, be exercised by the senior officer of the Singapore Section present in the Federation.

(2) Where any members of the Singapore Section, when not subject to the Air Force Act, are serving in the Federation otherwise than as a body or unit or are serving in or attached to or otherwise acting as part of a body or unit of the Federation Section such members shall be deemed to be, for all purposes of command and discipline, but subject to any Rules made under this Ordinance, to be members of the Federation Section of equivalent rank and seniority to their rank and seniority in the Singapore Section and shall be subject to the provisions of this Ordinance and of any rules and regulations made thereunder, accordingly.

(3) Subject to the provisions of this section officers of the Singapore Section, when serving in the Federation or on Actual Service shall, for the purposes of command and discipline, have, in relation to members of the Federation Section the same rank and seniority that they have in the Singapore Section under the provisions of any written law of the Colony relating to the Force:

Provided that where members of the Federation Section, when not subject to the Air Force Act, are serving in the Federation as a unit or body they shall, subject to the provisions of sub-section (2) of this section, be under the orders of their own officers present with them but subject to the control of the senior officer of the Force present and serving as an officer of the Force whether he be a member of the Federation Section or of the Singapore Section.

Power of High Commissioner in Council to make Rules.

23. (1) The High Commissioner in Council may make Rules to carry out the purposes of this Ordinance relating to the Federation Section.

(2) In particular, and without prejudice to the generality of the foregoing power, such Rules may—

(*a*) prescribe the manner in which, and conditions subject to which, persons desiring to be enrolled may offer themselves under this Ordinance, and the form of declaration to be taken by such persons and the periods for which they may be enrolled;

(*b*) prescribe the conditions of physical fitness required of members of the Federation Section and of persons applying for enrolment;

(*c*) define the manner in which and conditions under which members of the Federation Section may be called out or embodied;

(*d*) prescribe the training and courses of instruction to be undergone by members of the Federation Section;

(*e*) prescribe the rate of pay and allowances for members of the Federation Section when on Actual Service or when attached to or acting as part of or with the Royal Air Force;

(*f*) prescribe the numerical establishment of units of the Federation Section and the grades and ranks therein;

(*g*) prescribe the seniority of officers of the Federation Section and provide for the appointment to, promotion to and tenure of commissioned or warrant rank in the Section;

(*h*) provide for the seniority and rank for purposes of command and discipline in relation to members of the Federation Section of members of the Singapore Section deemed to be members of the Federation Section by virtue of sub-section (2) of section 22 of this Ordinance;

(*i*) provide for the calling into Actual Service of the members of the Federation Section.

Power of the Commander to make regulations.

24. The Commander may, with the approval of the High Commissioner and of the Governor of the Colony, make regulations, consistent with this Ordinance and any Rules made thereunder, providing for the equipment, general organisation and administration of the Force as a whole or, with the approval of the High Commissioner, of the Federation Section only; and in particular for—

(*a*) the issue and care of arms, accoutrements, ammunition, supplies, clothing and equipment for members of the Force or Section;

(*b*) returns, books, forms and correspondence relating to the Force or Section;

(*c*) the establishment and conduct of institutions for providing recreation and refreshment to members of the Force or Section;

(*d*) the training and inspection of the Force or Section and the establishment of training camps and the holding of exercises of the Force or Section;

(*e*) the advancement to and promotion in non-commissioned ranks and reversion from and reduction in such rank.

Exemption from certain civil liabilities.

25. All members of the Force, if acting *bona fide* and in their official capacity, shall be exempt from all written laws providing for the storage of explosives, gun-powder and other munitions of war in the same manner as the Regular Forces of His Majesty serving in the Federation and such articles, including firearms may be sent for the use of the Force or any part of it from one State or Settlement to another or from or to the Colony to or from the Federation without any notification to the Police or any licence or permit required by any written law.

Regulars not exempted from Air Force Act.

26. Nothing in this Ordinance shall exempt any commissioned officer, warrant officer, non-commissioned officer or men of the Royal Air Force attached to the Force from the provisions of the Air Force Act or from any other law applicable to him.

Acts, etc., of the Commander and Air Officer Commanding to be valid though not made or done in the Federation.

27. No regulation made and no order given or any other act or thing done by the Commander or the Air Officer Commanding within Malaya, under the provisions of this Ordinance or of any rules or regulations made thereunder, shall be deemed to be invalid in the Federation, by reason only that the same was not made, given, or done within the Federation.

S.S. Ord. Cap. 101. Repeal.

28. The Volunteer Air Force Ordinance of the Straits Settlements is hereby repealed.

Passed in the Legislative Council on the eighth day of February, 1950.

H R Hollin

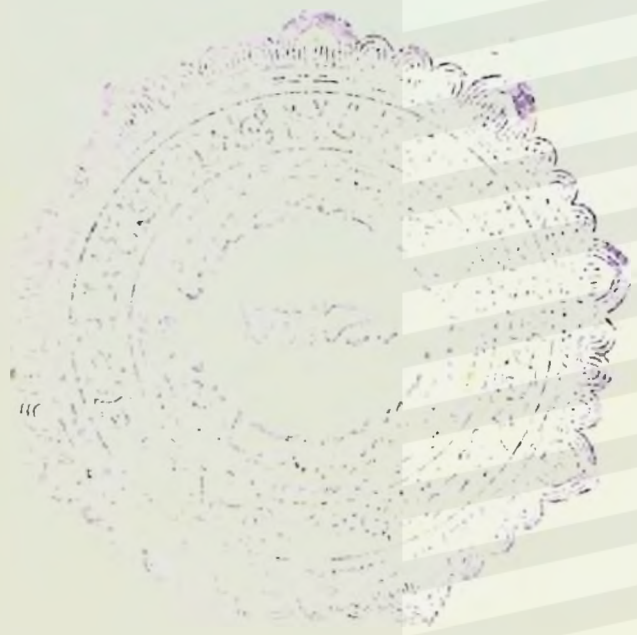
Clerk of Council.

FEDERATION OF MALAYA.

No. 2 of 1950.

THE COURTS (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto



I assent



Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor*

28th .....February, 1950.

27th .....February, 1950.

An Ordinance to amend the Courts Ordinance, 1948.

[*1st January, 1949.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and construction.

F.M. No. 43 of 1948.

1. This Ordinance may be cited as the Courts (Amendment) Ordinance, 1950, and shall be read as one with the Courts Ordinance, 1948, hereinafter referred to as the principal Ordinance and shall be deemed to have come into force at the date of the commencement of the principal Ordinance.

Repeal and re-enactment of section 61.

2. Section 61 of the principal Ordinance is hereby repealed and the following section substituted therefor :

"Transfer of powers to Presidents of Sessions Courts.

61. Subject to the provisions and limitations contained in this Ordinance, all powers, duties and functions which, by any written law in force in the Federation or any part thereof at the date of the commencement of this Ordinance, or by any law passed or made before the commencement of this Ordinance and coming into force after such commencement in the Federation or any part thereof, were vested in or conferred or imposed upon, or expressed to be vested in, conferred or imposed upon or which would, if this Ordinance had not been passed, have been vested in or conferred or imposed upon a District Judge, Magistrate of any description or Coroner of the Malayan Union or of the Federation shall, without prejudice to the provisions of section 80 of this Ordinance, be vested in, conferred and imposed upon the President of a Sessions Court, in the case of a law in force at the date of the commencement of this Ordinance, upon and after such date, and in the case of a law coming into force after the commencement of this Ordinance upon and after the date of the coming into force of such law."

3. Section 80 of the principal Ordinance is hereby repealed and the following section substituted therefor : Repeal and re-enactment of section 80.

"80. Subject to the provisions and limitations contained in this Ordinance, all powers, duties and functions which, by any written law in force in the Federation or any part thereof at the date of the commencement of this Ordinance, or by any law passed or made before the commencement of this Ordinance and coming into force after such commencement in the Federation or any part thereof, were vested in or conferred or imposed upon, or expressed to be vested in, conferred or imposed upon or which would, if this Ordinance had not been passed, have been vested in or conferred or imposed upon a District Judge, Magistrate of any description or Coroner of the Malayan Union or of the Federation shall, without prejudice to the provisions of section 61 of this Ordinance, be vested in, conferred and imposed upon Magistrates appointed under this Ordinance, in the case of a law in force at the date of the commencement of this Ordinance, upon and after such date, and in the case of a law coming into force after the commencement of this Ordinance upon and after the date of the coming into force of such law.". Transfer of powers to Magistrates.

Passed in the Legislative Council on the ninth day of February, 1950.

A. R. Collin.
Clerk of Council.

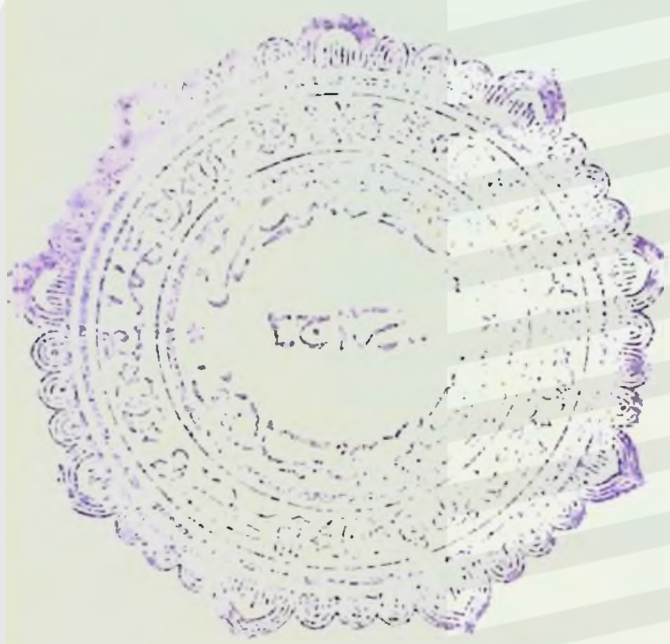
FEDERATION OF MALAYA.

No. 3 of 1950.

THE PORTS (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....February, 1950.

.....*High Commissioner.*

.....February, 1950.

An Ordinance to amend the Ports Ordinance (Cap. 149 of the Revised Edition) of the Straits Settlements.

[6th March, ~~February~~, *1950*.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and construction. S.S. Cap. 149.

1. This Ordinance may be cited as the Ports (Amendment) Ordinance, 1950, and shall be read as one with the Ports Ordinance of the Straits Settlements hereinafter referred to as the principal Ordinance.

Repeal and substitution of section 22.

2. Section 22 of the principal Ordinance is hereby repealed and the following section substituted therefor—

"Provident Fund, Pensions and Superannuation Schemes.

22. (1) With the approval of the High Commissioner in Council the Board may—

(*a*) establish, maintain, administer or continue to maintain and administer and subsequently wind up a Provident Fund for the benefit of its employees or any section of such employees and make regulations in respect thereof;

(*b*) enter into arrangements or agreements with any Harbour Board established and incorporated in the Colony of Singapore in respect of the Port of Singapore for the establishment, maintenance and administration and subsequent winding up of a Joint Provident Fund for the benefit of such employees and of the employees or a section of the employees of such Singapore Harbour Board and may subject to any such arrangement or agreement, make regulations in respect thereof;

(*c*) establish, maintain and administer a Pension Scheme for the provision of payments of pensions, gratuities or other allowances on superannuation, resignation, retirement or discharge of employees of the Board and for the establishment and maintenance of a Pension Fund and may make regulations in respect thereof; and

(*d*) establish and administer a Superannuation Scheme by the Board for the granting of such gratuities and allowances on death, superannuation, resignation, retirement or discharge of subordinate officers and servants of the Board as may be deemed expedient and for the granting of such gratuities and allowances as may be deemed expedient to any one or more of the surviving dependants of any person who having been employed as a subordinate officer or servant of the Board dies after having been superannuated or discharged or after having resigned or retired; and may make regulations in respect thereof.

(2) No gratuity, allowance or other payment payable out of any such Provident Fund or Joint Provident Fund or under any such Pension Scheme nor any right or interest acquired by any person thereunder shall be assignable or transferable or liable to be attached, sequestrated or levied upon for or in respect of any debt or claim whatsoever.

(3) Any moneys paid out of any such Provident Fund or Joint Provident Fund on the death of any person shall be deemed to be impressed with a trust in favour of the persons entitled thereto under the will or intestacy of such deceased person, but shall not be deemed to form part of his estate or be subject to his debts.

(4) Any person may by will or by a memorandum under his hand appoint a trustee or trustees of the moneys payable on his death out of any such Provident Fund or Joint Provident Fund and may make provision for the appointment of a new trustee or new trustees of such moneys and for the investment thereof.

(5) If at that time of the death of any person or at any time afterwards there is no trustee of such moneys or it is expedient to appoint a new trustee or new trustees, then and in any such case a trustee or trustees or a new trustee or new trustees may be appointed by the High Court or a Judge thereof.

(6) The receipt of a trustee or trustees duly appointed or in default of any such appointment and of written notice thereof to the Board the receipt of the legal personal representative of a

deceased person shall be a discharge to the Board for any moneys payable on his or her death out of any such Provident Fund or Joint Provident Fund.

(7) Any officer or servant of a Board who is a contributor to any such Provident Fund or Joint Provident Fund shall, if he is dismissed the service of the Board for fraud or dishonesty or misconduct, which involves pecuniary loss to the Board, or retires from or resigns his office with intent to escape discharge or dismissal in consequence of such fraud, dishonesty or misconduct, forfeit, at the absolute discretion of the Board, all or any part of his contribution to the Fund and the interest accrued thereon and the accumulations thereof, and shall also lose all benefits whatever from the Fund, except that the Board may, at its discretion, direct the repayment to him of the whole or such part of his contributions to the Fund and the interest accrued thereon and the accumulations thereof as the Board in its discretion thinks fit.

(8) Any employee of the Board who would otherwise be entitled to any benefit under any such Pension Scheme shall, if he is dismissed the service of the Board for fraud or dishonesty or misconduct, which involves pecuniary loss to the Board, or retires from or resigns his office with intent to escape discharge or dismissal in consequence of such fraud, dishonesty or misconduct forfeit and lose the whole or such part of such benefit as the Board may in its absolute discretion direct.

(9) Any approval given by the High Commissioner under sub-section (1) of this section shall, if the High Commissioner in Council so directs, be retrospective.''.

Amendment of section 53.

3. Section 53 of the principal Ordinance is hereby amended by inserting the word and comma ''pensions,'' immediately after the expression ''gratuities,'' occurring in the first line of paragraph (1) thereof.

Passed in the Legislative Council on the ninth day of February, 1950.

H. R. Hollis.

Clerk of Council.

FEDERATION OF MALAYA.

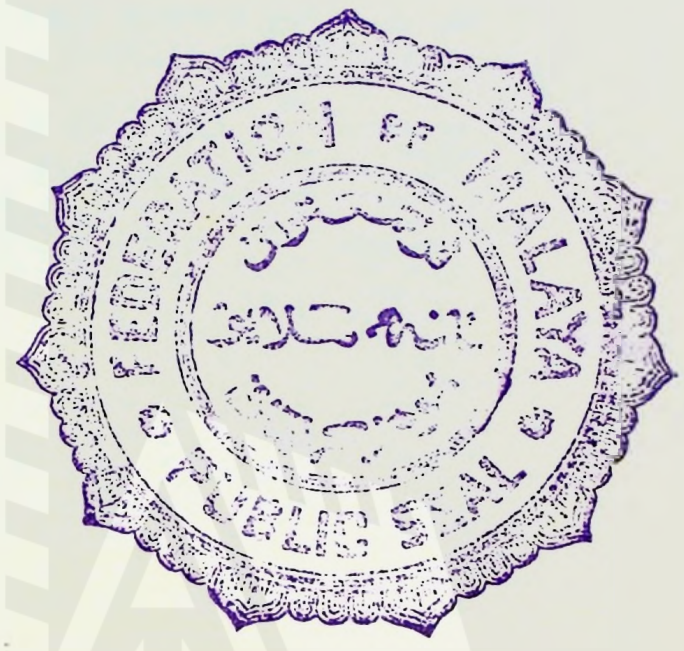
No. 4 of 1950.

THE JUVENILE COURTS (VALIDATION OF ORDERS) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

..... } *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....February, 1950.

.....*High Commissioner,*

.....February, 1950.

An Ordinance to validate sentences, judgments and orders of Courts purporting to have been given and made under the provisions of the Juvenile Courts Ordinance, 1947, and to restrict the taking of legal proceedings in respect thereof.

[6th March, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Juvenile Courts (Validation of Orders) Ordinance, 1950.

Validation of judgments, sentences and orders of Presidents of Sessions Courts and Magistrates purporting to act under the Juvenile Courts Ordinance, 1947.

M.U. No. 38 of 1947.

F. of M. No. 43 of 1948.

2. Any sentence, judgment, order or other act or thing given, made or done by any President of a Sessions Court or Magistrate, respectively, purporting to be in exercise of any power or function conferred, or in performance of any duty imposed, on a District Judge or Magistrate, respectively, under the provisions of the Juvenile Courts Ordinance, 1947, at any time after the coming into force of such Ordinance, shall be deemed to be, and always to have been, within the jurisdiction of such President of a Sessions Court or Magistrate, as the case may be; and every such sentence, judgment, order, act or thing so given, made or done shall be, and shall be deemed always to have been, as valid and effectual for all purposes as it would have been if at the date of the coming into force of such Ordinance any reference therein to a District Judge had been a reference to a President of a Sessions Court, and any reference therein to a Magistrate had been a reference to a Magistrate, appointed under the Courts Ordinance, 1948.

Indemnity for judicial acts done under the Juvenile Courts Ordinance, 1947, without jurisdiction and for acts consequential thereon.

3. No legal proceedings shall lie, be instituted or maintained in any Court

(*a*) against any President of a Sessions Court or Magistrate respectively for any act done or ordered to be done by him purporting to be in exercise of any power or function or in performance of any duty imposed on a District Judge or Magistrate respectively under the provisions of the Juvenile Courts Ordinance, 1947, at any time after

the coming into force of such Ordinance on the ground that such act done or ordered to be done was not within the limits of his jurisdiction;

(*b*) against any officer of any court or other person bound to execute the lawful warrants or orders of any President of a Sessions Court or Magistrate acting judicially for the execution of any warrant or order purporting to be given or made under the Juvenile Courts Ordinance, 1947, which such person would be bound to execute if within the jurisdiction of such President or Magistrate as the case may be;

(*c*) against any other officer of Government or other person in respect of any act or thing done or directed to be done by such officer or other person which such officer or person would have been authorised to do under the Juvenile Courts Ordinance, 1947, if at the date of the coming into force of such Ordinance any reference therein to a District Judge had been a reference to a President of a Sessions Court, and any reference therein to a Magistrate had been a reference to a Magistrate, appointed under the Courts Ordinance, 1948.

Passed in the Legislative Council on the ninth day of February, 1950.

A. R. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

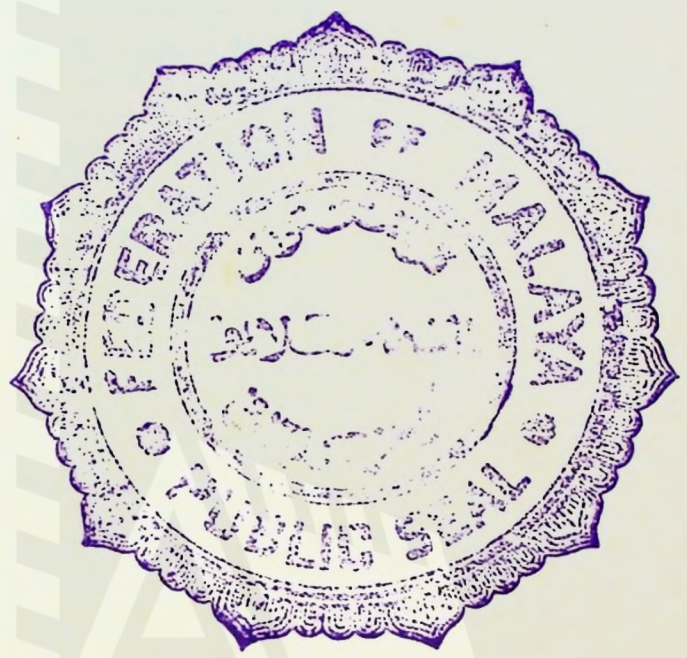
No. 5 of 1950.

THE PREVENTION OF CORRUPTION ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

..... } *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....February, 1950.

.....February, 1950.

.....
High Commissioner.

.....February, 1950.

An Ordinance to provide for the more effectual prevention of corruption.

[6th March ~~February~~, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council, as follows :

Short title.

1. This Ordinance may be cited as the Prevention of Corruption Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"agent" means any person employed by or acting for another and includes a trustee, administrator and executor, and a person serving under the Crown or under the Government or under any corporation or public body;

"consideration" means valuable consideration of any kind and includes discounts, commission and rebate bonuses, deductions and percentages and also employment or an agreement to give employment in any capacity;

"Government" means the Government of the Federation or of any State or Settlement in the Federation;

"principal" includes an employer, a beneficiary under a trust, and a trust estate as though it were a person and any person beneficially interested in the estate of a deceased person and the estate of a deceased person as though the estate were a person and in the case of a person serving under the Crown or under the Government or a public body includes the Crown or the Government or the public body as the case may be;

"public body" means any corporation, board, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings of public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law.

Punishment of corrupt transactions with agents.

3. (*a*) If any agent corruptly accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any money, gift or other consideration as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Ordinance done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(*b*) if any person corruptly gives or agrees to give or offers any money, gift or other consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the commencement of this Ordinance done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(*c*) if any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of an offence and be liable on conviction to imprisonment of either description for a term not exceeding three years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine.

Increase of maximum penalty in certain cases.

4. A person convicted of an offence under this Ordinance shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or the Government or any department thereof or any public body or a sub-contract to execute any work comprised in such a contract, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine.

Presumption of corruption in certain cases.

5. Where in any proceedings against a person for an offence under this Ordinance it is proved that any money, gift or other consideration has been paid or given to or accepted or obtained by a person serving under the Crown or the Government or any department thereof or a public body by or from a person or

agent of a person holding or seeking to obtain a contract from His Majesty or from the Government or any department thereof or from any public body such money, gift or other consideration shall be deemed to have been paid or given and accepted or obtained corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

Principal may recover amount of secret gifts.

6. (1) Where any money, gift or other consideration has in contravention of this Ordinance been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the money, gift or other consideration to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Ordinance shall operate as a bar to proceedings for the recovery of such amount or money value.

(2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

Police powers of investigation into offences under sections 161 and 165 of the Penal Code.

7. In any case relating to the commission of an offence under section 161 or 165 of the Penal Code or any conspiracy to commit or attempt to commit or any abetment of such offence, or of any conspiracy to commit or attempt to commit or any abetment of any offence under this Ordinance, which is not a seizable offence, a police officer not below the rank of Inspector may, without the order of the Public Prosecutor, exercise the special powers in relation to police investigations in a seizable case given by the Criminal Procedure Code in force in that part of the Federation in which such officer may be.

Public Prosecutor's power to order inspection of Bankers' Books.

8. (1) The Public Prosecutor may, if he is satisfied that any evidence of the commission of an offence under this Ordinance or of a conspiracy to commit, or an attempt to commit or an abetment of such offence or of the commission of an offence specified in the First Schedule to this Ordinance by a person in the service of His Majesty or of the Government or of any department thereof or of a public body is likely to be found in any banker's book relating to such person his wife or child or to a person reasonably believed by the Public Prosecutor to be a trustee or agent for such person, by order authorise any police officer

named in such order of or above the rank of Assistant Superintendent of Police to inspect any such book and a police officer so authorised may, at all reasonable times, enter the bank specified in such order and inspect such books kept therein and may take copies of any relevant entry in any such book.

(2) For the purpose of this section—

"bank" means any company carrying on the business of bankers in the Federation incorporated by or under any written law in force in the Federation or any company carrying on such business in the Federation under a licence issued under the Companies Ordinance, 1940 to 1946, and the Post Office Savings Bank; S.S. Ord. No. 49 of 1940. M.U. No. 13 of 1946.

"banker's books" includes ledgers, day books, cash books, account books and all other books used in the ordinary course of business.

Incriminating answers and discovery.

9. No person shall in any civil or criminal proceedings be excused from answering any question put either *viva voce* or by interrogatory or from making any discovery of documents on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Ordinance, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for an offence under Chapter XI of the Penal Code.

Evidence.

10. In any civil or criminal proceeding under this Ordinance evidence shall not be admissible to show that any such payment of money, gift or consideration as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Abetment of offences.

11. Whoever abets—

(*a*) the commission of an offence against this Ordinance;

(*b*) the commission outside the Federation of any act in relation to the affairs or business or on behalf of a principal residing or carrying on business in the Federation which if committed in the Federation would be an offence against this Ordinance,

shall be deemed to have committed the offence and be punishable accordingly.

Prosecution of offences.

12. A prosecution under this Ordinance shall not be instituted except by or with the consent of the Public Prosecutor.

Special rules of evidence.

13. (1) In any trial or inquiry by a Court into an offence punishable under this Ordinance or into a conspiracy to commit, or attempt to commit, or an abetment of, such offence, or into an offence specified in the First Schedule to this Ordinance, the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the Court as corroborating the testimony of any witness in such trial or inquiry that such accused person accepted or obtained or agreed to accept or attempted to obtain any money, gift or other consideration and as showing that such money, gift or other consideration was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

(2) An accused person shall, for the purposes of sub-section (1) of this section, be deemed to be in possession of resources or property or to have obtained an accretion thereto where such resources or property are held or such accretion is obtained by any other person whom, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe to be holding such resources or property or to have obtained such accretion in trust for or on behalf of such accused person or, in the case of the wife, child, father or mother of an accused person, as a gift from such accused person.

(3) Notwithstanding any rule of law or written law to the contrary, no witness shall, in any such trial or inquiry as is referred to in sub-section (1) of this section, be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any money, gift or other consideration to an agent.

Repeal.

14. The Ordinance and the Enactments specified in the Second Schedule to this Ordinance are hereby repealed.

THE FIRST SCHEDULE.

(Sections 8 and 13.)

An offence punishable under section 161 or section 165 of the Penal Code, or any conspiracy to commit or any attempt to commit or any abetment of such offence.

THE SECOND SCHEDULE.

(Section 14.)

F.M.S. Enactment No. 23 of 1938	The Prevention of Corruption Enactment, 1938
Johore Enactment No. 14 of 1940	The Prevention of Corruption Enactment, 1940
S.S. Ordinance No. 41 of 1937	The Prevention of Corruption Ordinance, 1937.

Passed in the Legislative Council on the ninth day of February, 1950.

H. Sellis.

Clerk of Council.

FEDERATION OF MALAYA.

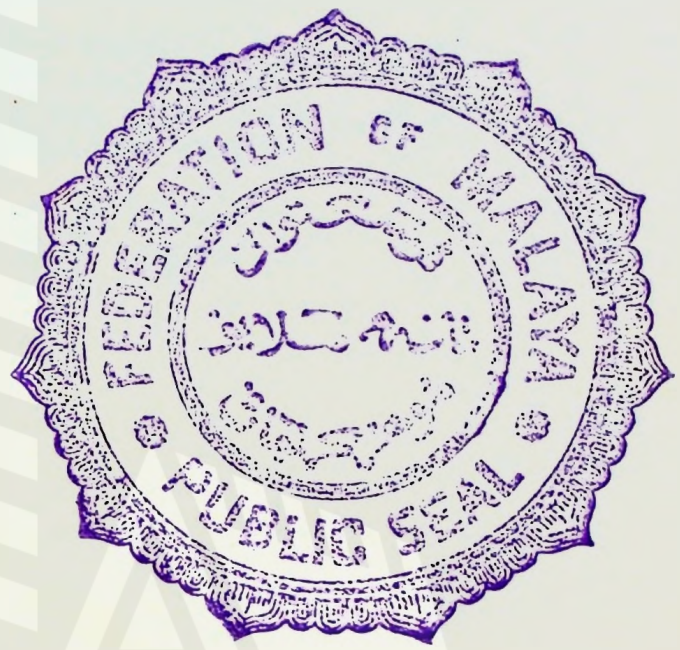
No. 6 of 1950.

THE MUNICIPAL (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....February, 1950.

.....February, 1950.

An Ordinance to amend the Municipal Ordinance of the Straits Settlements.

[6th March ~~February~~, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Municipal (Amendment) Ordinance, 1950.

Amendment of S. 59. S.S. Cap. 133.

2. Paragraph (*d*) of sub-section (i) of section 59 of the Municipal Ordinance is hereby amended by substituting the words "twenty-five" for the word "twenty" appearing in line three thereof.

Passed in the Legislative Council on the ninth day of February, 1950.

H.R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

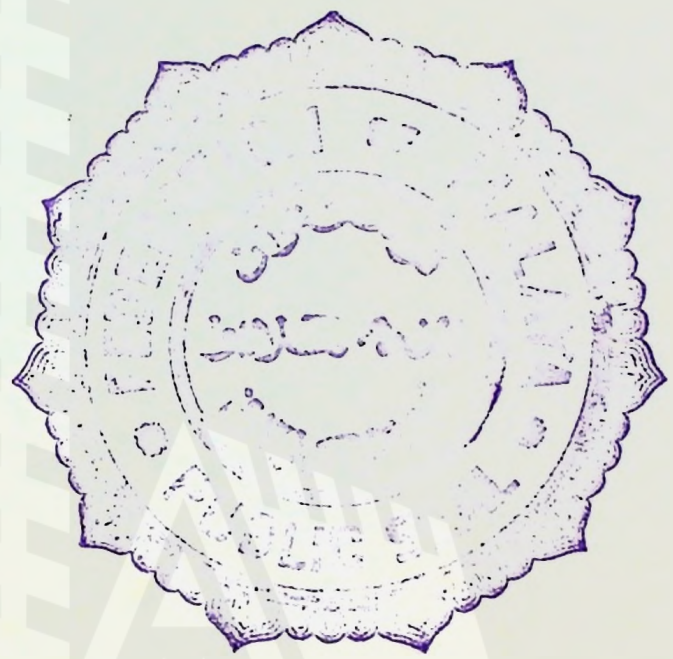
No. 7 of 1950.

THE REGISTRATION OF SCHOOLS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....February, 1950.

.....February, 1950.

An Ordinance to provide for the Registration of Schools and of their Managers and Teachers.

[6th March ~~February~~, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Registration of Schools Ordinance, 1950.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"Correspondence School" means an institution or business in which instruction or teaching is given by means of correspondence delivered by hand or through the Postal Services;

"Director", "Deputy Director" and "Assistant Director", means the Director of Education, Federation of Malaya, the Deputy Director of Education, Federation of Malaya and an Assistant Director of Education, Federation of Malaya, respectively;

"*Gazette*" means the appropriate State or Settlement *Gazette*;

"Inspector", "Assistant Inspector" and "Medical Officer" means an Inspector of Schools, an Assistant Inspector of Schools and a Medical Officer for Schools respectively appointed under sub-section (4) of section 3 of this Ordinance;

"Manager" means any person who actively takes part in the administration of the revenues or property or in the management of the school, and, in the case of a correspondence school, includes the authors, editors, business managers and examiners employed in preparing or issuing lessons or in correcting returned answers;

"Register" means a register kept under the provisions of section 6 of this Ordinance and includes any register kept in accordance with any Ordinance or Enactment repealed by this Ordinance; and "registered" means entered upon such register;

"Registrar" and "Assistant Registrar" means a Registrar of Schools and an Assistant Registrar of Schools respectively appointed under sub-section (1) of section 3 of this Ordinance;

"School", subject to the provisions of sub-section (4) of section 24 of this Ordinance, means a place where ten or more persons are being or are habitually taught, whether in one or more classes, or, in the case of a correspondence school, the place or places where instruction is prepared or where the answers are examined or corrected but does not include any place where the teaching is of a purely religious character or any school exempted under section 4 of this Ordinance from the provisions of this Ordinance:

Provided that where teaching is carried on in a place or part of a place under more than one separate management and under different names, such place shall be deemed to be, for the purposes of this Ordinance, a separate school in respect of each separate management and each such school and the managers and teachers thereof shall be separately registered under this Ordinance;

"Supervisor" means the manager appointed or deemed to be the supervisor of the school under section 8 or 17 of this Ordinance;

"Teacher" means a person who teaches pupils in a school or who prepares or issues lessons or corrects returned answers in a correspondence school and includes a manager or supervisor of a school who teaches in such school.

Appointment of Officers.

3. (1) The High Commissioner may from time to time appoint for any State or Settlement a Registrar of Schools and such number of Assistant Registrars of Schools as the High Commissioner may consider necessary for the purposes of this Ordinance.

(2) Every Registrar and Assistant Registrar appointed under this section shall be under the orders and direction of the Director.

(3) The Director and the Deputy Director and any Assistant Director, when present in any State or Settlement, may exercise therein any of the powers conferred upon a Registrar or Assistant Registrar for such State or Settlement by this Ordinance or by any regulations made thereunder.

(4) The Ruler in Council of any State and the High Commissioner in respect of any Settlement may appoint such persons as they may think fit to be Inspectors of Schools, Assistant Inspectors of Schools and Medical Officers for Schools for the purposes of this Ordinance in such State or Settlement, as the case may be.

(5) Every person appointed under this section shall be deemed to be a public servant within the meaning of the Penal Code.

(6) An Assistant Registrar shall exercise such of the powers and perform such of the duties conferred or imposed upon a Registrar under this Ordinance as may be prescribed.

Power of High Commissioner in Council to exempt schools.

4. (1) The High Commissioner in Council may, by order, exempt any school or class or category of schools from all or any of the provisions of this Ordinance, either absolutely or subject to such conditions as he may think fit to impose, and may, at any time, at his discretion, revoke any such exemption or cancel, alter or add to any such conditions.

(2) Nothing in this Ordinance shall apply to any school wholly maintained or wholly managed or controlled by the Government.

All schools to be registered.

5. (1) Every school shall be registered under this Ordinance.

(2) Any person who shall act as manager of, or teacher in, a school which is not registered under this Ordinance shall be guilty of an offence against this Ordinance :

Provided that nothing in this sub-section shall be deemed to make it unlawful for any person to do any act or thing necessary for the purpose of obtaining the registration of a school under this Ordinance.

(3) Both the owner and the occupier of any house, building or other place, the whole or part of which, to the knowledge of such owner or occupier, is being used as a school which he knows or has reason to believe to be an unregistered school, shall be guilty of an offence against this Ordinance, unless he shall prove that he took all reasonable steps in his power to prevent such house, building or other place or part thereof being so used or reported that such premises were being so used to the officer in charge of the nearest police station.

Register of schools.

6. Every Registrar shall keep or cause to be kept a register or registers in such form as may be prescribed by the Director in which shall be entered, in respect of every school registered in the State or Settlement for which he is appointed—

(*a*) the address of such school;

(*b*) the name of the school, under which instruction or teaching is carried on in such school;

(*c*) the name and address of the supervisor and of every other manager of such school;

(*d*) the name and address of every teacher employed or engaged in teaching in such school;

(*e*) such other particulars in relation to such school or to the managers of, or teachers in, such school or otherwise, as may be prescribed.

Application for registration of school.

7. (1) An application for the registration of a school, opened or intended to be opened in any State or Settlement, may be made to the Registrar for such State or Settlement by a manager of such school on behalf of the managers.

(2) Every such application shall be substantially in the Form A set out in the First Schedule to this Ordinance and shall be accompanied by applications for registration as a manager of, or teacher in, such school, as the case may be, duly completed in accordance with section 13 of this Ordinance, by every person named in such application as a manager of or teacher in such school.

No school to be registered unless a supervisor has been appointed.

8. No school shall be registered until a manager has been appointed by the managers of the school to be supervisor of such school for the purposes of this Ordinance, and a copy of such appointment, in writing, signed by the managers, has been submitted to the Registrar:

Provided that, when a school has not more than one manager, such manager shall be deemed to be the supervisor of the school.

Refusal of registration of a school.

9. (1) The Registrar may refuse to register a school if it appears to him—

(*a*) that the school is unsanitary, or is for reasons of health unsuitable for use as a school, or that the area provided for the open air

recreation of the pupils is inadequate or unsatisfactory, or that the school building or any part thereof is unsuitable by reason of danger from fire or that it is otherwise a dangerous building; or

(*b*) that such school is likely to be used for the purpose of political propaganda detrimental to the interests of the Federation or of the public, or for the purpose of instruction detrimental to the interests of the public or of the pupils, or as a meeting place for an unlawful society; or

(*c*) that the supervisor appointed by the managers is not a fit or proper or responsible person to act as supervisor for the purposes of this Ordinance; or

(*d*) that any manager or teacher named in the application form has been refused registration under section 14 of this Ordinance; or

(*e*) that the existing educational facilities are already adequate in the area in which it is proposed to open such school; or

(*f*) that the opening of such school would be detrimental to the interests of the Federation or of the public.

(2) The Registrar, in his discretion, may require as a condition precedent to the registration of any school—

(*a*) that security be given to his satisfaction that such school will not be used for any of the purposes referred to in paragraph (*b*) of sub-section (1) of this section, or that any person, refused registration as a manager of, or teacher in, such school, will not act as such manager or teacher;

(*b*) that the managers, or one or more of such managers as the Registrar may determine, make a cash deposit, not exceeding in all one thousand dollars, or enter into a bond in a like amount, with one or two sureties approved by the Registrar, as security for the observance by the managers and teachers of such school of the provisions of this Ordinance and of any regulations made thereunder;

(*c*) that a written scheme, constitution or deed of trust be prepared and executed by the proper parties thereto, providing for the management of the school and the administration of its property and revenues in a manner which the Director may consider satisfactory, and that a copy of such written scheme, constitution or deed of trust be submitted to him;

(*d*) that the school be rendered sanitary or suitable for use or that the area provided for open air recreation be rendered adequate or satisfactory or that the building be rendered safe;

(*e*) that a fit and proper and responsible person be appointed as supervisor;

(*f*) that another manager or teacher be appointed and apply for registration in place of any manager or teacher named in the application form and refused registration under section 14 of this Ordinance.

(3) When under the provisions of this section the Registrar refuses to register a school or imposes any condition precedent to such registration, he shall inform the applicant by notice in writing that registration is refused or that it is subject to conditions and shall, in each case, specify in such notice the grounds on which such registration is refused or the conditions on which registration will be granted and shall notify the applicant that he has a right of appeal against such refusal or against the imposition of any such condition in the manner set out in the following sub-section.

(4) Any applicant aggrieved by the refusal of the Registrar to register such school or by the imposition of any condition precedent to the registration of such school may, within fourteen days of the notice being served on him in accordance with sub-section (3) of this section, appeal to the Ruler in Council of the State or to the High Commissioner in Nominated Council of the Settlement, as the case may be, in accordance with the provisions of section 32 of this Ordinance.

Registration of schools.

10. Subject to the provisions of section 9 of this Ordinance, the Registrar shall, upon an application for the registration of any school duly made in

accordance with the provisions of section 7 of this Ordinance, after such inquiry as he may think necessary, register it and issue to the supervisor thereof a certificate of registration in the Form B set out in the First Schedule to this Ordinance.

Certificate and list of managers and teachers of school to be exhibited.

11. (1) A copy of the certificate issued under the provisions of section 10 of this Ordinance and a list of the names of the registered managers of, and registered teachers in, the school, in such languages as the Registrar may direct, shall be exhibited in a conspicuous place in such school.

(2) If any breach of sub-section (1) of this section is committed in any school, the managers of such school shall be guilty of an offence against this Ordinance.

Managers and teachers to be registered.

12. (1) No person shall act as a manager of, or teacher in, any registered school, unless he is registered under this Ordinance as a manager or teacher in respect of such school:

Provided that, nothing in this sub-section shall make it unlawful for any person to act as a manager of a registered school in the place of any registered manager retiring or ceasing to act as manager, if such person applies, under section 13 of this Ordinance, for registration as such manager within seven days of his commencing to act as manager, and notice of the refusal of such application has not been served upon him.

(2) Any person acting as a manager or teacher in contravention of sub-section (1) of this section shall be guilty of an offence against this Ordinance.

Form of applications for registration of managers and teachers.

13. (1) Every application for registration as a manager of a school shall be in the Form C set out in the First Schedule to this Ordinance.

(2) Every application for registration as a teacher in a school shall be in the Form D set out in the First Schedule to this Ordinance.

Refusal of registration as a manager or teacher.

14. The Registrar may in his absolute discretion refuse to register any person as a manager of, or teacher in, a school if—

(*a*) such person has been convicted by any Court of competent jurisdiction in the Federation or elsewhere of an offence punishable with imprisonment, or of an offence under

this Ordinance or under any previous written law relating to the registration of schools or under any similar law in force in the Colony; or

(*b*) such person shall have been a manager of, or a teacher in, any school, declared to be an unlawful school under the provisions of this Ordinance or of any previous written law relating to the registration of schools or of any similar law in force in the Colony at the time when such declaration was made; or

(*c*) the Registrar has reasonable grounds to believe that such person has, at any time, acted as a manager of, or teacher in, any school in contravention of the provisions of this Ordinance or of any previous written law relating to the registration of schools or of any similar law in force in the Colony; or

(*d*) it appears to the Registrar that it will be prejudicial to the interests of the Federation or of the public or of the pupils of the school that such person should be so registered; or

(*e*) in the case of a person applying to be registered as a teacher, such person's qualifications to act as such teacher are in the opinion of the Registrar, inadequate; or

(*f*) such person has made a false or misleading statement in a material particular in his application for registration :

Provided that any person who has been refused registration as a manager of or a teacher in a school under the provisions of this section may present a petition appealing against such refusal to the High Commissioner in Council who may at his discretion give directions (if any) to the Registrar as to the registration of such person as the High Commissioner in Council after consideration of such petition may think just, and the Registrar shall comply with such directions accordingly.

Registration of managers and teachers.

15. (1) Subject to the provisions of section 14 of this Ordinance, the Registrar shall, upon an application duly made, in accordance with the provisions of section 13 of this Ordinance, for the registration of

any person as the manager of, or teacher in, a registered school or in a school in respect of which an application for registration is pending before him, after such inquiry as he may think necessary, register such person accordingly, and shall inform him in writing that he has been so registered, and shall, in the case of a person registered as a teacher, issue to him a certificate in the Form E set out in the First Schedule to this Ordinance.

(2) Where any application for registration as a manager or teacher is refused under the provisions of section 14 of this Ordinance, notice of such refusal shall be given forthwith to the applicant by the Registrar.

Change in management or staff to be reported by the supervisor.

16. (1) Upon any registered manager or registered teacher of a registered school retiring or ceasing to act as such manager or teacher, or upon any person, not already registered as such, commencing to act as a manager of, or teacher in, such school, the supervisor shall, within twenty days of the happening of such event, report such event in writing to the Registrar with whom such school is registered.

(2) Any supervisor failing or neglecting to report such event in contravention of the provisions of this section or making any report, knowing the same to be false in a material particular, shall be guilty of an offence against this Ordinance.

(3) The Registrar, upon receiving a report under sub-section (1) of this section that any manager or teacher has retired or ceased to act, shall forthwith strike such manager or teacher off the register and shall serve such manager or teacher with a notice in writing informing him of such action.

Supervisor of registered school.

17. (1) The supervisor of a registered school shall be the person through whom all correspondence about the school with the Registrar or an Assistant Registrar or the Director shall be conducted.

(2) Immediately upon any supervisor of any registered school ceasing to act as supervisor of such school, the managers thereof shall appoint a fit and proper and responsible registered manager of such school to be supervisor in his place, and shall forthwith notify the Registrar, with whom such school is registered, of such appointment.

(3) If such managers shall fail or neglect to appoint such supervisor or shall fail or neglect to notify the Registrar of such appointment, every manager of such school shall be guilty of an offence against this Ordinance.

Offence for manager knowingly to act with an unregistered manager or to employ an unregistered teacher.

18. Any manager of a school who—

(*a*) acts with any other person, acting as a manager, whom he knows or has reason to believe to be acting in contravention of the provisions of this Ordinance; or

(*b*) employs or permits any person to act as a teacher in such school, other than a person registered as a teacher in such school under this Ordinance,

shall be guilty of an offence against this Ordinance.

Power of Registrar to strike managers and teachers off the register.

19. (1) If any registered manager or registered teacher shall—

(*a*) at any time, whether before or after the date of his registration, be or have been convicted by any competent Court in the Federation or elsewhere of an offence punishable with imprisonment; or

(*b*) at any time, whether before or after the date of his registration, have been a manager of or teacher in any school, declared under this Ordinance or any previous written law relating to the registration of schools or any law in force in the Colony corresponding to this Ordinance to be an unlawful school, at the time when such declaration was made; or

(*c*) at any time, whether before or after the date of his registration, be or have been convicted by any competent Court in the Federation of an offence under this Ordinance, or any previous written law relating to the registration of schools; or

(*d*) after the date of his registration, appear to the Registrar with whom he is registered to be a person who ought not, in the interests of the Federation or of the public or of the pupils of such school, to remain a manager of or teacher in such school as the case may be; or

(*e*) have obtained his registration as manager or teacher by reason of any false or misleading particular or particulars contained in his application for registration, or

the Registrar with whom such manager or teacher is registered may strike such manager or teacher off the register :

Provided that no person shall be struck off the register under the provisions of paragraphs (*a*), (*b*) and (*c*) of this sub-section by reason of any fact or matter occurring before the date of his registration and which was disclosed to the Registrar before such date.

(2) When any manager or teacher has been struck off the register under sub-section (1) of this section, the Registrar shall forthwith inform him by notice in writing that he has been so struck off, and of the grounds on which he has been so struck off and shall notify him that he has a right of appeal against such striking off in accordance with the provisions of the following sub-section.

(3) Any manager or teacher struck off the register under sub-section (1) of this section may, within fourteen days of the notice being served on him in accordance with sub-section (2) of this section, appeal to the Ruler in Council of the State or the High Commissioner in Nominated Council of the Settlement, as the case may be, in accordance with the provisions of section 32 of this Ordinance.

Inspection of registered schools.

20. (1) The Registrar shall, at least once in every year, personally inspect or cause to be inspected by an Assistant Registrar, Inspector or Assistant Inspector, every school, registered under this Ordinance in his State or Settlement, for the purpose of ascertaining that the provisions of this Ordinance or of any regulations made thereunder have been and are being complied with.

(2) The Registrar may require, at least once in every year, a copy of all instruction material given by a correspondence school, registered under this Ordinance in his State or Settlement, to be submitted to him.

Powers of Registrar, etc., in respect of registered schools.

21. (1) A Registrar, Assistant Registrar, Inspector or Assistant Inspector may, at any time, enter in or upon any registered school for the purpose of carrying out such inspection or examination, including the inspection and examination of books, as he may

consider necessary, and may remove and detain any books, documents or other articles, found in such school, for the purpose of further examination, or any books, documents or other articles so found which, in the opinion of the officer carrying out such inspection, may furnish evidence of the commission of an offence against this Ordinance or any regulation made under this Ordinance or which contain or are connected with political propaganda detrimental to the interest of the Federation or of the public or used for the purposes of instruction detrimental to the interests of the pupils or which may furnish evidence that the school is or has been used as a meeting place for an unlawful society; and such Registrar or other officer lawfully carrying out an inspection under this sub-section may, if ingress into such school or any part thereof cannot be obtained and none of the registered managers of or teachers in such school can be found to open such school or such part thereof or any receptacle therein, in order to effect such ingress or inspection, break open any outer or inner door or window of any such school or any locked receptacle found therein.

(2) The Registrar at any time and any officer whilst lawfully carrying out an inspection of a registered school under the provisions of this Ordinance may require any registered manager of, or registered teacher in, any registered school or any pupil of such school or any person found within such school to produce for his inspection any books or documents, relating to the management of or to the teaching carried on in such school, which are in his possession or under his control, and to furnish the Registrar or such officer with such information, relating to such management or teaching as the Registrar or officer may demand and which it is within the power of such person to furnish and, in the case of a registered teacher, to produce for inspection his certificate of registration as a teacher under this Ordinance and in the case of any manager, teacher, pupil or any person who is found within such school to produce for inspection any identity card issued to such manager, teacher, pupil or person under the provision of any written law in force relating to the registration of residents within the Federation or any area in the Federation.

(3) Any person who—

(*a*) obstructs or impedes the Registrar or any officer lawfully carrying out an inspection of a registered school under this Ordinance in the lawful exercise of any of his powers under this section; or

(*b*) refuses to produce any book, document or identity card or refuses to furnish any information in contravention of the provisions of sub-section (2) of this section or furnishes any information which is false in a material particular and which he knows to be false or does not believe to be true,

shall be guilty of an offence against this Ordinance.

Search of unregistered premises.

22. (1) Where a Registrar or any public officer, specially authorised by him in that behalf in writing, or any police officer, not below the rank of Inspector, has reasonable cause to believe that any house, building or other place has been or is being used as a school which is not registered under this Ordinance, the Registrar or such public officer or such police officer, accompanied by such persons as he may deem expedient, may enter in or upon such house, building or place and may search therein and may seize and detain any books, documents or other articles found therein which may furnish evidence of the commission of an offence against this Ordinance or which appear to be the property of or to have been used in connection with a school not registered under this Ordinance and may, for such purposes, if, after notice of his authority and purpose and demand of admittance upon the occupier thereof or the person residing or having charge thereof, admittance cannot otherwise be obtained, break open any outer or inner door or window or any locked receptacle therein which he suspects to contain any article which may be liable to seizure under this section.

(2) Any person who obstructs or impedes any Registrar or officer in the exercise of his powers under sub-section (1) of this section shall be guilty of an offence against this Ordinance.

Procedure if regulations not complied with.

23. (1) If it appears to the Registrar that any regulation made under this Ordinance has not been complied with in any registered school, he may, by notice in writing served on the supervisor of such school, direct the supervisor to take, within such

time, not less than fourteen days, as may be prescribed in such notice, such measures as may be specified therein to comply with such regulation.

(2) The supervisor of such school may, within fourteen days of the notice being served upon him, appeal to the Ruler in Council of the State or the High Commissioner in Nominated Council of the Settlement in which such school is registered, as the case may be, in accordance with the provisions of section 32 of this Ordinance.

(3) If, within the time prescribed in such notice, the specified measures have not been taken to the satisfaction of the Registrar and no appeal has been lodged under the provisions of sub-section (2) of this section, the Registrar may strike such school off the register, and such school and the managers and teachers thereof shall thereupon cease to be registered.

(4) If upon an appeal under the provisions of sub-section (2) of this section it is ordered by the Ruler in Council or the High Commissioner in Nominated Council, as the case may be, that the specified measures or any of them or any other measures shall be taken by the supervisor of the school, such measures shall be taken by the supervisor within such time as may be specified in such order, and, in default thereof, the Ruler in Council or the High Commissioner in Nominated Council, as the case may be, shall direct the Registrar to strike such school off the register, and thereupon such school and the managers and teachers thereof shall cease to be registered.

Registrar may declare certain schools unlawful.

24. (1) If it shall appear to the Registrar that any school is being used for the purpose of political propaganda detrimental to the interests of the Federation or of the public or for the purpose of instruction detrimental to the interests of the pupils or as the meeting place of an unlawful society, it shall be lawful for the Registrar to cause a notice to be served on the supervisor of such school, giving particulars of the matters alleged against the school and calling upon him to show cause, within a period to be specified in the notice, why the school should not be declared to be unlawful.

(2) A supervisor desiring to show cause why a school should not be declared to be unlawful may deliver to the Registrar, within the time specified in the notice, a written statement in the English or Malay language of the grounds on which he relies.

(3) If within the time specified in the notice no such written statement has been delivered, or the Registrar, after considering the written statement delivered and making such further enquiry, if any, as he may consider necessary or desirable, is satisfied that the school is being used for either of the said purposes or as such meeting place, the Registrar may declare the school to be an unlawful school.

(4) Any person aggrieved by any declaration made under sub-section (3) of this section may present a petition appealing against such declaration to the High Commissioner in Council who may at his discretion after consideration of such petition, make any such declaration upon such terms and conditions as he may think just and upon the revocation of such declaration the Registrar shall subject to the directions of the High Commissioner in Council reinstate in the register the school or any manager or teacher thereof struck off under the provisions of section 25 of this Ordinance and return to any teacher so reinstated his certificate of registration as a teacher thereof issued to him under the provisions of section 15 of this Ordinance.

(5) For the purpose of this section and of paragraph (*b*) of section 14, paragraph (*b*) of sub-section (1) of section 19, and of sections 26 and 27 of this Ordinance, a "school" shall be deemed to include any place in which teaching is carried on, irrespective of the number of persons taught, and any place in which material for instruction by correspondence is prepared or returned answers examined.

Cancellation of registration.

25. When a declaration has been made under sub-section (3) of section 24 of this Ordinance that a school is an unlawful school, the Registrar shall, unless such declaration has been revoked if the school is registered, strike the school and the managers thereof and every teacher therein off the register, and thereupon the school, and the managers thereof and every teacher therein shall be struck off the register.

Registrar may remove insignia, etc.

26. (1) When a declaration has been made under sub-section (3) of section 24 of this Ordinance that a school is an unlawful school, and so long as such declaration remains unrevoked it shall be lawful for the Registrar or any public officer, specially authorised in that behalf in writing by the Registrar, accompanied by such persons as he may deem

expedient, to enter the school and for that purpose to use force, if necessary, and to search for, remove and destroy the sign-boards, seals, chops, banners and other insignia of the school and any book or other document which contains political propaganda detrimental to the interests of the Federation or of the public.

(2) For the purpose of any entry or search under this section the Registrar or such public officer may break open any outer or inner door of the school or any locked receptacle therein which he suspects to contain any article which he is by this section empowered to destroy.

To be manager, etc., of unlawful school an offence.

27. Any person who acts as manager of, or as a teacher in, a school which has been declared under sub-section (3) of section 24 of this Ordinance to be unlawful shall unless such declaration has been revoked be guilty of an offence against this Ordinance.

Power of Registrar to strike school off the register.

28. (1) With the approval of the Ruler in Council of the State or of the High Commissioner in Nominated Council of the Settlement, as the case may be, in which any school is registered, the Registrar may strike off the register any school if he is satisfied—

(*a*) that the school is, for reasons of health, no longer suitable for use as a school, or that the school building or any part thereof is no longer safe for use as a school or is a dangerous building; or

(*b*) that the registration of such school was obtained by reason of any false or misleading particular or particulars contained in the application for its registration; or

(*c*) that an offence against this Ordinance has subsequent to the registration thereof been committed by any manager of, or teacher in, such school in relation to the management or teaching therein; or

(*d*) that there is no supervisor of such school or that the supervisor appointed by the managers of such school is not a fit or proper or responsible person.

(2) No school shall be struck off the register under this section unless notice in writing of the intention of the Registrar to strike such school off the register and giving particulars of the grounds on which it is proposed to strike off such school and calling upon the managers to show cause within a period of not less than fourteen days specified in such notice why such school should not be struck off has been served upon the supervisor of such school.

(3) Any manager desiring to show cause why a school should not be struck off may deliver to the Registrar within the time specified in such notice a written statement in the Malay or English language of the grounds on which he relies, and the Registrar, unless, after considering such statement, he is of opinion that such school should not be struck off the register, shall submit forthwith such statement to the Ruler in Council or the High Commissioner in Nominated Council, as the case may be.

Defunct schools.

29. (1) If the Registrar has reason to believe that any school registered in his State or Settlement has ceased to exist, he may publish, in the *Gazette*, a notice calling upon the registered managers of such school to furnish him with proof of its existence within one month from the date of such notice.

(2) If at the expiration of one month the Registrar is satisfied that the school has ceased to exist, he shall cause a notification to that effect to be published in the *Gazette*, and the school shall be deemed to have ceased to exist from the date of such publication, and the Registrar shall thereupon strike the school and the managers and teachers thereof off the register.

Teachers struck off the register to surrender certificates of registration.

30. (1) When a teacher has been struck off the register under the provisions of this Ordinance, such teacher shall, where there is no right of appeal against such striking off, immediately upon receipt of notice thereof, or, where there is a right of appeal, immediately upon the expiration of the time limited for such appeal where he has not exercised that right and, in any other case, immediately upon receiving notice that his appeal has been rejected, surrender to the Registrar his certificate of registration as a teacher issued to him under the provisions of section 15 of this Ordinance.

(2) Any teacher failing to surrender his certificate in contravention of the provisions of sub-section (1) of this section shall be guilty of an offence against this Ordinance.

Service of notices, etc.

31. (1) Any notice, order or communication, required to be or which may be sent to or served on any manager or teacher of any school under this Ordinance, may be served by letter, addressed to such manager or teacher at his registered address or at the registered address of the school, as the Registrar may deem fit.

(2) Any notice, order or communication, required to be or which may be sent to or served upon the supervisor of any school, may be served on the supervisor by letter addressed to such supervisor at his registered address or at the registered address of the school :

Provided that if such supervisor cannot be found or if no supervisor has been appointed, such notice, order or communication may be served upon or addressed to that teacher or manager who, in the opinion of the Registrar, is in charge of such school at such teacher or manager's registered address, or may be served by affixing such notice, order or communication upon a conspicuous part of the school premises, as the Registrar may deem fit.

(3) Any notice, order or communication required to be or which may be sent or served upon any person applying for registration of a school or as a manager or teacher may be served by letter addressed to such person at the address stated in his form of application.

Appeals.

32. Where any appeal to a Ruler in Council or to the High Commissioner in Nominated Council is brought under this Ordinance—

(*a*) the grounds of appeal shall be concisely stated in writing in the Malay or English language and shall be delivered to the Clerk of the State or Settlement Council, as the case may be, who shall, in turn, give the appellant seven clear days' notice of the hearing of the appeal;

(*b*) the appellant may, if he so desires, be present at the hearing of the appeal and be heard in support thereof either in person or by advocate;

(*c*) the Registrar may, if he so desires, be present at the hearing of the appeal and may be heard in support thereof either in person or by the Attorney-General, Solicitor-General or a Federal Counsel;

(*d*) the decision of the Ruler in Council or of the High Commissioner in Nominated Council, as the case may be, upon any appeal shall be final;

(*e*) no costs shall in any case be awarded either against or in favour of the Registrar or of the Government.

Owner and occupier of premises on which a school struck off the register, etc., was carried on to take all lawful steps to prevent such premises continuing to be used for such school.

33. (1) Where under section 9 of this Ordinance the Registrar has refused to register a school and the time for appealing against such refusal has expired, or where any appeal against such refusal has been rejected, or where any school is struck off the register under section 25 or 28 of this Ordinance, the Registrar may, at the expiration of such time or upon the rejection of such appeal or upon the striking off of such school, as the case may be, serve or cause to be served personally on the owner and the occupier of the premises referred to in such application or on which such school, so struck off, was carried on, a notice of the refusal of such application or of the striking off of such school.

(2) Upon receipt of such notice, it shall be the duty of the owner and the occupier of the premises to take such steps within his power as may be lawful and necessary to prevent such premises being used as such school.

(3) Where any school struck off the register under section 25 of this Ordinance is reinstated in such register under the provisions of sub-section (4) of section 24 of this Ordinance the Registrar shall forthwith give notice to the owner and the occupier of the premises in which such school is carried on of such reinstatement and from and after the date of such reinstatement the provisions of sub-section (2) of this section shall not apply to such school so long as it remains upon the register.

(4) Any owner and any occupier failing or neglecting to take any such steps, in contravention of the provisions of sub-section (2) of this section, shall be guilty of an offence and shall be liable to a fine not exceeding five hundred dollars and to a further fine

not exceeding fifty dollars for each day on which such premises were to his knowledge used as such school after such notice had been served upon him.

Penalties.

34. (1) Any person who—

(*a*) in making any application under this Ordinance for the registration of a school or for registration as a manager or teacher, makes any false statement which he knows to be false or does not believe to be true or, by the intentional suppression of any material fact, furnishes any information which is misleading; or

(*b*) is guilty of an offence under sub-section (3) of section 21 or sub-section (2) of section 22 of this Ordinance; or

(*c*) acts as the manager of or teacher in any school, after such school has, to his knowledge, been struck off the register under section 25 or 28 of this Ordinance; or

(*d*) acts as the manager of or teacher in any school, as the case may be, at any time after he has received notice that his application for registration as such manager or teacher has been refused or that he has been struck off the register of such school in accordance with sub-section (3) of section 16 or section 19 or 25 of this Ordinance and, if he shall not have appealed, the time for appealing against such refusal or striking off has expired or, if he shall have appealed, after his appeal is rejected; or

(*e*) acts as the manager of or teacher in any unregistered school which is used for the purpose of political propaganda detrimental to the interests of the Federation or of the public,

shall be liable to a fine not exceeding one thousand dollars or to imprisonment of either description for a term not exceeding one year.

(2) Any person guilty of an offence against this Ordinance, for which no other penalty is specifically provided, shall be liable to a fine of two hundred and fifty dollars for a first offence or five hundred dollars for a second or subsequent offence, and, in the case of

a conviction of a manager or teacher for an offence under section 5 or 12 of this Ordinance, shall be liable to a further fine of fifty dollars for each day after the day of conviction in which the offence for which he is charged continues.

Power of High Commissioner in Council to make regulations

35. (1) The High Commissioner in Council may make all such regulations as may be necessary for the purpose of carrying out or giving effect to the provisions of this Ordinance throughout the Federation, and, in particular and without prejudice to the generality of the power conferred by this section, may, by such regulations—

(*a*) prescribe anything that may be prescribed under this Ordinance;

(*b*) provide for the hygienic character and proper sanitation of schools and buildings used as or in connection with schools;

(*c*) regulate the methods of enforcing discipline in schools;

(*d*) prohibit the use, in any school or any specified class of school, of any book the use of which appears undesirable;

(*e*) prohibit the import or sale of any school text-book the use of which in schools appears undesirable;

(*f*) prohibit the use or delivery to any pupil by any correspondence school or the supply import or sale for use or delivery by any correspondence school of any book lesson instruction or other printed or written matter the use of which by a correspondence school appears undesirable;

(*g*) provide for the proper keeping of school registers and books of account at registered schools;

(*h*) provide for the medical inspection of pupils in schools and of school premises;

(*i*) provide for the control and supervision of subscriptions and collections on behalf of schools;

(*j*) provide the distribution and management of grants in aid and prohibit schools in receipt of such grants being conducted for profit;

(*k*) require the preparation and execution in respect of any school or class of schools of a written constitution, scheme or deed of

trust, providing for the management of such school or the administration of its property or revenues in such manner as the Director may consider satisfactory;

(*l*) fix the maxima of fees or other charges made by any school or class of school;

(*m*) prescribe penalties for any breach of any such regulations, provided that no such penalty shall exceed the maximum penalty prescribed by sub-section (2) of section 34 of this Ordinance.

(2) All such regulations shall be published in the *Gazette* of the Federation and shall come into force upon the date of publication therein.

(3) If a breach of any such regulation is committed, the supervisor shall be guilty of an offence against such regulation and shall be liable to such penalty as may be prescribed for such breach, and every other manager of, and teacher in, such school who has committed or abetted the commission of such breach shall likewise be guilty of an offence and liable to such penalty.

Power of High Commissioner to amend forms.

36. The High Commissioner in Council may, from time to time, cancel, vary or add to any of the forms contained in the First Schedule to this Ordinance.

Sanction of Registrar or Director required for prosecution.

37. No person shall be charged with any offence against this Ordinance or against any regulation made thereunder without the previous sanction in writing of the Registrar for the State or Settlement in which such offence is alleged to have been committed or of the Director.

Repeal and saving.

38. (1) The Ordinance and Enactments specified in the Second Schedule to this Ordinance are hereby repealed.

(2) Any school, manager or teacher registered under the provisions of the repealed Ordinance or any of the repealed Enactments shall be deemed to have been registered under this Ordinance and such registration shall continue in force but subject to the provisions of this Ordinance relating to the striking off the register of any such school, manager or teacher.

(3) When no person has been registered or appointed to be supervisor of any such school at the date of the commencement of this Ordinance, such school shall be deemed to have ceased to be registered unless, within

one month of the commencement of this Ordinance, a manager has been appointed by the managers of such school to be supervisor thereof for the purpose, of this Ordinance and a copy of such appointment in writing signed by the managers has been submitted to the Registrar of the State or Settlement in which such school is situate.

THE FIRST SCHEDULE.

THE REGISTRATION OF SCHOOLS ORDINANCE, 1950.

(*Section 7.*)

FORM A.

.....19.....

To the Registrar of Schools,
Education Office,
State/Settlement of.....

Sir,

I herewith submit particulars as under of a school which is proposed to open at.....and request you to issue a certificate of registration of the same under the Registration of Schools Ordinance.

I enclose applications from the following persons to be registered as managers of or teachers in such school :

(1).....as manager
(2).....
(3).....as teacher.

The following has been appointed Supervisor.....

I enclose a copy of his appointment in writing.

I am, Sir,
Yours faithfully,

.....
(*for Managers*).

1. Name and address of school.....
2. Whether for boys, girls or both.....
3. The dimensions of each class room.....
4. The syllabus of each class or standard.....
5. The weekly time-table of each class or standard.....
6. The times of roll-call.....
7. The regular holidays.....
8. The name, age, qualifications, experience and salary of each teacher.....
9. The names and addresses of and office held by each manager.....
10. The fees and any remissions or reductions therefrom.....
11. Any other sources of revenue—
    (*a*) from invested funds or landed property.....
    (*b*) from public subscriptions.....
    (*c*) from private subscriptions.....
12. The rent of the school premises.....
13. Any debt or charge on the school.....

THE REGISTRATION OF SCHOOLS ORDINANCE, 1950.

(*Section 10.*)

FORM B.

This is to certify that the.....school has been registered under the Registration of Schools Ordinance.

Name of Supervisor.....

.....

Registrar of Schools.

State/Settlement of.....

.....19.....

THE REGISTRATION OF SCHOOLS ORDINANCE, 1950.

[*Section 13 (1).*]

FORM C.

To the Registrar of Schools,

State/Settlement of.....

Sir,

I herewith submit particulars of myself as under and request you to register me as a manager of the.....school, at.....

My private address is.....

1. Full name.....
2. Age.....
3. Place of birth.....
4. No. of Identity Card.....
5. Office held or proposed to be held in the school.....
6. { I have not previously been registered as a manager of a school / I have been previously registered as a manager at the following schools

Name and address of School.	Office held.
.....	.....
.....	.....

7. I have / have not } previously applied for registration as manager of a school.

Particulars of previous applications.

(Signed).....

Date.....

THE REGISTRATION OF SCHOOLS ORDINANCE, 1950.

[*Section 13 (2).*]

FORM D.

APPLICATION FOR REGISTRATION AS A TEACHER.

.....19.....

To the Registrar of Schools,
(or Assistant Registrar),
Education Office,
State/Settlement.....

Sir,

I herewith submit particulars of myself as under together with two signed photographs and request you to issue to me a certificate of registration as a teacher under the Registration of Schools Ordinance.

My private address is.....

.....
Signature of Applicant.

1. Full name { English.....
Chinese (if applicable).....

Alternative name or names { English.....
Chinese (if applicable).....

State whether male or female.....married or single.....

2. Age.....(Date of birth.....)

Place of Birth

(*a*) Country.....

(*b*) Province.....

(*c*) District.....

(*d*) Town/Village.....

3. No. of Identity Card.....

4. *Natal* dialect.....

5. Where educated and qualifications (original certificates are attached).....

6. The names and addresses of all schools where previously employed, stating length of service at each, and particulars of any other previous employment.....

7. Name and address of school at which applicant is at present employed and the period of his engagement.....

8. Subjects taught or proposed to be taught by applicant.....
Subjects qualified to teach.....

9. Date and place of first registration.....

10. Whether Federal Citizen Yes/No.....

11. Seal of the school and signature of manager of school at which engaged.....

(Space below to be left blank.)

Central Remarks.	Regional Remarks.

THE REGISTRATION OF SCHOOLS ORDINANCE, 1950.

(Section 15.)

FORM E.

CERTIFICATE OF REGISTRATION OF TEACHER.

This is to certify that

(Name in English).....

(Name in Chinese) (if applicable).....

Age.....

Born at.....

No. of Identity Card.....

has been registered as a teacher under the Registration of Schools Ordinance, 1950, for the school shown hereunder.

.....

Registrar of Schools.

State/Settlement of.....

.....19.....

Qualifications:

Date.	Name of School for which Registered.	Address of Teacher.	Correspondence Number.	Initials of Registrar.

THE SECOND SCHEDULE.

(*Section 38.*)

F.M.S. Cap. 159	The Registration of Schools Enactment
S.S. Cap. 139	The Registration of Schools Ordinance
Johore Enactment No. 125 ...	The Registration of Schools Enactment
Kedah Enactment No. 98 ...	Enactment No. 98 (Registration of Schools)
Kelantan Enactment No. 26 of 1930	The Registration of Schools Enactment, 1930
Perlis Enactment No. 5 of 1352	The Registration of Schools Enactment, 1352

Passed in the Legislative Council on the ninth day of February, 1950.

H. E. Collis.

Clerk of Council.

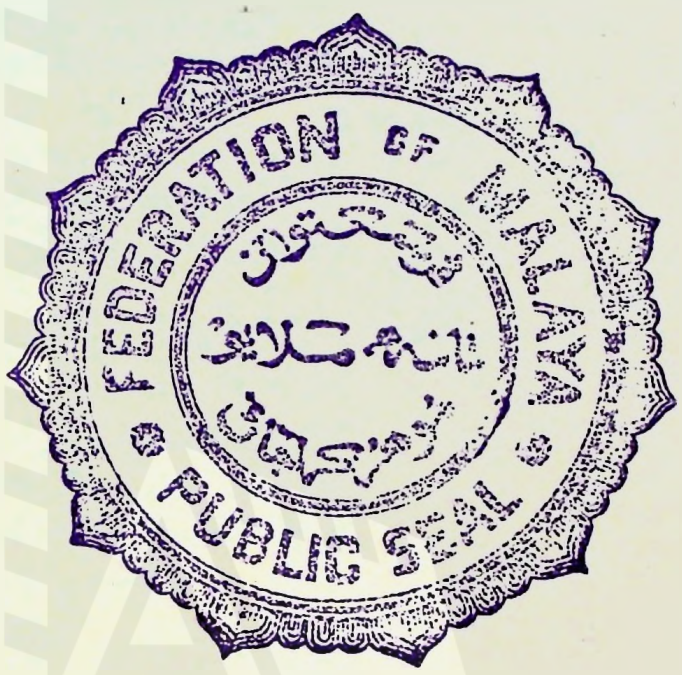
FEDERATION OF MALAYA.

No. 8 of 1950.

THE CIVIL LIABILITY ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent



Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....27th February, 1950.

.....*High Commissioner.*

.....26th March ~~February~~, 1950.

An Ordinance to declare the law relating to Civil Liability and to provide for the making and payment of awards in respect thereof and to enable gratuities to be granted in cases of special financial hardship arising in consequence of the cessation of Civil Liability.

[31st March, ~~February~~, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Civil Liability Ordinance, 1950.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"specified period" means the period between the 1st day of December, 1941, and the 15th day of February, 1942 (both inclusive).

"Civil Liability Scheme" means the provisions of the Ordinances, Enactments, Regulations and Rules referred to in the First Schedule to this Ordinance or any of them and any written law in force, in any State or Settlement now comprised in the Federation, immediately before the end of the specified period, relating to a Local Force and corresponding to such provisions or any of them.

"Local Force" means any force, corps or service specified in the Second Schedule to this Ordinance and any similar volunteer land, naval or air force, local defence corps or passive defence service constituted, raised or maintained by or under any law in force in any State or Settlement, now comprised in the Federation, corresponding to any law by or under which any force, corps or service specified in the Second Schedule was constituted, raised or maintained, but does not

include any force, corps, service or body, whether specified in the Second Schedule or not, or any part or unit of any such force, corps, service or body which was constituted, raised or maintained under any law in force in the former Colony of the Straits Settlements in or for service in the former Settlement of Singapore.

"Relief or Allowance" does not include pay or any pension or gratuity payable in respect of personal injuries, or to the personal representative, widow or dependants of any person by reason of such person's death.

Declaration that Civil Liability reliefs and allowances ceased to be payable after the 15th February, 1942.

3. (1) For the purpose of removing doubts, it is hereby declared that any relief or allowance payable under any grant or award made before the commencement of this Ordinance under or by virtue of the provisions of any Civil Liability Scheme ceased, on the 15th day of February, 1942, to be payable under such grant or award in respect of any period of time subsequent to such date and any such grant or award shall, in respect of any such period of time subsequent to such date, be void and of no effect in law.

(2) No legal proceedings whatsoever shall lie or be instituted or maintained in any Court for or on account of any relief or allowance in respect of any period of time subsequent to the 15th day of February, 1942.

(3) Nothing in this section shall confer upon Government any right to recover any sums actually paid before the commencement of this Ordinance to any person or to the wife dependants or agent of any person, under or in respect of any grant or award made in accordance with any Civil Liability Scheme.

No grants or awards under Civil Liability Schemes to be made after the commencement of this Ordinance.

4. From and after the commencement of this Ordinance, no grant or award of any relief or allowance shall be made under the provisions of any Civil Liability Scheme in respect of any person called up for service with any Local Force at any time during the specified period, and any grant or award purporting to be so made shall be void.

Relief and allowances in respect of service with a Local Force during the specified period to be granted under this Ordinance.

5. (1) Notwithstanding the provisions of any written law to the contrary, any person who was called up for service with any Local Force during the specified period or any part thereof shall, if he has not obtained a grant or award in respect thereof in his favour under a Civil Liability Scheme, be entitled to such relief and allowances in respect of his service prior to and including the 15th day of February, 1942, as may be prescribed by rules made under this section by the High Commissioner in Council, and not otherwise :

Provided that any person who has obtained a grant or award under a Civil Liability Scheme may, in such manner as may be prescribed, elect to abandon such grant or award and may claim under this section.

(2) The High Commissioner in Council may by such rules prescribe—

(*a*) the manner in which any application for relief or allowance may be made and the form of such application and the persons by whom such applications may be made and to whom awards may be paid in the event of the decease of any person entitled under a Civil Liability Scheme or under this section;

(*b*) the circumstances in which and the conditions upon which such relief or allowances may be granted:

Provided that the circumstances and conditions prescribed shall not be less favourable to any person concerned than those prescribed under any Civil Liability Scheme which was applicable to such person;

(*c*) the amount of such relief or allowances and the principles to be followed in determining such amounts:

Provided that any amount so prescribed and determined shall not be less than the amount which would have been payable to any person concerned under any Civil Liability Scheme applicable to such person;

(*d*) the persons or tribunals by whom such applications shall be heard and determined;

(*e*) the procedure to be followed by such persons or tribunals and all matters incidental thereto, including rules relating to the summoning and compelling the attendance of witnesses, the production of documents, the mode of giving evidence and the rules of evidence to be observed by such persons or tribunals in their proceedings;

(*f*) such other matters as may be necessary or expedient for carrying this section into effect.

(3) The High Commissioner in Council may make different Rules in respect of different Local Forces.

Continuance of relief or allowance *ex gratia* to the 30th June, 1942.

6. When under any grant or award made under a Civil Liability Scheme or under any grant or award made under the provisions of section 5 of this Ordinance, any relief or allowance was or is payable to any person in respect of any period of time ending on the 15th day of February, 1942, it shall be lawful for the Government, subject to the provisions of section 7 of this Ordinance, to pay to such person *ex gratia* in respect of the period after the 15th day of February and before the 1st day of July, 1942, a similar relief or allowance at the same rates and subject to the same terms and conditions as those on which such relief or allowance was payable under the terms of such grant or award in respect of the period ending on the 15th day of February, 1942.

Family allowances, etc., already received to be deducted.

7. All sums received by any person or the wife, dependants or agents of any person as a family, separation or other allowance or as a gratuity or relief granted under, or in place of any relief or allowance granted or awarded or capable of being granted or awarded under, any Civil Liability Scheme or as a relief or allowance in respect of any person called up for service with any Local Force from or on behalf of the Government or His Majesty's Government or the Government of the Federated Malay States or of the Colony of the Straits Settlements or of any State or Settlement now comprised in the Federation and all sums received by any person or the wife, dependants or agents of any person as or in place of pay, salary, allowances, emoluments or relief from or on behalf of the employer or former employer of such person, whether legally due or not shall, to the extent to which such sums related to the period between the 1st day of December, 1941, and the 15th day of February, 1942,

(both inclusive) be deducted from the amount of any relief or allowance payable to such person under any grant or award made under any Civil Liability Scheme or under section 5 of this Ordinance, as the case may be, and, to the extent to which such sums related to the period after the 15th day of February, 1942, and before the 1st day of July, 1942, shall be deducted from the amount of any *ex gratia* relief or allowance which may be payable to such person under the provisions of section 6 of this Ordinance:

Provided that all such sums which related to any period from and including the 1st day of December, 1941, and before the 1st day of July, 1946, and which were received in respect of the payment of insurance premia or for any purpose other than as, or in place of, a family or separation allowance, pay or salary or for the personal support of such person or his wife or dependants shall be deducted from the amount payable under any such grant or award or from the amount of any such *ex gratia* relief.

Power of Government to make provision for gratuities in cases of special financial hardship.

8. (1) The High Commissioner in Council may make rules regulating the granting and payment of a gratuity to any person or to the widow children or dependants or legal personal representative of any person who was called up for service with any Local Force during the specified period and who has suffered special financial hardship by reason of his not having received any relief or allowance to which he would have been entitled under any Civil Liability Scheme if such Scheme had continued in force and effect after the 30th day of June, 1942, to the 30th day of June, 1946.

(2) Rules made under this section may—

(*a*) define the nature of special financial hardship for the purposes of this section and prescribe the circumstances in which and conditions upon which any gratuity may be granted;

(*b*) classify applications and gratuities in respect of special financial hardship into categories;

(*c*) prescribe the limits of the amount of such gratuities or any category thereof;

(*d*) prescribe the manner in which applications for gratuities under this section may be made and the form of such applications;

(*e*) prescribe the persons or tribunals by whom any such application or any category of application shall be heard and determined;

(*f*) prescribe the procedure to be followed and the principles to be applied by such persons or tribunals and all matters incidental thereto, including rules relating to the summoning and compelling the attendance of witnesses, the production of documents, the mode of giving evidence and the rules of evidence to be observed by such persons or tribunals in their proceeding;

(*g*) make provision generally for such other matters as may be necessary or expedient for carrying this section into effect.

Repeal. F. of M. No. 62 of 1949.

9. The Civil Liability (Moratorium) Ordinance, 1949, is hereby repealed.

FIRST SCHEDULE.

(Section 2.)

Sections 18 and 19 of the Volunteer Force Enactment of the Federated Malay States (Cap. 44).

Rules 6 to 12 inclusive of the Volunteer Force (Pay and Allowances) Rules, 1941, of the Federated Malay States.

Regulation 29 of the Passive Defence Services Regulations, 1941, of the Federated Malay States and all Rules made thereunder.

Regulation 25 of the Local Defence Corps Regulations, 1940, of the Federated Malay States and all rules made thereunder.

Sections 19 and 20 of the Volunteer Force Ordinance of the Straits Settlements (Cap. 99).

Rule 3 of the Volunteer Force (Pay and Allowances) Rules, 1941, of the Straits Settlements.

Sections 18 and 19 of the Royal Naval Volunteer Force Ordinance of the Straits Settlements (Cap. 100) and all rules made thereunder.

Sections 17 and 18 of the Volunteer Air Force Ordinance of the Straits Settlements (Cap. 101) and all rules made thereunder.

SECOND SCHEDULE.

(Section 2.)

The Federated Malay States Volunteer Force.

The Straits Settlements Volunteer Force (Penang and Malacca units).

The Kelantan Volunteer Force.

The Kedah Volunteer Force.

The Johore Volunteer Forces.

The Johore European Volunteer Force.

The Straits Settlements Royal Naval Volunteer Reserve (Penang sub-division).

The Malayan Volunteer Air Force.

The Selangor Local Defence Corps.

The Perak Local Defence Corps.

The Negri Sembilan Local Defence Corps.

The Pahang Local Defence Corps.

The Penang Local Defence Corps.

The Malacca Local Defence Corps.

The Johore Defence Corps.

The Trengganu Defence Corps.

All other Local Defence Corps raised under

(*a*) the Local Defence Regulations, 1940, of the Federated Malay States;

(*b*) the Local Defence Regulations, 1940, of the Straits Settlements;

(*c*) the Local Defence Regulations, 1941, of Johore;

(*d*) the Local Defence Corps Enactment of Trengganu.

All Medical Auxiliary Services, Auxiliary Fire Services, Air Raid Precaution Services, Rescue Squads and other Passive Defence Services raised under

(*a*) the Passive Defence Services Regulations, 1941, of the Federated Malay States;

(*b*) the Passive Defence Services Regulations, 1941, of the Straits Settlements;

(*c*) the Passive Defence Services Regulations, 1941, of Johore.

The Kedah Special Police Force raised under the Emergency Regulations (Special Police) Order, 1360, of Kedah.

Passed in the Legislative Council on the ninth day of February, 1950.

H. R. Collis

Clerk of Council.

FEDERATION OF MALAYA.

No. 9 of 1950.

THE SOCIAL AND WELFARE SERVICES LOTTERIES BOARD ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer Administering the Government.

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to establish a Social and Welfare Services Lotteries Board and to authorise the promotion by such Board of public lotteries for social and welfare purposes and to provide for other matters incidental thereto.

[11th December, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Social and Welfare Services Lotteries Board Ordinance, 1950, and shall remain in force for a period of five years unless extended by a resolution of the Legislative Council.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"Board" means the Social and Welfare Services Lotteries Board established under section 3 of this Ordinance;

"The Chairman" means the Chairman of the Board appointed under sub-section (1) of section 4 of this Ordinance and includes any member of the Board appointed by the High Commissioner to act in place of the Chairman during such time as the Chairman is by reason of absence from the country or illness or for any other reason unable to act;

"public lottery" means any game method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot and to which the public or any class of the public has or may have access.

Establishment and incorporation of the Social and Welfare Services Lottery Board.

3. For the purposes of this Ordinance there shall be established a Board which shall be a body corporate under the name of "The Social and Welfare Services Lotteries Board" and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

Constitution of the Board.

4. (1) The Board shall consist of eleven members appointed by the High Commissioner in Council, one of whom he shall appoint as Chairman.

(2) The High Commissioner in Council may dismiss or suspend any member of the Board and may appoint

another person in his place or in place of any member who dies, retires or who, for the time being, is unable to act.

(3) Five members of the Board shall constitute a quorum at any meeting and all acts, matters or things authorised or required to be done by the Board may be decided by a majority at any meeting at which such a quorum is present.

(4) The Chairman shall, when present, preside at every meeting of the Board, and in his absence such member of the Board as may be chosen by the members present shall preside.

(5) The Chairman or member presiding at a meeting shall have the right to vote on any question and, in the event of the division of votes being equal, he shall also have a casting vote.

(6) All acts done by the Board shall, notwithstanding any vacancy in the Board or that it is afterwards discovered that there was a defect in the appointment of a person purporting to be a member thereof, be as valid as if no such vacancy or defect had existed.

(7) Subject to the provisions of this section, the Board shall have power to regulate its own procedure at its meetings and to appoint a Secretary of the Board and to provide for the taking and custody of minutes of the meetings of the Board.

Common Seal.

5. (1) The common seal of the Board shall bear such device as the Board may approve and the Board may from time to time break, change, alter and make anew such seal as it may think fit.

(2) The common seal of the Board shall be kept in the custody of the Chairman and shall not be affixed to any instrument except in the presence of the Chairman and two other members of the Board, who shall sign their names to the instrument in token of their presence and such signing shall be sufficient evidence that such seal was duly and properly affixed and that the same is the lawful seal of the Board.

Officers and servants of the Board.

6. (1) The Board may appoint such officers and servants as it may consider to be necessary for the due performance of the duties and functions of the Board.

(2) The officers and servants of the Board shall receive out of the funds raised by the Board such remuneration and allowances as may be approved by the High Commissioner in Council.

(3) Every member, officer or servant of the Board shall be deemed to be a public servant within the meaning of the Penal Code.

Power of Board to promote lotteries permitted by the High Commissioner in Council.

7. (1) Subject to the provisions of this Ordinance it shall be lawful for the Board, its members, officers and servants, notwithstanding any other written law to the contrary, to hold, promote, organise and administer such public lotteries as the Board may be permitted to promote under the provisions of subsection (2) of this section and to write, print, publish, advertise, sell or distribute tickets or chances in any such lottery and to do all such other things as may be incidental to or necessary for the promotion or administration thereof.

(2) The High Commissioner in Council may, from time to time, by Order permit the Board to promote a public lottery for the purpose of raising funds to be applied in aid of any named public philanthropic, charitable, religious or educational organisation, institution, body or service, or in carrying out any specified public philanthropic, charitable, religious or educational scheme or project, or any work beneficial to the public, or for the improvement of the social condition or for the advancement of the welfare of the public or any class thereof in some specified way or ways.

(3) The High Commissioner in Council may, subject to the provisions of this Ordinance and of any Rules made thereunder, by such Order impose such conditions and limitations upon the Board in respect of the promotion and administration of any lottery thereby permitted as he may think fit.

(4) Every Order made under the provisions of this section shall be published in the *Gazette*, as soon as practicable after the making thereof.

(5) The High Commissioner in Council may at any time revoke or amend any Order made under this section.

Prospectus of lottery to be published.

8. (1) The Board shall, upon the promotion of any lottery under this Ordinance, cause to be published in the *Gazette*, or in such other manner as the Chief Secretary may direct, a prospectus of such lottery which shall set forth—

(*a*) the general or special purposes to which the funds raised thereby will be applied;

(*b*) the prizes offered therein;

(*c*) the number of tickets or chances therein to be offered for sale and the prices and denominations of such tickets or chances;

(*d*) the opening and closing dates for the sale of tickets or chances therein;

(*e*) the times, places and manner at or in which the winners of prizes therein will be determined;

(*f*) the conditions subject to which any tickets or chances therein will be offered for sale and in accordance with which such lottery will be conducted;

(*g*) such other matters as may be prescribed.

(2) No tickets or chances in any lottery shall be sold or distributed at any time before the expiration of a period of one month after the date of the publication of such prospectus relating thereto.

Tickets and chances in a lottery to be sold, etc., only through the Postal Services.

9. (1) No tickets or chances in any lottery promoted by the Board under this Ordinance shall be sold or distributed otherwise than on behalf of the Board and by a person authorised in writing in that behalf by the Postmaster-General and otherwise than at a Post Office or through a Postal Agency established under the Post Office Ordinance, 1947.

(2) Any person who sells or offers for sale or distributes or attempts to distribute or who buys or offers to buy or obtains or attempts to obtain any ticket or chance in a lottery in contravention of the provisions of sub-section (1) of this section or who is found without lawful excuse in possession of any ticket or other document entitling any person to a chance in such lottery which has been bought or obtained in contravention of the provisions of such sub-section shall be guilty of an offence against this Ordinance.

General accounts of the Board and Audit.

10. (1) The Board shall cause books to be provided and kept, and true and regular accounts to be entered therein of all moneys received and paid by the Board and of the several purposes for which such moneys have been received and paid as well as of the assets, credits and liabilities of the Board, which books shall, at all reasonable times, be open to inspection by any member of the Board, and by the auditor appointed by the Financial Secretary, and by any other person authorised by the Financial Secretary to inspect the same.

(2) The accounts of the Board shall be audited at least once in every year by an auditor appointed in that behalf by the Financial Secretary and a copy of such accounts so audited shall be submitted by the Board to the Financial Secretary who shall cause the same to be published in the *Gazette*.

Special accounts in respect of each lottery.

11. (1) The Board shall prepare within three months of the date upon which the winners of prizes in a lottery were determined, a completed account in respect of such lottery showing the total amount raised thereby, the amount of the prizes paid out in respect thereof, the costs, charges and expenses and deductions made by the Board in respect thereof, the purposes to which the balance of the total amount so raised has been applied, and the names of the persons, organisations and institutions to whom such balance or any part thereof has been paid.

(2) Every such account shall be audited by the auditor appointed under sub-section (2) of section 10 of this Ordinance and a copy of such account, so audited, shall be submitted forthwith by the Board to the Financial Secretary who shall cause the same to be published in the *Gazette*.

Application of funds raised by lotteries.

12. (1) All sums received by the Board in respect of any lottery shall, after deduction therefrom of all costs charges and expenses incurred by the Board in the promotion and administration of such lottery and of the amount of the prizes given in respect thereof, be applied by the Board solely for the purposes or to or among the persons organisations and institutions specified or named in the Order granting permission to the Board to promote the same.

(2) The Board shall be entitled to deduct as part of the expenses incurred by it in the promotion or administration of any lottery such amount in respect of the general administrative or other expenses incurred by the Board in carrying out its duties or functions under this Ordinance, including any sum required to be paid into the Reserve Fund established under section 13 of this Ordinance, as, subject to the approval of the Financial Secretary, it may think reasonable.

(3) The Board shall submit to the Financial Secretary a full and true account of all costs, charges and expenses that it proposes to deduct in accordance with the provisions of this section and the Financial Secretary may, in his discretion, disallow, increase or reduce any item as he may think reasonable.

Reserve fund.

13. (1) The Board may establish a Reserve Fund, of such amount as the Financial Secretary may approve, for the purpose of meeting any present, future or contingent liabilities incurred or likely to be incurred by the Board in carrying out its duties under this Ordinance or in promoting or administering any lottery which it is or may be permitted to promote under this Ordinance, and may pay into such Fund from time to time, subject to the approval of the Financial Secretary, out of any sums received by it in respect of any lottery such sums as may be necessary for the maintenance of such Fund at the approved amount.

(2) Upon the dissolution of the Board the balance of such Reserve Fund, after payment of all debts, liabilities and other obligations incurred by the Board, shall be applied for such public, philanthropic, charitable, religious or educational organisation, institution, body or service, or in carrying out such public, philanthropic, charitable, religious or educational scheme or project, or such work which is beneficial to the public, or such improvement of the social condition or such advancement of the welfare of the public or any class thereof, as the High Commissioner in Council may direct.

Duty of Board to make recommendations as to the purposes for which funds should be raised by lotteries.

14. It shall be the duty of the Board from time to time to make recommendations to the High Commissioner in Council as to what organisations, institutions, bodies, services, schemes, projects or works should be aided by funds raised by lotteries promoted under this Ordinance, but the High Commissioner in Council shall not be bound by any such recommendations.

Lotteries to be promoted and administered in accordance with Ordinance and rules and the order permitting the same and with the prospectus.

15. (1) No lottery shall be promoted or administered by the Board otherwise than in accordance with the provisions of this Ordinance and of any rules made thereunder relating thereto, and of the terms and conditions of the Order made under section 7 of this Ordinance permitting such lottery, or otherwise than in accordance with the prospectus relating to such lottery published by the Board under the provisions of section 8 of this Ordinance.

(2) Any member, officer, servant or agent of the Board acting or attempting to act in contravention of the provisions of this section shall be guilty of an offence against this Ordinance.

(3) Any person abetting the commission of an offence under sub-section (2) of this section shall be guilty of an offence against this Ordinance.

Other Betting and Gaming Laws not to apply to lotteries promoted under this Ordinance.

16. Nothing contained in any other law relating to betting or gaming in force in any State or Settlement shall apply to any lottery promoted by the Board under this Ordinance or to any ticket or other document sold or distributed in connection with any such lottery by or on behalf of the Board.

Offences.

17. Any person who—

(*a*) sells or distributes or permits to be sold or distributed any ticket or chance in any lottery promoted by the Board otherwise than in accordance with the provisions of this Ordinance or of any rules made thereunder relating to such lottery or with the provisions of any Order or prospectus relating thereto; or

(*b*) being an agent officer or servant of any person fails to account to his principal for any sums received on sale or by commission or otherwise in respect of the sale or distribution of any such ticket or chance; or

(*c*) with intent to deceive, makes any false entry or omits to make any entry required to be made in respect of any lottery in any book required under this Ordinance to be kept in respect of such lottery;

shall be guilty of an offence against this Ordinance and shall be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

General penalty.

18. Any person guilty of an offence against this Ordinance for which no other penalty is specifically provided shall be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Jurisdiction of Sessions and First Class Magistrate's Courts.

19. A Sessions Court or a Court of a First Class Magistrate shall have power to try any offence against this Ordinance committed within the local jurisdiction of such Court and a Sessions Court may impose the full penalty provided by this Ordinance, notwithstanding any other written law to the contrary.

Exemption from duty imposed by the Betting and Sweepstake Ordinance, 1948.

20. No duty imposed by or under the provisions of the Betting and Sweepstake Ordinance, 1948, shall be payable on any lottery permitted to be promoted by the Board under this Ordinance.

Rules.

21. The High Commissioner in Council may make rules—

(*a*) prescribing anything required to be or which may be prescribed under this Ordinance;

(*b*) regulating the conduct and administration of any lottery promoted under this Ordinance including the sale and distribution of tickets or chances, the form, printing and serial numbering of such tickets or chances, the drawing of prizes, the commission (if any) to be paid on the sale or distribution of tickets or chances;

(*c*) prescribing the manner in which accounts required under this Ordinance shall be kept and audited;

(*d*) prescribing any other matter which may be necessary for the purpose of carrying this Ordinance into effect and for the purpose of ensuring the honest and satisfactory management of any lottery promoted under this Ordinance and the due application of all funds raised by such lottery.

Passed in the Legislative Council on the twentieth day of April, 1950.

H. R. Collin

Clerk of Council.

FEDERATION OF MALAYA.

No. 10 of 1950.

THE MERCHANDISE MARKS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman
..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lucas
..... *High Commissioner.*

..... *Sultan of Selangor.*

12th May, 1950.

6th May, 1950.

An Ordinance to unify and extend throughout the Federation the law relating to Fraudulent Marks on Merchandise.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Merchandise Marks Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"trade mark" means a trade mark which is protected by law in the Federation, and includes any trade mark which, either with or without registration, is protected by law in any territory in the British Commonwealth of Nations or in any foreign State to which the provisions of section 91 of the Patents and Designs Act, 1907, of the United Kingdom are under Order of the King in Council for the time being applicable;

"trade description" means any description, statement or other indication, direct or indirect, as to—

(*a*) the number, quantity, measure, gauge or weight of any goods;

(*b*) the place or country in which any goods were made or produced;

(*c*) the mode of manufacturing or producing any goods;

(*d*) the material of which any goods are composed;

(*e*) any goods being the subject of an existing patent, privilege or copyright;

(*f*) the degree of fineness of gold and silver goods;

and the use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Ordinance;

"false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every

alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false in a material respect, and also every trade description so nearly resembling some other trade description as to be calculated to deceive, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Ordinance; a trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than are contained therein in standard yards, standard feet or standard inches, or more hundredweights, pounds or ounces than there are standard hundredweights, standard pounds or standard ounces, is a false trade description;

"goods" means anything which is the subject of trade, manufacture or merchandise;

"manufacturer, dealer or trader" and "proprietor" include any body of individuals corporate or unincorporate;

"name" includes any abbreviation of a name.

Trade, Property and other Marks.

Trade mark.

3. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark.

Property mark.

4. A mark used for denoting that movable property belongs to a particular person is called a property mark.

Using a false trade mark.

5. Any person who marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false property mark.

6. Any person who marks any movable property or goods or any case, package or other receptacle containing movable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any

property or goods contained in any such receptacle so marked belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark.

7. Any person who uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be guilty of an offence and be liable to imprisonment for a term not exceeding one year or to fine, or to both.

Counterfeiting a trade mark or property mark used by another.

8. Any person who counterfeits any trade mark or property mark used by any other person shall be guilty of an offence and be liable to imprisonment for a term not exceeding two years, or to fine, or to both.

Counterfeiting a mark used by a public servant.

9. Any person who—

(*a*) counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that—

(i) any property has been manufactured by a particular person or at a particular time or place; or

(ii) the property is of a particular quality or has passed through a particular office; or

(iii) it is entitled to any exemption; or ; or

(*b*) uses as genuine any such mark knowing the same to be counterfeit;

shall be guilty of an offence and be liable to imprisonment for a term not exceeding three years, or to fine, or to both.

What constitutes counterfeiting a trade mark or property mark.

10. (1) A person shall be deemed to counterfeit a trade mark or property mark who either—

(*a*) without the assent of the proprietor of the trade mark or property mark makes that trade mark or property mark or a mark so nearly resembling that trade mark or property mark as to be calculated to deceive; or

(*b*) falsifies any genuine trade mark or property mark whether by alteration, addition, effacement or otherwise;

and any trade mark or property mark so made or falsified is in this Ordinance referred to as a counterfeit trade mark or property mark.

(2) In any prosecution for counterfeiting a trade mark or property mark the burden of proving the assent of the proprietor shall lie on the defendant.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

11. Any person who makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be guilty of an offence and be liable to imprisonment for a term not exceeding three years, or to fine, or to both.

Importing or selling, etc., goods marked with a counterfeit trade mark or property mark.

12. Any person who imports, sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves that—

(*a*) having taken all reasonable precautions against committing an offence under this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark; and

(*b*) on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(*c*) otherwise he had acted innocently;

be guilty of an offence and be liable to imprisonment for a term not exceeding one year, or to fine, or to both.

Making a false mark upon any receptacle containing goods.

13. Any person who makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof shall, unless he proves that he acted without intent to defraud, be guilty of an offence and be liable to imprisonment for a term not exceeding three years, or to fine, or to both.

Punishment for making use of any such false mark.

14. Any person who makes use of any such false mark in any manner prohibited by section 13 of this Ordinance shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence under that section.

Tampering with property mark with intent to cause injury.

15. Any person who removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be guilty of an offence and be liable to imprisonment for a term not exceeding one year, or to fine, or to both.

Trade Descriptions.

Provisions supplemental to the definition of false trade description.

16. (1) The provisions of this Ordinance respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and the said provisions shall also extend to the goods to which such figures, words, or marks, or arrangement or combination thereof are applied.

(2) The provisions of this Ordinance respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this Ordinance the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(*a*) are not a trade mark or part of a trade mark;

(*b*) are identical with or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials; and

(*c*) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

Application of trade descriptions.

17. (1) A person shall be deemed to apply a trade description to goods who—

(*a*) applies it to the goods themselves;

(*b*) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture;

(*c*) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture in, with, or to any covering, label, reel or other thing to which a trade description has been applied; or

(*d*) uses a trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression "label" includes any band or ticket.

(3) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or to any covering, label, reel or other thing.

Application of false trade description is an offence.

18. Any person who applies any false trade description to goods or causes any false description to be applied to goods shall, subject to this Ordinance and unless he proves that he acted without intent to defraud, be guilty of an offence and be liable to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred dollars, and in case of a second or subsequent conviction to imprisonment for a term not exceeding one year, or to fine, or to both.

Importation, sale, etc., of goods to which a false description is applied is an offence.

19. Any person who imports, except for a transhipment or in course of transit to any place outside the Federation without breaking bulk, sells or exposes for, or has in his possession for, sale or any purpose of trade or manufacture any goods or things to which a false trade description is applied, shall, unless he proves that—

(*a*) having taken all reasonable precaution against committing an offence under this Ordinance, he had, at the time of the

commission of the alleged offence, no reason to suspect the genuineness of the trade description; and

(*b*) on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(*c*) otherwise he had acted innocently;

be guilty of an offence and be liable to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred dollars, and in case of a second or subsequent conviction to imprisonment for a term not exceeding one year, or to fine, or to both.

Stamping of length of piece-goods.

20. Any person who, in the Settlements or either of them, imports, except for transhipment or in course of transit to any place outside the Settlements without breaking bulk, sells or exposes for, or has in his possession for, sale or any purpose of trade or manufacture any piece-goods such as are ordinarily sold in the Settlements or either of them by length or by the piece which have not conspicuously stamped or marked in English numerals on each piece the length thereof in standard yards or in standard yards and a fraction of such a yard according to the real length of the piece, shall be guilty of an offence and be liable to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred dollars, and in case of a second or subsequent conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, unless he proves—

(*a*) that having taken all reasonable precaution against committing an offence under this Ordinance, he had, at the time of the commission of the alleged offence, no reason to suspect that the real length was not stamped or marked as required by this section; and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all information in his power with respect to all persons from whom he obtained such piece-goods.

Application of Ordinance to watches.

21. (1) Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country

in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *primâ facie* be deemed to be a description of that country within the meaning of this Ordinance, and the provisions of this Ordinance with respect to goods to which a false trade description has been applied, and with respect to importing, selling or exposing for or having in possession for sale or any purpose of trade or manufacture goods with a false trade description, shall apply accordingly.

(2) For the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Unintentional Contravention of the Law relating to Marks and Descriptions.

Unintentional contravention of the law relating to marks and descriptions.

22. Where a person is accused under section 7 of this Ordinance of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 5 or 6, as the case may be, or under section 18 of applying to, or causing to be applied to, goods any false trade description, or under section 11 of making any die, plate or other instrument for the purpose of counterfeiting a trade mark, or property mark, and proves that—

(*a*) in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making or being used in making trade marks or property marks, and that in the case which is the subject of the charge he was so employed by some person resident in the Federation and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof;

(*b*) he took reasonable precaution against committing the offence charged;

(*c*) he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description; and

(*d*) he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the mark or description was applied;

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

Forfeiture of Goods.

Forfeiture of goods.

23. (1) When a person is convicted under section 7 of this Ordinance of using a false trade mark, or under section 12 of importing, selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 13 or section 14 of making, or making use of, a false mark, or under section 18 or 19 of applying a false trade description to goods or of importing, selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 12, 19 or 22, the Court convicting or acquitting him may direct the forfeiture of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty dollars, an appeal against the forfeiture may be preferred, within seven days from the date of the direction, to the High Court.

Procedure.

Description of trade marks in pleadings, etc.

24. In any charge, pleading, proceeding or document in which any trade mark, property mark, counterfeit trade mark or property mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark, property mark, counterfeit trade mark or property mark to be a trade mark or property mark or counterfeit trade mark or property mark.

Rules as to evidence.

25. In the case of imported goods evidence of the port of shipment shall be *primâ facie* evidence in any prosecution under this Ordinance of the place or country in which the goods were made or produced.

Costs.

26. On any prosecution under this Ordinance the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

Limitation.

27. No prosecution under this Ordinance shall be commenced after the expiration of three years next after the commission of the offence, or of one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Search warrant.

28. (1) Where upon information or complaint of an offence under this Ordinance, a Court has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either such Court on or after issuing the summons or warrant, or any other Court, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such Court may issue a warrant under its hand by virtue of which any police officer named or referred to in the warrant may enter such house, premises, or place at any reasonable time by day, and search there for and seize and take away those goods or things.

(2) Any goods or things seized under such warrant shall be brought before a Sessions Court or Magistrate's Court for the purpose of its being determined whether the same are or are not liable to forfeiture under this Ordinance.

(3) If the owner of any goods or things, which would be liable to forfeiture under this Ordinance, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a Sessions Court or Magistrate's Court may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place

the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(4) Any goods or things forfeited under this section, or under any other provision of this Ordinance, may be destroyed or otherwise disposed of, in such manner as the Court by which the same are forfeited directs.

(5) The Court may, out of any proceeds which are realised by the disposition of such goods, all trade marks and property marks and trade descriptions being first obliterated, award to any innocent party any loss which he has innocently sustained in dealing with such goods.

Punishment of abetment in Federation of act done out of Federation.

29. Any person who, being within the Federation, abets the commission without the Federation of any act which, if committed in the Federation, would under this Ordinance be an offence, may be tried for such abetment in any place in the Federation in which he is found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Compounding offences.

30. (1) Any offence punishable under this Ordinance other than offences punishable under sections 9, 13, 14 and 20 of this Ordinance may be compounded, or, where a prosecution for any such offence is pending, be compounded with the consent of the Court before which the case is pending.

(2) When any offence is compoundable under this section the abetment of such offence, or an attempt to commit such offence when such attempt is itself an offence, may be compounded in like manner.

(3) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic or is under some other legal disability, any person competent to contract on his behalf may compound such offence.

(4) Where an offence has been compounded under this section with the consent of the Court before which the case is pending, such composition shall have the effect of an acquittal of the accused in respect of the matters charged against him:

Provided that nothing in this section shall be construed to destroy, limit, derogate from or in any way affect the right of any other person injured by

the acts complained of to institute and prosecute criminal or civil proceedings, or both, against such accused person or against any other person in respect of whom any such right exists.

(5) The provisions of sections 213 and 214 of the Penal Code shall not extend to any case in which the offence may lawfully be compounded under this section.

Miscellaneous.

Implied warranty.

31. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely applied, or that the trade description is not a false trade description within the meaning of this Ordinance, unless the contrary is expressed in some writing signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions not to apply in certain cases.

32. (1) Where, at the commencement of this Ordinance, a trade description was lawfully and generally applied to goods of a peculiar class or manufactured by a particular method to indicate the particular class or method of manufacture of such goods, the provisions of this Ordinance with respect to false trade description shall not apply to such trade description when so applied.

Misleading statement as to country of origin.

(2) Where such trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

33. Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the Federation who *bona fide* acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor has given full information as to his master and as to the instructions which he has received from his master.

Repeal.

34. The Ordinance and Enactments specified in the Schedule to this Ordinance are hereby repealed.

SCHEDULE.

(Section 34.)

REPEAL.

No.	Title.
S.S. Cap. 157	The Merchandise Marks Ordinance.
F.M.S. Cap. 76	The Merchandise Marks Enactment.
Johore Enactment No. 40	The Merchandise Marks Enactment.

Passed in the Legislative Council on the twentieth day of April, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 11 of 1950.

THE EVIDENCE ORDINANCE, 1950.

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Setia Usaha
Parlimen, Malaysia

FEDERATION OF MALAYA.

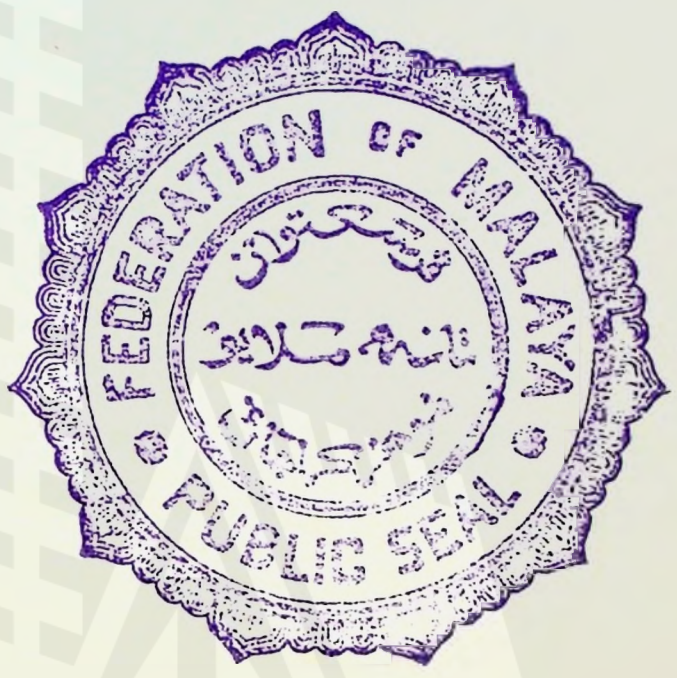
No. 11 of 1950.

THE EVIDENCE ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman .....
Yang di-Pertuan Besar of Negri Sembilan.

Hem Lenny .....
High Commissioner.

..... *Sultan of Selangor.*

12th .....May, 1950.

6th .....May, 1950.

An Ordinance to unify the law relating to evidence in the Federation.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Ordinance may be cited as the Evidence Ordinance, 1950.

Extent.

2. This Ordinance shall apply to all judicial proceedings in or before any Court other than Courts Martial and Muslim Religious Courts, but not to affidavits presented to any Court or officer nor to proceedings before an arbitrator.

Interpretation:

3. In this Ordinance, unless there is something repugnant in the subject or context—

British Commonwealth of Nations.

"British Commonwealth of Nations" includes the Commonwealth countries, and, where parts of these countries are under both a central and a local legislature, shall include both all parts under the central legislature and each part under a local legislature, and includes also the British Colonies, British Protectorates and Protected States, and any territory in respect of which a mandate or trusteeship is being exercised by His Majesty's Government in the United Kingdom or the Government of any Commonwealth country.

"Court" includes all Judges, Presidents of Sessions Courts and Magistrates and, except arbitrators, all persons legally authorised to take evidence;

"fact" means and includes

(*a*) any thing, state of things or relation of things capable of being perceived by the senses;

(*b*) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place is a fact.

(*b*) That a man heard or saw something is a fact.

(*c*) That a man said certain words is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation is a fact.

"relevant"; One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Ordinance relating to the relevancy of facts;

"fact in issue" means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows;

Illustrations.

A. is accused of the murder of *B.*

At his trial the following facts may be in issue:

that *A.* caused *B's* death;

that *A.* intended to cause *B's* death;

that *A.* had received grave and sudden provocation from *B.*;

that *A.* at the time of doing the act which caused *B's* death was by reason of unsoundness of mind incapable of knowing its nature.

"document" means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording that matter;

Illustrations.

A writing is a document.

Words printed, lithographed or photographed are documents.

A map or plan is a document.

An inscription on a metal plate or stone is a document.

A caricature is a document.

"evidence" includes

(*a*) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry: such statements are called oral evidence;

(*b*) all documents produced for the inspection of the Court: such documents are called documentary evidence.

"proved"; A fact is said to be "proved" when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"disproved"; A fact is said to be "disproved" when, after considering the matters before it, the Court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"not proved". A fact is said to be "not proved" when it is neither proved nor disproved.

"May presume". **4.** (1) Whenever it is provided by this Ordinance that the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

"Shall presume". (2) Whenever it is directed by this Ordinance that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

"Conclusive proof". (3) When one fact is declared by this Ordinance to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts. **5.** Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*) *A.* is tried for the murder of *B.* by beating him with a club with the intention of causing his death.

At *A's* trial the following facts are in issue:

A's beating *B.* with the club.

A's causing *B's* death by such beating.

A's intention to cause *B's* death.

(*b*) *A.* a party to a suit does not comply with a notice given by *B.* the other party to produce for *B's* inspection a document referred to in *A's* pleadings. This section does not enable *A.* to put such document in evidence on his behalf in such suit, otherwise than in accordance with the conditions prescribed by the law for the time being in force relating to Civil Procedure.

Relevancy of facts forming part of same transaction.

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) *A.* is accused of the murder of *B.* by beating him. Whatever was said or done by *A.* or *B.* or the bystanders at the beating or so shortly before or after it as to form part of the transaction is a relevant fact.

(*b*) *A.* is accused of waging war against the King by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though *A.* may not have been present at all of them.

(*c*) *A.* sues *B.* for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose and forming part of the correspondence in which it is contained are relevant facts though they do not contain the libel itself.

(*d*) The question is whether certain goods ordered from *B.* were delivered to *A.* The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is whether *A.* robbed *B.*

The facts that shortly before the robbery *B.* went to a fair with money in his possession and that he showed or mentioned the fact that he had it to third persons are relevant.

(*b*) The question is whether *A.* murdered *B.*

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(*c*) The question is whether *A.* poisoned *B.*

The state of *B's* health before the symptoms ascribed to poison and habits of *B.* known to *A.*, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party or of any agent to any party to any suit or proceeding in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Ordinance.

Explanation 2.—When the conduct of any person is relevant any statement made to him or in his presence and hearing which affects such conduct is relevant.

Illustrations.

(*a*) *A.* is tried for the murder of *B.*

The facts that *A.* murdered *C.*, that *B.* knew that *A.* had murdered *C.* and that *B.* had tried to extort money from *A.* by threatening to make his knowledge public are relevant.

(*b*) *A.* sues *B.* upon a bond for the payment of money. *B.* denies the making of the bond.

The fact that at the time when the bond was alleged to be made *B.* required money for a particular purpose is relevant.

(*c*) *A.* is tried for the murder of *B.* by poison.

The fact that before the death of *B.* *A.* procured poison similar to that which was administered to *B.* is relevant.

(*d*) The question is whether a certain document is the will of *A.*

The facts that not long before the date of the alleged will *A.* made inquiry into matters to which the provisions of the alleged will relate, that he consulted lawyers in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve are relevant.

(*e*) *A.* is accused of a crime.

The facts that either before or at the time of or after the alleged crime *A.* provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant.

(*f*) The question is whether *A.* robbed *B.*

The facts that after *B.* was robbed, *C.* said in *A*'s presence: "The police are coming to look for the man who robbed *B.*" and that immediately afterwards *A.* ran away are relevant.

(*g*) The question is whether *A*. owes *B*. $10,000.

The facts that *A*. asked *C*. to lend him money, and that *D*. said to *C*. in *A's* presence and hearing: "I advise you not to trust *A*. for he owes *B*. $10,000," and that *A*. went away without making any answer are relevant facts.

(*h*) The question is whether *A*. committed a crime.

The fact that *A*. absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter are relevant.

(*i*) *A*. is accused of a crime.

The facts that after the commission of the alleged crime he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it are relevant.

(*j*) The question is whether *A*. was ravished.

The facts that shortly after the alleged rape she made a complaint relating to the crime, the circumstances under which and the terms in which the complaint was made are relevant.

The fact that without making a complaint she said that she had been ravished is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section 32 (*a*); or as corroborative evidence under section 157.

(*k*) The question is whether *A*. was robbed.

The fact that soon after the alleged robbery he made a complaint relating to the offence, the circumstances under which and the terms in which the complaint was made are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant

as a dying declaration under section 32 (*a*); or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is whether a given document is the will of *A*.

The state of *A's* property and of his family at the date of the alleged will may be relevant facts.

(*b*) *A*. sues *B*. for a libel imputing disgraceful conduct to *A*.; *B*. affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between *A*. and *B*. about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between *A*. and *B*.

(*c*) *A*. is accused of a crime.

The fact that soon after the commission of the crime *A*. absconded from his house is relevant under section 8 as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) *A*. sues *B*. for inducing *C*. to break a contract of service made by him with *A*. *C*. on leaving *A*'s service says to *A*.: "I am leaving you because *B*. has made me a better offer." This statement is a relevant fact as explanatory of *C*'s conduct, which is relevant as a fact in issue.

(*e*) *A*. accused of theft is seen to give the stolen property to *B*., who is seen to give it to *A*'s wife. *B*. says as he delivers it: "*A*. says you are to hide this." *B*'s statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) *A*. is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons, in reference to their common intention after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that *A*. has joined in a conspiracy to wage war against the King.

The facts that *B*. procured arms in Europe for the purpose of the conspiracy, *C*. collected money in Malacca for a like object, *D*. persuaded persons to join the conspiracy in Province Wellesley, *E*. published writings advocating the object in view at Singapore, and *F*. transmitted from Singapore to *G*. at Batavia the money which *C*. had collected at Malacca, and the contents of a letter written by *H*. giving an account of the conspiracy are each relevant, both to prove the existence of the conspiracy and to prove *A*'s complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(*a*) if they are inconsistent with any fact in issue or relevant fact;

(*b*) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is whether *A*. committed a crime at Kuala Lumpur on a certain day.

The fact that on that day *A*. was at Taiping is relevant.

The fact that near the time when the crime was committed *A*. was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it is relevant.

(*b*) The question is whether *A*. committed a crime.

The circumstances are such that the crime must have been committed either by *A*., *B*., *C*. or *D*. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either *B*., *C*. or *D*. is relevant.

In suits for damages facts tending to enable Court to determine amount are relevant.

12. In suits in which damages are claimed any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom the following facts are relevant—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence;

(*b*) particular instances in which the right or custom was claimed, recognized or exercised or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether *A*. has a right to a fishery. A deed conferring the fishery on *A's* ancestors, a mortgage of the fishery by *A's* father, a subsequent grant of the fishery by *A's* father irreconcilable with the mortgage, particular instances in which *A's* father exercised the right, or in which the exercise of the right was stopped by *A's* neighbours, are relevant facts.

Facts showing existence of state of mind or of body or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists not generally but in reference to the particular matter in question.

Explanation 2.—But where upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(*a*) *A.* is accused of receiving stolen goods, knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*) *A.* is accused of fraudulently delivering to another person a counterfeit coin, which at the time when he delivered it he knew to be counterfeit.

The fact that at the time of its delivery *A.* was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that *A.* had been previously convicted of delivering to another person as genuine a counterfeit coin, knowing it to be counterfeit, is relevant.

(*c*) *A.* sues *B.* for damage done by a dog of *B's* which *B.* knew to be ferocious.

The facts that the dog had previously bitten *X.*, *Y.* and *Z.*, and that they had made complaints to *B.*, are relevant.

(*d*) The question is whether *A.*, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that *A.* had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee, if the payee had been a real person, is relevant, as showing that *A.* knew that the payee was a fictitious person.

(*e*) *A.* is accused of defaming *B.* by publishing an imputation intended to harm the reputation of *B.*

The fact of previous publications by *A.* respecting *B.*, showing ill-will on the part of *A.* towards *B.*, is relevant, as proving *A's* intention to harm *B's* reputation by the particular publication in question.

The facts that there was no previous quarrel between *A.* and B., and that *A.* repeated the matter complained of as he heard it, are relevant as showing that *A.* did not intend to harm the reputation of *B.*

(*f*) *A.* is sued by *B.* for fraudulently representing to *B.* that *C.* was solvent, whereby *B.*, being induced to trust *C.* who was insolvent, suffered loss.

The fact that at the time when *A.* represented *C.* to be solvent *C.* was supposed to be solvent by his neighbours, and by persons dealing with him, is relevant, as showing that *A.* made the representation in good faith.

(*g*) *A.* is sued by *B.* for the price of work done by *B.* upon a house of which *A.* is owner by the order of *C.*, a contractor.

A's defence is that *B's* contract was with *C.*

The fact that *A.* paid *C.* for the work in question is relevant as proving that *A.* did in good faith make over to *C.* the management of the work in question, so that *C.* was in a position to contract with *B.* on *C's* own account and not as agent for *A.*

(*h*) *A.* is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where *A.* was is relevant as showing that *A.* did not in good faith believe that the real owner of the property could not be found.

The fact that *A.* knew or had reason to believe that the notice was given fraudulently by *C.*, who had heard of the loss of the property and wished to set up a false claim to it, is relevant as showing that the fact that *A.* knew of the notice did not disprove *A's* good faith.

(*i*) *A.* is charged with shooting at *B.* with intent to kill him.

In order to show *A's* intent, the fact of *A's* having previously shot at *B.* may be proved.

(*j*) *A.* is charged with sending threatening letters to *B.*

Threatening letters previously sent by *A.* to *B.* may be proved as showing the intention of the letters.

(*k*) The question is whether *A.* has been guilty of cruelty towards *B.*, his wife.

Expression of their feelings towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is whether *A's* death was caused by poison.

Statements made by *A.* during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of *A's* health at the time when an assurance on his life was effected?

Statements made by *A.* as to the state of his health at or near the time in question are relevant facts.

(*n*) *A.* sues *B.* for negligence in providing him with a carriage for hire not reasonably fit for use whereby *A.* was injured.

The fact that *B's* attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that *B.* was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) *A.* is tried for the murder of *B.* by intentionally shooting him dead.

The fact that *A.* on other occasions shot at *B.* is relevant as showing his intention to shoot *B.*

The fact that *A.* was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) *A.* is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) *A.* is accused of burning down his house in order to obtain money for which it is insured.

The facts that *A.* lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires *A.* received payment from a different insurance office, are relevant as tending to show that the fire was not accidental.

(*b*) *A.* is employed to receive money from the debtors of *B.* It is *A's* duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by *A.* in the same book are false, and that the false entry is in each case in favour of *A.* are relevant.

(*c*) *A.* is accused of fraudulently delivering to *B.* a counterfeit dollar.

The question is whether the delivery of the dollar was accidental.

The facts that soon before or soon after the delivery to *B.*, *A.* delivered counterfeit dollars to *C.*, *D.* and *E.* are relevant as showing that the delivery to *B.* was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b*) The question is whether a particular letter reached *A.*

The facts that it was posted in due course and was not returned through the Dead Letter Office are relevant.

ADMISSIONS AND CONFESSIONS.

Admission and confession defined.

17. (1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

(2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

Admission by party to proceeding or his agent;

18. (1) Statements made by a party to the proceeding or by an agent to any such party whom the Court regards under the circumstances of the case as expressly or impliedly authorised by him to make them are admissions.

by suitor in representative character;

(2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

(3) Statements made by—

by party interested in subject-matter;

(*a*) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested; or

by person from whom interest derived.

(*b*) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A. undertakes to collect rents for *B.*

B. sues *A.* for not collecting rent due from *C.* to *B.*

A. denies that rent was due from *C.* to *B.*

A statement by *C.* that he owed *B.* rent is an admission and is a relevant fact, as against *A.* if *A.* denies that *C.* did owe rent to *B.*

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by *A.* to *B.* is sound.

A. says to *B.*: "Go and ask *C.*; *C.* knows all about it." *C's* statement is an admission.

Proof of admissions against persons making them and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest except in the following cases—

(*a*) an admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32 of this Ordinance;

(*b*) an admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body relevant or in issue, made at or about the time when such state of mind or body existed and is accompanied by conduct rendering its falsehood improbable;

(*c*) an admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between *A*. and *B*. is whether a certain deed is or is not forged. *A*. affirms that it is genuine; *B*. that it is forged.

A. may prove a statement by *B*. that the deed is genuine, and *B*. may prove a statement by *A*. that the deed is forged; but *A*. cannot prove a statement by himself that the deed is genuine, nor can *B*. prove a statement by himself that the deed is forged.

(*b*) *A*., the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A. produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. *A*. may prove these statements because they would be admissible between third parties if he were dead under paragraph (*b*) of section 32.

(*c*) *A*. is accused of a crime committed by him at Kuala Lumpur. He produces a letter written by himself and dated at Penang on that day, and bearing the Penang postmark of that day.

The statement in the date of the letter is admissible, because if *A*. were dead it would be admissible under paragraph (*b*) of section 32.

(*d*) *A.* is accused of receiving stolen goods, knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A. may prove these statements though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) *A.* is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A. may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any advocate or solicitor from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise when irrelevant in criminal proceeding.

24. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Confession to police officer below the rank of Inspector not to be proved.

25. Subject to any express provision contained in any written law, no confession made to a police officer who is below the rank of Inspector by a person accused of any offence shall be proved as against such person.

Confession by accused while in custody of police not to be proved against him.

26. Subject to any express provision contained in any written law, no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a President of a Sessions Court or Magistrate, shall be proved as against such person.

How much of information received from accused may be proved.

27. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether such information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

Confession made after removal of impression caused by inducement, threat or promise relevant.

28. If such a confession as is referred to in section 24 of this Ordinance is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation.—"Offence" as used in this section includes the abetment of or attempt to commit the offence.

Illustrations.

(*a*) *A.* and *B.* are jointly tried for the murder of *C.* It is proved that *A.* said: "*B* and I murdered *C.*" The Court may consider the effect of this confession as against *B.*

(*b*) *A.* is on his trial for the murder of *C.* There is evidence to show that *C.* was murdered by *A.* and *B.* and that *B.* said: "*A.* and I murdered *C.*"

This statement may not be taken into consideration by the Court against *A.* as *B.* is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained. Admissions not conclusive proof but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases— Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant;

(*a*) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. when it relates to cause of death;

Such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;

(*b*) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him; or is made in course of business;

(*c*) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages; or against interest of maker;

or gives opinion as to public right or custom or matters of general interest;

(*d*) when the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

or relates to existence of relationship;

(*e*) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;

or is made in will or deed relating to family affairs;

(*f*) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

or in document relating to transaction mentioned in section 13 (*a*);

(*g*) when the statement is contained in any deed or other document which relates to any such transaction as in mentioned in paragraph (*a*) of section 13 of this Ordinance;

or is made by several persons and expresses feelings relevant to matter in question.

(*h*) when the statement was made by a number of persons and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is whether *A.* was murdered by *B.*; or

A. dies of injuries received in a transaction in the course of which she was ravished.

The question is whether she was ravished by *B.*; or

The question is whether *A.* was killed by *B.* under such circumstances that a suit would lie against *B.* by *A's* widow.

Statements made by *A.* as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(*b*) The question is as to the date of *A*'s birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended *A*'s mother and delivered her of a son, is a relevant fact.

(*c*) The question is whether *A*. was in Kuala Lumpur on a given day.

A statement in the diary of a deceased solicitor regularly kept in the course of business that on a given day the solicitor attended *A*. at a place mentioned in Kuala Lumpur for the purpose of conferring with him upon specified business is a relevant fact.

(*d*) The question is whether a ship sailed from Penang harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Penang harbour is a relevant fact.

(*e*) The question is whether rent was paid to *A*. for certain land.

A letter from *A*'s deceased agent to *B*., saying that he had received the rent on *A*'s account and held it at *A*'s orders, is a relevant fact.

(*f*) The question is whether *A*. and *B*. were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(*g*) The question is whether *A*., a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship?

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is whether a given road is a public way.

A statement by *A*., a deceased Penghulu of the *Mukim*, that the road was public is a relevant fact.

(*j*) The question is, what was the price of shares on a certain day in a particular market?

A statement of the price made by a deceased broker in the ordinary course of his business is a relevant fact.

(*k*) The question is whether *A*., who is dead, was the father of *B*.

A statement by *A*. that *B*. was his son is a relevant fact.

(*l*) The question is, what was the date of the birth of *A*.?

A letter from *A*'s deceased father to a friend, announcing the birth of *A*. on a given day, is a relevant fact.

(*m*) The question is whether and when *A*. and *B*. were married.

An entry in a memorandum-book by *C*., the deceased father of *B*., of his daughter's marriage with *A*. on a given date, is a relevant fact.

(*n*) *A.* sues *B.* for a libel expressed in a printed caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character.

The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:

Provided—

(*a*) that the proceeding was between the same parties or their representatives in interest;

(*b*) that the adverse party in the first proceeding had the right and opportunity to cross-examine;

(*c*) that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. **n**

Illustration.

A. sues *B.* for $1,000 and shows entries in his account-books showing *B.* to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

Relevancy of entry in public record made in performance of duty.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain Acts, Ordinances or notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it made in a recital contained in any Act of Parliament, Ordinance or Enactment, or in a notification of the Government of, or of any Government in, the Federation appearing in the *Gazette*, or in any printed paper purporting to be the London *Gazette*, or the Government *Gazette* of any country in the British Commonwealth of Nations or of any Colony, Dependency or Possession of the British Crown, or to be the *Gazette* issued by the Local Government of any part of such country, Colony, Dependency or Possession, is a relevant fact.

Relevancy of statements as to any law contained in law books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement or of a conversation, or part of an isolated document or is contained in a document which forms part of a book or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in probate, etc., jurisdiction.

41. (1) A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.

(2) Such judgment, order or decree is conclusive proof—

(*a*) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(*b*) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(*c*) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and

(*d*) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 of this Ordinance are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A. sues *B.* for trespass on his land. *B.* alleges the existence of a public right of way over the land which *A.* denies.

The existence of a decree in favour of the defendant in a suit by *A.* against *C.* for a trespass on the same land in which *C.* alleged the existence of the same right of way is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42 when relevant.

43. Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 of this Ordinance are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Ordinance.

Illustrations.

(*a*) *A.* and *B.* separately sue *C.* for a libel which reflects upon each of them. *C.* in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case or in neither.

A. obtains a decree against *C.* for damages on the ground that *C.* failed to make out his justification. The fact is irrelevant as between *B.* and *C.*

(*b*) *A.* prosecutes *B.* under section 498 of the Penal Code for enticing away *C.*, *A's* wife.

B. denies that *C.* is *A's* wife, but the Court convicts *B.*

Afterwards *C.* is prosecuted for bigamy in marrying *B.* during *A's* lifetime. *C.* says that she never was *A's* wife.

The judgment against *B.* is irrelevant as against *C.*

(*c*) *A.* has obtained a decree for the possession of land against *B.* *C.*, *B's* son, murders *A.* in consequence.

The existence of the judgment is relevant as showing motive for a crime.

(*d*) *A.* is charged with theft and with having been previously convicted of theft.

The previous conviction is relevant as a fact in issue.

(*e*) *A.* is tried for the murder of *B.* The fact that *B.* prosecuted *A.* for libel and that *A.* was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment or incompetency of Court may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 of this Ordinance, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinions of experts.

45. (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.

(2) Such persons are called experts.

Illustrations.

(*a*) The question is whether the death of *A.* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which *A.* is supposed to have died are relevant.

(*b*) The question is whether *A.*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether symptoms exhibited by *A.* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is whether a certain document was written by *A.* Another document is produced which is proved or admitted to have been written by *A.*

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Facts bearing upon opinions of experts.

46. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

Illustrations.

(*a*) The question is whether *A.* was poisoned by a certain poison.

The fact that other persons who were poisoned by that poison exhibited certain symptoms, which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects but where there were no such sea-walls began to be obstructed at about the same time is relevant.

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is whether a given letter is in the handwriting of *A.*, a merchant in London.

B. is a merchant in Kuala Lumpur, who has written letters addressed to *A.* and received letters purporting to be written by him. *C.* is *B's* clerk, whose duty it was to examine and file *B's* correspondence. *D.* is *B's* broker, to whom *B.* habitually submitted the letters purporting to be written by *A.*, for the purpose of advising with him thereon.

The opinions of *B.*, *C.* and *D.* on the question whether the letter is in the handwriting of *A.* are relevant, though neither *B.*, *C.* nor *D.* ever saw *A.* write.

Opinion as to existence of right or custom when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of its existence, if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the inhabitants of a particular *kampong* to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to

(*a*) the usages and tenets of any body of men or family;

(*b*) the constitution and government of any religious or charitable foundation; or

(*c*) the meaning of words or terms used in particular districts or by particular classes of people;

the opinions of persons having special means of knowledge thereon are relevant facts.

Opinion on relationship when relevant.

50. (1) When the Court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct as to the existence of such relationship of any person who as a member of the family or otherwise has special means of knowledge on the subject is a relevant fact.

(2) Such opinion shall not be sufficient to prove a marriage in prosecutions under sections 494, 495 or 498 of the Penal Code.

Illustrations.

(*a*) The question is whether *A.* and *B.* were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*) The question is whether *A.* was a legitimate son of *B.*

The fact that *A.* was always treated as such by members of the family is relevant.

Grounds of opinion when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

In civil cases character to prove conduct imputed irrelevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases previous good character relevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant except in reply.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Explanation.—In sections 52, 53, 54 and 55 the word "character" includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition is shown.

PART II.

ON PROOF.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

57. (1) The Court shall take judicial notice of the following facts—

(*a*) all laws or regulations having the force of law now or heretofore in force or hereafter to be in force in any part of the Federation;

(*b*) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed;

(*c*) articles of War for His Majesty's Navy, Army or Air Force;

(*d*) the course of proceeding of Parliament, of the Legislative Council, and of Councils of State and Settlement Councils;

Explanation.—The word "Parliament" in paragraphs (*b*) and (*d*) means—

(i) The Parliament of the United Kingdom of Great Britain and Northern Ireland;

(ii) The Parliament of the United Kingdom of Great Britain and Ireland;

(iii) The Parliament of Northern Ireland;

(iv) The Parliament of Great Britain;

(v) The Parliament of England;

(vi) The Parliament of Scotland; and

(vii) The Parliament of Ireland prior to the first day of January, 1801.

(*e*) the accession and the sign manual of the Sovereign for the time being of the United Kingdom;

(*f*) all seals of which English Courts take judicial notice, the seals of all the Courts of the Federation, the seals of Courts of Admiralty and maritime jurisdiction and of notaries public, and all seals which any person is authorised to use by any law in force for the time being in the Federation;

(*g*) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of the Federation, if the fact of their appointment to such office is notified in the *Gazette;*

(*h*) the existence, title and national flag of every State or Sovereign recognized by the British Crown;

(*i*) the ordinary course of nature, natural and artificial divisions of time, the geographical divisions of the world, the meaning of English words, and public festivals, fasts and holidays notified in the *Gazette*;

(*j*) the territories in the British Commonwealth of Nations;

(*k*) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons;

(*l*) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and solicitors and other persons authorised by law to appear or act before it;

(*m*) the rule of the road on land or at sea;

(*n*) all other matters which it is directed by any written law to notice.

(2) In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

(3) If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it considers necessary to enable it to do so.

Facts admitted need not be proved.

58. (1) No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which before the hearing they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

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(2) The Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. (1) Oral evidence must in all cases whatever be direct—

(*a*) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;

(*b*) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;

(*c*) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner;

(*d*) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(2) The opinions of experts expressed in any treatise commonly offered for sale and the grounds on which such opinions are held may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

(3) If oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence includes—

(*a*) certified copies given under the provisions hereinafter contained;

(*b*) copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(*c*) copies made from or compared with the original;

(*d*) counterparts of documents as against the parties who did not execute them;

(*e*) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy but afterwards compared with the original is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases—

(*a*) when the original is shown or appears to be in the possession or power—

(i) of the person against whom the document is sought to be proved; or

(ii) of any person out of reach of or not subject to the process of the Court; or

(iii) of any person legally bound to produce it;

and when after the notice mentioned in section 66 of this Ordinance such person does not produce it;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot for any other reason not arising from his own default or neglect produce it in reasonable time;

(*d*) when the original is of such a nature as not to be easily movable;

(*e*) when the original is a public document within the meaning of section 74 of this Ordinance;

(*f*) when the original is a document of which a certified copy is permitted by this Ordinance or by any other law in force for the time being in the Federation to be given in evidence;

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*) any secondary evidence of the contents of the document is admissible.

In case (*b*) the written admission is admissible.

In case (*e*) or (*f*) a certified copy of the document but no other kind of secondary evidence is admissible.

In case (*g*) evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in paragraph (*a*) of section 65 of this Ordinance shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his solicitor, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases or in any other case in which the Court thinks fit to dispense with it—

(*a*) when the document to be proved is itself a notice;

(*b*) when from the nature of the case the adverse party must know that he will be required to produce it;

(*c*) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(*d*) when the adverse party or his agent has the original in Court;

(*e*) when the adverse party or his agent has admitted the loss of the document;

(*f*) when the person in possession of the document is out of reach of or not subject to the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there is an attesting witness alive and subject to the process of the Court and capable of giving evidence.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it is a document required by law to be attested.

Admission of execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Proof of document not required by law to be attested.

73. (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared by a witness or by the Court with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

Comparison of signature, writing or seal with others admitted or proved.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions.

PUBLIC DOCUMENTS.

74. The following documents are public documents—

Public documents.

(*a*) documents forming the acts or records of the acts—

(i) of the sovereign authority;

(ii) of official bodies and tribunals; and

(iii) of public officers, legislative, judicial and executive, whether of the Federation or of any State or Settlement in the Federation or of any other part of the British Commonwealth of Nations or of a foreign country;

(*b*) public records kept in the Federation of private documents;

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the foot of such copy, that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who by the ordinary course of official duty is authorised to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. (1) The following public documents may be proved as follows—

(*a*) acts, orders or notifications of the Government of, or of any Government in, the Federation in any of its departments—

by the records of the departments certified by the heads of those departments respectively, or by the Chief Secretary in the case of the Government of the Federation, or the State Secretary in the case of a State Government, or the Settlement Secretary in the case of a Settlement Government; or

by any document purporting to be printed by the authority of the Government concerned;

(*b*) the proceedings of the Legislative Council, Councils of State and Settlement Councils—

by the minutes of the body or by published Ordinances, Enactments or abstracts or by copies purporting to be printed by the authority of the Government concerned;

(*c*) proclamations, orders or regulations issued by His Majesty or by the Privy Council or by any department of His Majesty's Government—

by copies or extracts contained in the London *Gazette* or in the *Gazette* of the Federation or purporting to be printed by the King's Printer;

(*d*) the acts of the Executive or the proceedings of the legislature of a foreign country—

by journals published by their authority or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Ordinance or Enactment of the Federation;

(*e*) the proceedings of a municipal body or town board in the Federation—

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(*f*) public documents of any other class in a foreign country—

by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a British Consul or Diplomatic Agent that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

Proof of statutes of Commonwealth countries.

(2) Copies of Acts, Ordinances and Statutes passed by the legislature of any territory in the British Commonwealth of Nations and of orders, regulations and other instruments issued or made under the authority of any such Act, Ordinance or Statute, if purporting to be printed by the Government Printer, shall be received in evidence by all Courts of Justice in the Federation without any proof being given that the copies were so printed.

Government Printer defined.

(3) In this section "Government Printer" means, as respects any territory in the British Commonwealth of Nations, the printer purporting to be the printer authorised to print the Acts, Ordinances or Statutes of the legislature of that territory, or otherwise to be the Government Printer of that territory.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. (1) The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in the Federation or by any officer in the Colony or in the State of Brunei who is duly authorised thereto by the High Commissioner:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such document.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law and purporting to be signed by any Judge, President of a Sessions Court or Magistrate or by any such officer as aforesaid, the Court shall presume—

(*a*) that the document is genuine;

(*b*) that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

(*c*) that such evidence, statement or confession was duly taken.

Presumption as to *Gazettes*, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London *Gazette* or the *Gazette*, or the Government *Gazette* of any territory in the British Commonwealth of Nations, or to be the *Gazette* issued by the local Government of any part of any such territory, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the King's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which by the law in force for the time being in England or Northern Ireland would be admissible in proof of any particular in any Court of Justice in England or Northern Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed—

(*a*) the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims;

(*b*) the document shall be admissible for the same purpose for which it would be admissible in England or Northern Ireland.

Presumption as to maps or plans made by authority of Government.

83. (1) The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate.

(2) Maps or plans made for the purposes of any cause or other proceeding, civil or criminal, must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting—

(*a*) to be printed or published under the authority of the Government of any country and to contain any of the laws of that country; or

(*b*) to contain reports of decisions of the Courts of such country.

Presumption as to powers of attorney.

85. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or Commissioner for Oaths, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of the British Commonwealth of Nations is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of His Majesty or of the High Commissioner in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document called for and not produced, after notice to produce given under section 66 of this Ordinance, was attested, stamped and executed in the manner required by law.

90. Where any document purporting or proved to be thirty years old is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and in the case of a document executed or attested, that is was duly executed and attested by the persons by whom it purports to be executed and attested.

Presumption as to documents thirty years old.

Explanation.—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) *A.* has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) *A.* produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) *A.*, a connection of *B.*, produces deeds relating to lands in *B's* possession, which were deposited with him by *B.* for safe custody. The custody is proper.

Chapter VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in the Federation may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement in any document whatever of a fact, other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract is contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) *A.* contracts in writing with *B.* for the delivery of pepper upon certain terms. The contract mentions the fact that *B.* had paid *A.* the price of other pepper contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other pepper. The evidence is admissible.

(*e*) *A.* gives *B.* a receipt for money paid by *B.*

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91 of this Ordinance, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms:

Provided that—

(*a*) any fact may be proved which would invalidate any document or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;

(*b*) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved, and in considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document;

(*c*) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;

(*d*) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents;

(*e*) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved; provided that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract;

(*f*) any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Penang to London." The goods are shipped in a particular ship, which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b*) *A.* agrees absolutely in writing to pay *B.* $1,000 on the first of March, 1893. The fact that at the same time an oral agreement was made that the money should not be paid till the 31st of March cannot be proved.

(*c*) An estate called "the Kranji Tea Estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) *A.* enters into a written contract with *B.* to work certain mines, the property of *B.*, upon certain terms. *A.* was induced to do so by a misrepresentation of *B.* as to their value. This fact may be proved.

(*e*) *A.* institutes a suit against *B.* for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions on the ground that that provision was inserted in it by mistake. *A.* may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) *A.* orders goods of *B.* by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. *B.* sues *A.* for the price. *A.* may show that the goods were supplied on credit for a term still unexpired.

(*g*) *A.* sells *B.* a horse and verbally warrants him sound. *A.* gives *B.* a paper in these words: "Bought of *A.* a horse for $300." *B.* may prove the verbal warranty.

(*h*) *A.* hires lodgings of *B.* and gives *B.* a card on which is written: "Rooms $80 a month." *A.* may prove a verbal agreement that these terms were to include partial board.

A. hires lodgings of *B.* for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. *A.* may not prove that board was included in the terms verbally.

(*i*) *A.* applies to *B.* for a debt due to *A.* by sending a receipt for the money. *B.* keeps the receipt and does not send the money. In a suit for the amount *A.* may prove this.

(*j*) *A.* and *B.* make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with *B.*, who sues *A.* upon it. *A.* may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is on its face ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) *A.* agrees in writing to sell a horse to *B.* for $500 or $600. Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A. conveys to *B.* by deed "my estate at Kranji containing 100 acres." *A.* has an estate at Kranji containing 100 acres. Evidence may not be given of the fact that the estate meant was one situated at a different place and of a different size.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. Evidence as to document unmeaning in reference to existing facts.

Illustration.

A. conveys to *B.* by deed "my plantation in Penang."

A. had no plantation in Penang, but it appears that he had a plantation in Province Wellesley, of which *B.* had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the plantation in Province Wellesley.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one of several persons or things, evidence may be given of facts which show to which of those persons or things it was intended to apply. Evidence as to application of language which can apply to one only of several persons.

Illustrations.

(*a*) *A.* agrees to sell to *B.* for $500 "my white horse." *A.* has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) *A.* agrees to accompany *B.* to Halifax. Evidence may be given of facts showing whether Halifax in Yorkshire or Halifax in Nova Scotia was meant.

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply. Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.

Illustration.

A. agrees to sell to *B.* "my land at *X.* in the occupation of *Y.*" *A.* has land at *X.*, but not in the occupation of *Y.*, and he has land in the occupation of *Y.*, but it is not at *X.* Evidence may be given of facts showing which he meant to sell.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense. Evidence as to meaning of illegible characters, etc.

Illustration.

A., a sculptor, agrees to sell to *B.* "all my mods." *A.* has both models and modelling tools. Evidence may be given to show which he meant to sell.

99. Persons who are not parties to a document or their representatives in interest may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document. Who may give evidence of agreement varying terms of document.

Illustration.

A. and *B.* make a contract in writing that *B.* shall sell *A.* certain tin to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to *A.* This could not be shown as between *A.* and *B.*, but it might be shown by *C.* if it affected his interests.

Construction of wills to be governed by English law.

100. Nothing in sections 91 to 99 of this Ordinance shall affect the construction of wills, but in the Settlements or either of them they shall be construed according to the rules of construction which would be applicable thereto if they were being construed in a Court of Justice in England.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of proof.

101. (1) Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) *A.* desires a Court to give judgment that *B.* shall be punished for a crime which *A.* says *B.* has committed.

A. must prove that *B.* has committed the crime.

(*b*) *A.* desires a Court to give judgment that he is entitled to certain land in the possession of *B.* by reason of facts which he asserts and which *B.* denies to be true.

A. must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) *A.* sues *B.* for land of which *B.* is in possession, and which, as *A.* asserts, was left to *A.* by the will of *C.*, *B*'s father.

If no evidence were given on either side, *B.* would be entitled to his possession.

Therefore the burden of proof is on *A.*

(*b*) *A.* sues *B.* for money due on a bond.

The execution of the bond is admitted, but *B.* says that it was obtained by fraud, which *A.* denies.

If no evidence were given on either side, *A.* would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on *B.*

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. Burden of proof as to particular fact.

Illustrations.

(*a*) *A.* prosecutes *B.* for theft and wishes the Court to believe that *B.* admitted the theft to *C.* *A.* must prove the admission.

(*b*) *B.* wishes the Court to believe that at the time in question he was elsewhere. He must prove it.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact, is on the person who wishes to give such evidence. Burden of proving fact to be proved to make evidence admissible.

Illustrations.

(*a*) *A.* wishes to prove a dying declaration by *B.* *A.* must prove *B's* death.

(*b*) *A.* wishes to prove by secondary evidence the contents of a lost document.

A. must prove that the document has been lost.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. Burden of proving that case of accused comes within exceptions.

Illustrations.

(*a*) *A.* accused of murder alleges that by reason of unsoundness of mind he did not know the nature of the act.

The burden of proof is on *A.*

(*b*) *A.* accused of murder alleges that by grave and sudden provocation he was deprived of the power of self-control.

The burden of proof is on *A.*

(*c*) Section 325 of the Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt shall be subject to certain punishments.

A. is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances, bringing the case under section 335, lies on *A.*

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

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(*b*) *A.* is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Presumption that boy under 13 cannot commit rape.

113. It shall be an irrebuttable presumption of law that a boy under the age of thirteen years is incapable of committing rape.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Court may presume existence of certain fact.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit unless he is corroborated in material particulars;

(*c*) that a bill of exchange accepted or endorsed was accepted or endorsed for good consideration;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist is still in existence;

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

(*h*) that if a man refuses to answer a question which he is not compelled to answer by law, the answer if given would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—

as to illustration (*a*)—a shop-keeper has in his till a marked dollar, soon after it was stolen and cannot account for its possession specifically but is continually receiving dollars in the course of his business;

as to illustration (*b*)—*A.*, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. *B.*, a person of equally good character, who also took part in the arrangement, describes precisely what was done and admits and explains the common carelessness of *A.* and himself;

as to illustration (*b*)—a crime is committed by several persons. *A.*, *B.* and *C.*, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating *D.*, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration (*c*)—*A.*, the drawer of a bill of exchange, was a man of business. *B.*, the acceptor, was a young and ignorant person completely under *A's* influence;

as to illustration (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to illustration (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (*f*)—the question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to illustration (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feeling and reputation of his family;

as to illustration (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to illustration (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and such person or his representative in interest to deny the truth of that thing.

Illustration.

A. intentionally and falsely leads *B.* to believe that certain land belongs to *A.* and thereby induces *B.* to buy and pay for it.

The land afterwards becomes the property of *A.* and *A.* seeks to set aside the sale on the ground that at the time of the sale he had no title.

He must not be allowed to prove his want of title.

Estoppel of tenant;

116. No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

and of licensee of person in possession.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. (1) No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it.

(2) No bailee, agent or licensee shall be permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted:

Provided that any such bailee, agent or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as against his bailor, principal or licensor, or that his bailor, principal or licensor wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person, who has claimed them from such bailee, agent or licensee.

Explanation.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

CHAPTER IX.

OF WITNESSES.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. (1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as, for example, by writing or by signs; but such writing must be written and the signs made in open Court.

(2) Evidence so given shall be deemed to be oral evidence.

Parties to civil suit and their wives or husbands.

120. (1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

Husband or wife of person under criminal trial.

(2) In criminal proceedings against any person the husband or wife of such person respectively shall be a competent witness.

(3) In criminal proceedings the accused shall be a competent witness in his own behalf, and may give evidence in the same manner and with the like effect and consequences as any other witness, provided that, so far as the cross-examination relates to the credit of the accused, the Court may limit the cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.

Judges, Presidents of Sessions Courts and Magistrates.

121. No judge and, except upon the special order of the High Court, no President of a Sessions Court or Magistrate shall be compelled to answer any questions as to his own conduct in Court as such Judge, President or Magistrate or as to anything which came to his knowledge in Court as such Judge, President or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) *A.*, on his trial before the High Court, says that a deposition was improperly taken by *B.*, the committing Magistrate. *B.* cannot be compelled to answer questions as to this except upon the special order of the High Court.

(*b*) *A.* is accused before a Sessions Court of having given false evidence before *B.*, a President of a Sessions Court. *B.* cannot be compelled to say what *A.* said except upon the special order of the High Court.

(*c*) *A.* is accused of attempting to murder a police officer whilst on his trial before *B.*, a Judge of the High Court. *B.* may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit, subject, however, to the control of the High Commissioner in the case of a Department of the Federal Government, and of the

duce any

Mentri Besar or Resident Commissioner, as the case may be, in the case of a State or Settlement Government.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

125. No President of a Sessions Court, Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue or the excise laws.

Explanation.—"Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue or in or about the business of any Government farm.

Professional communications.

126. (1) No advocate or solicitor shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate or solicitor by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(*a*) any such communication made in furtherance of any illegal purpose;

(*b*) any fact observed by any advocate or solicitor in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such advocate or solicitor was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) *A.*, a client, says to *B.*, a solicitor: "I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose this communication is protected from disclosure.

(*b*) *A.*, a client, says to *B.*, a solicitor: "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication being made in furtherance of a criminal purpose is not protected from disclosure.

(*c*) *A.*, being charged with embezzlement, retains *B.*, a solicitor, to defend him. In the course of the proceedings *B.* observes that an entry has been made in *A's* account-book, charging *A.* with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment. a

This being a fact observed by *B.* in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. Section 126 of this Ordinance shall apply to interpreters and the clerks or servants of advocates and solicitors.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126 of this Ordinance; and if any party to a suit or proceeding calls any such advocate or solicitor as a witness, he shall be deemed to have consented to such disclosure, only if he questions such advocate or solicitor on matters which but for such question he would not be at liberty to disclose.

Confidential communications with legal advisers.

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Production of title deeds of witness not a party.

130. (1) No witness who is not a party to the suit shall be compelled to produce his title deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

(2) No witness who is a party to the suit shall be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production.

(3) No bank shall be compelled to produce the books of such bank in any legal proceeding to which such bank is not a party, except as provided by section 6 of the Bankers' Books Evidence Ordinance, 1949. Ord. No. 52 of 1949.

Production of documents which another person having possession could refuse to produce.

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, except for the purpose of identification, unless such last-mentioned person consents to their production, nor shall anyone who is entitled to refuse to produce a document be compelled to give oral evidence of its contents.

Witness not excused from answering on ground that answer will criminate.

132. (1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind, or that it will establish or tend to establish that he owes a debt or is otherwise subject to a civil suit at the instance of any Government in the Federation or of any other person.

(2) No answer which a witness shall be compelled by the Court to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

(3) Before compelling a witness to answer a question the answer to which will criminate or may tend directly or indirectly to criminate such witness, the Court shall explain to the witness the purport of sub-section (2) of this section.

Accomplice.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Number of witnesses.

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X.

OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of any such law by the discretion of the Court.

Court to decide as to admissibility of evidence.

136. (1) When either party proposes to give evidence of any fact, the Court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b*) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(*c*) *A.* is accused of receiving stolen property, knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may in its discretion either require the property to be identified before the denial of the possession is proved or permit the denial of the possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (*A.*) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (*B.*, *C.* and *D.*) which must be shown to exist before the fact (*A.*) can be regarded as the cause or effect of the fact in issue. The Court may either permit *A.* to be proved before *B.*, *C.* or *D.* is proved or may require proof of *B.*, *C.* and *D.* before permitting proof of *A.*

Examination-in-chief.

137. (1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

(3) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

Order of examinations. Direction of re-examination.

138. (1) Witnesses shall be first examined-in-chief, then, if the adverse party so desires, cross-examined, then, if the party calling them so desires, re-examined.

(2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(4) The Court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive or suggesting disputed facts as to which the witness is to testify, is called a leading question.

When they must not be asked.

142. (1) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the Court.

(2) The Court shall permit leading questions as to matters which are introductory or undisputed, or which have in its opinion been already sufficiently proved.

When they may be asked.

143. (1) Leading questions may be asked in cross-examination, subject to the following qualifications:

(*a*) the question must not put into the mouth of the witness the very words which he is to echo back again; and

(*b*) the question must not assume that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact.

(2) The Court, in its discretion, may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party.

Evidence as to matters in writing.

144. Any witness may be asked whilst under examination whether any contract, grant or other disposition of property as to which he is giving evidence was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which in the opinion of the Court ought to be produced, the adverse party may object to such evidence being given until such document is produced or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is whether *A*. assaulted *B*.

C. deposes that he heard *A*. say to *D*.: "*B*. wrote a letter accusing me of theft and I will be revenged on him." The statement is relevant as showing *A's* motive for the assault and evidence may be given of it though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

145. (1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined, without such writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

(2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

Questions lawful in cross-examination.

146. When a witness may be cross-examined he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(*a*) to test his accuracy, veracity or credibility;

(*b*) to discover who he is and what is his position in life; or

(*c*) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, section 132 of this Ordinance shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. (1) If any question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it does not think fit to compel him to answer the question, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the Court shall have regard to the following considerations—

(*a*) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(*b*) such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not

affect or would affect in a slight degree the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(*c*) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(*d*) the Court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Illustrations.

(*a*) An advocate is instructed by a solicitor that an important witness is a professional gambler. This is a reasonable ground for asking the witness whether he is a professional gambler.

(*b*) An advocate is informed by a person in Court that an important witness is a professional gambler. The informant, on being questioned by the advocate, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a professional gambler.

(*c*) A witness of whom nothing whatever is known is asked at random whether he is a professional gambler. There are here no reasonable grounds for the question.

(*d*) A witness of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a professional gambler.

Procedure of Court in case of question being asked without reasonable grounds.

M.U. Ord. No. 4 of 1947.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate or solicitor, report the circumstances of the case to the High Court in order that the Judges may, if they think fit, exercise the power to suspend or strike off the Roll of the Court given to them under the Advocates and Solicitors Ordinance, 1947.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether in a former transaction he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) *A.* affirms that on a certain day he saw *B.* at Malacca.

A. is asked whether he himself was not on that day at Penang. He denies it.

Evidence is offered to show that *A.* was on that day at Penang.

The evidence is admissible, not as contradicting *A.* on a fact which affects his credit, but as contradicting the alleged fact that *B.* was seen on the day in question in Malacca.

(*d*) *A.* is tried for a rape on *B.* *B.* is asked in cross-examination whether she has not had illicit intercourse with *C.* and *D.* She denies it. Evidence is offered to show that she has had such intercourse with *C.* and *D.* The evidence is not admissible.

In each of the cases in illustrations (*c*) and (*d*) the witness might, if the denial was false, be charged with giving false evidence.

(*e*) *A.* is asked whether he has not said that he would be revenged on *B.*, against whom he gives evidence. He denies it.

He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the Court, by the party who calls him—

(*a*) by the evidence of persons who testify that they from their knowledge of the witness believe him to be unworthy of credit;

(*b*) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(*c*) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(*d*) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) *A.* sues *B.* for the price of goods sold and delivered to *B.*

C. says that he delivered the goods to *B.*

Evidence is offered to show that on a previous occasion he said that he had not delivered the goods to *B.*

The evidence is admissible.

(*b*) *A.* is indicted for the murder of *B.*

C. says that *B.*, when dying, declared that *A.* had given *B.* the wound of which he died.

Evidence is offered to show that on a previous occasion *C.* said that the wound was not given by *A.* or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such

relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact to which he testifies.

Illustration.

A., an accomplice, gives an account of a robbery in which he took part. He describes various incidents, unconnected with the robbery, which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement relevant under section 32 or 33 of this Ordinance is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. (1) A witness may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

When witness may use copy of document to refresh memory.

(3) Whenever the witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court is satisfied that there is sufficient reason for the non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159 of this Ordinance although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

161. Any writing referred to under section 159 or 160 of this Ordinance must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

162. (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

(2) The Court, if it sees fit, may inspect the document unless it refers to affairs of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

(3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence, and if the translator disobeys such direction, he shall be held to have committed an offence under section 166 of the Penal Code.

Giving as evidence of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so and if it is relevant.

Using as evidence of document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A. sues *B.* on an agreement, and gives *B.* notice to produce it. At the trial *A.* calls for the document, and *B.* refuses to produce it. *A.* gives secondary evidence of its contents. *B.* seeks to produce the document itself to contradict the secondary evidence given by *A.*, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Ordinance to be relevant and duly proved:

Provided also that this section shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131 of this Ordinance if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149 of this Ordinance; nor shall he dispense with the primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Chapter XI.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it appears to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

PART IV.

REPEAL.

Repeal.

168. The Enactments and Ordinances set out in the Schedule to this Ordinance are hereby repealed to the extent specified in the third column of such Schedule.

SCHEDULE.

(Section 168.)

REPEAL.

(1) No.	(2) Title.	(3) Extent of repeal.
F.M.S. Cap. 10 ...	The Evidence Enactment	The whole
Kedah Enact. No. 33 ...	Enactment No. 33 (Evidence)	,,
Kelantan Enact. No. 8 of 1930	The Evidence Enactment, 1930	,,
Perlis Enact. No. 13 of 1354	The Evidence Enactment, 1354	,,
Trengganu Enact. No. 11 of 1355	The Evidence Enactment, 1355	,,
S.S. Cap. 13	The Evidence Ordinance	,,
F. of M. Ord. No. 9 of 1949	The Johore (Replacement of Laws) Ordinance, 1949	The words "F.M.S. Cap. 10 ... Evidence Enactment" in the Schedule

Passed in the Legislative Council on the twentieth day of April, 1950.

A.R. Sellin.

Clerk of Council.

FEDERATION OF MALAYA.

No. 12 of 1950.

THE ARBITRATION ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....6th May, 1950.

.....*High Commissioner.*

.....12th May, 1950.

An Ordinance to unify and extend throughout the Federation the law relating to Arbitration.

[23rd *May*, *1950*.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Arbitration Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"Court" means the High Court;

"submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

F. of M. No. 35 of 1948.

"Rules of Court" means rules made by the Supreme Court Rule Committee under the Rule Committee Ordinance, 1948.

References by consent out of Court.

Submission to be irrevocable and to have effect as an order of Court.

3. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court, and shall have the same effect in all respects as if it had been made an order of Court.

Provisions implied in submissions.

4. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Ordinance so far as they are applicable to the reference under the submission.

Power to stay proceedings where there is a submission.

5. (1) If any party to a submission or any person claiming through or under him commences any legal proceedings against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, before taking any other steps in the proceedings, apply to the Court to stay the proceedings.

(2) The Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the

applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

6. (1) In any of the following cases—

(*a*) where a submission provides that the reference shall be to a single arbitrator and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;

(*b*) if an appointed arbitrator refuses to act or is incapable of acting or dies and the submission does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;

(*c*) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him;

(*d*) where an appointed umpire or third arbitrator refuses to act or is incapable of acting or dies and the submission does not show that it was intended that the vacancy should not be supplied and the parties or arbitrators do not supply the vacancy;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator.

(2) If the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

7. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

(*a*) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(*b*) if on such a reference one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court may set aside any appointment made in pursuance of this section.

Powers of arbitrator.

8. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

(*a*) to administer oaths to or take the affirmations of the parties and witnesses;

(*b*) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(*c*) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned.

9. Any party to a submission may take out a summons or other process to give evidence or to produce documents, but no person shall be compelled under any such summons or process to produce any document which he could not be compelled to produce on the trial of a suit or action.

Power to enlarge time for making award.

10. The time for making an award may be enlarged by order of the Court, whether the time for making the award has expired or not.

Power to remit award.

11. (1) In all cases of reference to arbitration the Court may remit the matters referred or any of them to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

12. (1) Where an arbitrator or umpire has misconducted himself the Court may remove him. Power to set aside award.

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

13. An award on a submission may, by leave of the Court, be enforced in the same manner as a decree, judgment or order to the same effect. Enforcing award.

References under order of Court.

14. (1) Subject to the provisions of any written law regulating procedure in civil proceedings, the Court may refer any question arising in any cause or matter, other than a criminal proceeding by the Public Prosecutor, for inquiry or report to any special referee. Reference for report.

(2) The report of a special referee may be adopted wholly or partially by the Court, and if so adopted may be enforced as a decree, judgment or order to the same effect.

15. In any cause or matter other than a criminal proceeding by the Public Prosecutor— Power to refer in certain cases.

(*a*) if all the parties interested who are not under disability consent; or

(*b*) if the cause or matter require any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be conducted by the Court through its ordinary officers; or

(*c*) if the question in dispute consists wholly or in part of matters of account;

the Court may at any time order the whole cause or matter or any question or issue of fact arising therein to be tried before a special referee or arbitrator respectively agreed on by the parties or before an officer of the Court.

16. (1) In all cases of reference to a special referee or arbitrator under an order of the Court in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the Court and shall have such authority and shall conduct the reference in such manner as are prescribed by Rules of Court, and subject thereto as the Court may direct. Powers and remuneration of referees and arbitrators.

(2) The report or award of any special referee or arbitrator on any such reference shall, unless set aside by the Court, be equivalent to the decree, judgment or order of the Court.

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the Court shall be determined by the Court.

Court to have powers as in references by consent.

17. The Court shall, as to references under order of the Court, have all the powers which are by this Ordinance conferred on the Court as to references by consent out of Court.

Court of Appeal to have powers of Court.

18. The Court of Appeal shall have all the powers conferred by this Ordinance on the Court under the provisions relating to references under order of the Court.

General.

Power to compel attendance of witness in any part of the Federation.

19. (1) The Court may order that a summons or other process shall issue to compel the attendance before a special referee or before any arbitrator or umpire of a witness, wherever he may be within the Federation.

(2) The Court may also issue an order to bring up a prisoner for examination before a special referee or before any arbitrator or umpire.

Statement of case pending arbitration.

20. Any referee, arbitrator or umpire may, at any stage of the proceedings under a reference, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

Costs.

21. Any order made under this Ordinance may be made on such terms as to costs or otherwise as the authority making the order thinks just.

Exercise of powers by Registrar and other officers.

22. Provision may be made by Rules of Court for conferring on any Registrar or other officer of the Court all or any of the jurisdiction conferred by this Ordinance on the Court.

Application of Ordinance to references under statutory power.

23. This Ordinance shall apply to every arbitration under any written law passed before or after the commencement of this Ordinance, as if the arbitration were pursuant to a submission, except in so far as

this Ordinance is inconsistent with the written law regulating the arbitration or with any rules or procedure authorised or recognised by that law.

Repeal.

24. The Enactments and Ordinance specified in the Second Schedule to this Ordinance are hereby repealed.

THE FIRST SCHEDULE.

(Section 4.)

Provisions to be implied in Submissions.

(1) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(2) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(3) The arbitrators shall make their award in writing within three months after entering on the reference or after having been called on to act by notice in writing from any party to the submission or on or before any later day to which the arbitrators by any writing signed by them may enlarge the time for making the award.

(4) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in place of the arbitrators.

(5) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may enlarge the time for making his award.

(6) The parties to the reference and all persons claiming through them respectively shall, subject to any legal objection, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(7) The witnesses on the reference shall if the arbitrators or umpire think fit be examined on oath or affirmation.

(8) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

(9) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

(Section 24.)

REPEAL.

No.	Title.
F.M.S. Cap. 65	The Arbitration Enactment
Johore Enact. No. 43 ...	The Arbitration Enactment
Kedah Enact. No. 6 ...	Enactment No. 6 (Arbitration)
S.S. Cap. 12	The Arbitration Ordinance

Passed in the Legislative Council on the twentieth day of April, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 13 of 1950.

THE CARRIAGE OF GOODS BY SEA ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

Tuanku Abdul Rahman
..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lucas
..... *High Commissioner.*

..... *Sultan of Selangor.*

12th
.....May, 1950.

6th
....May, 1950.

An Ordinance to unify and extend throughout the Federation the law relating to the Carriage of Goods by Sea.

[23rd *May, 1950.*]

WHEREAS at the International Conference on Maritime Law held at Brussels in October, 1922, the delegates at the Conference, including the delegates representing His Majesty, agreed unanimously to recommend their respective Governments to adopt as the basis of a convention a draft convention for the unification of certain Rules relating to bills of lading :

AND WHEREAS at a meeting held at Brussels in October, 1923, the Rules contained in the said draft convention were amended by the Committee appointed by the said Conference :

14 & 15 Geo. V, c. 22.

AND WHEREAS provision has been made by the Carriage of Goods by Sea Act, 1924, of the Imperial Parliament that the said Rules as so amended and as set out with modifications in the Schedule thereto shall, subject to the provisions of that Act, have the force of law with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading :

AND WHEREAS like provision has been made in the law of the former Federated Malay States, Johore and the Settlements :

AND WHEREAS it is expedient to unify such law and extend the same throughout the Federation :

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Carriage of Goods by Sea Ordinance, 1950.

Application of Rules.

2. Subject to the provisions of this Ordinance, the Rules set out in the First Schedule to this Ordinance (hereinafter referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in the Federation to any other port whether in or outside the Federation.

Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.

3. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Statement as to application of Rules to be included in bills of lading.

4. Every bill of lading, or similar document of title, issued in the Federation which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Ordinance.

Modification of Article VI of Rules in relation to local trade.

5. Article VI of the Rules shall, in relation to—

(*a*) the carriage of goods by sea in sailing ships carrying goods from any port in the Federation to any other port whether in or outside the Federation; and

(*b*) the carriage of goods by sea in ships carrying goods from any port in the Federation to any other port in the Federation or to any port in the Colony;

have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.

6. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of the shipment shall not be deemed to have been guaranteed by the shipper.

Saving in operation.

S.S. Cap. 150.

7. Nothing in this Ordinance shall affect the operation of sections 282 to 286, both inclusive, 326 and 327 of the Merchant Shipping Ordinance of the Straits Settlements, or the operation of any other written law for the time being in force limiting the liability of the owners of sea-going vessels.

Repeal.

8. The Enactments and Ordinance specified in the Second Schedule to this Ordinance are hereby repealed.

THE FIRST SCHEDULE.

(Section 2.)

RULES RELATING TO BILLS OF LADING.

ARTICLE I.

DEFINITIONS.

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper;

(*b*) "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

(*c*) "goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

(*d*) "ship" means any vessel used for the carriage of goods by sea;

(*e*) "carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II.

RISKS.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III.

RESPONSIBILITIES AND LIABILITIES.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(*a*) make the ship seaworthy;

(*b*) properly man, equip, and supply the ship;

(*c*) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

(*a*) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(*b*) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(*c*) the apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*), and (*c*).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any

document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV.

RIGHTS AND IMMUNITIES.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(*a*) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(*b*) fire, unless caused by the actual fault or privity of the carrier;

(*c*) perils, dangers and accidents of the sea or other navigable waters;

(*d*) act of God;

(*e*) act of War;

(*f*) act of public enemies;

(*g*) arrest or restraint of princes, rulers or people, or seizure under legal process;

(*h*) quarantine restrictions;

(*i*) act or omission of the shipper or owner of the goods, his agent or representative;

(*j*) strikes or lockouts or stoppage or restraints of labour from whatever cause, whether partial or general;

(*k*) riots and civil commotions;

(*l*) saving or attempting to save life or property at sea;

(*m*) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(*n*) insufficiency of packing;

(*o*) insufficiency or inadequacy of marks;

(*p*) latent defects not discoverable by due diligence;

(*q*) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure abovenamed.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE V.

SURRENDER OF RIGHTS AND IMMUNITIES, AND INCREASE OF RESPONSIBILITIES AND LIABILITIES.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI.

SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, storage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII.

LIMITATIONS ON THE APPLICATION OF THE RULES.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII.

LIMITATION OF LIABILITY.

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX.

The monetary units mentioned in these Rules are to be taken to be gold value.

THE SECOND SCHEDULE.

(Section 8.)

REPEAL.

No.	Title.
F.M.S. Cap. 54 ...	The Carriage of Goods by Sea Enactment
Johore Enact. No. 90 ...	The Carriage of Goods by Sea Enactment
S.S. Cap. 156	The Carriage of Goods by Sea Ordinance.

Passed in the Legislative Council on the twentieth day of April, 1950.

H. S. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 14 of 1950.

THE CONTRACTS (MALAY STATES) ORDINANCE, 1950.

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FEDERATION OF MALAYA.

No. 14 of 1950.

THE CONTRACTS (MALAY STATES) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....12th May, 1950.

.....6th May, 1950.

An Ordinance to unify within the Malay States the law relating to Contracts.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and application.

1. (1) This Ordinance may be cited as the Contracts (Malay States) Ordinance, 1950, and shall apply within the Malay States only.

(2) Nothing herein contained shall affect the provisions of any Ordinance or Enactment or any usage or custom of trade, or any incident of any contract, not inconsistent with the provisions of this Ordinance.

Interpretation.

2. In this Ordinance the following words and expressions are used in the following senses, unless a contrary intention appears from the context—

(*a*) when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(*b*) when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise;

(*c*) the person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

(*d*) when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(*e*) every promise and every set of promises, forming the consideration for each other, is an agreement;

(*f*) promises which form the consideration or part of the consideration for each other are called reciprocal promises;

(*g*) an agreement not enforceable by law is said to be void;

(*h*) an agreement enforceable by law is a contract;

(*i*) an agreement which is enforceable by law at at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(*j*) a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I

OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS.

Communication, acceptance, and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication, when complete.

4. (1) The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

(2) The communication of an acceptance is complete—

(*a*) as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

(*b*) as against the acceptor, when it comes to the knowledge of the proposer.

(3) The communication of a revocation is complete—

(*a*) as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

(*b*) as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a*) *A.* proposes, by letter, to sell a house to *B.* at a certain price.

The communication of the proposal is complete when *B.* receives the letter.

(*b*) *B.* accepts *A.'s* proposal by a letter sent by post.

The communication of the acceptance is complete—

as against *A.*, when the letter is posted;

as against *B.*, when the letter is received by *A.*

(*c*) *A.* revokes his proposal by telegram.

The revocation is complete as against *A.* when the telegram is despatched. It is complete as against *B.* when *B.* receives it.

(*d*) *B.* revokes his acceptance by telegram.

B.'s revocation is complete as against *B.* when the telegram is despatched, and as against *A.* when it reaches him.

Revocation of proposals and acceptances.

5. (1) A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

(2) An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A. proposes, by a letter sent by post, to sell his house to *B.*

B. accepts the proposal by a letter sent by post.

A. may revoke his proposal at any time before or at the moment when *B.* posts his letter of acceptance, but not afterwards.

B. may revoke his acceptance at any time before or at the moment when the letter communicating it reaches *A.*, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(*a*) by the communication of notice of revocation by the proposer to the other party;

(*b*) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(*c*) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(*d*) by the death or mental disorder of the proposer, if the fact of his death or mental disorder comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(*a*) be absolute and unqualified;

(*b*) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

What agreements are contracts.

10. (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

(2) Nothing herein contained shall affect any law in force in the Federation by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. (1) A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

(2) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

(3) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a mental hospital, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(*a*) coercion, as defined in section 15 of this Ordinance; or

(*b*) undue influence, as defined in section 16 of this Ordinance; or

(*c*) fraud, as defined in section 17 of this Ordinance; or

(*d*) misrepresentation, as defined in section 18 of this Ordinance; or

(*e*) mistake, subject to the provisions of sections 21, 22, and 23 of this Ordinance.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A., on board an English ship on the high seas, causes *B.* to enter into an agreement by an act amounting to criminal intimidation under the Penal Code.

A. afterwards sues *B.* for breach of contract at Taiping.

A. has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined.

16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Evidence Ordinance, 1950. Ord. No. 11 of 1950.

Illustrations.

(*a*) *A.* having advanced money to his son, *B.*, during his minority, upon *B.*'s coming of age, obtains, by misuse of parental influence, a bond from *B.* for a greater amount than the sum due in respect of the advance. *A.* employs undue influence.

(*b*) *A.*, a man enfeebled by disease or age, is induced, by *B.*'s influence over him as his medical attendant, to agree to pay *B.* an unreasonable sum for his professional services. *B.* employs undue influence.

(*c*) *A.*, being in debt to *B.*, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on *B.* to prove that the contract was not induced by undue influence.

(*d*) *A.* applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. *A.* accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

"Fraud" defined.

17. "Fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract—

(*a*) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(*b*) the active concealment of a fact by one having knowledge or belief of the fact;

(*c*) a promise made without any intention of performing it;

(*d*) any other act fitted to deceive;

(*e*) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a*) *A.* sells, by auction, to *B.*, a horse which *A.* knows to be unsound. *A.* says nothing to *B.* about the horse's unsoundness. This is not fraud in *A.*

(*b*) *B.* is *A.*'s daughter and has just come of age. Here, the relation between the parties would make it *A.*'s duty to tell *B.* if the horse is unsound.

(*c*) *B.* says to *A.*, "If you do not deny it, I shall assume that the horse is sound." *A.* says nothing. Here, *A.*'s silence is equivalent to speech.

(*d*) *A.* and *B.*, being traders, enter upon a contract. *A.* has private information of a change in prices which would affect *B.*'s willingness to proceed with the contract. *A.* is not bound to inform *B.*

"Misrepresentation" defined.

18. "Misrepresentation" includes—

(*a*) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(*b*) any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him;

(*c*) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

19. When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) *A.*, intending to deceive *B.*, falsely represents that five hundred gantangs of indigo are made annually at *A.*'s factory, and thereby induces *B.* to buy the factory. The contract is voidable at the option of *B.*

(*b*) *A.*, by a misrepresentation, leads *B.* erroneously to believe that five hundred gantangs of indigo are made annually at *A.'s* factory. *B.* examines the account of the factory, which show that only four hundred gantangs of indigo have been made. After this *B.* buys the factory. The contract is not voidable on account of *A.'s* misrepresentation.

(*c*) *B.*, having discovered a vein of ore on the estate of *A.*, adopts means to conceal, and does conceal, the existence of the ore from *A.* Through *A.'s* ignorance *B.* is enabled to buy the estate at an undervalue. The contract is voidable at the option of *A.*

(*d*) *A.* is entitled to succeed to an estate at the death of *B.*; *B.* dies; *C.*, having received intelligence of *B.'s* death, prevents the intelligence reaching *A.*, and thus induces *A.* to sell him his interest in the estate. The sale is voidable at the option of *A.*

Power to set aside contract induced by undue influence.

20. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) *A.'s* son has forged *B.'s* name to a promissory note. *B.*, under threat of prosecuting *A.'s* son, obtains a bond from *A.* for the amount of the forged note. If *B.* sues on this bond, the Court may set the bond aside.

(*b*) *A.*, a money-lender, advances $100 to *B.*, an agriculturist, and, by undue influence, induces *B.* to execute a bond for $200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering *B.* to repay the $100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

21. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) *A.* agrees to sell *B.* a specific cargo of goods supposed to be on its way from England to Klang. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) *A.* agrees to buy from *B.* a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) *A.*, being entitled to an estate for the life of *B.*, agrees to sell it to *C.* *B.* was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistake as to law.

22. A contract is not voidable because it was caused by a mistake as to any law in force in the Federation; but a mistake as to a law not in force in the Federation has the same effect as a mistake of fact.

Illustration.

A. and *B.* make a contract grounded on the erroneous belief that a particular debt is barred by limitation: the contract is not voidable.

Contract caused by mistake of one party as to matter of fact.

23. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful, and what not.

24. The consideration or object of an agreement is lawful, unless—

(*a*) it is forbidden by law; or

(*b*) it is of such a nature that, if permitted, it would defeat the provisions of any law; or

(*c*) it is fraudulent; or

(*d*) it involves or implies injury to the person or property of another; or

(*e*) the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) *A.* agrees to sell his house to *B.* for $10,000. Here, *B.'s* promise to pay the sum of $10,000 is the consideration for *A.'s* promise to sell the house, and *A.'s* promise to sell the house is the consideration for *B.'s* promise to pay the $10,000. These are lawful considerations.

(*b*) *A.* promises to pay *B.* $1,000 at the end of six months, if *C.*, who owes that sum to *B.*, fails to pay it. *B.* promises to grant time to *C.* accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(*c*) *A.* promises, for a certain sum paid to him by *B.*, to make good to *B.* the value of his ship if it is wrecked on a certain voyage. Here *A.*'s promise is the consideration for *B.*'s payment, and *B.*'s payment is the consideration for *A.*'s promise, and these are lawful considerations.

(*d*) *A.* promises to maintain *B.*'s child, and *B.* promises to pay *A.* $1,000 yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) *A.*, *B.*, and *C.* enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) *A.* promises to obtain for *B.* an employment in the public service, and *B.* promises to pay $1,000 to *A.* The agreement is void, as the consideration for it is unlawful.

(*g*) *A.*, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for *B.* a lease of land belonging to his principal. The agreement between *A.* and *B.* is void, as it implies a fraud by concealment, by *A.*, on his principal.

(*h*) *A.* promises *B.* to drop a prosecution which he has instituted against *B.* for robbery, and *B.* promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) *A.*'s estate is sold for arrears of revenue under the provisions of an Ordinance, by which the defaulter is prohibited from purchasing the estate. *B.*, upon an understanding with *A.*, becomes the purchaser, and agrees to convey the estate to *A.* upon receiving from him the price which *B.* has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) *A.*, who is *B.*'s solicitor, promises to exercise his influence, as such, with *B.* in favour of *C.*, and *C.* promises to pay $1,000 to *A.* The agreement is void, because it is immoral.

(*k*) *A.* agrees to let her daughter to hire to *B.* for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Penal Code.

VOID AGREEMENTS.

Agreements void, if considerations and objects unlawful in part.

25. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A. promises to superintend, on behalf of *B.*, a legal manufacture of indigo, and an illegal traffic in other articles. *B.* promises to pay to *A.* a salary of $10,000 a year. The agreement is void, the object of *A.*'s promise, and the consideration for *B.*'s promise, being in part unlawful.

Agreement without consideration, void, unless—

26. An agreement made without consideration is void, unless—

it is in writing and registered;

(*a*) it is expressed in writing and registered under the law (if any) for the time being in force for the registration of such documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

or is a promise to compensate for something done;

(*b*) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

or is a promise to pay a debt barred by limitation law.

(*c*) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a*) *A.* promises, for no consideration, to give to *B.* $1,000. This is a void agreement.

(*b*) *A.*, for natural love and affection, promises to give his son, *B.*, $1,000. *A.* puts his promise to *B.* into writing and registers it under a law for the time being in force for the registration of such documents. This is a contract.

(*c*) *A.* finds *B.*'s purse and gives it to him. *B.* promises to give *A.* $50. This is a contract.

(*d*) *A.* supports *B.*'s infant son. *B.* promises to pay *A.*'s expenses in so doing. This is a contract.

(*e*) *A.* owes *B.* $1,000, but the debt is barred by limitation. *A.* signs a written promise to pay *B.* $500 on account of the debt. This is a contract.

(*f*) *A.* agrees to sell a horse worth $1,000 for $10. *A.*'s consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) *A.* agrees to sell a horse worth $1,000 for $10. *A.* denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not *A.*'s consent was freely given.

Agreement in restraint of marriage void.

27. Every agreement in restraint of the marriage of any person, other than a minor during his or her minority, is void.

Agreement in restraint of trade void.

28. Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which good-will is sold;

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

of agreement between partners prior to dissolution;

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

or during continuance of partnership.

Exception 3.—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Agreements in restraint of legal proceedings void.

29. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Saving of contract to refer questions that have already arisen.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

30. Agreements, the meaning of which is not certain, or capable of being made certain, are void. Agreements void for uncertainty.

Illustrations.

(*a*) *A.* agrees to sell to *B.* "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) *A.* agrees to sell to *B.* one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) *A.*, who is a dealer in coconut-oil only, agrees to sell to *B.* "one hundred tons of oil." The nature of *A.'s* trade affords an indication of the meaning of the words, and *A.* has entered into a contract for the sale of one hundred tons of coconut-oil.

(*d*) *A.* agrees to sell to *B.* "all the grain in my granary at Ipoh." There is no uncertainty here to make the agreement void.

(*e*) *A.* agrees to sell to *B.* "one thousand gantangs of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) *A.* agrees to sell to *B.* "my white horse for dollars five hundred or dollars one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

31. (1) Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Agreements by way of wager void.

(2) This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred dollars or upwards, to be awarded to the winner or winners of any horse-race. Exception in favour of certain prizes for horse-racing.

(3) Nothing in this section shall be deemed to legalise any transaction connected with horse-racing forbidden by any written law in force for the time being.

CHAPTER III

OF CONTINGENT CONTRACTS.

32. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. "Contingent contract" defined.

Illustration.

A. contracts to pay *B.* $10,000 if *B.'s* house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

33. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(*a*) *A.* makes a contract with *B.* to buy *B.*'s horse if *A.* survives *C.* This contract cannot be enforced by law unless and until *C.* dies in *A.*'s lifetime.

(*b*) *A.* makes a contract with *B.* to sell a horse to *B.* at a specified price, if *C.*, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until *C.* refuses to buy the horse.

(*c*) *A.* contracts to pay *B.* a sum of money when *B.* marries *C.* *C.* dies without being married to *B.* The contract becomes void.

Enforcement of contracts contingent on an event not happening.

34. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A. agrees to pay *B.* a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

35. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A. agrees to pay *B.* a sum of money if *B.* marries *C.*

C. marries *D.* The marriage of *B.* to *C.* must now be considered impossible, although it is possible that *D.* may die and that *C.* may afterwards marry *B.*

When contracts become void which are contingent on happening of specified event within fixed time.

36. (1) Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

(2) Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen. When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(*a*) *A.* promises to pay *B.* a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(*b*) *A.* promises to pay *B.* a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

37. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. Agreement contingent on impossible events void.

Illustrations.

(*a*) *A.* agrees to pay *B.* $1,000 if two straight lines should enclose a space. The agreement is void.

(*b*) *A.* agrees to pay *B.* $1,000 if *B.* will marry *A.*'s daughter *C.* *C.* was dead at the time of the agreement. The agreement is void.

Chapter IV

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

38. (1) The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Ordinance, or of any other law. Obligation of parties to contracts.

(2) Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) *A.* promises to deliver goods to *B.* on a certain day on payment of $1,000. *A.* dies before that day. *A.*'s representatives are bound to deliver the goods to *B.*, and *B.* is bound to pay the $1,000 to *A.*'s representatives.

(*b*) *A.* promises to paint a picture for *B.* by a certain day, at a certain price. *A.* dies before the day. The contract cannot be enforced either by *A.*'s representatives or by *B.*

Effect of refusal to accept offer of performance.

39. (1) Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

(2) Every such offer must fulfil the following conditions—

(*a*) it must be unconditional;

(*b*) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;

(*c*) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

(3) An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A. contracts to deliver to *B.* at his warehouse, on the 1st of March, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, *A.* must bring the cotton to *B.*'s warehouse, on the appointed day, under such circumstances that *B.* may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

40. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a*) *A.*, a singer, enters into a contract with *B.*, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and *B.* engages to pay her $100 for each night's performance. On the sixth night *A.* wilfully absents herself from the theatre. *B.* is at liberty to put an end to the contract.

(*b*) *A.*, a singer, enters into a contract with *B.*, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and *B.* engages to pay her at the rate of $100 for each night. On the sixth night *A.* wilfully absents herself. With the assent of *B.*, *A.* sings on the seventh night. *B.* has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through *A.*'s failure to sing on the sixth night.

BY WHOM CONTRACTS MUST BE PERFORMED.

Person by whom promise is to be performed.

41. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) *A.* promises to pay *B.* a sum of money. *A.* may perform this promise, either by personally paying the money to *B.*, or by causing it to be paid to *B.* by another; and, if *A.* dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) *A.* promises to paint a picture for *B.* *A.* must perform this promise personally.

Effect of accepting performance from third person.

42. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

43. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

44. (1) When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

(2) Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

(3) If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) *A.*, *B.*, and *C.* jointly promise to pay *D.* $3,000. *D.* may compel either *A.* or *B.* or *C.* to pay him $3,000.

(*b*) *A.*, *B.*, and *C.* jointly promise to pay *D.* the sum of $3,000. *C.* is compelled to pay the whole. *A.* is insolvent, but his assets are sufficient to pay one-half of his debts. *C.* is entitled to receive $500 from *A.*'s estate, and $1,250 from *B.*

(*c*) *A.*, *B.*, and *C.* are under a joint promise to pay *D.* $3,000. *C.* is unable to pay anything, and *A.* is compelled to pay the whole. *A.* is entitled to receive $1,500 from *B.*

(*d*) *A.*, *B.*, and *C.* are under a joint promise to pay *D.* $3,000, *A.* and *B.* being only sureties for *C.* *C.* fails to pay. *A.* and *B.* are compelled to pay the whole sum. They are entitled to recover it from *C.*

Effect of release of one joint promisor.

45. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights.

46. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

Illustration.

A., in consideration of $5,000 lent to him by *B.* and *C.*, promises *B.* and *C.* jointly to repay them that sum with interest on a day specified. *B.* dies. The right to claim performance rests with *B.*'s representative jointly with *C.* during *C.*'s life, and after the death of *C.* with the representatives of *B.* and *C.* jointly.

TIME AND PLACE FOR PERFORMANCE.

Time for performance of promise where no application is to be made and no time is specified.

47. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact.

48. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise where time is specified and no application to be made.

Illustration.

A. promises to deliver goods at *B.*'s warehouse on the 1st of January. On that day *A.* brings the goods to *B.*'s warehouse, but after the usual hour for closing it, and they are not received. *A.* has not performed his promise.

49. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the hours of business.

Application for performance on certain day to be at proper time and place.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

50. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise where no application to be made and no place fixed.

Illustration.

A. undertakes to deliver a thousand gantangs of rice to *B.* on a fixed day. *A.* must apply to *B.* to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

51. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(*a*) *B.* owes *A.* $2,000. *A.* desires *B.* to pay the amount to *A.*'s account with *C.*, a banker. *B.*, who also banks with *C.*, orders the amount to be transferred from his account to *A.*'s credit, and this is done by *C.* Afterwards, and before *A.* knows of the transfer, *C.* fails. There has been a good payment by *B.*

(*b*) *A.* and *B.* are mutually indebted. *A.* and *B.* settle an account by setting off one item against another, and *B.* pays *A.* the balance found to be due from him upon such settlement. This amounts to a payment by *A.* and *B.*, respectively, of the sums which they owed to each other.

(*c*) *A.* owes *B.* $2,000. *B.* accepts some of *A.'s* goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d*) *A.* desires *B.*, who owes him $100, to send him a note for $100 by post. The debt is discharged as soon as *B.* puts into the post a letter containing the note duly addressed to *A.*

PERFORMANCE OF RECIPROCAL PROMISES.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

52. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*) *A.* and *B.* contract that *A.* shall deliver goods to *B.* to be paid for by *B.* on delivery.

A. need not deliver the goods unless *B.* is ready and willing to pay for the goods on delivery.

B. need not pay for the goods unless *A.* is ready and willing to deliver them on payment.

(*b*) *A.* and *B.* contract that *A.* shall deliver goods to *B.* at a price to be paid by instalments, the first instalment to be paid on delivery.

A. need not deliver unless *B.* is ready and willing to pay the first instalment on delivery.

B. need not pay the first instalment unless *A.* is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

53. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a*) *A.* and *B.* contract that *A.* shall build a house for *B.* at a fixed price. *A.'s* promise to build the house must be performed before *B.'s* promise to pay for it.

(*b*) *A.* and *B.* contract that *A.* shall make over his stock-in-trade to *B.* at a fixed price, and *B.* promises to give security for the payment of the money. *A.'s* promise need not be performed until the security is given, for the nature of the transaction requires that *A.* should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

54. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A. and *B.* contract that *B.* shall execute certain work for *A.* for $1,000. *B.* is ready and willing to execute the work accordingly, but *A.* prevents him from doing so. The contract is voidable at the option of *B;* and, if he elects to rescind it, he is entitled to recover from *A.* compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

55. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) *A.* hires *B.'s* ship to take in and convey, from Klang to Singapore, a cargo to be provided by *A.*, *B.* receiving a certain freight for its conveyance. *A.* does not provide any cargo for the ship. *A.* cannot claim the performance of *B.'s* promise, and must make compensation to *B.* for the loss which *B.* sustains by the non-performance of the contract.

(*b*) *A.* contracts with *B.* to execute certain builders' work for a fixed price, *B.* supplying the scaffolding and timber necessary for the work. *B.* refuses to furnish any scaffolding or timber, and the work cannot be executed. *A.* need not execute the work, and *B.* is bound to make compensation to *A.* for any loss caused to him by the non-performance of the contract.

(*c*) *A.* contracts with *B.* to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and *B.* engages to pay for the merchandise within a week from the date of the contract. *B.* does not pay within the week. *A.'s* promise to deliver need not be performed, and *B.* must make compensation.

(*d*) *A.* promises *B.* to sell him one hundred bales of merchandise, to be delivered next day, and *B.* promises *A.* to pay for them within a month. *A.* does not deliver according to his promise. *B.'s* promise to pay need not be performed, and *A.* must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential.

56. (1) When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

(2) If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

(3) If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act.

57. (1) An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

(2) A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

(3) Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(*a*) *A.* agrees with *B.* to discover treasure by magic. The agreement is void.

(*b*) *A.* and *B.* contract to marry each other. Before the time fixed for the marriage, *A.* goes mad. The contract becomes void.

(*c*) *A.* contracts to marry *B.*, being already married to *C.*, and being forbidden by the law to which he is subject to practise polygamy. *A.* must make compensation to *B.* for the loss caused to her by the non-performance of his promise.

(*d*) *A.* contracts to take in cargo for *B.* at a foreign port. *A.'s* Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) *A.* contracts to act at a theatre for six months in consideration of a sum paid in advance by *B.* On several occasions *A.* is too ill to act. The contract to act on those occasions becomes void.

Reciprocal promise to do things legal, and also other things illegal.

58. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

A. and *B.* agree that *A.* shall sell *B.* a house for $10,000, but that, if *B.* uses it as a gambling house, he shall pay *A.* $50,000 for it.

The first set of reciprocal promises, namely, to sell the house and to pay $10,000 for it, is a contract.

The second set is for an unlawful object, namely, that *B.* may use the house as a gambling house, and is a void agreement.

Alternative promise, one branch being illegal.

59. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A. and *B.* agree that *A.* shall pay *B.* $1,000 for which *B.* shall afterwards deliver to *A.* either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

APPROPRIATION OF PAYMENTS.

Application of payment where debt to be discharged is indicated.

60. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(*a*) *A.* owes *B.*, among other debts, $1,000 upon a promissory note, which falls due on the 1st of June. He owes *B.* no other debt of that amount. On the 1st of June *A.* pays to *B.* $1,000. The payment is to be applied to the discharge of the promissory note.

(*b*) *A.* owes to *B.*, among other debts, the sum of $567. *B.* writes to *A.* and demands the payment of this sum. *A.* sends to *B.* $567. This payment is to be applied to the discharge of the debt of which *B.* had demanded payment.

Application of payment where debt to be discharged is not indicated.

61. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates.

62. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

CONTRACTS WHICH NEED NOT BE PERFORMED.

Effect of novation, rescission, and alteration of contract.

63. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(*a*) *A.* owes money to *B.* under a contract. It is agreed between *A.*, *B.*, and *C.* that *B.* shall henceforth accept *C.* as his debtor, instead of *A.* The old debt of *A.* to *B.* is at an end, and a new debt from *C.* to *B.* has been contracted.

(*b*) *A.* owes *B.* $10,000. *A.* enters into an arrangement with *B.*, and gives *B.* a mortgage of his (*A.'s*) estate for $5,000 in place of the debt of $10,000. This is a new contract and extinguishes the old.

(*c*) *A.* owes *B.* $1,000 under a contract. *B.* owes *C.* $1,000. *B.* orders *A.* to credit *C.* with $1,000 in his books, but *C.* does not assent to the agreement. *B.* still owes *C.* $1,000, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

64. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a*) *A.* promises to paint a picture for *B.* *B.* afterwards forbids him to do so. *A.* is no longer bound to perform the promise.

(*b*) *A.* owes *B.* $5,000. *A.* pays to *B.*, and *B.* accepts, in satisfaction of the whole debt, $2,000 paid at the time and place at which the $5,000 were payable. The whole debt is discharged.

(*c*) *A.* owes *B.* $5,000. *C.* pays to *B.* $1,000 and *B.* accepts them, in satisfaction of his claim on *A.* This payment is a discharge of the whole claim.

(*d*) *A.* owes *B.*, under a contract, a sum of money, the amount of which has not been ascertained. *A.*, without ascertaining the amount, gives to *B.*, and *B.*, in satisfaction thereof, accepts the sum of $2,000. This is a discharge of the whole debt, whatever may be its amount.

(*e*) *A.* owes *B.* $2,000, and is also indebted to other creditors. *A.* makes an arrangement with his creditors, including *B.*, to pay them a composition of fifty cents in the dollar upon their respective demands. Payment to *B.* of $1,000 is a discharge of *B.'s* demand.

Consequences of rescission of voidable contract.

65. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void agreement, or contract that becomes void.

66. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(*a*) *A.* pays *B.* $1,000 in consideration of *B.'s* promising to marry *C.*, *A.'s* daughter. *C.* is dead at the time of the promise. The agreement is void, but *B.* must repay *A.* the $1,000.

(*b*) *A.* contracts with *B.* to deliver to him 250 gantangs of rice before the 1st of May. *A.* delivers 130 gantangs only before that day, and none later. *B.* retains the 130 gantangs after the 1st of May. He is bound to pay *A.* for them.

(*c*) *A.*, a singer, contracts with *B.*, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and *B.* engages to pay her $100 for each night's performance. On the sixth night *A.* wilfully absents herself from the theatre, and *B.*, in consequence, rescinds the contract. *B.* must pay *A.* for the five nights on which she had sung.

(*d*) *A.* contracts to sing for *B.* at a concert for $1,000, which are paid in advance. *A.* is too ill to sing. *A.* is not bound to make compensation to *B.* for the loss of the profits which *B.* would have made if *A.* had been able to sing, but must refund to *B.* the $1,000 paid in advance.

Mode of communicating or revoking rescission of voidable contract.

67. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

68. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A. contracts with *B.* to repair *B.*'s house.

B. neglects or refuses to point out to *A.* the places in which his house requires repair.

A. is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

69. If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a*) *A.* supplies *B.*, a mentally disordered person, with necessaries suitable to his condition in life. *A.* is entitled to be reimbursed from *B.*'s property.

(*b*) *A.* supplies the wife and children of *B.*, a mentally disordered person, with necessaries suitable to their condition in life. *A.* is entitled to be reimbursed from *B.*'s property.

Reimbursement of person paying money due by another, in payment of which he is interested.

70. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B. holds land in Perak, on a lease granted by *A.*, the landowner. The revenue payable by *A.* to the Government being in arrear, his land is advertised for sale by the Government. Under the Land Code, the consequence of such sale will be the annulment of *B.*'s lease. *B.*, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from *A.* *A.* is bound to make good to *B.* the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act.

71. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

(*a*) *A.*, a tradesman, leaves goods at *B.*'s house by mistake. *B.* treats the goods as his own. He is bound to pay *A.* for them.

(*b*) *A.* saves *B.*'s property from fire. *A.* is not entitled to compensation from *B.*, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

72. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid, or thing delivered by mistake or under coercion.

73. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations.

(*a*) *A.* and *B.* jointly owe $100 to *C.* *A.* alone pays the amount to *C.*, and *B.*, not knowing this fact, pays $100 over again to *C.* *C.* is bound to repay the amount to *B.*

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

74. (1) When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

(2) Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

(3) When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a*) *A.* contracts to sell and deliver 50 gantangs of saltpetre to *B.*, at a certain price to be paid on delivery. *A.* breaks his promise. *B.* is entitled to receive from *A.*, by way of compensation, the sum, if any, by which the contract price falls short of the price for which *B.* might have obtained 50 gantangs of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) *A.* hires B.'s ship to go to Telok Anson, and there take on board, on the 1st of January, a cargo, which *A.* is to provide, and to bring it to Port Dickson, the freight to be paid when earned. *B.*'s ship does not go to Telok Anson, but *A.* has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. *A.* avails himself of those opportunities, but is put to trouble and expense in doing so. *A.* is entitled to receive compensation from *B.* in respect of such trouble and expense.

(*c*) *A.* contracts to buy of *B.*, at a stated price, 50 gantangs of rice, no time being fixed for delivery. *A.* afterwards informs *B.* that he will not accept the rice if tendered to him. *B.* is entitled to receive from *A.*, by way of compensation the amount, if any, by which the contract price exceeds that which *B.* can obtain for the rice at the time when *A.* informs *B.* that he will not accept it.

(*d*) *A.* contracts to buy *B.*'s ship for $60,000, but breaks his promise. *A.* must pay to *B.*, by way of compensation, the excess, if any, of the contract price over the price which *B.* can obtain for the ship at the time of the breach of promise.

(*e*) *A.*, the owner of a boat, contracts with *B.* to take a cargo of tin to Singapore, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Singapore is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of tin falls. The measure of the compensation payable to *B.* by *A.* is the difference between the price which *B.* could have obtained for the cargo at Singapore, at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) *A.* contracts to repair *B.*'s house in a certain manner, and receives payment in advance. *A.* repairs the house, but not according to contract. *B.* is entitled to recover from *A.* the cost of making the repairs conform to the contract.

(*g*) *A.* contracts to let his ship to *B.* for a year, from the 1st of January, for a certain price. Freights rise, and, on the 1st of January, the hire obtainable for the ship is higher than the contract price. *A.* breaks his promise. He must pay to *B.*,

by way of compensation, a sum equal to the difference between the contract price and the price for which *B.* could hire a similar ship for a year on and from the 1st of January.

(*h*) *A.* contracts to supply *B.* with a certain quantity of iron at a fixed price, being a higher price than that for which *A.* could procure and deliver the iron. *B.* wrongfully refuses to receive the iron. *B.* must pay to *A.*, by way of compensation, the difference between the contract price of the iron and the sum for which *A.* could have obtained and delivered it.

(*i*) *A.* delivers to *B.*, a carrier, a machine, to be conveyed, without delay, to *A.*'s mill, informing *B.* that his mill is stopped for want of the machine. *B.* unreasonably delays the delivery of the machine, and *A.*, in consequence, loses a profitable contract with the Government. *A.* is entitled to receive from *B.*, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) *A.*, having contracted with *B.* to supply *B.* with 1,000 tons of iron at $100 a ton, to be delivered at a stated time, contracts with *C.* for the purchase of 1,000 tons of iron at $80 a ton, telling *C.* that he does so for the purpose of performing his contract with *B.* *C.* fails to perform his contract with *A.*, who cannot procure other iron, and *B.*, in consequence, rescinds the contract. *C.* must pay to *A.* $20,000, being the profit which *A.* would have made by the performance of his contract with *B.*

(*k*) *A.* contracts with *B.* to make and deliver to *B.*, by a fixed day, for a specified price, a certain piece of machinery. *A.* does not deliver the piece of machinery at the time specified, and, in consequence of this, *B.* is obliged to procure another at a higher price than that which he was to have paid to *A.*, and is prevented from performing a contract which *B.* had made with a third person at the time of his contract with *A.* (but which had not been then communicated to *A.*), and is compelled to make compensation for breach of that contract. *A.* must pay to *B.*, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by *B.* for another, but not the sum paid by *B.* to the third person by way of compensation.

(*l*) *A.*, a builder, contracts to erect and finish a house by the 1st of January, in order that *B.* may give possession of it at that time to *C.*, to whom *B.* has contracted to let it. *A.* is informed of the contract between *B.* and *C.* *A.* builds the house so badly that, before the 1st of January, it falls down and has to be rebuilt by *B.*, who, in consequence, loses the rent which he was to have received from *C.*, and is obliged to make compensation to *C.* for the breach of his contract. *A.* must make compensation to *B.* for the cost of rebuilding the house, for the rent lost, and for the compensation made to *C.*

(*m*) *A.* sells certain merchandise to *B.*, warranting it to be of a particular quality, and *B.*, in reliance upon this warranty, sells it to *C.* with a similar warranty. The goods prove to be not according to the warranty, and *B.* becomes liable to pay *C.* a sum of money by way of compensation. *B.* is entitled to be reimbursed this sum by *A.*

(*n*) *A.* contracts to pay a sum of money to *B.* on a day specified. *A.* does not pay the money on that day. *B.*, in consequence of not receiving the money on that day, is unable to pay his debts and is totally ruined. *A.* is not liable to make good to *B.* anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) *A.* contracts to deliver 50 gantangs of saltpetre to *B.* on the 1st of January, at a certain price. *B.* afterwards, before the 1st of January, contracts to sell the saltpetre to *C.* at a higher price than the market price of the 1st of January. *A.* breaks his promise. In estimating the compensation payable by *A.* to *B.*, the market price of the 1st of January, and not the profit which would have arisen to *B.* from the sale to *C.*, is to be taken into account.

(*p*) *A.* contracts to sell and deliver 500 bales of cotton to *B.* on a fixed day. *A.* knows nothing of *B.*'s mode of conducting his business. *A.* breaks his promise, and *B.*, having no cotton, is obliged to close his mill. *A.* is not responsible to *B.* for the loss caused to *B.* by the closing of the mill.

(*q*) *A.* contracts to sell and deliver to *B.*, on the 1st of January, certain cloth which *B.* intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. *B.* is entitled to receive from *A.*, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) *A.*, a shipowner, contracts with B. to convey him from Klang to Sydney in *A.*'s ship, sailing on the 1st of January, and *B.* pays to *A.*, by way of deposit, one-half of his passage-money. The ship does not sail on the 1st of January, and *B.*, after being, in consequence, detained in Klang for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. *A.* is liable to repay to *B.* his deposit, with interest, and the expense to which he is put by his detention in Klang, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which *B.* lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognisance, or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of the State or the Federal Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(*a*) *A.* contracts with *B.* to pay *B.* $1,000, if he fails to pay *B.* $500 on a given day. *A.* fails to pay *B.* $500 on that day. *B.* is entitled to recover from *A.* such compensation, not exceeding $1,000, as the Court considers reasonable.

(*b*) *A.* contracts with *B.* that, if *A.* practises as a surgeon within Calcutta, he will pay *B.* $5,000. *A.* practises as a surgeon in Calcutta. *B.* is entitled to such compensation, not exceeding $5,000, as the Court considers reasonable.

(*c*) *A.* gives a recognisance binding him in a penalty of $500 to appear in Court on a certain day. He forfeits his recognisance. He is liable to pay the whole penalty.

(*d*) *A.* gives *B.* a bond for the repayment of $1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and *B.* is only entitled to recover from *A.* such compensation as the Court considers reasonable.

(*e*) *A.*, who owes money to *B.*, a money-lender, undertakes to repay him by delivering to him 10 gantangs of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 gantangs. This is a stipulation by way of penalty, and *B.* is only entitled to reasonable compensation in case of breach.

(*f*) *A.* undertakes to repay *B.* a loan of $1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) *A.* borrows $100 from *B.* and gives him a bond for $200 payable by five yearly instalments of $40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract entitled to compensation.

76. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A., a singer, contracts with *B.*, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and *B.* engages to pay her $100 for each night's performance. On the sixth night *A.* wilfully absents herself from the theatre, and *B.*, in consequence, rescinds the contract. *B.* is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII

OF INDEMNITY AND GUARANTEE.

"Contract of indemnity" defined.

77. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

Illustration.

A. contracts to indemnify *B.* against the consequences of any proceedings which *C.* may take against *B.* in respect of a certain sum of $200. This is a contract of indemnity.

Rights of indemnity-holder when sued.

78. The promisee in the contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(*a*) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(*b*) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(*c*) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

"Contract of guarantee", "surety", "principal debtor", and "creditor".

79. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consideration for guarantee.

80. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a*) *B.* requests *A.* to sell and deliver to him goods on credit. *A.* agrees to do so, provided *C.* will guarantee the payment of the price of the goods. *C.* promises to guarantee the payment in consideration of *A.'s* promise to deliver the goods. This is a sufficient consideration for *C.'s* promise.

(*b*) *A.* sells and delivers goods to *B.* *C.* afterwards requests *A.* to forbear to sue *B.* for the debt for a year, and promises that, if he does so, *C.* will pay for them in default of payment by *B.* *A.* agrees to forbear as requested. This is a sufficient consideration for *C.'s* promise.

(*c*) *A.* sells and delivers goods to *B.* *C.* afterwards, without consideration, agrees to pay for them in default of *B.* The agreement is void.

Surety's liability.

81. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A. guarantees to *B.* the payment of a bill of exchange by *C.*, the acceptor. The bill is dishonoured by *C.* *A.* is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

"Continuing guarantee".

82. A guarantee which extends to a series of transactions is called a "continuing guarantee".

Illustrations.

(*a*) *A.*, in consideration that *B.* will employ *C.* in collecting the rents of *B.'s* estate, promises *B.* to be responsible to the amount of $5,000, for the due collection and payment by *C.* of those rents. This is a continuing guarantee.

(*b*) *A.* guarantees payment to *B.*, a tea-dealer, to the amount of $1,000, for any tea he may from time to time supply to *C.* *B.* supplies *C.* with tea to above the value of $1,000, and *C.* pays *B.* for it. Afterwards, *B.* supplies *C.* with tea to the value of $2,000. *C.* fails to pay. The guarantee given by *A.* was a continuing guarantee, and he is accordingly liable to *B.* to the extent of $1,000.

(*c*) *A.* guarantees payment to *B.* of the price of five sacks of flour to be delivered by *B.* to *C.* and to be paid for in a month. *B.* delivers five sacks to *C.* *C.* pays for them. Afterwards *B.* delivers four sacks to *C.*, which *C.* does not pay for. The guarantee given by *A.* was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

83. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(*a*) *A.*, in consideration of *B.*'s discounting, at *A.*'s request, bills of exchange for *C.*, guarantees to *B.*, for twelve months, the due payment of all such bills to the extent of $5,000. *B.* discounts bills for *C.* to the extent of $2,000. Afterwards, at the end of three months, *A.* revokes the guarantee. This revocation discharges *A.* from all liability to *B.* for any subsequent discount. But *A.* is liable to *B.* for the $2,000 on default of *C.*

(*b*) *A.* guarantees to *B.*, to the extent of $10,000, that *C.* shall pay all the bills that *B.* shall draw upon him. *B.* draws upon *C.* *C.* accepts the bill. *A.* gives notice of revocation. *C.* dishonours the bill at maturity. *A.* is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

84. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.

85. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A. and *B.* make a joint and several promissory note to *C.* A. makes it, in fact, as surety for *B.*, and *C.* knows this at the time when the note is made. The fact that *A.*, to the knowledge of *C.*, made the note as surety for *B.*, is no answer to a suit by *C.* against *A.* upon the note.

Discharge of surety by variance in terms of contract.

86. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a*) *A.* becomes surety to *C.* for *B.*'s conduct as a manager in *C.*'s bank. Afterwards, *B.* and *C.* contract, without *A.*'s consent, that *B.*'s salary shall be raised, and that he shall become liable

for one-fourth of the losses on overdrafts. *B.* allows a customer to overdraw, and the bank loses a sum of money. *A.* is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b*) *A.* guarantees *C.* against the misconduct of *B.* in an office to which *B.* is appointed by *C.*, and of which the duties are defined by an Ordinance. By a subsequent Ordinance, the nature of the office is materially altered. Afterwards, *B.* misconducts himself. *A.* is discharged by the change from future liability under his guarantee, though the misconduct of *B.* is in respect of a duty not affected by the later Ordinance.

(*c*) *C.* agrees to appoint *B.* as his clerk to sell goods at a yearly salary, upon *A.*'s becoming surety to *C.* for *B.*'s duly accounting for moneys received by him as such clerk. Afterwards, without *A.*'s knowledge or consent, *C.* and *B.* agree that *B.* should be paid by a commission on the goods sold by him and not by a fixed salary. *A.* is not liable for subsequent misconduct of *B.*

(*d*) *A.* gives to *C.* a continuing guarantee to the extent of $3,000 for any oil supplied by *C.* to *B.* on credit. Afterwards, *B.* becomes embarrassed, and, without the knowledge of *A.*, *B.* and *C.* contract that *C.* shall continue to supply *B.* with oil for ready money, and that the payments shall be applied to the then existing debts between *B.* and *C.* *A.* is not liable on his guarantee for any goods supplied after this new arrangement.

(*e*) *C.* contracts to lend *B.* $5,000 on the 1st of March. *A.* guarantees repayment. *C.* pays the $5,000 to *B.* on the 1st of January. *A.* is discharged from his liability, as the contract has been varied, inasmuch as *C.* might sue *B.* for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

87. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a*) *A.* gives a guarantee to *C.* for goods to be supplied by *C.* to *B.* *C.* supplies goods to *B.*, and afterwards *B.* becomes embarrassed and contracts with his creditors (including *C.*) to assign to them his property in consideration of their releasing him from their demands. Here *B.* is released from his debt by the contract with *C.*, and *A.* is discharged from his suretyship.

(*b*) *A.* contracts with *B.* to grow a crop of indigo on *A.*'s land and to deliver it to *B.* at a fixed rate, and *C.* guarantees *A.*'s performance of this contract. *B.* diverts a stream of water which is necessary for irrigation of *A.*'s land, and thereby prevents him from raising the indigo. *C.* is no longer liable on his guarantee.

(*c*) *A.* contracts with *B.* for a fixed price to build a house for *B.* within a stipulated time, *B.* supplying the necessary timber. *C.* guarantees *A.'s* performance of the contract. *B.* omits to supply the timber. *C.* is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.

88. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor.

89. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C., the holder of an overdue bill of exchange drawn by *A.* as surety for *B.*, and accepted by *B.*, contracts with *M.* to give time to *B.* *A.* is not discharged.

Creditor's forbearance to sue does not discharge surety.

90. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B. owes to *C.* a debt guaranteed by *A.* The debt becomes payable. *C.* does not sue *B.* for a year after the debt has become payable. *A.* is not discharged from his suretyship.

Release of one co-surety does not discharge others.

91. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

92. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(*a*) *B.* contracts to build a ship for *C.* for a given sum, to be paid by instalments as the work reaches certain stages. *A.* becomes surety to *C.* for *B.'s* due performance of the contract. *C.*, without the knowledge of *A.*, prepays to *B.* the last two instalments. A. is discharged by this prepayment.

(*b*) *C.* lends money to *B.* on the security of a joint and several promissory note made in *C.'s* favour by *B.*, and by *A.* as surety for *B.*, together with a bill of sale of *B.'s* furniture, which gives power to *C.* to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, *C.* sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. *A.* is discharged from liability on the note.

(*c*) *A.* puts *M.* as apprentice to *B.*, and gives a guarantee to *B.* for *M.'s* fidelity. *B.* promises on his part that he will, at least once a month, see *M.* make up the cash. *B.* omits to see this done as promised, and *M.* embezzles. *A.* is not liable to *B.* on his guarantee.

Rights of surety on payment or performance.

93. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities.

94. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(*a*) *C.* advances to *B.*, his tenant, $2,000 on the guarantee of *A.* *C.* has also a further security for the $2,000 by a mortgage of *B.'s* furniture. *C.* cancels the mortgage. *B.* becomes insolvent, and *C.* sues *A.* on his guarantee. *A.* is discharged from liability to the amount of the value of the furniture.

(*b*) *C.*, a creditor, whose advance to *B.* is secured by a decree, receives also a guarantee for that advance from *A.* *C.* afterwards takes *B.'s* goods in execution under the decree, and then, without the knowledge of *A.*, withdraws the execution. *A.* is discharged.

(*c*) *A.*, as surety for *B.*, makes a bond jointly with *B.* to *C.*, to secure a loan from *C.* to *B.* Afterwards, *C.* obtains from *B.* a further security for the same debt. Subsequently, *C.* gives up the further security. *A.* is not discharged.

Guarantee obtained by misrepresentation invalid.

95. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid.

96. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstance is invalid.

Illustrations.

(*a*) *A.* engages *B.* as clerk to collect money for him. *B.* fails to account for some of his receipts, and *A.* in consequence calls upon him to furnish security for his duly accounting. *C.* gives his guarantee for *B.*'s duly accounting. *A.* does not acquaint *C.* with *B.*'s previous conduct. *B.* afterwards makes default. The guarantee is invalid.

(*b*) *A.* guarantees to *C.* payment for iron to be supplied by him to *B.* to the amount of 2,000 tons. *B.* and *C.* have privately agreed that *B.* should pay five dollars per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from *A.* *A.* is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

97. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

98. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a*) *B.* is indebted to *C.*, and *A.* is surety for the debt. *C.* demands payment from *A.*, and on his refusal sues him for the amount. *A.* defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from *B.* the amount paid by him for costs, as well as the principal debt.

(*b*) *C.* lends *B.* a sum of money, and *A.*, at the request of *B.*, accepts a bill of exchange drawn by *B.* upon *A.* to secure the amount. *C.*, the holder of the bill, demands payment of it from *A.*, and, on *A.*'s refusal to pay, sues him upon the bill. *A.*, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from *B.* the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c*) *A.* guarantees to *C.*, to the extent of $2,000, payment for rice to be supplied by *C.* to *B.* *C.* supplies to *B.* rice to a less amount than $2,000, but obtains from *A.* payment of the sum of $2,000 in respect of the rice supplied. *A.* cannot recover from *B.* more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

99. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other,

the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(*a*) *A.*, *B.* and *C.* are sureties to *D.* for the sum of $3,000 lent to *E.* *E.* makes default in payment. *A.*, *B.* and *C.* are liable, as between themselves, to pay $1,000 each.

(*b*) *A.*, *B.* and *C.* are sureties to *D.* for the sum of $1,000 lent to *E.*, and there is a contract between *A.*, *B.*, and *C.* that *A.* is to be responsible to the extent of one-quarter, *B.* to the extent of one-quarter, and *C.* to the extent of one-half. *E.* makes default in payment. As between the sureties, *A.* is liable to pay $250, *B.* $250, and *C.* $500.

Liability of co-sureties bound in different sums.

100. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a*) *A.*, *B.*, and *C.*, as sureties for *D.*, enter into three several bonds, each in a different penalty—namely, *A.* in the penalty of $10,000, *B.* in that of $20,000, *C.* in that of $40,000, conditioned for *D.*'s duly accounting to *E.* *D.* makes default to the extent of $30,000. *A.*, *B.*, and *C.* are each liable to pay $10,000.

(*b*) *A.*, *B.*, and C., as sureties for D., enter into three several bonds, each in a different penalty—namely, *A.* in the penalty of $10,000, *B.* in that of $20,000, *C.* in that of $40,000, conditioned for *D.*'s duly accounting to *E.* *D.* makes default to the extent of $40,000. *A.* is liable to pay $10,000, and *B.* and *C.* $15,000.

(*c*) *A.*, *B.*, and *C.*, as sureties for *D.*, enter into three several bonds, each in a different penalty—namely, *A.* in the penalty of $10,000, *B.* in that of $20,000, *C.* in that of $40,000, conditioned for *D.*'s duly accounting to *E.* *D.* makes default to the extent of $70,000. *A.*, *B.*, and *C.* have to pay each the full penalty of his bond.

CHAPTER VIII

OF BAILMENT.

'Bailment", "bailor", and "bailee" defined.

101. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor; of such goods, although they may not have been delivered by way of bailment.

Delivery to bailee how made.

102. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

103. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a*) *A.* lends a horse, which he knows to be vicious, to *B.* He does not disclose the fact that the horse is vicious. The horse runs away. *B.* is thrown and injured. *A.* is responsible to *B.* for damage sustained.

(*b*) *A.* hires a carriage of *B.* The carriage is unsafe, though *B.* is not aware of it, and *A.* is injured. *B.* is responsible to *A.* for the injury.

Care to be taken by bailee.

104. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed.

105. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed, if he has taken the amount of care of it described in section 104 of this Ordinance.

Termination of bailment by bailee's act inconsistent with conditions.

106. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A. lets to *B.*, for hire, a horse for his own riding. *B.* drives the horse in his carriage. This is, at the option of *A.*, a termination of the bailment.

Liability of bailee making unauthorised use of goods bailed.

107. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(*a*) *A.* lends a horse to *B.* for his own riding only. *B.* allows *C.*, a member of his family, to ride the horse. *C.* rides with care, but the horse accidentally falls and is injured. *B.* is liable to make compensation to *A.* for the injury done to the horse.

(*b*) *A.* hires a horse in Taiping from *B.* expressly to march to Kuala Kangsar. *A.* rides with due care, but marches to Parit Buntar instead. The horse accidentally falls and is injured. *A.* is liable to make compensation to *B.* for the injury to the horse.

Effect of mixture, with bailor's consent, of his goods with bailee's.

108. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, without bailor's consent, when the goods can be separated.

109. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration.

A. bails 100 bales of cotton marked with a particular mark to *B.* *B.*, without *A.*'s consent, mixes the 100 bales with other bales of his own, bearing a different mark: *A.* is entitled to have his 100 bales returned, and *B.* is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

110. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A. bails a barrel of Cape flour, worth $45, to *B.* *B.*, without *A.*'s consent, mixes the flour with country flour of his own, worth only $25 a barrel. *B.* must compensate *A.* for the loss of his flour.

Repayment by bailor of necessary expenses.

111. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

112. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed. on expiration of time or accomplishment of purpose.

113. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

114. If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

115. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

116. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A. leaves a cow in the custody of *B.* to be taken care of. The cow has a calf. *B.* is bound to deliver the calf as well as the cow to *A.*

Bailor's responsibility to bailee.

117. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailment by several joint owners.

118. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to bailor without title.

119. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Right of third person claiming goods bailed.

120. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods;

121. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

may sue for specific reward offered.

When finder of thing commonly on sale may sell it.

122. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(*a*) when the thing is in danger of perishing or of losing the greater part of its value; or

(*b*) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien.

123. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(*a*) *A.* delivers a rough diamond to *B.*, a jeweller, to be cut and polished, which is accordingly done. *B.* is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) *A.* gives cloth to *B.*, a tailor, to make into a coat. *B.* promises *A.* to deliver the coat as soon as it is finished, and to give a three months' credit for the price. *B.* is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, solicitors, and policy-brokers.

124. Bankers, factors, wharfingers, advocates and solicitors, and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

BAILMENTS OF PLEDGES.

"Pledge", "pawnor", and "pawnee" defined.

125. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Pawnee's right of retainer.

126. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.

127. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extra-ordinary expenses incurred.

128. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

129. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

130. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by possessor of goods, or of documentary title to goods.

131. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents:

Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

Pledge where pawnor has only a limited interest.

132. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS.

Suit by bailor or bailee against wrong-doer.

133. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

134. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER IX.

AGENCY.

APPOINTMENT AND AUTHORITY OF AGENTS.

"Agent" and "principal" defined.

135. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Who may employ agent.

136. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

137. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

138. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

139. The authority of an agent may be expressed or implied.

Definitions of express and implied authority.

140. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A. owns a shop in Kajang, living himself in Kuala Lumpur, and visiting the shop occasionally. The shop is managed by *B.*, and he is in the habit of ordering goods from *C.* in the name of *A.* for the purpose of the shop, and of paying for them out of *A.'s* funds with *A.'s* knowledge. *B.* has an implied authority from *A.* to order goods from *C.* in the name of *A.* for the purposes of the shop.

Extent of agent's authority.

141. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) *A.* is employed by *B.*, residing in London, to recover at Telok Anson a debt due to *B.* *A.* may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) *A.* constitutes *B.* his agent to carry on his business of a shipbuilder. *B.* may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

Agent's authority in an emergency.

142. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(*a*) An agent for sale may have goods repaired if it be necessary.

(*b*) *A.* consigns provisions to *B.* at Taiping, with directions to send them immediately to *C.* at Parit Buntar. *B.* may sell the provisions at Taiping, if they will not bear the journey to Parit Buntar without spoiling.

SUB-AGENTS.

When agent cannot delegate.

143. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent" defined.

144. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

145. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority.

146. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by agent to act in business of agency.

147. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(*a*) *A.* directs *B.*, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. *B.* names *C.*, an auctioneer, to conduct the sale. *C.* is not a sub-agent, but is *A.'s* agent for the conduct of the sale.

(*b*) *A.* authorises *B.*, a merchant in Taiping, to recover the moneys due to *A.* from *C.* & *Co.* *B.* instructs *D.*, a solicitor, to take legal proceedings against *C.* & *Co.* for the recovery of the money. *D.* is not a sub-agent, but is solicitor for *A.*

Agent's duty in naming such person.

148. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a*) *A.* instructs *B.*, a merchant, to buy a ship for him. *B.* employs a ship surveyor of good reputation to choose a ship for *A.* The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. *B.* is not, but the surveyor is, responsible to *A.*

(*b*) *A.* consigns goods to *B.*, a merchant, for sale. *B.*, in due course, employs an auctioneer in good credit to sell the goods of *A.*, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. *B.* is not responsible to *A.* for the proceeds.

RATIFICATION.

Right of person as to acts done for him without his authority. Effect of ratification.

149. Where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

150. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a*) *A.*, without authority, buys goods for *B.* Afterwards *B.* sells them to *C.* on his own account; *B.'s* conduct implies a ratification of the purchase made for him by *A.*

(*b*) *A.*, without *B.'s* authority, lends *B.'s* money to *C.* Afterwards *B.* accepts interest on the money from *C.* *B.'s* conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

151. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorised act forming part of a transaction.

152. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorised act cannot injure third person.

153. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a*) *A.*, not being authorised thereto by *B.*, demands on behalf of *B.*, the delivery of a chattel, the property of *B.*, from *C.*, who is in possession of it. This demand cannot be ratified by *B.*, so as to make *C.* liable for damages for his refusal to deliver.

(*b*) *A.* holds a lease from *B.*, terminable on three months' notice. *C.*, an unauthorised person, gives notice of termination to *A.* The notice cannot be ratified by *B.*, so as to be binding on *A.*

REVOCATION OF AUTHORITY.

Termination of agency.

154. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated or declared a bankrupt or an insolvent.

Termination of agency, where agent has an interest in subject-matter.

155. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(*a*) *A.* gives authority to *B.* to sell *A.*'s land, and to pay himself, out of the proceeds, the debts due to him from *A.* *A.* cannot revoke this authority, nor can it be terminated by his unsoundness of mind or death.

(*b*) *A.* consigns 1,000 bales of cotton to *B.*, who has made advances to him on such cotton, and desires *B.* to sell the cotton, and to repay himself out of the price the amount of his own advances. *A.* cannot revoke this authority nor is it terminated by his unsoundness of mind or death.

When principal may revoke agent's authority.

156. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised.

157. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a*) *A.* authorises *B.* to buy 1,000 bales of cotton on account of *A.*, and to pay for it out of *A.'s* money remaining in *B.'s* hands. *B.* buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. *A.* cannot revoke *B.'s* authority so far as regards payment for the cotton.

(*b*) *A.* authorises *B.* to buy 1,000 bales of cotton on account of *A.*, and to pay for it out of *A.'s* money remaining in *B.'s* hands. *B.* buys 1,000 bales of cotton in *A.'s* name, and so as not to render himself personally liable for the price. *A.* can revoke *B.'s* authority to pay for the cotton.

Compensation for revocation by principal or renunciation by agent.

158. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

159. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

160. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent, respectively.

Illustration.

A. empowers *B.* to let *A.'s* house. Afterwards *A.* lets it himself. This is an implied revocation of *B.'s* authority.

When termination of agent's authority takes effect as to agent, and as to third persons.

161. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a*) *A.* directs *B.* to sell goods for him, and agrees to give *B.* 5 per cent. commission on the price fetched by the goods. *A.* afterwards, by letter, revokes *B.'s* authority. *B.*, after the letter is sent, but before he receives it, sells the goods for $100. The sale is binding on *A.*, and *B.* is entitled to $5 as his commission.

(*b*) *A.*, at Port Dickson, by letter directs *B.* to sell for him some cotton lying in a warehouse in Klang, and afterwards, by letter, revokes his authority to sell, and directs *B.* to send the cotton to Port Dickson. *B.*, after receiving the second letter, enters into a contract with *C.*, who knows of the first letter, but not of the second, for the sale to him of the cotton. *C.* pays *B.* the money, with which *B.* absconds. *C.'s* payment is good as against *A.*

(*c*) *A.* directs *B.*, his agent, to pay certain money to *C.* *A.* dies, and *D.* takes out probate to his will. *B.*, after *A.'s* death, but before hearing of it, pays the money to *C.* The payment is good as against *D.*, the executor.

Agent's duty on termination of agency by principal's death or insanity.

162. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

163. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

AGENT'S DUTY TO PRINCIPAL.

Agent's duty in conducting principal's business.

164. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(*a*) *A.*, an agent engaged in carrying on for *B.* a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. *A.* must make good to *B.* the interest usually obtained by such investments.

(*b*) *B.*, a broker, in whose business it is not the custom to sell on credit, sells goods of *A.* on credit to *C.*, whose credit at the time was very high. *C.*, before payment, becomes insolvent. *B.* must make good the loss to *A.*

Skill and diligence required from agent.

165. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct

consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(*a*) *A.*, a merchant in Kuala Lumpur, has an agent, *B.*, in London, to whom a sum of money is paid on *A.'s* account, with orders to remit. *B.* retains the money for a considerable time. *A.*, in consequence of not receiving the money, becomes insolvent. *B.* is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e.g.*, by variation of rate of exchange—but not further.

(*b*) *A.*, an agent for the sale of goods, having authority to sell on credit, sells to *B.* on credit, without making the proper and usual enquiries as to the solvency of *B.* *B.*, at the time of such sale, is insolvent. *A.* must make compensation to his principal in respect of any loss thereby sustained.

(*c*) *A.*, an insurance-broker employed by *B.* to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. *A.* is bound to make good the loss to *B.*

(*d*) *A.*, a merchant in England, directs *B.*, his agent at Klang, who accepts the agency, to send him 100 bales of cotton by a certain ship. *B.*, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. *B.* is bound to make good to *A.* the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

166. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

167. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

168. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*) *A.* directs *B.* to sell *A.'s* estate. *B.* buys the estate for himself in the name of *C.* *A.*, on discovering that *B.* has bought the estate for himself, may repudiate the sale, if he can show that *B.* has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) *A.* directs *B.* to sell *A.*'s estate. *B.*, on looking over the estate before selling it, finds a mine on the estate which is unknown to *A.* *B.* informs *A.* that he wishes to buy the estate for himself, but conceals the discovery of the mine. *A.* allows *B.* to buy, in ignorance of the existence of the mine. *A.*, on discovering that *B.* knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

169. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A. directs *B.*, his agent, to buy a certain house for him. *B.* tells *A.* it cannot be bought, and buys the house for himself. *A.* may, on discovering that *B.* has bought the house, compel him to sell it to *A.* at the price he gave for it.

Agent's right of retainer out of sums received on principal's account.

170. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

171. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

172. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted.

173. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(*a*) *A.* employs *B.* to recover $100,000 from *C.*, and to lay it out on good security. *B.* recovers the $100,000 and lays out $90,000 on good security, but lays out $10,000 on security which he ought to have known to be bad, whereby *A.* loses

$2,000. *B.* is entitled to remuneration for recovering the $100,000 and for investing the $90,000. He is not entitled to any remuneration for investing the $10,000, and he must make good the $2,000 to *A*.

(*b*) *A.* employs *B.* to recover $1,000 from *C.* Through *B.*'s misconduct the money is not recovered. *B.* is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property.

174. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

PRINCIPAL'S DUTY TO AGENT.

Agent to be indemnified against consequences of lawful acts.

175. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(*a*) *B.*, at Klang, under instructions from *A.*, of Taiping, contracts with *C.* to deliver certain goods to him. *A.* does not send the goods to *B.*, and *C.* sues *B.* for breach of contract. *B.* informs *A.* of the suit, and *A.* authorises him to defend the suit. *B.* defends the suit, and is compelled to pay damages and costs, and incurs expenses. *A.* is liable to *B.* for such damages, costs, and expenses.

(*b*) *B.*, a broker at Taiping, by the orders of *A.*, a merchant there, contracts with *C.* for the purchase of 10 casks of oil for *A.* Afterwards *A.* refuses to receive the oil, and *C.* sues *B.* *B.* informs *A.*, who repudiates the contract altogether. *B.* defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. *A.* is liable to *B.* for such damages, costs, and expenses.

Agent to be indemnified against consequences of acts done in good faith.

176. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(*a*) *A.*, a decree-holder and entitled to execution of *B.*'s goods, requires the officer of the Court to seize certain goods, representing them to be the goods of *B.* The officer seizes the goods, and is sued by *C.*, the true owner of the goods. *A.* is liable to indemnify the officer for the sum which he is compelled to pay to *C.*, in consequence of obeying *A.*'s directions.

(*b*) *B.*, at the request of *A.*, sells goods in the possession of *A.*, but which *A.* had no right to dispose of. *B.* does not know this, and hands over the proceeds of the sale to *A.* Afterwards *C.*, the true owner of the goods, sues *B.* and recovers the value of the goods and costs. *A.* is liable to indemnify *B.* for what he has been compelled to pay to *C.* and for *B.*'s own expenses.

Non-liability of employer of agent to do a criminal act.

177. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(*a*) *A.* employs *B.* to beat *C.*, and agrees to indemnify him against all consequences of the act. *B.* thereupon beats *C.*, and has to pay damages to *C.* for so doing. *A.* is not liable to indemnify *B.* for those damages.

(*b*) *B.*, the proprietor of a newspaper, publishes, at *A.*'s request, a libel upon *C.* in the paper, and *A.* agrees to indemnify *B.* against the consequences of the publication, and all costs and damages of any action in respect thereof. *B.* is sued by *C.* and has to pay damages, and also incurs expenses. *A.* is not liable to *B.* upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

178. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A. employs *B.* as bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and *B.* is in consequence hurt. *A.* must make compensation to *B.*

EFFECT OF AGENCY ON CONTRACT WITH THIRD PERSONS.

Enforcement and consequences of agent's contracts.

179. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a*) *A.* buys goods from *B.*, knowing that he is an agent for their sale, but not knowing who is the principal. *B.*'s principal is the person entitled to claim from *A.* the price of the goods, and *A.* cannot, in a suit by the principal, set-off against that claim a debt due to himself from *B.*

(*b*) *A.*, being B.'s agent, with authority to receive money on his behalf, receives from *C.* a sum of money due to *B.* *C.* is discharged of his obligation to pay the sum in question to *B.*

Principal how far bound when agent exceeds authority.

180. When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A., being owner of a ship and cargo, authorises *B.* to procure an insurance for $4,000 on the ship. *B.* procures a policy for $4,000 on the ship, and another for the like sum on the cargo. *A.* is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

181. Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

Illustration.

A. authorises *B.* to buy 500 sheep for him. *B.* buys 500 sheep and 200 lambs for one sum of $6,000. *A.* may repudiate the whole transaction.

Consequences of notice given to agent.

182. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a*) *A.* is employed by *B.* to buy from *C.* certain goods, of which *C.* is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, *A.* learns that the goods really belonged to *D.*, but *B.* is ignorant of that fact. *B.* is not entitled to set-off a debt owing to him from *C.* against the price of the goods.

(*b*) *A.* is employed by *B.* to buy from *C.* goods of which *C.* is the apparent owner. *A.* was, before he was so employed, a servant of *C.*, and then learnt that the goods really belonged to *D.*, but *B.* is ignorant of that fact. In spite of the knowledge of his agent, *B.* may set-off against the price of the goods a debt owing to him from *C.*

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

183. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases—

Presumption of contract to contrary.

(*a*) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(*b*) where the agent does not disclose the name of his principal;

(*c*) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

184. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

185. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A., who owes $500 to *B.*, sells $1,000 worth of rice to *B.* *A.* is acting as agent for *C.* in the transaction, but *B.* has no knowledge nor reasonable ground of suspicion that such is the case. *C.* cannot compel *B.* to take the rice without allowing him to set-off *A.*'s debt.

Right of person dealing with agent personally liable.

186. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A. enters into a contract with *B.* to sell him 100 bales of cotton, and afterwards discovers that *B.* was acting as agent for *C.* *A.* may sue either *B.* or *C.*, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

187. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal, respectively.

Liability of pretended agent.

188. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent not entitled to performance.

189. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Liability of principal inducing belief that agent's unauthorised acts were authorised.

190. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligation if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a*) *A.* consigns goods to *B.* for sale, and gives him instructions not to sell under a fixed price. *C.*, being ignorant of *B.'s* instructions, enters into a contract with *B.* to buy the goods at a price lower than the reserved price. *A.* is bound by the contract.

(*b*) *A.* entrusts *B.* with negotiable instruments endorsed in blank. *B.* sells them to *C.* in violation of private orders from *A.* The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent.

191. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(*a*) *A.*, being *B.'s* agent for the sale of goods, induces *C.* to buy them by a misrepresentation, which he was not authorised by *B.* to make. The contract is voidable, as between *B.* and *C.*, at the option of *C.*

(*b*) *A.*, the captain of *B.'s* ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between *B.* and the pretended consignor.

CHAPTER X

OF PARTNERSHIP.

"Partnership" defined.

192. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

"Firm" defined.

Persons who have entered into partnership with one another are called collectively a "firm".

Illustrations.

(*a*) *A.* and *B.* buy 100 bales of cotton, which they agree to sell for their joint account; *A.* and *B.* are partners in respect of such cotton.

(*b*) *A.* and *B.* buy 100 bales of cotton, agreeing to share it between them. *A.* and *B.* are not partners.

(*c*) *A.* agrees with *B.*, a goldsmith, to buy and furnish gold to *B.*, to be worked up by him and sold, and that they shall share in the resulting profit or loss. *A.* and *B.* are partners.

(*d*) *A.* and *B.* agree to work together as carpenters, but that *A.* shall receive all profits and shall pay wages to *B.* *A.* and *B.* are not partners.

(*e*) *A.* and *B.* are joint owners of a ship. This circumstance does not make them partners.

Lender not a partner by advancing money for share of profits.

193. A loan to a person engaged, or about to engage, in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Property left in business by retiring partner, or deceased partner's representative.

194. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning of the last preceding section.

Servant or agent remunerated by share of profits not a partner.

195. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Widow or child of deceased partner receiving annuity out of profits not a partner.

196. No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Person receiving portion of profits for sale of good-will not a partner.

197. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Responsibility of person leading another to believe him a partner.

198. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Liability of person permitting himself to be represented as a partner.

199. Anyone consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

Minor partner not personally liable, but his share is.

200. A person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Liability of minor partner on attaining majority.

201. A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Partner's liability for debts of partnership.

202. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.

Partner's liability to third person for neglect or fraud of co-partner.

203. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's power to bind co-partners.

204. Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a*) *A.* and *B.* trade in partnership, *A.* residing in England, and *B.* in the Federation. *A.* draws a bill of exchange in the name of the firm. *B.* has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(*b*) *A.*, being one of a firm of solicitors, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(*c*) *A.* and *B.* carry on business in partnership as bankers. A sum of money is received by *A.* on behalf of the firm. *A.* does not inform *B.* of such receipt, and afterwards *A.* appropriates the money to his own use. The partnership is liable to make good the money.

(*d*) *A.* and *B.* are partners. *A.*, with the intention of cheating *B.*, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Annulment of contract defining partners' rights and obligations.

205. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all of them, which consent must either be expressed, or be implied from a uniform course of dealing.

Illustration.

A., *B.*, and *C.*, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, *A.* receiving one-half of the nett profits and the other half being divided equally between *B.* and *C.* All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partners' mutual relations, where no contract to contrary.

206. In the absence of any contract to the contrary the relations of partners to each other are determined by the following rules—

(*a*) all partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property.

The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss;

(*b*) all partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership;

(*c*) each partner has a right to take part in the management of the partnership business;

(*d*) each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business;

(*e*) when differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners;

(*f*) no person can introduce a new partner into a firm without the consent of all the partners;

(*g*) if, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members;

(*h*) unless the partnership has been entered into for a fixed term, any partner may retire from it at any time;

(*i*) where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court;

(*j*) partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

207. At the suit of a partner the Court may dissolve the partnership in the following cases—

(*a*) when a partner becomes of unsound mind;

(*b*) when a partner, other than the partner suing, has been adjudicated bankrupt under any law relating to bankruptcy;

(*c*) when a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person;

(*d*) when any partner becomes incapable of performing his part of the partnership contract;

(*e*) when a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners;

(*f*) when the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

208. A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

209. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

210. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

211. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a*) *A.*, *B.*, and *C.* are partners in trade. *C.*, without the knowledge of *A.* and *B.*, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. *A.* and *B.* are entitled to participate if they please, in the benefit of the lease.

(*b*) *A.*, *B.*, and *C.* carry on business together in partnership as merchants trading between Klang and London. *D.*, a merchant in London, to whom they make their consignments, secretly allows *C.* a share of the commission which he receives upon such consignments, in consideration of *C.*'s using his influence to obtain the consignments for him. *C.* is liable to account to the firm for the money so received by him.

Obligations, to firm, of partner carrying on competing business.

212. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Revocation of continuing guarantee by change in firm.

213. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

Non-liability of deceased partner's estate for subsequent obligations.

214. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.

Payment of partnership debts, and of separate debts.

215. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance of partners' rights and obligations after dissolution.

216. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

Notice of dissolution.

217. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.

Winding up by Court on dissolution or after termination.

218. Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts, and distribute the surplus according to the shares of the partners, respectively.

219. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto. Limited liability partnerships, incorporated partnerships, and joint-stock companies.

CHAPTER XI.

REPEAL.

220. The Ordinance and Enactment set out in the Schedule to this Ordinance are hereby repealed to the extent specified in the third column of such Schedule. Repeal.

SCHEDULE.

(Section 220.)

REPEAL.

No.	Title.	Extent of repeal.
F. of M. No. 9 of 1949	The Johore (Replacement of Laws) Ordinance, 1949	The words— "F.M.S. Cap. 52 ... Contract Enactment" in the Schedule.
F.M.S. Cap. 52	The Contract Enactment	The whole

Passed in the Legislative Council on the twentieth day of April, 1950.

H.R. Collins

Clerk of Council.

FEDERATION OF MALAYA.

No. 15 of 1950.

THE OFFICIAL SECRETS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Tuanku Abdul Rahman
..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lumley
..... *High ~~Commissioner~~.*

..... *Sultan of Selangor.*

6th May, 1950.

12th May, 1950.

An Ordinance to unify the law relating to the protection of official secrets.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Official Secrets Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"British Commonwealth of Nations" means the Commonwealth countries, the British Colonies, and any territory which is under His Majesty's protection or in respect of which a mandate or trusteeship is being exercised by His Majesty's Government in the United Kingdom or the Government of any Commonwealth country;

"contract made on behalf of His Majesty" includes any contract made by any Department of the Government of any part of the British Commonwealth of Nations, and in the event of war, of the Government of any ally of His Majesty in such war;

"document" includes part of a document;

"model" includes design, pattern, and specimen;

"munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank, or similar engine, arms and ammunition, bomb, torpedo, or mine, intended or adapted for use in war, and any other article, material or device, whether actual or proposed, intended for such use;

"offence against this Ordinance" includes any act, omission, or other thing which is punishable under this Ordinance;

"office under His Majesty" includes any office or employment in or under any department of the Government of any part of the British Commonwealth of Nations, and, in the event of war, of the Government of any ally of His Majesty in such war;

"officer of police" includes any person upon whom the powers of a police officer not below the rank of inspector are conferred by the High Commissioner under section 18 of this Ordinance;

"armed forces" shall be deemed to include all regular and local forces of His Majesty or of a Malay State or of the Federation which are present in the Federation;

"General Officer Commanding" means the officer for the time being commanding the troops of His Majesty in Malaya and the troops of the Government of the Federation;

"prohibited place" means—

(i) any work of defence, arsenal, naval, military or air-force establishment, barrack, camp or station, factory, dockyard, mine, minefield, ship or aircraft belonging to or occupied by or on behalf of any Government in the Federation or of His Majesty or any telegraph, telephone, wireless or signal station or office so belonging or occupied, and any place belonging to or occupied by or on behalf of such Government or of His Majesty and used for the purpose of building, repairing, making, proving, testing or storing any munitions of war, or any photographs, drawings, plans, models, or documents relating thereto, or for the purpose of getting or storing any metals, oil, mechanical transport spirit or aviation spirit or minerals of use in time of war;

(ii) any place not belonging to any Government in the Federation or to His Majesty where any munitions of war, oil, mechanical transport spirit, aviation spirit, fuel or supplies or any photographs, drawings, models, plans, or documents relating thereto, are being made, repaired, gotten, or stored under contract with, or with any person on behalf of such Government or of His Majesty, or otherwise on behalf of either of them;

(iii) any place belonging to or used for the purposes of any Government in the Federation or of His Majesty which is for the time being declared by order of the High Commissioner to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to a foreign power or to an enemy;

(iv) any railway, tramway, roadway, or channel or other means of communication by land or water (including any bridges, tunnels, piers, works or structures being part thereof, or connected or used therewith), or any beach, foreshore or the whole or any part of the territorial waters of any State or Settlement in the Federation, or any search-light, light-house, buoy or other navigational aid, or any public building, fire station, aerodrome or air station, or any signal telegraph or radio station, or any place used for gas, water, electricity or engineering works or other works for purposes of a public character or any place where any munitions of war or oil, mechanical transport spirit, aviation spirit, fuel or supplies or any photographs, drawings, models, plans or documents relating thereto are being made, repaired, or stored otherwise than on behalf of any Government in the Federation or of His Majesty, any of the aforesaid being a place which is for the time being declared by order of the High Commissioner to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to a foreign power or to an enemy;

(v) any area (being in the vicinity of any work of defence, arsenal, naval, military or air-force establishment or station, factory, dockyard, mine, mine-field, camp, ship or aircraft, belonging to or occupied by or on behalf of any Government in the Federation of His Majesty) which is declared by order of the High Commissioner to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or damage thereto, would be useful to a foreign power or to an enemy;

(vi) any area specified in any notice under section 3 of the Military Manœuvres Enactment of the Federated Malay States as extended

F.M.S. Cap. 43.

throughout the Malay States by the Military Manœuvres (Extension) Ordinance, 1947, or under section 4 of the Military Manœuvres Ordinance of the Straits Settlements, or any area declared by proclamation of the High Commissioner under section 9 of such Enactment or of such Ordinance of the Straits Settlements to be a manœuvring ground or a firing ground, which is declared by order of the High Commissioner to be a prohibited place for the purposes of this section; M.U. No. 40 of 1947. S.S. Cap. 103.

"photograph" includes a photographic or process negative and any printed or other pictorial representation or drawing produced in whole or part by photographic means;

"drawing" includes any plan, sketch, tracing, painting, print or other pictorial representation;

any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of any part of the British Commonwealth of Nations, whether the place is or is not actually vested in His Majesty;

expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the photograph, drawing, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or received; expressions referring to obtaining or retaining any photograph, drawing, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any photograph, drawing, plan, model, article, note, or document; and expressions referring to the communication of any photograph, drawing, plan, model, article, note or document include the transfer or transmission of the photograph, drawing, plan, model, article, note or document.

Spying an offence.

3. (1) If any person for any purpose prejudicial to the safety or interests of the British Commonwealth of Nations—

(*a*) approaches, inspects, passes over or is in the neighbourhood of, or enters any prohibited place within the meaning of this Ordinance; or

(*b*) makes any photograph, drawing, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or to an enemy; or

(*c*) obtains, collects, records, publishes or communicates to any other person any secret official code word, countersign or pass word, or any photograph, drawing, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or to an enemy;

he shall be guilty of an offence against this Ordinance.

(2) Any person who takes or makes any photograph, drawing, map, measurement, sounding or survey of or within a prohibited place, shall, unless he proves that the thing so taken or made is not prejudicial to the safety or interests of the British Commonwealth of Nations and is not intended to be directly or indirectly useful to a foreign power or to an enemy, be guilty of an offence against this Ordinance :

Provided that it shall not be an offence against this sub-section to take or make, outside a prohibited place (otherwise than from an aircraft) a photograph or drawing in which such place or part thereof is included, unless it is proved that the photograph or drawing is intended to be prejudicial to the safety or interests of the British Commonwealth of Nations or to be directly or indirectly useful to a foreign power or to an enemy :

Provided further that the taking or making of any photograph, drawing, map, measurement, sounding or survey in accordance with the terms and conditions in such permit as the competent authority sees fit to give shall not be an offence against this sub-section. It may be a term or condition of such permit that anything so taken or made must immediately be submitted to the competent authority for examination who, if satisfied that there is reasonable cause to believe that the thing so taken or made contains matter or information prejudicial to the safety or interests of the British Commonwealth of Nations and directly or indirectly useful to a foreign power or to an enemy, shall send it to the Chief Secretary, and the High Commissioner

may give such orders in respect of the thing as he is empowered to give under sub-section (6) of this section.

(3) For the purposes of sub-section (2) of this section—

(*a*) the competent authority for a prohibited place reserved for naval purposes shall be the Naval Officer in Charge of His Majesty's Naval Establishments, Singapore;

(*b*) the competent authority for a prohibited place reserved for military purposes shall be the General Officer Commanding;

(*c*) the competent authority for a prohibited place reserved for air force purposes shall be the Senior Royal Air Force Officer stationed in the Colony;

(*d*) the competent authority for a prohibited place which is not reserved for naval, military or air force purposes shall be the Commissioner of Police.

(4) Any person who makes or assists in making a declaration or statement false in any material respect for the purpose of obtaining a permit from a competent authority shall be guilty of an offence against this Ordinance and shall on conviction before a Sessions Court or the Court of a Magistrate of the First Class be liable to a fine not exceeding one thousand dollars.

(5) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the British Commonwealth of Nations, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, or from his having acted in contravention of section 6 of this Ordinance or in the manner mentioned in section 7 of this Ordinance it appears that his purpose was a purpose prejudicial to the safety or interests of the British Commonwealth of Nations; and if any photograph, drawing, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Ordinance, or anything in such a place, or any secret official code word, countersign or pass word is made, obtained, collected, recorded, published or communicated by

any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the British Commonwealth of Nations unless the contrary is proved.

(6) If any Court is satisfied that there is reasonable cause to believe that a photograph or drawing contains matter or information prejudicial to the safety or interests of the British Commonwealth of Nations and directly or indirectly useful to a foreign power or to an enemy, the Court may issue a search warrant to search for and seize such photograph or drawing even though an offence against this Ordinance is not alleged to have been committed.

The photograph or drawing, if seized under the search warrant or voluntarily produced by the person in whose possession it is, shall be sent by the Court to the Chief Secretary, and the High Commissioner may, if he considers that the photograph or drawing contains matter or information prejudicial to the safety or interests of the British Commonwealth of Nations and directly or indirectly useful to a foreign power or to an enemy, order the photograph or drawing to be forfeited, or order that any part of such photograph or drawing be obliterated, erased or removed.

Cameras prohibited except under permit.

4. (1) Any person who, within a prohibited place, has any apparatus for taking or making photographs in his possession without a permit in writing in that behalf signed by the competent authority shall be liable to a fine not exceeding one hundred dollars:

Provided that it shall not be an offence against this section for any person residing within any prohibited place to possess any such apparatus within such place without a permit.

(2) Any such apparatus in respect of which an offence has been or is suspected of having been committed may be seized by any person duly authorised in that behalf by the competent authority for such prohibited place, and any plate or film in or belonging to such apparatus may also be seized and may be subjected to such process of development as the competent authority may direct either generally or in any particular case.

(3) In this section "competent authority" means the competent authority for the purposes of sub-section (2) of section 3 of this Ordinance.

Wrongful communication, etc., of information.

5. If any person having in his possession or control any secret official code word, countersign or pass word, or any photograph, drawing, plan, model, article, note, document, or information which—

(*a*) relates to or is used in a prohibited place or anything in such a place; or

(*b*) relates to munitions of war; or

(*c*) has been made or obtained in contravention of this Ordinance; or

(*d*) has been entrusted in confidence to him by any person holding office under His Majesty; or

(*e*) he has obtained, or to which he has had access, owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of any Government in the Federation or of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract;

does any of the following, that is to say

(i) communicates directly or indirectly any such information or thing as aforesaid to any foreign power other than a foreign power to whom he is duly authorised to communicate it, or to any person other than a person to whom he is authorised to communicate it or to whom it is his duty to communicate it; or

(ii) uses any such information or thing as aforesaid for the benefit of any foreign power other than a foreign power for whose benefit he is authorised to use it, or in any manner prejudicial to the safety or interests of the British Commonwealth of Nations; or

(iii) retains in his possession or control any such thing as aforesaid when he has no right to retain it, or

when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof; or

(iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such information or thing as aforesaid; or

(v) receives any such information or thing as aforesaid, knowing or having reasonable ground to believe at the time when he received it that the information or thing is communicated to him in contravention of this Ordinance, unless he proves that the reception by him of the said information or thing was not directly or indirectly solicited by him;

that person shall be guilty of an offence against this Ordinance.

Unauthorised use of uniforms, falsification of reports, forgery, personation, and false documents.

6. (1) If any person gains or assists any other person to gain admission to a prohibited place otherwise than by an authorised point of entry or for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose prejudicial to the safety or interests of the British Commonwealth of Nations within the meaning of this Ordinance—

(*a*) uses or wears, without lawful authority, any naval, military, air-force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(*b*) makes use of any disguise or false name, or knowingly conceals his identity or nationality; or

(*c*) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(*d*) forges, alters, or tampers with any passport or any naval, military, air-force, police or official pass, permit, certificate, licence or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(*e*) personates, or falsely represents himself to be, a person holding or in the employment of a person holding office under His Majesty, or personates, or falsely represents himself to be or not to be, a person to whom an official document or secret official code word, countersign or pass word has been duly issued or communicated; or

(*f*) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, key, badge, device, seal or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military or air-force authority appointed by or acting under the authority of the Government of the Federation or of His Majesty, or any key, badge, device, die, seal or stamp so nearly resembling any such articles as aforesaid as to be calculated to deceive, or counterfeits any such articles as aforesaid, or uses, or has in his possession, or under his control, any such counterfeited articles as aforesaid;

he shall be guilty of an offence against this Ordinance.

(2) If any person—

(*a*) retains for any purpose prejudicial to the safety or interests of the British Commonwealth of Nations any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorised by such department with regard to the return or disposal thereof; or

(*b*) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word, countersign or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word, countersign or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a Chief Police Officer; or

(*c*) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such key, badge, device, die, seal or stamp as aforesaid; or

(*d*) with intent to obtain an official document, secret official code word, countersign or pass word, whether for himself or for any other person, knowingly makes any false statement;

he shall be guilty of an offence against this Ordinance.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the British Commonwealth of Nations, sub-section (5) of section 3 of this Ordinance shall apply in like manner as it applies to prosecutions under that section.

Communications with foreign agents to be evidence of commission of certain offences.

7. (1) In any proceedings against a person for an offence under section 3 of this Ordinance, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the Federation, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the British Commonwealth of Nations, obtained or attempted to obtain or to communicate information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision—

(*a*) a person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—

(i) he has, either within or without the Federation, visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either, within or without the Federation, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person;

(*b*) the expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the Federation, prejudicial to the safety or interests of the British Commonwealth of Nations, or who has or is reasonably suspected of having, either within or without the Federation, committed, or attempted to commit, such an act in the interests of a foreign power;

(*c*) any address, whether within or without the Federation, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

Interfering with police officers or members of the armed forces.

8. No person within or in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of the armed forces engaged on duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of an offence against this Ordinance.

Power to require the production of telegrams.

9. (1) Where it appears to the High Commissioner that such a course is expedient in the public interest, he may by warrant under his hand, require any person who owns or controls any telegraphic cable or wire or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the Federation, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the Federation by means of any such cable, wire or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so, or mutilates or destroys the same, shall be guilty of an offence against this Ordinance.

(3) In this section the expressions "telegram" and "wireless telegraphy" shall have the same meanings as in the Telegraphs Enactment of the Federated Malay States.

F.M.S. Cap. 163.

Duty of giving information as to commission of offences.

10. It shall be the duty of every person to give on demand to any police officer not below the rank of inspector, or to any officer of the armed forces on duty, or to any member of the armed forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence against this Ordinance, and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information, and, if any person fails to give any such information or to attend as aforesaid, he shall be guilty of an offence against this Ordinance.

Harbouring.

11. (1) If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence against this Ordinance, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any

such persons, wilfully omits or refuses to disclose to a police officer any information which it is in his power to give in relation to any such person, he shall be guilty of an offence against this Ordinance.

(2) In this section the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to commit an offence against this Ordinance.

Attempts, incitements, etc.

12. Any person who attempts to commit any offence against this Ordinance, or solicits or incites or endeavours to persuade, or conspires with another person to commit an offence, or aids or abets or does any act preparatory to the commission of an offence against this Ordinance, shall be guilty of an offence against this Ordinance, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Power to arrest.

13. (1) Any person who is found committing an offence against this Ordinance, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be arrested without a warrant.

(2) Without limiting the generality of sub-section (1) of this section any commissioned officer, warrant officer, petty officer, non-commissioned officer or leading rate of the armed forces and any police officer may, with or without a warrant or other process, apprehend or cause to be apprehended any person found, in a prohibited place or on lands or premises in the occupation of the armed forces, offending against this Ordinance or suspected of so offending, and shall forthwith bring or cause to be brought the person so apprehended before the Court of a Magistrate for the purpose of being dealt with according to law.

Restriction on prosecution.

14. (1) A prosecution for an offence against this Ordinance shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(2) When a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

Search warrants.

15. (1) A President of a Sessions Court or a Magistrate, if he is satisfied by information on affirmation that there is reasonable ground for suspecting that an offence against this Ordinance has been or is about to be committed, may grant a search warrant authorising any police officer named therein, or authorising if so requested any police officer accompanied by an officer deputed by the General Officer Commanding, to enter at any time any premises or place specified in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize and retain any photograph, drawing, plan, model, article, note or document or anything of a like nature or anything which is or may be evidence of an offence against this Ordinance having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence against this Ordinance has been or is about to be committed. The seal of a Court shall not be necessary to validate a warrant issued under this section.

(2) A President of a Sessions Court or Magistrate is authorised to administer an affirmation for the purposes of this section.

(3) The information shall, unless the warrant has been issued by a President of a Sessions Court or Magistrate under the seal of his Court, be returned without undue delay into the nearest Court of a Magistrate of the First Class having jurisdiction in the State in which it was issued.

(4) A search warrant issued under this section shall, if issued by a President of a Sessions Court or Magistrate under the seal of his Court, be returned into his Court, and in any other case shall be returned into the nearest Court of a Magistrate of the First Class having jurisdiction in the State in which it was issued.

(5) When it appears to an officer of police not below the rank of inspector that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may, by a written order under his hand, give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

Trial of offences.

16. (1) For the purposes of the trial of a person for an offence against this Ordinance, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in the Federation in which the offender may be found.

(2) In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a Court against any person for an offence against this Ordinance or the proceedings on appeal, or in the course of the trial of a person for an offence against this Ordinance, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the British Commonwealth of Nations, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(3) Where the person guilty of an offence against this Ordinance is a company or corporation, or a member or servant of a partnership or firm, acting in the course of the business of the partnership or firm, every director and officer of the company or corporation or every member of the partnership or firm (as the case may be) shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Punishment.

17. (1) A person who is guilty of an offence against this Ordinance by reason of sub-sections (1) or (2) of section 3 shall be liable to imprisonment of either description for a term not exceeding fourteen years, and shall also be liable to a fine not exceeding ten thousand dollars.

(2) A person who is guilty of an offence against this Ordinance by reason of section 5, 6, 8, 9, 10 or 11 shall be liable to imprisonment of either description for a term not exceeding two years, and shall also be liable to a fine not exceeding one thousand dollars.

High Commissioner may confer police powers on suitable person.

18. The High Commissioner may confer upon any person whom he deems fit and suitable the powers of a police officer not below the rank of inspector for the purposes of this Ordinance.

Powers under law relating to criminal procedure not restricted.

19. Nothing in this Ordinance shall be deemed to limit or restrict any powers conferred by any written law for the time being in force relating to criminal procedure.

Repeal.

20. The Ordinance and Enactments specified in the Schedule to this Ordinance are hereby repealed.

THE SCHEDULE.

(Section 20.)

REPEAL.

No.	Title.
S.S. Cap. 102	The Official Secrets Ordinance
F.M.S. Enactment No. 23 of 1939	The Official Secrets Enactment, 1939
Johore Enactment No. 73	The Official Secrets Enactment
Kedah Enactment No. 11 of 1358	The Official Secrets Enactment
Kelantan Enactment No. 11 of 1940	The Official Secrets Enactment, 1940
Perlis Enactment No. 7 of 1358	The Official Secrets Enactment, 1358
Trengganu Enactment No. 13 of 1358	The Official Secrets Enactment, 1358

Passed in the Legislative Council on the twentieth day of April, 1950.

H.R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 16 of 1950.

THE PRESUMPTION OF SURVIVORSHIP ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....6th.....May, 1950.

.....*High Commissioner.*

.....12th.....May, 1950.

An Ordinance to provide for a presumption of Survivorship in regard to Claims to Property.

[23rd May, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Presumption of Survivorship Ordinance, 1950.

Presumption of survivorship in regard to claim to property.

2. In all cases where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the Court) for all purposes affecting the title to property be presumed to have occurred in order of seniority and accordingly the younger shall be deemed to have survived the elder.

Passed in the Legislative Council on the twentieth day of April, 1950.

A.R. Ellis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 17 of 1950.

THE REVISED EDITION OF THE LAWS (ANNUAL SUPPLEMENTS) (AMENDMENT) (JOHORE) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

..... { *Yang di-Pertuan Besar of Negri Sembilan.*

..... *High Commissioner.*

.....*Sultan of Selangor.*

.....May, 1950.

.....May, 1950.

An Ordinance to amend the Revised Edition of the Laws (Annual Supplements) Enactment, 1936, of the State of Johore.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows:

Short title.

1. This Ordinance may be cited as the Revised Edition of the Laws (Annual Supplements) (Amendment) (Johore) Ordinance, 1950.

Amendment of section 3 of the Revised Edition of the Laws (Annual Supplements) Enactment, 1936, of the State of Johore.

2. The proviso to section 3 of the Revised Edition to the Laws (Annual Supplements) Enactment, 1936, of the State of Johore is hereby amended by—

(*a*) the deletion of the semi-colon appearing after the word "prepared" in the third line thereof and the substitution therefor of a full stop; and

(*b*) by the deletion of all the words appearing in such proviso after such word "prepared".

Passed in the Legislative Council on the twentieth day of April, 1950.

A. R. Collin

Clerk of Council.

FEDERATION OF MALAYA.

No. 18 of 1950.

THE LAND AND MINING PLANS AND DOCUMENTS (PHOTOGRAPHIC COPIES) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman. ..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lumley
..... *High Commissioner.*

..... *Sultan of Selangor.*

12th ..... May, 1950.

6th ..... May, 1950.

An Ordinance to provide for the validity of photographically produced plans and copies of plans and documents.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Land and Mining Plans and Documents (Photographic Copies) Ordinance, 1950.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"document" means an issue document of title, register document of title, Lease, Grant, Statutory Land Grant or any certificate of title registered, issued or made under or in accordance with or by virtue of the provisions of any written law specified in the Schedule to this Ordinance.

Photographically produced plans of, and copies of plans of, land to be sufficient compliance with law requiring plans or copies of plans to be drawn.

3. Where, under the provisions of any written law specified in the Schedule to this Ordinance, a plan or copy of a plan of any land is required to be drawn on, contained in or attached to any document, or any copy of any document is required to be made or submitted to any person, it shall be sufficient for the purposes of any such written law to attach to such document a photographically produced plan or copy of a plan of such land or to make or submit a photographically produced copy of such document, as the case may be :

Provided that—

(*a*) such photographically produced plan or copy of any plan or document is made by the Surveyor-General or by a person duly authorised in writing by him so to do; and

(*b*) such plan or copy is certified by the Surveyor-General or the person making the same to be a true and correct plan of such land or to be a true and accurate copy of the original plan or of the original document, as the case may be.

4. Every photographically produced plan of any land or copy of a plan or of a document duly made and certified in accordance with the provisions of section 3 of this Ordinance and attached to any document or submitted to any person as required by, and for the purpose of, any written law relating to land or mining in the Federation shall be admissible in evidence without further proof in all Courts of the Federation.

Photographic plans and copies to be admissible in evidence.

5. The High Commissioner in Council may from time to time by order published in the *Gazette* amend or add to the Schedule to this Ordinance.

Power of High Commissioner in Council to amend Schedule.

THE SCHEDULE.

(Section 3).

F.M.S. Enactment Cap. 138 ...	The Land Code.
F.M.S. Cap. 147	The Mining Enactment.
Johore Enactment No. 1 ...	The Land Enactment.
Johore Enactment No. 69 ...	The Mining Enactment.
Kedah Enactment No. 56 ...	Enactment No. 56 (Land).
Kedah Enactment No. 67 ...	Enactment No. 67 (Mining).
Kelantan Enactment No. 26 of 1938	The Land Enactment, 1938.
Kelantan Enactment No. 10 of 1939	The Mining Enactment, 1939.
Trengganu Enactment No. 3 of 1357	The Land Enactment.
Trengganu Enactment No. 51 of 1356	The Mining Enactment.
Perlis Enactment No. 11 of 1356	The Land Enactment, 1356.
Perlis Enactment No. 1 of 1340	The Mining Enactment, 1340.
S.S. Cap. 113	The Crown Lands Ordinance.
S.S. Cap. 125	The Malacca Lands Customary Rights Ordinance.
S.S. Cap. 126	The Mutations in Titles to Land Ordinance.
M.U. Ordinance No. 8 of 1948 ...	The Railway Ordinance, 1948.

Passed in the Legislative Council on the twentieth day of April, 1950.

H.R. Hollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 19 of 1950.

THE INDUSTRIAL REHABILITATION (FINANCE) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....May, 1950.

.....May, 1950.

An Ordinance to amend the Industrial Rehabilitation (Finance) Ordinance, 1947.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows:

Short title.

1. This Ordinance may be cited as the Industrial Rehabilitation (Finance) (Amendment) Ordinance, 1950.

Amendment of section 4 (1). M.U. No. 20 of 1947.

2. Sub-section (1) of section 4 of the Industrial Rehabilitation (Finance) Ordinance, 1947, is hereby amended by the deletion of the words "the Economic Adviser," which appear therein.

Passed in the Legislative Council on the twentieth day of April, 1950.

H.R. Sollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 20 of 1950.

THE LEGAL REPRESENTATION OF HIS MAJESTY'S FORCES ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman. ..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Sultan of Selangor.*

..... *High Commissioner.*

12th ..... May, 1950.

6th ..... May, 1950.

An Ordinance to provide for the legal representation of His Majesty's Forces in inferior Courts.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Legal Representation of His Majesty's Forces Ordinance, 1950.

Special provision for defence of members of His Majesty's Forces in inferior Courts.

2. Notwithstanding any provision of the Advocates and Solicitors Ordinance, or of any other written law, any member of His Majesty's Forces who is entitled to practise in the Supreme Court or High Court of any part of His Majesty's dominions or who is a solicitor of the Supreme Court of Judicature of England or Northern Ireland, or is a Writer to the Signet or a Solicitor in Scotland or a Solicitor admitted in any Dominion may appear and plead before any Sessions Court or Magistrate's Court in the Federation of Malaya on behalf of any member of His Majesty's Forces, in any criminal cause or matter, as if he were an advocate and solicitor of the Supreme Court of the Federation of Malaya duly admitted and enrolled and authorised to practise under the provisions of the Advocates and Solicitors Ordinance, 1947:

M.U. Ord. No. 4 of 1947.

Provided that no such member of His Majesty's Forces shall be entitled to claim, or shall receive any fee or reward for or in connection with any such appearance.

Certificate to practise.

3. A certificate purporting to be signed by or on behalf of any Flag Officer, General Officer or Air Officer in His Majesty's Forces certifying that any person is a member of His Majesty's Forces and is qualified in accordance with the provisions of section 2 of this Ordinance shall be sufficient evidence of the facts certified in such certificate.

Modification of Malayan Union Ordinance No. 4 of 1947.

4. The provisions of the Advocates and Solicitors Ordinance, 1947, shall be deemed to be modified and amended only so far as may be necessary to give effect to this Ordinance.

Passed in the Legislative Council on the twentieth day of April, 1950.

A.R. Collis

Clerk of Council.

FEDERATION OF MALAYA.

No. 21 of 1950.

THE LICENSING OF BICYCLES (STATE AND SETTLEMENT LEGISLATURES COMPETENCY) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

..... { *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Sultan of Selangor.*

..... *High Commissioner.*

.....May, 1950.

.....May, 1950.

An Ordinance to confer upon State and Settlement Legislatures authority to pass laws relating to the licensing of bicycles and to impose fees or taxes thereon.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Licensing of Bicycles (State and Settlement Legislatures Competency) Ordinance, 1950.

State and Settlement Legislatures authorised to pass laws providing for the registration, etc., of bicycles.

2. (1) It shall be within the competency of any Council of State or Settlement Council to pass laws providing for the registration and licensing of bicycles kept or habitually used within such State or Settlement and for the imposition and collection of fees in respect of such registration or licensing and for such other incidental and consequential matters in relation thereto as such Council of State or Settlement Council may deem necessary, and from time to time to amend or repeal any such law :

Provided that—

(*a*) no bicycle belonging to any Government in the Federation shall be required to be registered or licensed under any law passed by virtue of the provisions of this section; and

(*b*) no bicycle taxed or required to be registered or licensed upon payment of a fee under any other written law in force in such State or Settlement shall be required to be registered or licensed under any law passed by virtue of the provisions of this section, without the consent of the High Commissioner in Council,

(2) In this section the expression "bicycle" includes a pedal tricycle.

Saving.

3. Nothing in this Ordinance shall affect the rights and powers of the Federal Legislative Council to pass such laws as it may think fit relating to the licensing or registration of bicycles or to the imposition or collection of fees in respect thereof or to any other matter incidental or consequential thereto.

Passed in the Legislative Council on the twentieth day of April, 1950.

H. R. Hollin.

Clerk of Council.

FEDERATION OF MALAYA.

No. 22 of 1950.

THE MALAYAN ROYAL NAVAL VOLUNTEER RESERVE ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Tuanku Abdul Rahman ..... {*Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lunny .....
High Commissioner.

..... *Sultan of Selangor.*

12th May, 1950.

6th May, 1950.

An Ordinance to establish a Volunteer Force for the naval defence of Malaya.

[, *1950*.]

WHEREAS it is desirable that volunteers should be raised in the Federation for the service of His Majesty and of Their Highnesses the Rulers in the naval defence of Malaya:

AND WHEREAS it is necessary for efficiency that such volunteers together with such volunteers as may be raised in the Colony for the service of His Majesty in the naval defence of Malaya should be organised as a unified force under a single command;

AND WHEREAS it has been agreed between the Governments of the Federation and of the Colony, with the approval of Their Highnesses the Rulers, that such unified force should be known, both in the Federation and in the Colony, as the "Malayan Royal Naval Volunteer Reserve".

AND WHEREAS it is necessary to provide for the establishment by law of the Malayan Royal Naval Volunteer Reserve and for the raising and maintenance of a Division thereof in the Federation and for the command and discipline thereof and for other matters incidental thereto.

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Malayan Royal Naval Volunteer Reserve Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"Actual Service" means service of a member of the Force whilst called out under the provisions of section 20 of this Ordinance or called out under the corresponding provisions of any written law of the Colony relating to the Force;

"The Commanding Officer" means the person appointed under section 7 of this Ordinance to be in executive command of the Force;

"Commissioned Officer" means an officer of the Force appointed under a commission from the High Commissioner or, in the case of an Officer of the Singapore Division, from the Governor of the Colony;

"The Federation Division" means the Division of the Malayan Royal Naval Volunteer Reserve raised and maintained within the Federation under the provisions of section 3 of this Ordinance;

"The Force" means the Malayan Royal Naval Volunteer Reserve consisting of the Federation Division and of the Singapore Division;

"Rating" means a member of the Force below the rank of Warrant Officer;

"Senior Officer" means the officer appointed under section 7 of this Ordinance to be in command of the Federation Division;

"The Singapore Division" means such division of the Force as may be raised and maintained in the Colony under the provisions of any written law of the Colony relating to the Force corresponding to section 3 of this Ordinance;

"Unit" means a unit of the Federation Division constituted under section 4 of this Ordinance or a unit of the Singapore Division constituted under the corresponding provisions of any written law of the Colony relating to the Force;

"Warrant Officer" means an officer of the Force appointed under a warrant from the High Commissioner or, in the case of an officer of the Singapore Division, from the Governor of the Colony.

Constitution of the Federation Division of the Malayan Royal Naval Volunteer Reserve.

3. (1) There shall be raised and maintained, in conjunction with the Colony, a force of volunteers for the naval defence of Malaya to be known as the "Malayan Royal Naval Volunteer Reserve".

(2) One Division of such force, to be known as "the Federation Division of the Malayan Royal Naval Volunteer Reserve", shall be raised and maintained in the Federation and at the expense of the Federation, out of moneys provided by the Legislative Council.

(3) The High Commissioner in Council may provide for maintaining and using vessels of war or other vessels or equipment either in conjunction with the Colony or separately and may, from time to time, at his discretion and subject to such terms (if any) as may be agreed between the Government of the Federation and the Government of the Colony, place any such vessels or equipment at the disposal of the members of the Singapore Division for their use.

(4) In each year the expenditure proposed to be incurred upon the Federation Division shall be included in the total of the estimates of the expenditure proposed to be incurred upon local forces.

Constitution of units of the Federation Division.

4. The Federation Division shall consist of such units as the High Commissioner may from time to time direct.

Constitution of an Auxiliary Service and a Reserve of Officers.

5. The High Commissioner may constitute for the Federation—

(*a*) an Auxiliary Service, which may consist of officers and ratings who are members of the Federation Division, for administrative purposes and who do not necessarily attend instructional training for combatant service.

(*b*) A Reserve of Officers, which shall consist of—

(i) Officers of the Federation Division who, having completed not less than five years service with the Force and having expressed a desire to transfer to such Reserve, are so transferred;

(ii) Officers of the Federation Division who, having satisfied the Senior Officer that, by reason of previous training, they can perform efficiently the duties of officers and that, by reason of age or special circumstances, they are unable to join or continue in a unit constituted under section 4 of this Ordinance, have been appointed by the High Commissioner to the Reserve;

(iii) Officers of the Singapore Division, who are members of any Reserve of officers constituted under the corresponding provisions of any written law in the Colony relating to the force, and who have been transferred by the High Commissioner to the Reserve constituted under this section by agreement between the High Commissioner and the Governor of the Colony. Any officer so transferred shall thereupon be deemed for all purposes to be an officer of the Federation Division so long as he remains a member of such Reserve.

Officers of the Federation Division.

6. Officers of the Federation Division, other than officers transferred under the provisions of section 15 of this Ordinance, shall be appointed by the High Commissioner by Commission or by warrant and such Commission or warrant shall not be deemed to be vacated by the death or retirement of the High Commissioner by whom it was issued.

Command.

7. (1) The Federation Division shall be under the Orders and general direction of the Flag Officer, Malayan Area, of the Royal Navy.

Provided that—

(*a*) where a state of emergency has been declared to exist and all or any part of the Federation Division has been called out under section 20 of this Ordinance; or

(*b*) where the Federation Division or any part thereof, though not called out, is operating with the Royal Navy,

the Flag Officer, Malayan Area, may place the Federation Division or any part thereof so called out or operating under the temporary command of any officer of the Royal Navy.

(2) The High Commissioner and the Governor of the Colony, jointly, may appoint, by notification in the *Gazette* of the Federation and Colony respectively, a fit and proper person, who shall be an officer of the

Royal Navy or of the Federation Division or Singapore Division, to be Commanding Officer of the Force. Such Commanding Officer shall have executive command, for all matters of administration and training, over the Federation Division.

(3) The High Commissioner may appoint such person as he thinks fit to be Senior Officer of the Federation Division, who shall, subject to the authority of the Commanding Officer of the Force, and to the provisions of this section, have command over the Federation Division.

Persons eligible for enrolment.

8. (1) Every male person who is a British subject or a Federal citizen shall, subject to the provisions of this Ordinance and of any regulations made thereunder, be eligible for enrolment in the Federation Division.

Persons not eligible for enrolment.

(2) The following persons shall not be eligible for enrolment:

(*a*) persons serving as regular members of the Royal Navy, Army or Air Force;

(*b*) members of the Police Force of the Federation or of the Colony;

(*c*) persons under the age of seventeen years, or over the age of forty years, except as hereinafter provided;

(*d*) members of the Singapore Division or of any other local force or volunteer force of the Federation or of the Colony.

Period of service.

9. (1) Every rating of the Federation Division shall be enrolled for a period of not less than four years:

Provided always that with the sanction of the Senior Officer any male person who is eligible for enrolment and who is over the age of thirty-seven years may be enrolled for such term and upon such conditions as the High Commissioner may approve.

(2) The Senior Officer may from time to time upon the application of any person who is found to be medically fit, extend for any period not exceeding four years the period of enrolment of such applicant:

Provided that every such extension shall, in the absence of a sanction under sub-section (1) of this section, expire not later than the date at which the applicant will attain the age of forty years.

(3) Except when on Actual Service, any member of the Force shall be entitled to be discharged if he has given one month's notice in writing to the Senior Officer that he desires to be discharged :

Provided always that he shall have first returned his arms, uniforms and equipment in good condition to the Senior Officer or to the officer in command of his unit or to a person authorised by such Senior Officer or officer in command to receive them, and provided further that no charge under section 22 of this Ordinance is pending against him.

(4) Notwithstanding anything in this section contained, a member of the Federation Division shall not be exempted from trial or punishment for any offence under section 22 of this Ordinance.

Acceptance of general service.

10. Any person joining the Federation Division and any Commissioned Officer, Warrant Officer or rating in the Federation Division may give an undertaking in writing to accept general service in the Royal Navy in emergency. Such undertaking shall be irrevocable so long as the person giving it remains a member of the Federation Division or retains any rank in the Division.

High Commissioner may dismiss.

11. The High Commissioner may, with or without assigning any reason therefor, dismiss any member from the Federation Division.

Discharge of ratings.

12. The Senior Officer may discharge any rating of the Federation Division on the ground that he is not likely to become an efficient member of the Force.

Service required of members of the Federation Division.

13. (1) A member of the Federation Division shall undergo such training as may be prescribed by rules made under this Ordinance.

(2) Such rules may prescribe instruction, training and exercise on shore or on board any ship or vessel whether belonging to the Federation or not and whether within or without the limits of the Federation or the territorial waters thereof.

(3) A member of the Federation Division on actual service shall perform such services as he may be called upon to perform whether within or without the limits of the Federation or of the territorial waters thereof.

Exemption from service.

14. The Senior Officer may exempt any member of the Force from the whole or part of his period of service if he is satisfied that such member is efficient.

Change of Residence.

15. (1) Any member of the Federation Division who changes his permanent place of residence so as to be unable to continue to attend training in the unit of the Federation Division in which he is serving shall notify the officer in command of such unit of his change of address and the Senior Officer may thereupon transfer any such member from such unit to a unit of the Federation Division in the area in which such member has taken up his permanent address.

Transfer from Singapore to Federation Division.

(2) Any member of the Singapore Division who takes up residence within the Federation, may, with the consent of the Governor of the Colony, be transferred to, and shall thereupon become a member of the Federation Division, by order of the Senior Officer and, if an officer, he shall, on transfer, subject to the approval of the High Commissioner, have the same rank and seniority for the purposes of command and discipline, as he had in the Singapore Division, immediately before such transfer.

Occasions when members are under Naval discipline.

16. Every member of the Federation Division—

(*a*) when attached to or otherwise acting as part of or with the Royal Navy; or

(*b*) when on Actual Service in any place,

shall be subject to the provisions of the Naval Discipline Act and all other laws and customs for the time being in force for the government of His Majesty's ships, vessels and forces by sea to the same extent as if he were a member of the Royal Naval Reserve or Royal Naval Volunteer Reserve constituted under Statute of the Imperial Parliament.

Pay and allowances when on Actual Service.

17. All members of the Federation Division on Actual Service shall be entitled to such pay or allowances as may be prescribed by rules made by the High Commissioner in Council.

Relief to families of persons called out.

18. All members of the Federation Division on Actual Service shall, during the period of their absence on such service, be entitled to such relief for their wives and families as may be fixed by the High Commissioner in Council.

Provision for members disabled on service and widows and families of those killed on service.

19. All members of the Federation Division wounded or injured when on Actual Service or when called upon to aid the police in a Civil disturbance, and the widows and families of all such members killed or who die of wounds received during such service, or from illness directly attributable to such service, shall be entitled to such pensions or gratuities as may be fixed by the High Commissioner in Council.

Power to call out Force in an emergency.

20. (1) The High Commissioner may, when in his opinion a state of emergency exists, call out all or any part of the Force in the Federation.

(2) It shall be lawful for the High Commissioner in such a state of emergency to place any vessel of war maintained by the Federation or any other vessel or equipment used by the Federation Division and belonging to the Federation at the disposal of His Majesty for general service in the Royal Navy.

Obstructing the Force, and aiding or inducing member of Force to dereliction of duty.

21. Any person who—

(*a*) knowingly and wilfully obstructs any portion of the Force or any member thereof in the performance of any service or duty under this Ordinance or under any Rules or Regulations made under this Ordinance; or

(*b*) knowingly agrees with, or induces or attempts to induce any member of the Force to neglect or to act in conflict with his duty as a member of the Force; or

(*c*) who knowingly is a party to, or aids or abets, or incites to the commission of any act of indiscipline or any act whereby any lawful order given to any member of the Force or any law or regulation with which it is the duty of any member of the Force to comply, may be evaded or infringed; or

(*d*) without lawful authority wears the uniform or part of the uniform or any badge or emblem of the Force or of any Division of the Force or falsely represents himself as entitled to wear such uniform badge or emblem,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred dollars.

Offences by members of the Force.

22. (1) Any member of the Federation Division who, when he is not subject to the Naval Discipline Act—

(*a*) fails without just cause (the proof whereof shall lie upon him) to attend at any time or place lawfully appointed by proper authority for instruction, training or exercise; or

(*b*) when in uniform or on duty or undergoing instruction, training or exercise is drunk or is guilty of insubordinate conduct; or

(*c*) without proper authority and permission, gives, sells, pledges, lends or otherwise disposes of, or loses by neglect, or causes damage to any arms, ammunition, accoutrements, clothing, supplies or any other article or thing (whether similar to any of those specified or not) entrusted to or held by him or in his charge for the service of the Force, or fails to deliver up such property when so required by the Senior Officer or by the officer in command of his unit; or

(*d*) does any act to hazard or to cause any stranding, loss or any damage to any launch, boat, ship or other craft whatsoever used for any purpose of the Royal Navy or of the Force,

shall be guilty of an offence and shall be liable on conviction before the Senior Officer or before the officer in command of his unit to a fine not exceeding twenty-five dollars.

(2) Any person convicted of an offence against paragraph (*c*) or paragraph (*d*) of sub-section (1) shall in addition to any other punishment be liable to be ordered to pay by way of compensation a sum of money not exceeding one hundred dollars or the cost of replacement or repair of the article disposed of, lost, damaged or not delivered up, whichever is the less, and such sum shall be deemed to be a fine.

(3) The payment of any sum imposed by way of fine or compensation or both under this section shall, upon the application of the Senior Officer or of the Officer

in Command of the unit, be recovered and enforced by any Magistrate's Court having criminal jurisdiction in the place in which such fine is imposed or compensation ordered in the same manner as such Court could recover or enforce the payment of such fine or compensation under the law in force in such place if such fine or compensation had been imposed by such Court.

Violent behaviour on duty.

23. (1) When a member of the Federation Division is drunk or guilty of any violent or insubordinate behaviour whilst on duty or under instruction, the Senior Officer, Chief Petty Officer, Petty Officer, or Leading Rating present shall have power to arrest and confine him until the conclusion of such duty or instruction.

(2) "under instruction" for the purposes of this section means any occasion on which a member of the Division is present under orders whether in uniform or not.

Command and discipline of members of the Singapore Division in the Federation.

24. (1) Subject to the provisions of sub-section (2) of this section where any members of the Singapore Division, when not subject to the Naval Discipline Act, are serving in the Federation or the territorial waters thereof as a unit or body, they shall be under the orders of their own officers present with them, but subject to the control of the Senior Officer of the Force present and serving as an officer of the Force whether such Senior Officer be a member of the Federation Division or of the Singapore Division, and such members shall be subject to the same rules and as far as possible perform the same duties as when on service in the Colony or the territorial waters thereof:

Provided that any powers of punishment or of enforcing punishment conferred upon any officer of the Singapore Division by the provisions of any written law in force in the Colony relating to the Force and corresponding to section 22 of this Ordinance or to any rule made under this Ordinance shall, if such officer be absent from the Federation, be exercised by the Senior Officer of the Singapore Division present in the Federation.

(2) Where any member of the Singapore Division, when not subject to the Naval Discipline Act, are serving in the Federation or within the territorial waters of the Federation otherwise than as a body or unit or are serving in or attached to or otherwise acting as part of a body or unit of the Federation Division or on board any vessel belonging to the Federation, such members shall be deemed to be, for all purposes of Command and discipline, but subject to any rules made under this Ordinance, to be members of the Federation Division of equivalent rank and seniority to their rank and seniority in the Singapore Division and shall be subject to the provisions of this Ordinance and of any rules made thereunder accordingly.

(3) Subject to the provisions of this section, officers of the Singapore Division, when serving in the Federation or on Actual Service shall, for the purposes of Command and discipline, have, in relation to members of the Federation Division the same rank and seniority that they have in the Singapore Division under the provisions of any written law of the Colony relating to the Force:

Provided that, where members of the Federation Division, when not subject to the Naval Discipline Act, are serving in the Federation or in the territorial waters thereof or on board a vessel belonging to the Federation as a unit or body, they shall, subject to the provisions of sub-section (2) of this section, be under the orders of their own officers present with them but subject to the control of the Senior Officer of the Force present and serving as an officer of the Force whether he be a member of the Federation Division or of the Singapore Division.

Power to make Rules.

25. (1) The High Commissioner in Council may make Rules to carry out the purposes of this Ordinance relating to the Federation Division.

(2) In particular, and without prejudice to the generality of the foregoing power, such Rules may—

(*a*) prescribe the manner in which, and conditions subject to which, persons desiring to be enrolled may offer themselves under this Ordinance, and the form of declaration to be taken by such persons;

(*b*) the conditions of physical fitness required of members of the Federation Division and of persons applying for enrolment;

(*c*) define the manner in which and conditions under which members of the Federation Division may be called out or embodied;

(*d*) prescribe the training to be undergone by members of the Federation Division;

(*e*) prescribe the rate of pay and allowances for members of the Federation Division when called out under section 20 or when attached to or acting as part of or with the Royal Navy;

(*f*) prescribe the numerical establishment of units of the Federation Division and the grades, ranks and ratings therein;

(*g*) prescribe the attendances at courses of instruction and training of members of the Federation Division;

(*h*) prescribe the seniority of officers of the Federation Division and provide for the appointment to, promotion to, and tenure of, commissioned or warrant rank in the Division;

(*i*) provide for the seniority and rank for purposes of command and discipline in relation to members of the Federation Division of members of the Singapore Division deemed to be members of the Federation Division by virtue of subsection (2) of section 24 of this Ordinance;

(*j*) provide for the calling into Actual Service of the members of the Federation Division.

Flag Officer, Malayan Area, may make regulations.

26. The Flag Officer, Malayan Area may, with the approval of the High Commissioner and of the Governor of the Colony, make regulations consistent with this Ordinance and the Rules made thereunder providing generally for the equipment, general organisation and administration of the Force or, with the approval of the High Commissioner, of the Federation Division and in particular for—

(*a*) the issue and care of arms, accoutrements, ammunition, supplies, clothing and equipment for members of the Force or Division;

(*b*) returns, books, forms and correspondence relating to the Force or Division;

(*c*) the establishment and conduct of institutions for providing recreation and refreshment to members of the Force or Division;

(*d*) the training and inspection of the Force or Division;

(*e*) the embarkation of the Force or Division in His Majesty's ships or other suitable places for training, the establishment of training camps within or without the Federation and the holding of exercises of the Force or Division within or without the Federation or the territorial waters thereof.

Validity of regulations and orders made outside the Federation.

27. No regulation made and no order given or any other act or thing done by the Flag Officer Malayan Area or by the Commanding Officer under the provisions of this Ordinance or of any rules or regulations made thereunder shall be deemed to be invalid in the Federation by reason only that the same was not made, given or done within the Federation.

Exemption from certain civil liabilities.

28. All members of the Force if acting *bona fide* and in their official capacity shall be exempt from all written laws providing for the storage of explosives, gun-powder and other munitions of war in the same manner as the Regular Forces of His Majesty serving in the Federation and such articles, including firearms may be sent for the use of the Force or any part of it from one State or Settlement to another or from or to the Colony to or from the Federation without any notification to the Police or any licence or permit required by any written law.

Sea Cadet Corps.

29. (1) The High Commissioner may accept the service, but without enrolment as members of the Force, of youths between the ages of fourteen years and eighteen years, who are British subjects or Federal Citizens and whom he may deem qualified as cadets to be formed into a Sea Cadet Corps.

(2) Such Corps may, at the discretion of the Senior Officer, be constituted into units and may, with the concurrence of the High Commissioner, be attached to any unit of the Federation Division.

(3) No member of such Corps shall be called upon to serve outside the limits of the Federation or of the territorial waters thereof.

(4) The officers of such Sea Cadet Corps shall be commissioned by the High Commissioner and such commission shall not be vacated by the death or retirement from office of the High Commissioner by whom the same was issued.

(5) Such Sea Cadet Corps shall be under the command of the Senior Officer who may, with the approval of the High Commissioner, make regulations for the general government, management and discipline of such Sea Cadet Corps or any unit thereof and the conditions on which such Corps or unit may be disbanded or the services of any members thereof be dispensed with.

(6) For the purpose of advising the Senior Officer in the exercise of the powers conferred upon him by sub-section (5) of this section, the High Commissioner may appoint an Advisory Council consisting of eight members, one of whom shall be the Director of Education, Malaya, but the Senior Officer shall not be bound to accept any advice tendered to him by such Council.

(7) Unless expressly provided to the contrary by any regulations made under sub-section (5) of this section, nothing in this Ordinance relating to matters of command or discipline, other than this section, shall apply to such Corps or to any member thereof, other than a commissioned officer thereof.

30. The Royal Naval Volunteer Reserve Ordinance of the Straits Settlements is hereby repealed. S.S. Ord. Cap. 100.

Passed in the Legislative Council on the twentieth day of April, 1950.

H. R. Hollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 23 of 1950.

THE PILOTS ENACTMENT (APPLICATION TO TRENGGANU) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman ..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lunny
..... *High Commissioner.*

..... *Sultan of Selangor.*

12th
.....May, 1950.

6th
.....May, 1950.

An Ordinance to extend the application of the Pilots Enactment of the Federated Malay States to the State of Trengganu.

[, *1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows:

Short title and commencement.

1. This Ordinance may be cited as the Pilots Enactment (Application to Trengganu) Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Application of the Pilots Enactment of the Federated Malay States to Trengganu. F.M.S. Cap. 172.

2. From and after the commencement of this Ordinance, the Pilots Enactment of the Federated Malay States shall apply and have effect in the State of Trengganu.

Passed in the Legislative Council on the twentieth day of April, 1950.

H.R. Hollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 24 of 1950.

THE WAR DAMAGE (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....6th.....May, 1950.

.....*High Commissioner.*

.....12th.....May, 1950.

An Ordinance to amend the War Damage Ordinance, 1949.

[*1st January, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

1. This Ordinance may be cited as the War Damage (Amendment) Ordinance, 1950, and shall be deemed to have come into force on the 1st day of January, 1950.

Amendment of section 13 (1). F. of M. No. 73 of 1949.

2. Sub-section (1) of section 13 of the War Damage Ordinance, 1949, is hereby amended by deleting the word "three" occurring in the thirteenth line thereof and substituting therefor the word "six".

Passed in the Legislative Council on the twentieth day of April, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 25 of 1950.

THE AERODROMES (CONTROL OF OBSTRUCTIONS) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Tuanku Abdul Rahman .....
Yang di-Pertuan Besar of Negri Sembilan.

Henry Gurney .....
High Commissioner.

.....*Sultan of Selangor.*

12th .....May, 1950.

6th .....May, 1950.

An Ordinance to ensure the safety of aircraft in flight in the vicinity of Aerodromes by controlling or removing obstructions on land in such vicinity.

[23rd *May, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Aerodromes (Control of Obstructions) Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"aerodrome" means any land or water which the High Commissioner in Council may, by notice in the *Gazette*, declare to be an aerodrome for the purposes of this Ordinance and includes any land or water situated within the Colony and belonging to or under the control of His Majesty or of the Government of the Colony or of any of His Majesty's Air Forces and used or intended to be used for the landing and departure of aircraft;

"controlled area" means any area which is declared to be a controlled area under section 3 of this Ordinance;

"erection" of a structure includes an addition or alteration to any existing structure.

"order" means an order made under section 4 of this Ordinance;

"structure" includes any house, warehouse, office, shop, school and any other building whether permanent or temporary and whether used for the purpose of human habitation or otherwise and also any wall, fence, platform, staging, gatepost, pillar, paling, frame, hoarding, bridge, cable, wire or any other artificial obstruction raised above ground level;

Power to proclaim an area a controlled area.

3. Whenever it appears to the High Commissioner in Council that it is or is likely to become necessary for the safety of air navigation in the vicinity of an aerodrome that any area should be cleared or kept clear of obstructions, the High Commissioner in Council may, in the case of an area situate in a Malay State, in conjunction with the Ruler in Council of such State, and, in the case of an area situate in a Settlement, after consultation with the Nominated Council of such Settlement, by proclamation published

in the *Gazette*, declare such area to be a controlled area for the purposes of this Ordinance and define the boundaries thereof.

Power to prohibit or regulate erection of structures and planting trees in controlled area.

4. The High Commissioner in Council may in the case of an area situate in a Malay State, in conjunction with the Ruler in Council of such State, and, in the case of an area situate in a Settlement, after consultation with the Nominated Council of such Settlement, at any time by order published in the *Gazette* prohibit absolutely or conditionally or regulate the erection of any structure above a height specified in such order, or the planting of any tree or other high growing vegetation, within a controlled area or any part of such area.

Notice to remove or alter structure, trees and other vegetation in controlled area.

5. (1) The High Commissioner, or any officer authorised by the High Commissioner in that behalf, may, by notice in writing, require the owner or occupier of any land subject to any order within such time, not being less than one month from the date of the service of such notice upon the person concerned, as may be fixed by such notice—

(*a*) to remove or reduce in height any structure on such land, which is above the height specified in such order, whether such structure was erected before or after the making of such order, or any tree or other high growing vegetation, either planted in contravention of such order, or likely, in the opinion of the High Commissioner, to cause an obstruction to aircraft;

(*b*) to take such steps in regard to, or to effect such alterations to, any structure, tree or other vegetation on any land within a controlled area, or any part of such area, as may be necessary to comply with any conditions imposed by any order applicable to such structure, tree or vegetation or, in the case of any structure erected or tree or vegetation existing before the making of such order, which would have been applicable to such structure, tree or other vegetation if it had been erected or planted after the making of such order.

(2) If default shall be made in complying with the provisions of such notice within the time fixed by such notice, any officer authorised by the High Commissioner either generally or specially in that behalf,

may enter upon such land and cause such action to be taken as is required by such notice and may recover the cost of and all expenses incurred in doing any necessary work from the person in default.

Power of entry on land.

6. Any officer authorised in that behalf by the High Commissioner and any person employed in that behalf under the supervision of such officer may, from time to time enter upon, survey and take levels of any controlled area and may do all other acts necessary for such survey and for the purpose of marking out the boundaries of such area or any part thereof :

Provided that no such officer or person shall enter into any building or enclosed garden or compound attached to any building, without the consent of the occupier, unless he shall have previously given such occupier at least three clear days' notice in writing of his intention to do so.

Restriction on claims for damages and compensation.

7. No damages or compensation in respect of any order made or act done under the provisions of this Ordinance shall be recoverable otherwise than in accordance with the provisions of this Ordinance.

Damage caused by reduction or removal of structure or valuable tree or plant.

8. When any structure or valuable tree or plant is reduced in height or removed or any expense is reasonably incurred in compliance with any order or the conditions of any order, the owner or occupier of the land shall, unless such structure was erected or such tree or plant was planted in contravention of any order or of the conditions imposed thereby, receive compensation to the extent to which he has suffered damage by reason of such reduction or removal or has incurred such expense.

Damage caused by entry on land under section 6.

9. Where any damage is done to property in the exercise or purported exercise of any power conferred by section 6 of this Ordinance, the owner or occupier shall receive compensation to the extent to which he has suffered damage thereby.

Compensation for loss of value of land.

10. Where any land in a controlled area is affected by any order made under section 4 of this Ordinance prohibiting or regulating the erection of any structure or the planting of any tree or vegetation, the owner or occupier thereof shall be entitled to compensation to the extent (if any) that the value of his land or his interest in such land is shown to have been, by reason of the provisions of such order, depreciated in relation to the current ordinary market value of neighbouring land not included in such order.

Notice of claim to compensation.

11. (1) No person shall be entitled to compensation under this Ordinance unless he shall have given notice of his claim in the prescribed form to the Collector appointed for the District in which such land is situate—

(*a*) in the case of a claim to compensation under section 8 or 9 of this Ordinance, within three months of the date on which the act causing damage was committed;

(*b*) in the case of a claim to compensation under section 10 of this Ordinance within six months of the date of the making of the order.

(2) The High Commissioner may, if he shall think fit, extend the time for giving notice of any claim.

(3) Collector, as regards the States of Negri Sembilan, Pahang, Perak, and Selangor means a Collector of Land Revenue as defined in the Land Code; and as regards the State of Johore means a Collector as defined in the Land Enactment of that State; and as regards the State of Trengganu means a Collector of Land Revenue under the Land Enactment of that State; and as regards the State of Kedah means a Land Officer and also a Settlement Officer appointed under Kedah Enactment No. 56 (Land); and as regards the State of Perlis means a Commissioner or a Land Officer appointed under the Land Enactment, 1356, of that State; and as regards the State of Kelantan means a District Officer appointed under the Land Enactment of that State; and as regards a Settlement means a Collector of Land Revenue appointed for the purposes of the Land Revenue Collection Ordinance, 1940, of the Straits Settlements, or for the purposes of the Malacca Lands Customary Rights Ordinance of the Straits Settlements.

F.M.S. Cap. 138.

Johore No. 1.

Trengganu No. 3 of 1357.

Kedah No. 56.

Perlis No. 11 of 1356.

Kelantan No. 26 of of 1938.

S.S. No. 47 of 1940.

S.S. Cap. 125.

Determination of compensation.

12. (1) The amount of any compensation which may become payable under the provisions of this Ordinance shall be determined by agreement and in the absence of such agreement by a Compensation Tribunal appointed by the High Commissioner for the purpose in respect of the controlled area.

(2) Every such Compensation Tribunal shall consist of a Chairman who shall be a Judge of the Supreme Court and such other persons as the High Commissioner may think fit.

(3) The award of such Compensation Tribunal shall be final.

Service of notices.

13. Service of any notice under section 5 or 6 of this Ordinance may be effected in the same manner as service of a notice may be effected under the provisions of the Land Code or Land Enactment in force in the State, or of the Land Revenue Collection Ordinance in force in the Settlement, in which such land is situate.

Modification of conditions of alienation and rent in respect of land affected by an order or notice under this Ordinance.

14. Where by reason of any Order or Notice made or issued under section 4 or 5 of this Ordinance it is or becomes impossible for the owner of any land affected thereby to comply with any express or implied condition imposed upon the alienation of such land under or by virtue of the provisions of the Land Code or Land Enactment in force in the State in which such land is situate, the Ruler in Council of such State may, notwithstanding any other law to the contrary, upon the application of such owner, suspend, amend, or waive the performance or fulfilment of such condition, and reserve a reduced rent in respect of such land, so long as any order made under section 4 of this Ordinance affecting such land remains in force.

Power to make rules.

15. The High Commissioner in Council may make Rules for the purpose of prescribing anything required to be prescribed under this Ordinance and for regulating the procedure of Compensation Tribunals and generally for the purpose of carrying this Ordinance into effect.

Offences and penalties.

16. Any person who does any act in contravention of or fails without reasonable excuse to comply with the terms of any order or notice made or issued under section 4 or 5 of this Ordinance or who obstructs any person in the performance of his duties under this Ordinance shall be guilty of an offence and liable to a fine not exceeding one thousand dollars or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Passed in the Legislative Council on the twentieth day of April, 1950.

K.R. Collin

Clerk of Council.

FEDERATION OF MALAYA.

No. 26 of 1950.

THE TRADE MARKS ORDINANCE, 1950.

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FEDERATION OF MALAYA.

No. 26 of 1950.

THE TRADE MARKS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....Abdul Rahman..... | *Yang di-Pertuan Besar of Negri Sembilan.*

.....Henry Lemmy.....
High ~~Commissioner~~.

.....Sultan of Selangor.

30th June, 1950.

.....June, 1950.

30th June, 1950.

An Ordinance to provide for the Registration of Trade Marks and to control the use thereof.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

PART I.

PRELIMINARY.

Short title and commencement.

1. This Ordinance may be cited as the Trade Marks Ordinance, 1950, and shall, subject to the provisions of section 16 of this Ordinance, come into force on such date as the High Commissioner may by notification in the *Gazette* appoint.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires—

"assignment" means assignment by act of the parties concerned;

"Court" means the High Court;

"limitations" means any limitations of the exclusive right to the use of a trade mark given by the registration of a person as proprietor thereof, including limitations of that right as to mode of use, as to use in relation to goods to be sold, or otherwise traded in, in any place within the Federation, or as to use in relation to goods to be exported to any market outside the Federation;

"mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof;

"permitted use" has the meaning assigned to it by sub-section (1) of section 38 of this Ordinance;

"prescribed" means, in relation to proceedings before the Court or preliminary thereto or connected therewith, prescribed by rules of Court made under the Rule Committee Ordinance, 1948, and in other cases, prescribed by this Ordinance or in any rules thereunder;

F. of M. No. 35 of 1948.

"registrable trade mark" means a trade mark which is capable of registration under the provisions of this Ordinance;

"Register" means the Register of Trade Marks kept under the provisions of this Ordinance;

"registered trade mark" means a trade mark which is actually upon the Register;

"registered user" means a person who is for the time being registered as such under section 38 of this Ordinance;

"the Registrar" means the Registrar of Trade Marks appointed under section 3 of this Ordinance;

"trade mark" means, except in relation to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section 75 of this Ordinance;

"transmission" means transmission by operation of law, devolution on the personal representatives of a deceased person, and any other mode of transfer not being assignment.

(2) References in this Ordinance to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references therein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in physical or other relation to, goods.

Appointment of Registrar.

3. (1) The High Commissioner may appoint a fit and proper person to be the Registrar of Trade Marks under and for the purposes of this Ordinance.

(2) The Registrar shall have a seal of such device as may be approved by the High Commissioner.

(3) Impressions of such seal shall be judicially noticed and admitted in evidence.

(4) Any act or thing directed to be done by or to the Registrar may be done by or to any officer authorised by the High Commmissioner.

REGISTER OF TRADE MARKS.

Register of Trade Marks.

4. The Registrar shall for the purposes of this Ordinance keep a record called the "Register of Trade Marks" wherein shall be entered all registered trade marks, with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of all registered users, disclaimers, conditions, limitations, and such other matters, relating to such trade marks, as may from time to time be prescribed.

Division of Register.

5. The Register shall be divided into two parts to be called respectively "Part A" and "Part B".

Trust not to be entered in Register.

6. There shall not be entered in the Register any notice of any trust expressed, implied or constructive, nor shall any such notice be receivable by the Registrar.

Inspection of and extract from Register.

7. The Register shall at all convenient times be open to the inspection of the public, subject to such rules as may be prescribed, and certified copies sealed with the seal of the Registrar of any entry in any such Register shall be given to any person requiring the same on payment of the prescribed fee.

PART II.

REGISTRATION OF SINGAPORE TRADE MARKS.

Proprietor of trade mark registered in Singapore may apply within twelve months for local registration. S.S. No. 38 of 1938.

8. (1) Any person being the registered proprietor, at the date of the commencement of this Ordinance, of a trade mark in the Colony by virtue of an entry made under the provisions of Part II of the Trade Marks Ordinance, 1938, or of Part III of such Ordinance, in the Register of Trade Marks kept under such Ordinance, or any person deriving his right from such registered proprietor by assignment, transmission or other operation of law, may apply within six months from the commencement of this Ordinance to have such trade mark registered in the Federation in respect of some or all of the goods comprised in the Colony registration:

Provided that where an application is made in respect of a trade mark which is registered in the Colony by virtue of an entry made under the provisions of Part III of the Trade Marks Ordinance, 1938, such trade mark shall not be registered under this section unless it is proved to the satisfaction of the Registrar that it has been used in the Federation by the applicant for a period of not less than two years immediately preceding the date of his application.

(2) The High Commissioner in Council may from time to time by notification in the *Gazette* extend the period within which applications under sub-section (1) of this section may be made.

Application for registration.

9. An application for registration of a trade mark under this Part shall be made to the Registrar and accompanied by four representations of the trade mark and full particulars of the registration of the trade mark in the Colony.

Registration in local Register.

10. Upon such application being lodged, together with the documents mentioned in section 9 of this Ordinance, the Registrar shall, if satisfied that the trade mark and particulars agree in all respects with those registered in the Register of Trade Marks kept in the Colony, register such trade mark in Part A or Part B of the Register according as the trade mark has been registered in Part A or in Part B in the Register of Trade Marks kept in the Colony.

Privileges and rights conferred.

11. Privileges and rights granted under this Ordinance by virtue of such registration shall date from the date of registration in the Colony:

Provided, however, that no action for infringement of the trade mark shall be entertained in respect of any use of the trade mark prior to the date of lodging the application for registration in the Federation.

Proceedings by aggrieved person to remove trade mark from Register.

12. (1) Any person aggrieved by the registration of a trade mark under the provisions of this Part may, within six months from the expiry of the period within which applications under section 8 of this Ordinance may be made, apply to the Registrar for the removal of such trade mark from the Register on the grounds that there had been no *bonâ fide* use of such trade mark by the registered proprietor in the Federation during the two years immediately preceding such registration and that such trade mark is identical or nearly identical with one which has for not less than two years been *bonâ fide* used in the Federation by such aggrieved person upon or in connexion with the same goods or description of goods.

(2) An appeal shall lie from any decision of the Registrar to the Court.

Procedure before the Court.

13. Every appeal to the Court under this Part shall be made in such manner as may be prescribed and the Court shall have the power to make any order which may be necessary to enable substantial justice to be done.

Limitation of time for receiving application.

14. No application for registration under this Part shall be receivable after the expiry of the period within which applications under section 8 of this Ordinance may be made.

Trade marks registered under this Part to be deemed to have been registered under Part III.

15. Upon the expiry of the period within which applications under section 8 of this Ordinance may be made all trade marks entered in the Register under the provisions of this Part shall, subject to anything which may be done under sections 12 and 13 of this Part, be deemed, for all purposes, to be trade marks registered under Part III of this Ordinance.

PART III.

REGISTRATION OF LOCAL TRADE MARKS.

Commencement of this Part.

16. This Part shall come into operation upon the expiry of the period within which applications under section 8 of this Ordinance may be made.

REGISTRABLE TRADE MARKS.

Particular goods.

17. (1) A trade mark may only be registered in respect of particular goods or classes of goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar, whose decision shall be final.

Trade marks registrable in Part A.

18. (1) A trade mark (other than a certification trade mark), to be registrable in Part A of the Register, must contain or consist of at least one of the following essential particulars—

(*a*) the name of a company, individual, or firm, represented in a special or particular manner;

(*b*) the signature of the applicant for the registration or some predecessor in his business;

(*c*) an invented word or invented words;

(*d*) a word or words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname;

(*e*) any other distinctive mark: Provided that a name, signature, or word or words, other than such as fall within the description in the above paragraphs (*a*), (*b*), (*c*) and (*d*), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness.

(2) For the purposes of this section "distinctive" means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid the Registrar or the Court may have regard to the extent to which—

(*a*) the trade mark is inherently adapted to distinguish as aforesaid; and

(*b*) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid:

Provided always that any mark which has been registered as a distinctive mark in Part A of the Register of Trade Marks kept in the United Kingdom under the Trade Marks Act, 1938, or in the Colony under the Trade Marks Ordinance, 1938, of the Colony, shall be deemed to be a distinctive mark for the purposes of this Ordinance.

1 & 2 Geo. 6, c. 22.
S.S. No. 38 of 1938.

REGISTRATION OF TRADE MARKS.

Application for registration.

19. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering the same in Part A must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Ordinance, the Registrar may refuse the application or may accept it absolutely or subject to conditions, amendments or modifications, or to such limitations, if any, as he may think right to impose.

(3) In the case of such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the material used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments or modifications, if any, or to what limitations, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those so stated as aforesaid by him, except by leave of the Court. Where any further grounds of

objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice in the prescribed manner.

(6) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

(7) An application for the registration of a trade mark in respect of any goods shall not be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark—

(*a*) if the Registrar is satisfied that a body corporate is about to be constituted and that the applicant intends to assign the trade mark to the corporation with a view to the use thereof in relation to those goods by the corporation; or

(*b*) if the application is accompanied by an application for the registration of a person as a registered user of the trade mark, and the Registrar is satisfied that the proprietor intends it to be used by that person in relation to those goods and the Registrar is also satisfied that that person will be registered as a registered user thereof immediately after registration of the trade mark.

(8) The Registrar may, as a condition of the exercise of the power conferred by sub-section (7) of this section in favour of the applicant who relies on intention to assign to a corporation as aforesaid, require him to give security for the costs of any proceedings before him relative to any opposition, and in default of such security being duly given may treat the application as abandoned.

(9) Where a trade mark is registered in respect of any goods under the power conferred by sub-section (7) of this section in the name of an applicant who relies on intention to assign to a corporation as aforesaid, then, unless within a period of six months the corporation has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

Registration of trade marks in Part B.

20. (1) Where any trade mark has for not less than two years been *bonâ fide* used in the Federation or the Colony upon or in connection with any goods (whether for sale in the Federation or the Colony or exportation abroad), for the purpose of indicating that they are goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale, or where any mark has been registered in Part B of the Register of Trade Marks kept in the United Kingdom under the Trade Marks Act, 1938, or in the Colony under the Trade Marks Ordinance, 1938, of the Colony, the person claiming to be the proprietor of the mark may apply in writing to the Registrar in the prescribed manner to have the mark entered as his registered trade mark in Part B of the Register in respect of such goods.

1 & 2 Geo. 6, c. 22.
S.S. No. 38 of 1938.

(2) The Registrar shall consider every such application for registration of a trade mark in Part B of the Register, and if it appears to him, after such search, if any, as he may deem necessary, that the application is inconsistent with the provisions of section 23 or section 31 of this Ordinance, or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing the goods of the applicant, he may refuse the application, or may accept it subject to the conditions, amendments, or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application.

(3) Every such application shall be accompanied by a statutory declaration verifying the user, including the date of first user, and such date shall be entered on the Register :

Provided that where the date of first user is not known with certainty it shall be sufficient to state the earliest date on which the mark was known to have been used and such date shall be entered in the Register as the date of first user.

(4) Any such refusal or conditional acceptance shall be subject to appeal in the prescribed manner to the Court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark in Part A of the Register.

(5) A trade mark may be registered in Part B notwithstanding any registration in Part A by the same proprietor of the same mark or any part or parts thereof.

(6) The provisions of section 75 of this Ordinance shall not apply in respect of trade marks to which this section applies.

Powers to treat applications for registration in Part A as applications for registration in Part B.

21. If any person applies for the registration of a trade mark (other than a certification trade mark) in Part A of the Register, the Registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B of the Register and deal with the application accordingly.

Coloured trade marks.

22. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any Court having to decide on the distinctive character of such trade mark.

If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction of registration.

23. (1) It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

(2) No trade mark shall be registered in respect of particular goods or classes of goods set forth in the Schedule to this Ordinance unless such trade mark has been and is registered in the United Kingdom in respect of such goods or classes of goods and unless the application for registration is made by the registered proprietor in the United Kingdom or any person deriving his right from such registered proprietor by assignment, transmission, or other operation of law.

Words used as name or description of an article or substance

24. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use, after the date of the registration, of a word or words which the trade mark contains, or of which it consists, as the name or description of an article or substance :

Provided that, if it is proved either—

(*a*) that there is a well-known and established use of the word or words as the name or

description of the article or substance by a person or persons carrying on a trade therein, not being use in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or, in the case of a certification trade mark, goods certified by the proprietor; or

(*b*) that the article or substance was formerly manufactured under a patent, that a period of two years or more after the cesser of the patent has elapsed, and that the word or words is or are the only practicable name or description of the article or substance,

the provisions of sub-section (2) of this section shall have effect.

(2) Where the facts mentioned in paragraph (*a*) or (*b*) of the proviso to sub-section (1) of this section are proved with respect to any word or words, then—

(*a*) if the trade mark consists solely of that word or those words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed for the purposes of section 46 of this Ordinance to be an entry wrongly remaining on the register;

(*b*) if the trade mark contains that word or those words and other matter, the Court or the Registrar, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description of that word or those words, so, however, that no disclaimer on the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made; and

(*c*) for the purposes of any other legal proceedings relating to the trade mark—

(i) if the trade mark consists solely of that word or those words, all rights of the proprietor to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description, or

(ii) if the trade mark contains that word or those words and other matter, all rights of the proprietor to the exclusive use of that word or those words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in paragraph (*a*) of the proviso to sub-section (1) of this section first became well known and established, or at the expiration of the period of two years mentioned in paragraph (*b*) of that proviso.

(3) No word which is the commonly used and accepted name of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark in respect of a chemical substance or preparation :

Provided that the foregoing provisions of this sub-section shall not have effect in relation to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

Address for service.

25. When an applicant for the registration of a trade mark or an agent does not reside or carry on business in Malaya he shall give the Registrar an address for service in Malaya, and, if he fails to do so, the Registrar may refuse to proceed with the application until such address has been given.

Advertisement of application.

26. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the

prescribed manner. Such advertisement shall set forth all conditions and limitations subject to which the application has been accepted:

Provided that the Registrar may cause an application for registration of a trade mark to be advertised before acceptance thereof if it is made under paragraph (*e*) of sub-section (1) of section 18 of this Ordinance or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted but shall not be bound so to do.

Opposition to registration.

27. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt thereof the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Court shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(7) On the hearing of an appeal under this section any party may, either in the manner prescribed or by special leave of the Court, bring forward further material for the consideration of the Court.

(8) On an appeal under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinbefore provided, except by leave of the Court. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the Court may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in any such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such a notice, or an appellant, neither resides nor carries on business in the Federation, the Court may require him to give security for costs of the proceedings before it relative to the opposition or to the appeal, as the case may be, and in default of such security being duly given may treat the opposition or application, or the appeal, as the case may be, as abandoned.

(11) An appeal shall lie from a decision of the Court to the Court of Appeal.

Disclaimers.

28. If a trade mark—

(*a*) contains parts not separately registered by the proprietor as trade marks, or

(*b*) contains matter common to the trade, or otherwise of a non-distinctive character,

the Registrar or the Court, in deciding whether the trade mark shall be entered or shall remain on the Register, may require, as a condition of its being upon the Register—

(i) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark, or to the exclusive use of all or any portion of such matter as aforesaid, to the exclusive use of which they hold him not to be entitled, or

(ii) that the proprietor shall make such other disclaimer as they may consider necessary for the purpose of defining his rights under such registration :

Provided that no disclaimer upon the Register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration.

29. When an application for registration of a trade mark in Part A or in Part B of the Register has been accepted, and either—

(*a*) the application has not been opposed, and the time for opposition has expired, or

(*b*) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the application has been accepted in error, register the said trade mark in Part A or Part B, as the case may be, and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed for the purposes of this Ordinance to be the date of registration.

Non completion of registration.

30. Where the registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice in writing of the non-completion to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

IDENTICAL TRADE MARKS.

Identical trade marks.

31. Subject to the provisions of section 33 of this Ordinance, no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and already on the Register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion.

Rival claims to identical marks.

32. Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or nearly resemble each other, in respect of the same goods or description of goods, the Registrar may refuse to

register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or by the Court.

Concurrent use.

33. In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or of the Registrar make it proper to do so, the Court or the Registrar may permit the registration of trade marks which are identical or nearly resemble each other for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the Court or the Registrar, as the case may be, may think it right to impose.

Association of trade marks.

34. (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the Register as associated trade marks.

(2) On application made in the prescribed manner by the registered proprietor of two or more associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by another person in relation to any of the goods in respect of which it is registered, and may amend the Register accordingly.

(3) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the Court.

Combined trade marks.

35. Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the same as separate trade marks.

Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be

entered on the Register as such, but the use of the whole trade mark shall, for the purposes of this Ordinance, be deemed to be also a use of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks.

36. Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods, which, while resembling each other in the material particulars thereof, yet differ in respect of—

(*a*) statements of the goods in relation to which they are respectively used or proposed to be used; or

(*b*) statements of number, price, quality or names of places; or

(*c*) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All trade marks so registered shall be deemed to be and shall be registered as associated trade marks.

Assignment and use of associated trade marks.

37. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks:

Provided that where under the provisions of this Ordinance use of a registered trade mark is required to be proved for any purpose, the Court or the Registrar may, if and so far as it or he shall think right, accept use of an associated registered trade mark, or of the trade mark with additions and alterations not substantially affecting its identity, as an equivalent for such use, and provided further that the foregoing provisions apply in relation to proof of use of any registered trade mark and not in relation only to proof of use of a trade mark which is one of two or more associated trade marks.

Registered users.

38. (1) Subject to the provisions of this section, a person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

The use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject, is in this Ordinance referred to as the "permitted use" thereof.

(2) The permitted use of a trade mark shall be deemed to be use by the proprietor thereof, and shall be deemed not to be use by a person other than the proprietor, for the purposes of section 47 of this Ordinance and for any other purpose for which such use is material under this Ordinance or at common law.

(3) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and, if the proprietor refuses or neglects to do so within two months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant. A proprietor so added as defendant shall not be liable for any costs, unless he enters an appearance and takes part in the proceedings.

(4) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user must apply in writing to the Registrar in the prescribed manner and must furnish him with a statutory declaration made by the proprietor, or by some person authorised to act on his behalf and approved by the Registrar—

(*a*) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;

(*b*) stating the goods in respect of which registration is proposed;

(*c*) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter; and

(*d*) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof,

and with such further documents, information or evidence as may be required under the rules or by the Registrar.

(5) When the requirements of sub-section (4) of this section have been complied with, if the Registrar, after considering the information furnished to him under that sub-section, is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or any of them by the proposed registered user, subject to any conditions or restrictions which the Registrar thinks proper, would not be contrary to the public interest, the Registrar may register the proposed registered user as a registered user in respect of the goods as to which he is so satisfied subject as aforesaid.

(6) The Registrar shall refuse an application under the foregoing provisions of this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(7) The Registrar shall, if so required by an applicant, take steps for securing that information given for the purposes of an application under the foregoing provisions of this section (other than matter entered in the Register) is not disclosed to rivals in trade.

(8) Without prejudice to the provisions of section 46 of this Ordinance, the registration of a person as a registered user—

(*a*) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;

(*b*) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark; or

(*c*) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, that is to say—

(i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause, or to be likely to cause, deception or confusion;

(ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;

(iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested.

(9) Provision shall be made by the rules for the notification of the registration of a person as a registered user to any other registered user of the trade mark, and for the notification of any application under the last foregoing sub-section to the registered proprietor and each registered user (not being the applicant) of the trade mark, and for giving to the applicant on such an application and to all persons to whom such application is notified and who intervene in the proceedings in accordance with the rules an opportunity of being heard.

(10) The Registrar may at any time cancel the registration of a person as a registered user of a trade mark in respect of any goods in respect of which the trade mark is no longer registered.

(11) Any decision of the Registrar under the foregoing provisions of this section shall be subject to appeal to the Court.

(12) Where a person is registered as a registered user of a trade mark on an application made within one year from the commencement of this Part of this Ordinance, sub-section (2) of this section shall have effect in relation to any previous use (whether before or after the commencement of this Ordinance) of the trade mark by that person, being use in relation to the

goods in respect of which he is registered and, where he is registered subject to conditions or restrictions, being use such as to comply substantially therewith, as if such previous use had been permitted use.

(13) Nothing in this section shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

PART IV.

ISSUE OF CERTIFICATE.

Certificate of registration.

39. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the seal of the Registrar.

RENEWAL OF REGISTRATION.

Duration of registration.

40. The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this Ordinance:

Provided that in the case of a trade mark registered under the provisions of Part II of this Ordinance registration shall be for a period equal to the unexpired portion of the period for which such trade mark is registered in the Colony.

Renewal of registration.

41. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this Ordinance referred to as "the expiration of the last registration".

Procedure on expiry of period of registration.

42. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove the trade mark from the Register, subject to such conditions, if any, as to its restoration to the Register as may be prescribed.

Status of unrenewed trade marks.

43. Where a trade mark has been removed from the Register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of an application for the registration of a trade mark during one year next after the date of the removal, be deemed to be a trade mark which is already on the Register:

Provided that the foregoing provisions of this section shall not have effect when the Registrar is satisfied either—

(*a*) that there has been no *bonâ fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or

(*b*) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

CORRECTION AND RECTIFICATION OF REGISTER.

Correction of Register.

44. (1) The Registrar may, on request made in the prescribed manner by the registered proprietor—

(*a*) correct any error in the name, address or description of the registered proprietor of a trade mark; or

(*b*) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark; or

(*c*) cancel the entry of a trade mark on the Register; or

(*d*) strike out any goods or classes of goods from those in respect of which a trade mark is registered; or

(*e*) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

(2) The Registrar may, on request made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

Alteration of registered trade mark.

45. (1) The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application. the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(4) Where leave as aforesaid is granted, the trade mark as altered shall be advertised in the prescribed manner, unless it has already been advertised, in the form to which it has been altered, in an advertisement under sub-section (2) of this section.

Rectification of Register.

46. (1) Subject to the provisions of this Ordinance—

(*a*) the Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongfully remaining on the Register, or by any error or defect in any entry in the Register, make such order for making, expunging, or varying such entry as it thinks fit;

(*b*) the Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the Register;

(*c*) in case of fraud in the registration, assignment or transmission of a registered trade mark the Registrar may himself apply to the Court under the provisions of this section;

(*d*) any order of the Court rectifying the Register shall direct that notice of the rectification be served on the Registrar in the prescribed manner, and the Registrar shall, upon receipt of such notice, rectify the Register accordingly.

(2) The power to rectify the Register conferred by this section shall include power to remove a registration in Part A of the Register to Part B.

Provisions as to non-use of trade mark.

47. (1) Subject to the provisions of section 48 of this Ordinance, a registered trade mark may be taken off the Register in respect of any of the goods in respect of which it is registered on application by any person aggrieved to the Court, on the ground either—

(*a*) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, if it was registered under sub-section (7) of section 19, by the corporation or registered user concerned, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or

(*b*) that up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no *bonâ fide* use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that (except where the applicant has been permitted under section 33 of this Ordinance to register an identical or nearly resembling trade mark in respect of the goods in question or where the Court is of opinion that he might properly be permitted so to register such a trade mark) the Court may refuse an application made under paragraph (*a*) or (*b*) of this sub-section in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time

being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(*a*) the matters referred to in paragraph (*b*) of sub-section (1) of this section are shown so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in the Federation (otherwise than for export from the Federation), or in relation to goods to be exported to a particular market outside the Federation; and

(*b*) a person has been permitted under section 33 of this Ordinance to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be sold, or otherwise traded in, in that place (otherwise than for export from the Federation), or in relation to goods to be exported to that market, or the Court is of opinion that he might properly be permitted so to register such a trade mark;

on application by that person to the Court, the Court may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use as last aforesaid.

(3) An applicant shall not be entitled to rely for the purposes of paragraph (*b*) of sub-section (1), or for the purposes of sub-section (2), of this section on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention not to use or to abandon the trade mark in relation to the goods to which the application relates.

Defensive trade marks.

48. (1) Where a trade mark consisting of an invented word or invented words has become so well known as respects any goods in respect of which it is registered and in relation to which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the

proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 47 of this Ordinance, the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the first-mentioned goods, be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under section 47 of this Ordinance.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be, and shall be registered as, associated trade marks.

(4) On application by any person aggrieved to the Court, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (1) of this section are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (1) of this section.

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Ordinance shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Assignment and transmission of trade marks.

49. (1) Notwithstanding any rule of law or equity to the contrary, a registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible either in connection with the goodwill of a business or not.

(2) A registered trade mark shall be, and shall be deemed always to have been, assignable and transmissible in respect either of all the goods in respect of which it is registered, or was registered, as the case may be, or of some (but not all) of those goods.

(3) The provisions of sub-sections (1) and (2) of this section shall have effect in the case of an unregistered trade mark used in relation to any goods as they have effect in the case of a registered trade mark registered in respect of any goods, if at the time of the assignment or transmission of the unregistered trade mark it is or was used in the same business as a registered trade mark, and if it is or was assigned or transmitted at the same time and to the same person as that registered trade mark and in respect of goods all of which are goods in relation to which the unregistered trade mark is or was used in that business and in respect of which that registered trade mark is or was assigned or transmitted.

(4) Notwithstanding anything in the foregoing sub-sections, a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which, as a result of an assignment or transmission, there would in the circumstances subsist, or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion:

Provided that, where a trade mark is, or has been, assigned or transmitted in such a case as aforesaid, the assignment or transmission shall not be deemed

to be, or to have been, invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, or were, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within the Federation (otherwise than for export therefrom), or in relation to goods to be exported to the same market outside the Federation.

(5) The proprietor of a registered trade mark who proposes to assign it in respect of any goods in respect of which it is registered may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances, and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment of the first-mentioned trade mark would or would not be invalid under sub-section (4) of this section, and a certificate so issued shall, subject to the provisions of this section as to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under sub-section (4) of this section of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 50 of this Ordinance of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

(6) In a case in which as a result of an assignment or transmission of a trade mark there would in the circumstances subsist, or have subsisted, whether under the common law or by registration, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in a place or places in the Federation, and an exclusive right in another of those persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in another place or other

places in the Federation, the following provisions shall have effect, that is to say—

(*a*) Notwithstanding anything in sub-sections (1) to (3) of this section, a trade mark shall not, after the commencement of this Ordinance, be assignable or transmissible in any such case:

Provided that, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or of a person who claims that a trade mark has been transmitted to him or to a predecessor in title of his since the commencement of this Ordinance, in any such case, the Registrar, if he is satisfied that in all the circumstances the use of the trade marks in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not be deemed to be, or to have been invalid under this paragraph or under sub-section (4) of this section, so, however, that in the case of a registered trade mark this provision shall not have effect unless application for the registration under section 50 of this Ordinance of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

(*b*) The validity of an assignment or transmission effected or claimed to have been effected before the commencement of this Ordinance in any such case shall be determined as if the foregoing provisions of this section had not been enacted:

Provided that, on application made in the prescribed manner within two years from the commencement of this Ordinance by a person who claims that an assignment or transmission of a registered trade mark to him or to a predecessor in title of his has been so effected,

the Registrar shall have the like jurisdiction as under the proviso to the foregoing paragraph, and an assignment or transmission approved by him shall not be deemed to have been invalid on the ground of the subsistence of such rights as aforesaid, or on the ground that the assignment or transmission was effected otherwise than in connection with the goodwill of a business or was effected in respect of some (but not all) of the goods in respect of which the trade mark was registered, if application for registration of title as aforesaid is made within six months from the date on which the approval is given or was made before that date.

(7) Where an assignment in respect of any goods of a trade mark that is at the time of the assignment used in a business in those goods is made after the commencement of this Ordinance otherwise than in connection with the goodwill of that business, the assignment shall not take effect until the following requirements have been satisfied, that is to say, the assignee must, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, apply to him for directions with respect to the advertisement of the assignment, and must advertise it in such form and manner and within such period as the Registrar may direct.

(8) Any decision of the Registrar under this section shall be subject to appeal to the Court.

Registration of assignments.

50. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make application to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Any decision of the Registrar under this section shall be subject to appeal to the Court.

(3) Except for the purposes of an appeal under this section or of an application under section 46 of this

Ordinance, a document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of sub-section (1) of this section shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.

PART V.

EFFECT OF REGISTRATION.

Powers of registered proprietor.

51. Subject to the provisions of this Ordinance—

(*a*) the person for the time being entered in the Register as proprietor of a trade mark shall, subject to any rights appearing from such Register to be vested in any other person, have power to assign the same and give effectual receipts for any consideration for such assignment;

(*b*) any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Effect of registration in Part A of the Register.

52. (1) Subject to the provisions of this section, and of sections 55 and 59 of this Ordinance, the registration of a person in Part A of the Register as proprietor of a trade mark (other than a certification trade mark) in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(*a*) as being use as a trade mark; or

(*b*) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular, or other advertisement, issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

(2) The right to the use of a trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the Register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(3) The right to the use of a trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(*a*) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(*b*) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the facts a connection in the course of trade between any person and the goods.

(4) The use of a registered trade mark, being one of two or more registered trade marks which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

Effect of registration in Part B of the Register.

53. (1) Except as provided by sub-section (2) of this section and by sub-section (2) of section 20 of this Ordinance the registration of a person in Part B of the Register as proprietor of a trade mark in

respect of any goods shall, if valid, give or be deemed to have given to that person the like right in relation to those goods as if the registration had been in Part A of the Register, and the provisions of section 52 of this Ordinance shall have effect in like manner in relation to a trade mark registered in Part B of the Register as they have effect in relation to a trade mark registered in Part A of the Register.

(2) In any action for infringement of the right to the use of a trade mark given by registration as aforesaid in Part B of the Register, no injunction or other relief shall be granted to the plaintiff if the defendant establishes to the satisfaction of the Court that the use of which the plaintiff complains is not likely to deceive or cause confusion or to be taken as indicating a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the trade mark.

Registration *primâ facie* evidence of validity.

54. In all legal proceedings relating to a registered trade mark (including applications under section 46 of this Ordinance) the fact that a person is registered as proprietor of the trade mark shall be *primâ facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.

Registration conclusive after seven years.

55. In all legal proceedings relating to a trade mark registered in Part *A* of the Register (including applications under section 46 of this Ordinance) the original registration in Part *A* of the Register of such trade mark shall, after the expiration of seven years from the date of the original registration, be taken to be valid in all respects unless such original registration was obtained by fraud or unless the trade mark offends against the provisions of section 23 of this Ordinance:

Provided that nothing in this Ordinance shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date anterior—

(*a*) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his; or

(*b*) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his;

whichever is the earlier, or to object (on such use being proved) to that person being put on the Register for that identical or nearly resembling trade mark in respect of those goods under section 33 of this Ordinance.

Unregistered trade mark.

56. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark.

Infringement.

57. In any action or proceeding relating to a trade mark or trade name the Registrar or the Court, as the case may be, shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.

Infringement of trade mark by breach of certain restrictions.

58. (1) Where, by a contract in writing made with the proprietor or a registered user of a registered trade mark, a purchaser or owner of goods enters into an obligation to the effect that he will not do, in relation to the goods, an act to which this section applies, any person who, being the owner for the time being of the goods and having notice of the obligation, does that act, or authorises it to be done, in relation to the goods, in the course of trade or with a view to any dealing therewith in the course of trade, shall be deemed thereby to infringe the right to the use of the trade mark given by the registration thereof, unless that person became the owner of the goods by purchase for money or money's worth in good faith before receiving notice of the obligation or by virtue of a title derived through another who so became the owner thereof.

(2) The acts to which this section applies are—

(*a*) the application of the trade mark upon the goods after they have suffered alteration in any manner specified in the contract as respects their state or condition, get-up or packing;

(*b*) in a case in which the trade mark is upon the goods, the alteration, part removal or part obliteration thereof;

(*c*) in a case in which the trade mark is upon the goods, and there is also thereon other matter, being matter indicating a connection in the course of trade between the proprietor or registered user and the goods, the removal or obliteration, whether wholly or partially, of the trade mark unless that other matter is wholly removed or obliterated;

(*d*) in a case in which the trade mark is upon the goods, the application of any other trade mark to the goods;

(*e*) in a case in which the trade mark is upon the goods, the addition to the goods of any other matter in writing that is likely to injure the reputation of the trade mark.

(3) Sub-section (2) of section 53 of this Ordinance shall not apply to an act that is deemed by virtue of this section to be an infringement of a trade mark registered in Part B of the Register.

(4) In this section references in relation to any goods to the proprietor, to a registered user, and to the registration, of a trade mark shall be construed, respectively, as references to the proprietor in whose name the trade mark is registered, to a registered user who is registered, and to the registration of the trade mark, in respect of those goods, and the expression "upon" includes in relation to any goods a reference to physical relation thereto.

Use of name, address or description of goods.

59. No registration of a trade mark shall interfere with—

(*a*) any *bonâ fide* use by a person of his own name or of the name of his place of business, or of the name, or of the name of the place of business, or any of his predecessors in business; or

(*b*) the use by any person of any *bonâ fide* description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in paragraph (*b*) of sub-section (1) of section 52 or in paragraph (*b*) of sub-section (2) of section 75 of this Ordinance.

"Passing off" action

60. Nothing in this Ordinance contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

PART VI.

LEGAL PROCEEDINGS.

Certificate of validity in legal proceedings.

61. In any legal proceeding in which the validity of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify to that effect, and if it so certifies then in any subsequent legal proceeding in which the validity of the registration comes into question the proprietor of the trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between solicitor and client, unless in the subsequent proceeding the Court certifies that he ought not to have them.

Registrar to have notice of proceeding for rectification.

62. In any legal proceeding in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

COSTS.

Costs of proceedings before the Court.

63. (1) In all proceedings before the Court under this Ordinance, the Court may award to any party such costs as it may consider reasonable and the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

(2) In all proceedings before the Registrar under this Ordinance, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may, by leave of the Court or a Judge thereof, be enforced in the same manner as a judgment or order of the Court to the same effect.

EVIDENCE.

Mode of giving evidence.

64. In any proceeding under this Ordinance before the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which he shall think it right to do so, the Registrar may take evidence *viva voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *viva voce* the Registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as if he were a referee appointed by the Court under the provisions of section 14 of the Arbitration Ordinance of the Straits Settlements and as if such Ordinance applied throughout the Federation. S.S. Cap. 12.

Sealed copies to be evidence.

65. Printed or written copies or extracts of or from the Register, or of or from the Register of Trade Marks kept in the Colony under the Trade Marks Ordinance, 1938, of the Colony, or of or from the Register of Trade Marks kept in the United Kingdom under the Trade Marks Act, 1938, purporting to be certified by the Registrar and sealed with his seal, or purporting to be certified by the Registrar of Trade Marks of the Colony and sealed with his seal, or purporting to be certified by the Comptroller-General of the United Kingdom Patent Office and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts and in all proceedings, without further proof or production of the originals. S.S. No. 38 of 1938. 1 & 2 Geo. 6, c. 22.

Certificate of Registrar to be evidence.

66. A certificate purporting to be under the hand of the Registrar, or of the Registrar of Trade Marks of the Colony, or of the Comptroller-General of the United Kingdom Patent Office, as to any entry, matter or thing which he is authorised to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

GENERAL.

Discretionary powers.

67. In any appeal from the decision of the Registrar to the Court under this Ordinance the Court shall have and exercise the same discretionary powers as

under this Ordinance are conferred upon the Registrar.

Rectification of Register.

68. (1) Any application for the rectification of the Register which, under section 24, 46 or 47 of this Ordinance, is to be made to the Court, may, at the option of the applicant, be made in the first instance to the Registrar:

Provided that no such application shall be made otherwise than to the Court where an action concerning the trade mark in question is pending.

(2) The Registrar may, at any stage of the proceedings, refer any such application to the Court or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

Removal of trade marks from Part A to Part B.

(3) In any proceedings for rectification of the Register under this Ordinance the Court or the Registrar shall, in addition to the other powers conferred by this Ordinance, have power to direct a trade mark entered in Part A of the Register to be removed to Part B of the Register.

PART VII.

MISCELLANEOUS.

Exercise of discretionary power of Registrar.

69. Where any discretionary or other power is given to the Registrar by this Ordinance or by any rules made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required to do so within the prescribed time) giving to the applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar.

70. Except where expressly given by the provisions of this Ordinance or rules made thereunder there shall be no appeal from a decision of the Registrar, but the Court, in dealing with any question of the rectification of the Register (including all applications under the provisions of section 46 of this Ordinance), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents.

71. Where by this Ordinance any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may under and in accordance with rules made under this Ordinance, or in particular

cases by special leave of the Registrar, be done by or to an agent of that person duly authorised in the prescribed manner.

Preliminary advice by Registrar as to distinctiveness.

72. (1) The power to give to a person who proposes to apply for the registration of a trade mark in Part A or Part B of the Register advice as to whether the trade mark appears to the Registrar *primâ facie* to be inherently adapted to distinguish, or capable of distinguishing, as the case may be, shall be a function of the Registrar under this Ordinance.

(2) Any such person who is desirous of obtaining such advice must make application to the Registrar therefor in the prescribed manner.

(3) If on an application for the registration of a trade mark as to which the Registrar has given advice as aforesaid in the affirmative, made within three months after the advice is given, the Registrar, after further investigation or consideration, gives notice to the applicant of objection on the ground that the trade mark is not adapted to distinguish, or capable of distinguishing, as the case may be, the applicant shall be entitled, on giving notice of withdrawal of the application within the prescribed period, to have repaid to him any fee paid on the filing of the application.

Power to make rules.

73. (1) Subject to the provisions of this Ordinance, the High Commissioner in Council may make such rules, prescribe such forms and generally do such things as he may deem expedient—

(*a*) for regulating the practice (other than that relating to proceedings before the Court or connected therewith) under this Ordinance including the service of documents;

(*b*) for classifying goods for the purposes of registration of trade marks;

(*c*) for making or requiring duplicates of trade marks and other documents;

(*d*) for securing and regulating the publishing and selling or distributing, in such manner as the High Commissioner in Council may think fit, of copies of trade marks and other documents;

(*e*) generally, for regulating the business of the office in relation to trade marks and all things by this Ordinance placed under the direction or control of the Registrar.

(2) Rules made under sub-section (1) of this section shall be published in the *Gazette* and laid as soon as practicable on the table of the Legislative Council and shall have the same force and effect as if enacted in this Ordinance :

Provided that such rules may be disapproved or altered, but without prejudice to anything previously done thereunder, by a resolution of the Legislative Council passed within three months of the date of their being laid on the table as aforesaid.

F. of M. No. 35 of 1948.

(3) Subject to the provisions of this Ordinance, the Supreme Court Rule Committee constituted under the Rule Committee Ordinance, 1948, may make rules of Court regulating the practice and procedure in relation to proceedings before the Court or connected therewith, and the costs of such proceedings.

Fees.

74. There shall be paid in respect of applications and registration and other matters under this Ordinance, such fees as the High Commissioner in Council may from time to time prescribe.

Certification trade marks.

75. (1) A mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified shall be registrable as a certification trade mark in Part A of the Register in respect of those goods in the name, as proprietor thereof, of that person :

Provided that a mark shall not be so registrable in the name of a person who carries on a trade in goods of the kind certified.

(2) In determining whether a mark is adapted to distinguish as aforesaid, the Registrar may have regard to the extent to which—

(*a*) the mark is inherently adapted to distinguish as aforesaid in relation to the goods in question; and

(*b*) by reason of the use of the mark or of any other circumstances, the mark is in fact adapted to distinguish as aforesaid in relation to the goods in question.

(3) Subject to the provisions of sub-sections (4) to (6) of this section, and of sections 55 and 59 of this Ordinance, the registration of a person as proprietor of a certification trade mark in respect of any goods,

shall, if valid, give to that person the exclusive right to the use of the trade mark in relation to those goods, and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a person authorised by him under the regulations in that behalf using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(*a*) as being use as a trade mark; or

(*b*) in a case in which the use is use upon the goods or in physical relation thereto or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or by his authorisation under the relevant regulations to use the trade mark or to goods certified by the proprietor.

(4) The right to the use of a certification trade mark given by registration as aforesaid shall be subject to any conditions or limitations entered on the Register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations, the registration does not extend.

(5) The right to the use of a certification trade mark given by registration as aforesaid shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(*a*) in relation to goods certified by the proprietor of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the trade mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the trade mark; or

(*b*) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor :

Provided that paragraph (*a*) of this sub-section shall not have effect in the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that paragraph, if such application is contrary to the relevant regulations.

(6) Where a certification trade mark is one of two or more registered trade marks which are identical or nearly resemble each other, the use of any of those trade marks in exercise of the right to the use of that trade mark given by registration shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks.

(7) An application for the registration of a mark under this section must be made to the Registrar in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof.

(8) The provisions of sub-sections (2) to (6) of section 19 of this Ordinance shall have effect in relation to an application under this section as they have effect in relation to an application under sub-section (1) of section 19.

(9) In dealing under such provisions with an application under this section the Registrar shall have regard to the like considerations, so far as relevant, as if the application were an application under section 19 of this Ordinance and to any other considerations relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is such a trade mark.

(10) An applicant for the registration of a mark under this section shall transmit to the Registrar draft regulations for governing the use thereof, which

shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the trade mark, and may contain any other provisions that the Registrar may require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the trade mark in accordance with the regulations). Such regulations, if approved, shall be deposited with the Registrar and shall be open to inspection in like manner as the Register.

(11) The Registrar shall consider the application with regard to the following matters, that is to say—

(*a*) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;

(*b*) whether the draft regulations are satisfactory; and

(*c*) whether in all the circumstances the registration applied for would be to the public advantage;

and may either—

(i) refuse to accept the application; or

(ii) accept the application and approve the regulations, either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modifications of the application or of the regulations, which he may think requisite having regard to any of the matters aforesaid;

but, except in the case of acceptance and approval without modification and unconditionally, the Registrar shall not decide the matter without giving to the applicant an opportunity of being heard:

Provided that the Registrar may, at the request of the applicant, consider the application with regard to any of the matters aforesaid before authorisation to proceed with the application has been given, so however that the Registrar shall be at liberty to reconsider any matter on which he has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft regulations.

(12) When an application has been accepted, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section 27 of this Ordinance shall have effect in relation to the registration of the mark as if the application had been an application under section 19 of this Ordinance :

Provided that, in deciding under the said provisions, the Registrar shall have regard only to the considerations referred to in sub-section (9) of this section, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Registrar under sub-section (13) of this section of any opposition relating to any of the matters referred to in sub-section (11) of this section.

(13) When notice of opposition is given relating to any of the matters referred to in sub-section (11) of this section, the Registrar shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications of the application or of the regulations, if any, registration is, having regard to those matters, to be permitted.

(14) (*a*) The regulations deposited in respect of a certification trade mark may, on the application of the registered proprietor, be altered by the Registrar.

(*b*) The Registrar may cause an application for his consent to be advertised in any case where it appears to him that it is expedient so to do, and, where the Registrar causes an application to be advertised, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar of opposition to the application, the Registrar shall not decide the matter without giving the parties an opportunity of being heard.

(15) The Court may, on the application in the prescribed manner of any person aggrieved, or on the application of the Registrar, make such order as it

thinks fit for expunging or varying any entry in the Register relating to a certification trade mark, or for varying the deposited regulations, on the ground—

(*a*) that the proprietor is no longer competent, in the case of any of the goods in respect of which the trade mark is registered, to certify those goods;

(*b*) that the proprietor has failed to observe a provision of the deposited regulations to be observed on his part;

(*c*) that it is no longer to the public advantage that the trade mark should be registered; or

(*d*) that it is requisite for the public advantage that, if the trade mark remains registered, the regulations should be varied;

and the Court shall not have any jurisdiction to make an order under section 46 of this Ordinance on any of those grounds.

(16) The Registrar shall rectify the Register and the deposited regulations in such manner as may be requisite for giving effect to an order made under sub-section (15) of this section.

(17) Notwithstanding anything in sub-section (2) of section 63 of this Ordinance, the Registrar shall not have any jurisdiction to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the trade mark.

(18) The following provisions of this Ordinance shall not have effect in relation to a certification trade mark, this is to say, section 18, sections 19, 26 and 27 (except as expressly applied by this section), section 38, section 47, section 48, sub-sections (4) to (8) of section 49, section 52, section 58 and sub-section (2) of section 79, and any provisions the operation of which is limited by the terms thereof to registration in Part B of the Register.

Offences.

76. (1) If any person makes or causes to be made a false entry in the Register, or a writing falsely purporting to be a copy of an entry in the Register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an

offence and shall be liable to imprisonment of either description for a term not exceeding five years.

Penalty for falsely representing a trade mark as registered.

(2) Any person who makes a representation—

(*a*) with respect to a mark, not being a registered trade mark, to the effect that it is a registered trade mark; or

(*b*) with respect to a part of a registered trade mark, not being a part separately registered as a trade mark, to the effect that it is so registered; or

(*c*) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered; or

(*d*) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the Register, the registration does not give that right;

shall be guilty of an offence and shall be liable to a fine not exceeding one hundred dollars.

(3) For the purposes of this section, the use in the Federation in relation to a trade mark of the word "registered", or of any other word referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the Register, except—

(*a*) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside the Federation, being a country under the law of which the registration referred to is in fact in force;

(*b*) where that word (being a word other than the word "registered") is of itself such as to indicate that the reference is to such registration as last aforesaid; or

(*c*) where that word is used in relation to a mark registered as a trade mark under the law of a country outside the Federation and in relation to goods to be exported to that country.

Royal Arms, etc.

77. (1) If any person, without the authority of His Majesty, uses in connection with any trade, business, calling or profession the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms or if any person, without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he shall be guilty of an offence and shall be liable to a fine not exceeding three hundred dollars.

(2) If any person, without the authority of the Ruler concerned, uses in connection with any trade, business, calling or profession the Arms of the Ruler of any State (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use such Arms or if any person, without the authority of the Ruler concerned, uses in connection with any trade, business, calling or profession any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to the Ruler of any State, he shall be guilty of an offence and shall be liable to a fine not exceeding three hundred dollars.

(3) If any person uses in connection with any trade, business, calling or profession—

(*a*) the Arms of any State without the authority of the Ruler in Council of that State; or

(*b*) the Arms of the Federation or of any Settlement without the authority of the High Commissioner,

(or arms so closely resembling the same as to be calculated to deceive) in such a manner as to be calculated to lead to the belief that he is duly authorised so to use the Arms of that State or Settlement or of the Federation, as the case may be, he shall be guilty of an offence and shall be liable to a fine not exceeding three hundred dollars.

(4) Nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem or title to continue to use such trade mark.

International and Colonial arrangements.

78. (1) Where any person has registered or has applied for protection for any trade mark in the United Kingdom or in any foreign state with the Government of which His Majesty may have been pleased to make any arrangement for mutual protection of trade marks, such person or his legal representative or assignee shall be entitled to registration of his trade mark in priority to other applicants; and such registration shall have the same date as the date of application for protection in the United Kingdom or foreign state, as the case may be:

Provided that—

(*a*) the application for registration is made within six months from the date of the commencement of Part III of this Ordinance or of the application for protection in the United Kingdom or foreign state; and

(*b*) nothing in this section shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual date on which his trade mark is registered in the Federation.

(2) The registration of a trade mark shall not be invalidated by reason only of the use of the trade mark by some other person in the Federation during the aforesaid period of six months.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under Part III of this Ordinance.

(4) The provisions of this section shall apply only in the case of the United Kingdom and of those foreign states with respect to which the High Commissioner may by Proclamation to be published in the *Gazette* declare them to be applicable and so long only in the case of each of such foreign states as the Proclamation continues in force with respect to that state.

(5) Where it is made to appear to the High Commissioner that in any part of His Majesty's

dominions outside the United Kingdom, or in any British protectorate or protected state, or in any territory in respect of which a mandate or trusteeship on behalf of the League of Nations or the United Nations has been accepted by His Majesty and is being exercised by the Government of any part of His Majesty's dominions, satisfactory provision has been made for the protection of trade marks registered in the Federation, it shall be lawful for the High Commissioner by Proclamation to apply the provisions of this section to that part of His Majesty's dominions outside the United Kingdom, or that British protectorate or protected state or territory, with such variations or additions (if any) as may be stated in the Proclamation.

(6) For the purposes of this section "foreign state" shall be deemed to include any colony, protectorate, territory subject to the authority or under the suzerainty of a foreign state and any territory in respect of which a mandate or trusteeship on behalf of the League of Nations or the United Nations is being exercised by a foreign state.

Use of trade mark for export trade, and use where form of trade connection changes.

79. (1) The application in the Federation of a trade mark to goods to be exported from the Federation and any other act done in the Federation in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within the Federation, would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Ordinance or at common law.

(2) The use of a registered trade mark in relation to goods between which and the person using it any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the trade mark has been, or is, used in relation to goods between which and that person or a predecessor in title of his a different form of connection in the course of trade subsisted or subsists.

Repeal S.S. No. 38 of 1938. Kedah Enact. No. 102.

80. The Trade Marks Ordinance, 1938, of the Straits Settlements and Enactment No. 102 (Royal Arms) of the State of Kedah are hereby repealed.

SCHEDULE.

(Section 23.)

Textile Piece Goods, Yarns and Threads.

For the purposes of this Schedule—

"textile piece goods, yarns and threads" means goods which are comprised in any of such classes of textile piece goods, yarns and threads as may be prescribed as being classes which refer predominantly to textile piece goods, yarns and threads, other than goods of a kind as to which it may be provided by the rules that this Schedule is not to apply.

Passed in the Legislative Council on the fourteenth day of June, 1950.

A. R. Talib
Clerk of Council.

FEDERATION OF MALAYA.

No. 27 of 1950.

THE COMMISSIONS OF ENQUIRY ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....30th June, 1950.

.....*High Commissioner.*

.....30th June, 1950.

An Ordinance to make provision for the holding of Commissions of Enquiry.

[4th July. ~~June,~~ *1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Commissions of Enquiry Ordinance, 1950.

Issue of Commissions.

2. (1) The High Commissioner in Council may, where it appears to him to be expedient so to do, issue a Commission appointing one or more Commissioners and authorising such Commissioners to enquire into—

(*a*) the conduct of any Federal officer;

(*b*) the conduct or management of any department of the public service of the Federation;

(*c*) the conduct or management of any public institution which is not solely maintained by State or Settlement funds;

(*d*) any other matter, not involving any question relating to Muslim Religion or Malay Custom, in which an enquiry would, in the opinion of the High Commissioner in Council, be for the public welfare:

Provided that where any Federal officer into whose conduct it is proposed to enquire, was, at the time of committing such conduct, serving in a department of the public service of a State or Settlement, such commission shall only be issued with the concurrence of the Ruler in Council of such State or of the High Commissioner in Nominated Council, as the case may be.

(2) The High Commissioner in Nominated Council may, where it appears to him to be expedient so to do, issue a Commission appointing one or more Commissioners and authorising such Commissioners to enquire into—

(*a*) the conduct of any Settlement officer;

(*b*) the conduct or management of any department of the public service of a Settlement;

(*c*) the conduct or management of any public institution which is solely maintained by Settlement funds;

(*d*) any other matter in which an enquiry would, in the opinion of the High Commissioner in Nominated Council, be for the public welfare of a Settlement:

Provided that where any Settlement officer, into whose conduct it is proposed to enquire, was, at the time of committing such conduct, serving in a department of the Federal Government or of the public service of a State, such Commission shall only be issued with the concurrence of the High Commissioner in Council or of the Ruler in Council of such State, as the case may be.

(3) The Ruler in Council of any State may, where it appears to him to be expedient so to do, issue a Commission appointing one or more Commissioners and authorising such Commissioners to enquire into—

(*a*) the conduct of any State officer;

(*b*) the conduct or management of any department of the public service of such State;

(*c*) the conduct or management of any public institution which is solely maintained by State funds;

(*d*) any other matter in which an enquiry would, in the opinion of the Ruler in Council, be for the public welfare of such State and which does not directly concern the public welfare of any other State or any Settlement:

Provided that where any State officer, into whose conduct it is proposed to enquire, was, at the time of committing such conduct serving in a department of the Federal Government or of the public service of a Settlement, such Commission shall only be issued with the concurrence of the High Commissioner in Council or the High Commissioner in Nominated Council, as the case may be.

(4) In this section, unless the context otherwise requires—

(*a*) "Federal officer" means any officer appointed and employed by the Federal Government, and any officer whose conditions of employment render him liable for service in more than one State or Settlement;

(*b*) "State officer" means any officer appointed by a State Government whose conditions of employment do not render him liable for service outside that State;

(*c*) "Settlement officer" means any officer appointed by a Settlement Government whose conditions of employment do not render him liable for service outside that Settlement.

Terms of Commission.

3. (1) A Commission issued under section 2 of this Ordinance shall specify the subject of the enquiry and may, in the discretion of the High Commissioner in Council or in Nominated Council or Ruler in Council, as the case may be—

(*a*) if there is more than one Commissioner, direct—

(i) which Commissioner shall be Chairman;

(ii) the number of Commissioners which shall constitute a quorum;

(*b*) direct where and when the enquiry shall be held and the report thereof rendered;

(*c*) direct whether the enquiry or any part thereof shall or shall not be held in public;

(*d*) generally prescribe how such Commission shall be executed.

(2) When the Commission specifies the number of Commissioners which shall constitute a quorum, the number of Commissioners so specified may, in the absence of the other Commissioner or Commissioners, exercise all or any of the powers conferred upon the Commissioners by this Ordinance.

Power to add or substitute Commissioners.

4. (1) The High Commissioner in Council or in Nominated Council or Ruler in Council, as the case may be, may, from time to time, add to the persons named in any such Commission, and in case any person appointed or added under this Ordinance dies or resigns or desires to be discharged or refuses or becomes incapable of acting, the High Commissioner in Council or in Nominated Council or Ruler in Council, as the case may be, may appoint a new Commissioner in his place, and all the powers and duties by this Ordinance conferred and imposed on a Commissioner shall be exercised and performed by the Commissioner so added or appointed.

(2) When a new Commissioner has been appointed under the provisions of sub-section (1) of this section it shall not be necessary for any evidence which may have been taken before the Commission prior to such appointment to be retaken.

Enlargement of time.

5. The High Commissioner in Council or in Nominated Council or Ruler in Council, as the case may be, may, from time to time, by endorsement under his hand on a Commission, enlarge the time for the execution of the Commission, whether the time for the execution thereof has expired or not.

Change of High Commissioner or Ruler.

6. No Commission issued under this Ordinance shall lapse by reason of, or be otherwise affected by, the death, absence, retirement or removal of the High Commissioner or, if such Commission has been issued by a Ruler in Council of any State, the demise of the Ruler of that State.

Appointment of Secretary.

7. The High Commissioner in Council or in Nominated Council or Ruler in Council, as the case may be, may appoint a Secretary to attend the sittings of the Commission, to record their proceedings, to keep their papers, summon and record the evidence of witnesses, and generally to perform such duties connected with the enquiry as the Commissioners shall order, subject to the directions, if any, of the High Commissioner in Council or in Nominated Council or Ruler in Council, as the case may be.

Powers of Commissioners.

8. The Commissioners shall have the following powers—

(*a*) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses as the Commissioners may think it necessary or desirable to procure or examine;

(*b*) to require the evidence (whether written or oral) of any witness to be made on oath or affirmation (such oath or affirmation to be that which could be required of the witness if he were giving evidence in the High Court) or by statutory declaration;

(*c*) to summon any person in the Federation, or, in the case of a Commission issued by the Ruler in Council of any State, in such State, to attend any meeting of the

Commissioners to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession;

(*d*) to issue a warrant of arrest to compel the attendance of any person who, after having been summoned to attend, fails to do so, and does not excuse such failure to the satisfaction of the Commissioners, and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons, and also to fine such person a sum not exceeding fifty dollars;

(*e*) to fine in a sum not exceeding fifty dollars any person who, being required by the Commissioners to give evidence on affirmation or to produce a document or other thing, refuses to do so and does not excuse such refusal to the satisfaction of the Commissioners;

(*f*) notwithstanding the provisions of any written law relating to evidence, to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;

(*g*) subject to any direction contained in the Commission—

(i) to admit or exclude the public from the enquiry or any part thereof;

(ii) to admit or exclude the press from the enquiry or any part thereof;

(*h*) to award any person who has attended any meeting of the Commissioners, including any interpreter appointed under section 9 of this Ordinance, such sums as in the opinion of the Commissioners may have been reasonably incurred by him by reason of such attendance.

Interpreters.

9. (1) The Commissioners shall have the power to appoint any person, whether in the service of Government or not, to act as interpreter in any matter brought before them and to translate any books, papers or writings produced to them.

(2) Any interpreter appointed under this section shall make and subscribe before the Commissioners the following affirmation:

"I.....do solemnly declare and affirm that I will faithfully perform the duties of interpreter and will truly interpret the questions put and the answers given by witnesses and also statements made by the Commissioners and will truly translate or explain and transcribe all documents entrusted to me for such purpose to the best of my ability, and that I will not except as authorised by the Commissioners directly or indirectly reveal the contents of such documents as may be entrusted to me, nor the evidence given by witnesses which may have been interpreted by me".

Allowances.

10. Any sums awarded by the Commissioners under paragraph (*h*) of section 8 of this Ordinance shall be paid out of the public funds of the Federation or, where the Commission has been issued by the Ruler in Council of any State, out of the public funds of that State.

Use of evidence in civil and criminal proceedings.

11. No evidence taken under this Ordinance shall be admissible in any civil or criminal proceedings whatsoever against the person who gave such evidence, except when such person is charged with giving or fabricating false evidence.

Penalty for threats, etc., to witnesses.

12. (1) Any person who hinders or attempts to hinder any person from giving evidence before the Commissioners or by threats, deters or attempts to deter any person from giving such evidence, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years.

(2) Any person who threatens, insults or injures any person for having given evidence, or on account of the evidence which he has given before the Commissioners, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years.

Penalty for contempt.

13. Any person who commits an act of contempt as defined in section 14 of this Ordinance against the Commissioners or any of them shall be guilty of an offence and shall be liable to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months.

Definition of contempt.

14. The following shall be deemed to be an act of contempt within the meaning of section 13 of this Ordinance—

(*a*) any act of disrespect or any insult or threat offered to the Commissioners or any of them while sitting in Commission;

(*b*) any act of disrespect or any insult or threat offered to a Commissioner at any other time and place on account of his proceedings in his capacity as a Commissioner.

Manner of dealing with contempt.

15. (1) Where an act of contempt is committed in the presence of the Commissioners sitting in Commission, the Commissioners may, after hearing the offender in his defence, pass sentence upon him forthwith in accordance with section 13 of this Ordinance.

(2) In any other case the Commissioners may summon the offender to appear before them at a time and place to be specified in such summons, there to show cause why he should not be judged to have committed an act of contempt and be dealt with in accordance with the provisions of section 13 of this Ordinance.

(3) If any person who has been summoned in accordance with the provisions of sub-section (2) of this section fails to attend at the time and place specified in the summons, the Commissioners may issue a warrant to compel the attendance of such person.

Public Prosecutor to aid Commissioners.

16. (1) The Commissioners may require the Public Prosecutor to cause any matter relevant to the enquiry to be investigated.

(2) Any person appointed by the Public Prosecutor to investigate any such matter shall, for the purposes of such investigations, have, within the Malay States, all the powers in relation to police investigations given to police officers in any seizable case under the provisions of Chapter XIII of the Criminal Procedure Code of the Federated Malay States, and, within the Settlements, all such powers given under the provisions of Chapter XIII of the Criminal Procedure Code of the Straits Settlements, and may, when authorised in writing by the Public Prosecutor, search any premises and take possession of any articles or documents as specified in such authority.

F.M.S. Cap. 6.

S.S. Cap. 21.

Preservation of order by the police.

17. The High Commissioner, the Ruler of a State, or the Resident Commissioner of a Settlement, as the case may be, may direct the Commissioner of Police to detail police officers to attend upon any such Commissioners, to preserve order during the proceedings and to serve summonses on witnesses and to perform such ministerial duties as such Commissioners shall direct.

Right to representation by counsel.

18. Any person whose conduct is the subject of enquiry under this Ordinance, or who is in any way implicated or concerned in the matter under enquiry, shall be entitled to be represented by an advocate and solicitor at the whole of the enquiry; and any other person who may consider it desirable that he should be so represented may, by leave of the Commissioner or Commissioners, be represented in the manner aforesaid. The Attorney-General, Solicitor-General or any Federal Counsel shall be entitled at any time to appear before and address the Commissioners on any matter which to the Attorney-General appears to be relevant to the enquiry.

Commissioners to be public servants and enquiries to be judicial proceedings under the Penal Code.

19. Every Commissioner appointed under this Ordinance shall, so long as he is acting as such Commissioner, be deemed to be a public servant within the meaning of the Penal Code, and every enquiry under this Ordinance shall be deemed to be a judicial proceeding within the meaning of such Code.

Commissioners to have powers of First Class Magistrates.

20. For the purposes of recovering any costs awarded or enforcing the payment of any fine ordered or imposed or giving effect to any warrant of arrest or order of imprisonment, the Commissioners or any of them shall have the powers of a Magistrate of the First Class.

Protection of Commissioners and witnesses.

21. (1) No Commissioner shall be liable to any suit or other proceeding for any act or thing done by him as such Commissioner.

(2) All evidence given for the purposes of any enquiry under this Ordinance shall be absolutely privileged so that the witness giving such evidence shall not be liable to any suit or other civil proceeding in respect of such evidence.

Procedure and forms.

22. Subject to the provisions of this Ordinance the procedure to be followed by the Commissioners and the form of any order, summons, warrant or other document made or issued for the purposes of this Ordinance shall be in the discretion of the Commissioners.

Repeal.

23. The Ordinances and Enactments specified in the Schedule hereto are hereby repealed.

SCHEDULE.

(Section 23.)

REPEAL.

No.	Title.
M.U. Ord. No. 24 of 1947 ...	The Commissions of Enquiry Ordinance, 1947
S.S. Ord. No. 5 of 1941	The Inquiry Commissions Ordinance, 1941
F.M.S. Enactment No. 10 of 1940	The Commissions of Enquiry Enactment, 1940
Johore Enactment No. 105 ...	The Commissions of Inquiry Enactment

Passed in the Legislative Council on the fourteenth day of June, 1950.

A. R. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 28 of 1950.

THE TELECOMMUNICATIONS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

Abdul Rahman. ..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lanning
..... *High Commissioner.*

..... *Sultan of Selangor.*

30th ..... June, 1950.

30th ..... June, 1950.

An Ordinance to unify the law relating to Telecommunications.

[1st ~~June~~ July, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council, as follows :

PART I.

PRELIMINARY.

Short title.

1. This Ordinance may be cited as the Telecommunications Ordinance, 1950.

Interpretation.

2. In this Ordinance—

"Land Authority" means in connection with any matter affecting land in any State the Ruler in Council of that State and in connection with any matter affecting land in any Settlement, the Resident Commissioner of that Settlement;

"local authority" means the Municipal Commissioners of any Municipality, a Town Board, Rural Board or other similar local authority constituted by or under any written law for the time being in force;

"message" means any communication sent and, received or made by telecommunication or given to a telecommunications officer to be sent by telecommunication or to be delivered;

"post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telecommunication line;

"telecommunication" means any system for the transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, visual or other electromagnetic systems;

"telecommunication authority" means the Director-General of Telecommunications, Malaya, and includes any telecommunications officer empowered by him to perform all or any of the functions conferred on the telecommunication authority under this Ordinance;

"telecommunication line" means a wire or wires used for the purpose of a telecommunication, with any casing, coating, tube or pipe enclosing the same, and any appliances and any apparatus connected therewith for the purpose of fixing or insulating the same;

"telecommunications officer" means any person employed, either permanently or temporarily, in connection with a telecommunication, established, maintained or worked by the Government or by a person licensed under this Ordinance;

"telecommunication plant" means any building, apparatus, machinery, equipment, poles, lines, vehicles and any other appliances used for and in connection with telecommunications.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

Exclusive privilege and power to grant licences.

3. (1) The Government shall have the exclusive privilege of establishing, maintaining and working telecommunications within the Federation.

(2) The exclusive privilege referred to in sub-section (1) of this section shall not extend to a telecommunication, other than a radiocommunication as defined in section 36 of this Ordinance, contained wholly within a building or part of a building when such telecommunication is owned and operated by a person occupying that building or part of a building for his sole use and interest.

(3) The High Commissioner in Council may grant a licence on such conditions and in consideration of such payments as he thinks fit to any person to establish, maintain or work a telecommunication within any part of the Federation, and, subject to the approval of the Land Authority, a licence may extend to authorising the licensee to place, lay, carry or maintain any posts, cables or wires for the purpose of such telecommunication on, along, through, under or across any land:

Provided that where it is not proposed to carry any telecommunication line for the purpose of a telecommunication on, along, through, under or across any State land or Settlement land, or in such manner as to cause interference with any private right of any other person such licence may be granted by the telecommunications authority.

Procedure on application for licence authorising work involving interference with private rights.

4. Where any person (hereinafter called "the petitioner") requests the High Commissioner in Council to grant him a licence under the provisions of sub-section (3) of section 3 of this Ordinance and the granting of such licence would authorise the doing of work involving interference with any private right no such licence shall be granted until the following procedure has been duly observed, that is to say—

(*a*) the petitioner shall prepare a plan of the area or areas over, along or under which the telecommunication line is to be laid and maintained and shall show on such plan the whole premises whether built or not which will be affected by the said undertaking, and the said plan shall be open to public inspection for a period of three weeks after the date of the notification hereinafter referred to shall have first been published;

(*b*) the petitioner shall after such plan has been prepared and is ready for inspection publish a notification during the said period twice in the *Gazette* and twice weekly in at least one English language newspaper and one Malay or Chinese language newspaper and such notification shall be in such form as may be prescribed;

(*c*) the petitioner shall serve a notice on every owner of property affected by such plan stating that such plan has been prepared and requiring him to signify his assent or dissent thereto within one month from the date of service;

(*d*) any person affected by such plan may within the said period of three weeks or within one month from the date of such service deliver to the petitioner a written objection to any proposal contained therein;

(*e*) upon the request of the petitioner or of any person objecting under the provisions of the last paragraph the High Commissioner may within fourteen days thereof appoint a tribunal consisting of not more than six persons, three of whom shall form a quorum. The tribunal shall have power to determine its own proceedings and each

member thereof shall be furnished by the petitioner with a copy of the plan, the notification and the objection;

(*f*) objections shall be considered by the tribunal at a meeting of which the petitioner and the objectors shall be informed by notice in writing delivered by the tribunal to the petitioner and the objectors and service of the notice shall be deemed sufficient if the notice is delivered to the last known address of the petitioner and the objectors or left at the property deemed to be affected by the plan and notification. At such meeting the petitioner and any objector may appear in person or be represented by a duly authorised agent;

(*g*) the tribunal shall meet to consider objections not less than one week or more than three weeks after the appointment thereof by the High Commissioner;

(*h*) within fourteen days after completing the hearing of the objections the tribunal shall submit to the High Commissioner in Council its findings in the form of a report together with one copy each of the plan, the notification and a schedule of the objections in a summary form which shall record the opinion of the tribunal as to each objection;

(*i*) the High Commissioner in Council may approve the said plan or may reject it, or may approve the said plan with such conditions and modifications as he may think fit. Approval or objection of any plan shall be notified in the *Gazette* and such notification to be conclusive evidence that the said plan was duly prepared and approved or rejected as the case may be:

Provided that where no objection has been lodged within the time specified in paragraph (*d*) of this section or where an objection has been lodged in respect of certain immovable property and not in respect of other immovable property, the High Commissioner in Council may, upon the expiration of the time so specified, forthwith, subject to the approval of the Land Authority, grant such licence to

the petitioner under sub-section (3) of section 3 of this Ordinance so far as such licence relates to the immovable property in respect of which no objection has been lodged within the specified time.

Special powers in emergency.

5. (1) On the occurrence of any public emergency or in the interest of the public safety, the High Commissioner or any officer specially authorised by him in this behalf may—

(*a*) take temporary possession of any telecommunication established, maintained or worked by any person licensed under this Ordinance; or

(*b*) withdraw either totally or partially the use of any telecommunication facility or telecommunication plant from any person or class of persons or from the public at large; or

(*c*) order that any message or class of messages to or from any person or class of persons or relating to any specified subject shall not be transmitted or shall be intercepted or detained, or that any such message or messages or the records thereof shall be disclosed to an officer mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under sub-section (1) of this section was in the interest of public safety, a certificate signed by the High Commissioner and delivered to the person in charge of the telecommunication shall be conclusive proof on the point.

Power to require production of messages.

6. Where it appears to the High Commissioner that such a course is expedient in the public interest he may by warrant under his hand require any person who owns or controls any telecommunication to produce to him or to a person named in the warrant the originals and transcripts and records relating to either all messages, or messages of any specified class or description, or messages sent from or addressed to any specified person or place or sent to or received from any place out of the Federation by means of any such telecommunication and all other papers relating to any such messages as aforesaid.

Power to make regulations.

7. (1) The High Commissioner in Council may make regulations for the conduct of all or any telecommunications established, maintained or worked by the Government or by persons licensed under this Ordinance.

(2) Such regulations may provide for all or any of the following matters:

(*a*) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted, and apparatus, equipment and plant may be hired;

(*b*) the precautions to be taken for preventing the improper interception or disclosure of messages;

(*c*) the period for which and the conditions subject to which messages and other documents belonging to or being in the custody of telecommunication officers shall be preserved;

(*d*) the fees to be charged for searching for messages or other documents in the custody of any telecommunication officer;

(*e*) for prescribing all matters which under this Part of this Ordinance may be prescribed.

Such regulations may prescribe fines for any offence against the provisions thereof which shall not exceed the following limits—

(i) where the offender is a person licensed under this Ordinance and is punishable for the breach, five hundred dollars, and in the case of a continuing breach, a further fine of one hundred dollars for every day or part of a day after the first day during which the breach continues;

(ii) where the offender is a servant of a person licensed as aforesaid or any other person, one-fourth of the amount specified in paragraph (i) of this sub-section.

(3) Regulations made under this section shall be laid before the Legislative Council at its first meeting after their publication in the *Gazette*.

(4) If a resolution of the Legislative Council is passed, at the meeting next after the meeting at which the Regulations are laid in accordance with sub-section (3) of this section, to the effect that any such regulation

shall be cancelled as from a specified date, such regulation shall be void as from that date, but without prejudice to the validity of anything done under such regulation prior to such date.

Revocation of licences.

8. The High Commissioner in Council may at any time revoke any licence granted under section 3 of this Ordinance on the breach of any of the conditions therein contained or in default of payment of any consideration payable thereunder.

Government not responsible for loss or damage.

9. (1) The Government shall not be responsible for any loss or damage which may occur in consequence—

(*a*) of any telecommunication officer failing in his duty with respect to the receipt, transmission or delivery of any message; or

(*b*) of any failure of telecommunication plant.

(2) No telecommunication officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELECOMMUNICATION LINES AND POSTS.

Power to place telecommunication lines and posts.

10. (1) The telecommunication authority may from time to time place and maintain a telecommunication line under, over, along or across, and posts in or upon, any immovable property.

(2) The telecommunication authority shall not exercise the powers conferred by this section except for the purposes of a telecommunication established or maintained by the Government, or to be so established or maintained, or licensed under sub-section (3) of section 3 of this Ordinance.

(3) Neither the Government nor the telecommunication authority shall acquire any right other than that of user only in the property under, over, along, across, in or upon which the telecommunication authority places any telecommunication line or post.

(4) Except as hereinafter provided, the telecommunication authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority without the permission of that authority.

(5) In the exercise of the powers conferred by this section, the telecommunication authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than property referred to in sub-section (4) of this section shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property.

11. The telecommunication authority, his officers, servants and agents may at any time for the purpose of examining, repairing, altering or removing any telecommunication line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to property vested in or under the control or management of local authorities.

Power for local authority to impose conditions.

12. Any permission given by a local authority under sub-section (4) of section 10 of this Ordinance may be given subject to such reasonable conditions as that authority thinks fit to impose as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work or as to any other thing connected with or relative to any work undertaken by the telecommunication authority under those powers.

Power for local authority to require removal of lines and posts.

13. When under the foregoing provisions of this Ordinance a telecommunication line or post has been placed by the telecommunication authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority having regard to circumstances which have arisen since the telecommunication line or post was so placed considers it expedient that it should be removed or that its position should be altered, the local authority may require the telecommunication authority to remove it or alter its position, as the case may be.

Power to alter position of pipes and drains.

14. (1) The telecommunication authority may, for the purpose of exercising the powers conferred upon it by this Ordinance in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe, not being a main pipe for the supply of gas or water, or of any drain, not being a main drain.

(2) When the telecommunication authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so to the local authority, and when the pipe or drain is not under the control of the local authority to the person under whose control the pipe or drain is.

(3) A local authority or person receiving notice under sub-section (2) of this section may send a person to superintend the work, and the telecommunication authority shall execute the work to the reasonable satisfaction of the person so sent.

Dispute between authorities.

15. (1) If any dispute arises between the telecommunication authority and a local authority in consequence of the local authority refusing the permission referred to in sub-section (4) of section 10, or prescribing any condition under section 12, or in consequence of the telecommunication authority omitting to comply with a requisition made under section 13 of this Ordinance, or otherwise in respect of the exercise of the powers conferred by this Ordinance, it shall be determined by such officer as the High Commissioner may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the High Commissioner in Council, whose order shall be final.

Provisions applicable to other property.

Cases of resistance or obstruction.

16. (1) If the exercise of the powers mentioned in section 10 of this Ordinance in respect of property referred to in sub-section (5) thereof is resisted or obstructed, a President of a Sessions Court may, in his discretion, order that the telecommunication authority shall be permitted to exercise them.

(2) If after the making of an order under sub-section (1) of this section, any person resists the exercise of those powers, or having control over the property does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under sub-section (5) of section 10 of this Ordinance, it shall, on application for that purpose by either of the disputing parties to a President of a Sessions Court, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telecommunication authority may pay into the Sessions Court for the district such amount as it deems sufficient, or where all the disputing parties have, in writing, admitted the amount tendered to be sufficient, or the amount has been determined under sub-section (3) of this section, that amount; and the President of a Sessions Court, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a President of a Sessions Court under sub-section (3) or (4) of this section shall be final:

Provided that nothing in this sub-section shall affect the right of any person to sue for and recover the whole or any part of any compensation paid by the telecommunication authority from the person who has received the same.

Owner of property may require removal of line or post.

17. (1) When under the foregoing provisions of this Ordinance a telecommunication line or post has been placed by the telecommunication authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telecommunication line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telecommunication authority to remove or alter the line or post accordingly.

(2) If compensation has been paid under sub-section (5) of section 10 of this Ordinance, he shall, when making the requisition, tender to the telecommunication authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever is the smaller sum.

(3) If the telecommunication authority omits to comply with the requisition, the person making it may apply to the President of a Sessions Court within whose jurisdiction the property is situate to order the removal or alteration.

(4) The President of a Sessions Court may, in his discretion, reject the application or make an order, absolute or subject to conditions, for the removal of the telecommunication line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final.

Removal of trees dangerous to or obstructing telecommunication lines or communications.

18. (1) Where in the opinion of the Director-General of Telecommunications, Malaya, there is at any time danger or suspected danger that any tree (which term in this section includes undergrowth) standing or lying near a telecommunication line may interrupt or interfere with telecommunications or cause damage to any telecommunication line, the Director-General of Telecommunications, Malaya, may cause the tree to be felled or dealt with in such other manner as will, in his opinion, avert the danger.

(2) Where a tree, which has been felled or otherwise dealt with under sub-section (1) of this section, was in existence before the telecommunication line was placed, erected or installed, the Director-General of Telecommunications, Malaya, may pay to any person interested in the tree such sum as may be agreed by way of compensation; and in default of agreement shall report the matter to the officer charged under the Land Code of the Federated Malay States, or under any written law corresponding thereto which is in force in any State or Settlement, with the collection of land revenue from the land on which such tree is situate, who after giving an opportunity of being heard to all persons interested, shall award, and if necessary shall apportion, such compensation as he thinks reasonable; and such award shall be final.

Notice due by person felling trees.

(3) In the event of the owner or occupier of any land felling or clearing any tree or vegetation adjacent to any telecommunication line, such owner or occupier shall give to the telecommunication authority notice in writing of his intention so to do and shall take all such reasonable precautions as the telecommunication authority may require for the protection of such telecommunication line.

Liability of person felling trees.

(4) If any such owner or occupier fails to give notice as hereinbefore provided, or having given notice fails to take any such precautions as the telecommunication authority may have required, he shall be liable to pay to the telecommunication authority all costs

and expenses incurred in repairing the line and re-establishing communication. The certificate of the telecommunication authority shall be conclusive evidence of the amount of such costs and expenses.

Recovery of costs.

(5) If the amount due for costs and expenses be not paid within seven days after demand the telecommunication authority may report the same to a President of a Sessions Court and such amount may be recovered in the same way as if it were a fine imposed by such President of a Sessions Court.

Onus of proof.

(6) If any trees or vegetation are felled or cleared upon land adjacent to any telecommunication line it shall be presumed until the contrary is proved that such trees or vegetation were felled or cleared by the owner or occupier of the land or by his servants or agents acting as such.

Existing line and posts deemed to be placed under this Ordinance.

19. Every telecommunication line or post placed before the commencement of this Ordinance under, over, along, across, in or upon any property for the purpose of a telecommunication established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by and after observance of all the requirements of this Ordinance.

Application of Part III to a person licensed under section 3.

20. This Part shall apply to a person licensed under sub-section (3) of section 3 of this Ordinance to place, lay, carry or maintain any posts, cables or wires on, along, through, under or across any land, as though references to "the telecommunication authority" wherever appearing in this Part were references to such person so licensed.

PART IV.

PENALTIES.

Unlicensed telecommunication or breach of licence.

21. Any person who establishes, maintains or works a telecommunication within the Federation otherwise than as permitted under section 3 of this Ordinance or breaks any condition contained in a licence granted under that section, shall be liable to a fine not exceeding five hundred dollars, and to a further fine not exceeding two hundred and fifty dollars for every week or part thereof during which the line is maintained or worked or the breach of the condition continues.

Using unlicensed telecommunications.

22. Any person who, knowing or having reason to believe that a telecommunication has been established or is maintained or worked in contravention of this Ordinance, transmits or receives any message by such telecommunication, or performs any service incidental thereto, or delivers any message for transmission by such telecommunication, or accepts delivery of any message sent thereby, shall be liable to a fine not exceeding twenty-five dollars.

Intrusion or trespass or obstruction.

23. Any person who

(*a*) enters any part of a telecommunication office of the Government or any part of an office of a person licensed under this Ordinance without the permission of the telecommunication officer in charge; or

(*b*) enters a fenced enclosure, building or room of such a telecommunication office in contravention of any rule or notice not to do so; or

(*c*) refuses to quit such enclosure, building or room on being requested to do so by any telecommunication officer or servant employed therein; or

(*d*) wilfully obstructs or impedes any such officer or servant in the performance of his duty;

shall be liable to a fine not exceeding two hundred dollars.

Unlawful attempt to learn contents of messages.

24. Any person who does any of the acts mentioned in section 23 of this Ordinance, with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Ordinance, shall, in addition to the fine to which he is liable under section 23, be liable to imprisonment for a term which may extend to one year.

Intentional damage to telecommunication.

25. Any person who, intending—

(*a*) to prevent or obstruct the transmission or delivery of any message; or

(*b*) to intercept or to acquaint himself with the contents of any message; or

(*c*) to commit mischief;

damages, removes, tampers with or touches any telecommunication plant, shall be liable to imprisonment for a term which may extend to three years or to a fine not exceeding three hundred dollars, or to both such imprisonment and fine.

Offences by telecommunication officers.

26. Any telecommunication officer, or any person not being a telecommunication officer but having official duties connected with any office which is used as a telecommunication office, who—

(*a*) wilfully secretes, makes away with or alters any message or record of any message; or

(*b*) wilfully and otherwise than in obedience to an order of the High Commissioner or of an officer specially authorised by him to make the order, omits to transmit or intercepts or detains any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message or record of any message to any person not entitled to receive the same; or

(*c*) divulges the purport of any message to any person not entitled to become acquainted with the same;

shall be liable to imprisonment for a term which may extend to three years or to a fine not exceeding three hundred dollars, or to both such imprisonment and fine.

Fraudulently sending messages.

27. Any telecommunication officer who transmits or allows to be transmitted by telecommunication any message on which the charge prescribed by the Government or by a person licensed under this Ordinance, as the case may be, has not been paid, intending thereby to defraud the Government or that person, shall be liable to imprisonment for a term which may extend to three years or to a fine not exceeding three hundred dollars, or to both such imprisonment and fine.

Misconduct.

28. Any telecommunication officer, or other person having official duties connected with any telecommunication office, who is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission, or the delivery of any message is impeded or delayed, or any telecommunication officer who loiters or delays in the transmission or delivery of any message, shall be liable to imprisonment for a term which may extend to three months or to a fine not exceeding fifty dollars, or to both such imprisonment and fine.

Sending false messages.

29. Any person who transmits or causes to be transmitted by telecommunication a message which he knows to be false or fabricated shall be liable to imprisonment for a term which may extend to three years or to a fine not exceeding three hundred dollars, or to both such imprisonment and fine.

Fraudulent retention of message.

30. Any person who fraudulently retains or wilfully secretes, makes away with or detains a message or record of a message which ought to have been delivered to some other person, or being required by a telecommunication officer to deliver up any such message or record thereof neglects or refuses to do so, shall be liable to imprisonment for a term which may extend to two years or to a fine not exceeding two hundred dollars, or to both such imprisonment and fine.

Refusal or neglect to produce message.

31. Any person who, on being required under section 6 of this Ordinance to produce any original or transcript of a message or any record or paper relating to a message, refuses or neglects to do so, shall be liable to imprisonment for a term which may extend to three months, or to a fine not exceeding five hundred dollars, or to both such imprisonment and fine.

Telecommunication officers deemed public servants.

32. (1) A telecommunication officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Penal Code.

(2) In the said section 161 the word "Government" shall for the purposes of this Ordinance, be deemed to include a person licensed under this Ordinance.

Attempt to commit offence.

33. Any person who attempts to commit an offence punishable under this Ordinance shall be liable to the punishment herein provided for the offence.

PART V.

RADIOCOMMUNICATION.

Exemption.

34. The provision of this Part shall not apply to officers or men of His Majesty's Navy, Army or Air Force or of any Local Force established under any written law in force in the Federation using radiocommunication apparatus in the performance of their official duties, or to radiocommunication apparatus so used.

35. (1) In this Part—

"Vehicle" means any vehicle whether mechanically propelled or not;

"radiocommunication" means any telecommunication by means of Hertzian waves;

"Hertzian waves" means electromagnetic waves between 10 Kc/s and 3,000,000 Mc/s;

"radiocommunication apparatus" means any apparatus or any component part thereof capable of being used or being adapted for the transmission or reception of Hertzian waves;

"local vessel" means any ship registered in a port of the Federation, or any vessel licensed to be used in the tidal waters of the Federation, or any unlicensed vessel habitually kept in the Federation or the territorial waters thereof;

"local aircraft" means any aircraft registered in the Federation;

(2) Subject to regulations made under section 40 of this Ordinance, nothing in this Part of this Ordinance shall prevent any person from making or using electrical apparatus for actuating machinery or for any purpose other than the transmission or reception of messages or other communications whatsoever.

Exclusive privilege.

36. (1) The Government shall have the exclusive privilege of establishing any radio communication station and of installing and working any radiocommunication apparatus for the purpose of—

(*a*) transmitting messages or other communications whatsoever by radiocommunication within the Federation and receiving messages or other communications whatsoever so transmitted; or

(*b*) transmitting messages or other communications whatsoever by radiocommunication from the Federation to any place, ship or aircraft outside the Federation; or

(*c*) receiving in the Federation messages or other communications whatsoever transmitted by radiocommunication from any place, ship or aircraft outside the Federation.

(2) The High Commissioner in Council may fix the rates at which, and the conditions and restrictions subject to which, messages or other communications may be transmitted or received by radiocommunication or delivered after receipt to the person to whom they are addressed.

Grant of licences.

37. (1) The High Commissioner in Council may, whenever he deems it expedient to do so, licence the establishment of any radiocommunication station or the installation or working of any radiocommunication apparatus in any place in the Federation or on board any local vessel or local aircraft or in any vehicle.

(2) The High Commissioner in Council may, whenever he deems it expedient to do so, issue to any person who holds a licence under sub-section (1) of this section a licence to work any radiocommunication apparatus for all or any of the purposes mentioned in section 36 of this Ordinance.

(3) The High Commissioner in Council may delegate his power of issuing licences to the telecommunication authority, or to such officer or officers as he thinks fit and may appoint officers for the purpose of carrying into effect the provisions of this Part of this Ordinance:

Provided that no delegation of the power of issuing licences shall affect the exercise of such power by the High Commissioner in Council.

(4) All such officers shall be deemed to be public servants within the meaning of the Penal Code.

Prohibitions.

38. (1) No person shall—

(*a*) establish any radiocommunication station or instal or work any radiocommunication apparatus in any place in the Federation or on board any local vessel or local aircraft or in any vehicle; or

(*b*) offer for sale, sell, or have in his possession with a view to sale radiocommunication apparatus or material;

except under and in accordance with a licence granted under this Part of this Ordinance.

(2) Every such licence shall be in such form and for such period as the High Commissioner in Council determines and shall contain such terms, conditions and restrictions, on and subject to which the licence is granted, as the High Commissioner in Council considers desirable in the public interest.

(3) Any person who is in possession of any radiocommunication apparatus intended for transmitting or receiving messages by radiocommunication shall be deemed until the contrary is proved to have worked the same.

(4) The occupier of any dwelling-house or premises in which is installed any radiocommunication apparatus for receiving any messages by radiocommunication in respect of which a licence is not in force shall be guilty of an offence against this Part of this Ordinance.

(5) It shall be a defence to a prosecution for an offence against sub-section (4) of this section that the occupier was not aware and could not with reasonable diligence have become aware of the existence in the dwelling-house or premises of the radiocommunication apparatus in question.

Penalty for unlicensed station.

39. (1) Any person who establishes a radiocommunication station or instals or works any radiocommunication apparatus without a licence shall be liable to a fine not exceeding one thousand dollars or to imprisonment for a term which may extend to twelve months, and in either case shall be liable to forfeit any radiocommunication apparatus installed or worked without a licence.

(2) If a Magistrate is satisfied by information on oath that there is reasonable ground for believing that a radiocommunication station has been established or that any radiocommunication apparatus has been installed or worked without a licence in any place in the Federation or on board any local vessel or local aircraft, he may grant a search warrant to any police officer to enter and inspect the station, place, local vessel or local aircraft and to seize any apparatus which appears to him to be used or intended to be used for radiocommunication therein.

(3) A police officer may seize any apparatus which is found by him in any vehicle and which appears to him to be used or intended to be used without a licence for radio communication therein.

Power to make regulations.

40. (1) The High Commissioner in Council may make regulations for—

(*a*) prescribing the forms of licences and the manner in which applications for licences under this Part of this Ordinance are to be made;

(*b*) prescribing the terms, conditions and restrictions on and subject to which licences are granted and the duties of licensees;

(*c*) prescribing the fees payable on the grant of any licence;

(*d*) regulating the working and use of radiocommunication apparatus;

(*e*) regulating the licensing of dealers in and the sale or transfer of radiocommunication apparatus;

(*f*) prohibiting or regulating the working or using of any radiocommunication apparatus in any vehicle or on board any vessel, whether local, British or foreign, while in the territorial waters of the Federation;

(*g*) prohibiting or regulating the working or using of any radiocommunication apparatus on any aircraft, whether local, British or foreign, while in or over the Federation or the territorial waters thereof;

(*h*) examining and issuing certificates of proficiency to operators;

(*i*) ensuring the secrecy of radiocommunications;

(*j*) regulating electrical interference with the working or using of any radiocommunication apparatus and prescribing the requirements to be complied with in the case of any apparatus to prevent or reduce such interference;

(*k*) prescribing all matters which by this Part of this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part of this Ordinance.

(2) No regulations made in respect of the matters described in paragraphs (*f*) and (*g*) of sub-section (1) of this section shall apply to the use of radiocommunication for the purpose of making or answering signals of distress.

Control of apparatus in an emergency.

41. If on the occurrence of any public emergency or in the interest of public safety or tranquillity, the High Commissioner in Council is of opinion that the Government should have control over the transmission or reception of messages by radiocommunications, then after publication of notice to that effect in the *Gazette* and until further notice, the use of radiocommunication at any radiocommunication station and by any installation or apparatus for radiocommunication in the Federation or on board any

vessel in the territorial waters of the Federation or on any aircraft in or over the Federation or its territorial waters or in any vehicle shall be subject to such orders, rules or regulations as the High Commissioner in Council may make, either before or after the occurrence of the emergency, and such orders, rules or regulations may—

(*a*) prohibit or regulate such use in all cases or in such cases as may be deemed desirable; or

(*b*) provide for—

(i) the taking possession of, the control of or the usage for official purposes of all radiocommunication stations and apparatus, and the payment of compensation for any damage caused thereby;

(ii) the stopping, delaying and censoring of all messages received, transmitted or submitted for transmission;

(iii) the carrying out of any other purpose which the High Commissioner in Council thinks necessary:

Provided that nothing in such orders, rules or regulations shall apply to the use of radiocommunication for the purpose of making or answering signals of distress.

Licences for experimental purposes.

42. (1) When an applicant for a licence proves to the satisfaction of the High Commissioner that the sole object of obtaining the licence is to enable him to conduct experiments in radiocommunication, a licence for that purpose may be granted in accordance with the regulations made under section 40 of this Ordinance and may not be subject to any rent or royalty.

(2) The expression "rent or royalty" in sub-section (1) of this section does not include fees charged in respect of the grant or renewal of licences.

General penalty.

43. (1) Every omission or neglect to comply with, and every act done or attempted to be done contrary to this Part of this Ordinance or any regulation made thereunder, or in breach of the conditions and restrictions subject to or upon which any licence has been issued, shall be deemed to be an offence against this Part of this Ordinance, and for every such offence, not otherwise specially provided for, the offender shall, in addition to the forfeiture of any article seized, be liable to a fine not exceeding five hundred dollars.

(2) In the case of a conviction involving a fine the Court inflicting such fine may direct, on the application of the officer conducting the prosecution, that any part not exceeding one half thereof shall be paid to any person who has given such information as had led to the conviction of the offender or offenders, or if there are more than one such person may direct that it be divided amongst them in such proportions as the Court deems fit.

Repeal.

44. The Enactments and Ordinances mentioned in the Schedule to this Ordinance are hereby repealed to the extent specified in the third column of that Schedule :

Provided that all appointments and rules made, and all licences granted under the provisions of any Ordinance or Enactment repealed by this Ordinance and in force at the commencement of this Ordinance shall continue in force and have effect as if they had been made or granted under this Ordinance until superseded by appointments, regulations and licences made or granted under this Ordinance.

SCHEDULE.

(Section 44.)

Enactments and Ordinance.	Short title.	Extent of Repeal.
S.S. Cap. 72	The Telegraphs Ordinance	The whole
F.M.S. Cap. 163 ...	The Telegraphs Enactment	The whole
Johore Enact. No. 76	The Telegraphs Enactment	The whole
Kedah Enact. No. 120	Enactment No. 120 (Telegraphs)	The whole
Kelantan Enact. No. 4 of 1914	The Telegraph Enactment, 1914	The whole
Trengganu Enact. No. 55 of 1356	The Post Office Enactment	Part III Telegraphs and Part IV Wireless Telegraphy
M.U. Ordinance No. 39 of 1947	The Telegraph (Perlis) Ordinance, 1947	The whole

Passed in the Legislative Council on the fourteenth day of June, 1950.

H. R. Hills

Clerk of Council.

FEDERATION OF MALAYA.

No. 29 of 1950.

THE SPECIFIC RELIEF (MALAY STATES) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

30th June, 1950.

.....*High Commissioner.*

30th June, 1950.

An Ordinance to extend throughout the Malay States the law relating to Specific Relief.

[4th ~~June~~ July, 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART I.

PRELIMINARY.

Short title and application.

1. This Ordinance may be cited as the Specific Relief (Malay States) Ordinance, 1950, and shall have effect within the Malay States only.

Interpretation.

2. (1) In this Ordinance—

"obligation" includes every duty enforceable by law;

"settlement" means any instrument (other than a will or codicil) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;

"trust" includes every species of express, implied, or constructive fiduciary ownership;

"trustee" includes every person holding, expressly, by implication or constructively, a fiduciary character.

Illustrations.

(*a*) *Z.* bequeaths land to *A.*, "not doubting that he will pay thereout an annuity of $1,000 to *B.* for his life." *A.* accepts the bequest. *A.* is a trustee, within the meaning of this Ordinance, for *B.*, to the extent of the annuity.

(*b*) *A.* is the legal, medical, or spiritual adviser of *B.* By availing himself of his situation as such adviser, *A.* gains some pecuniary advantage which might otherwise have accrued to *B.* *A.* is a trustee for *B.*, within the meaning of this Ordinance, of such advantage.

(*c*) *A.*, being *B.*'s banker, discloses, for his own purpose, the state of *B.*'s account. *A.* is a trustee, within the meaning of this Ordinance, for *B.*, of the benefit gained by him by means of such disclosure.

(*d*) *A.*, one of several partners, is employed to purchase goods for the firm. *A.*, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. *A.* is a trustee, for his co-partners, within the meaning of this Ordinance, of the profit so made.

(*e*) *A.*, the manager of *B.*'s indigo-factory, becomes agent for *C.*, a vendor of indigo-seed, and receives, without *B.*'s assent, commission on the seed purchased from *C.* for the factory. *A.* is a trustee, within the meaning of this Ordinance, for *B.*, of the commission so received.

(2) All words occurring in this Ordinance, which are defined in the Contracts (Malay States) Ordinance, 1950, shall be deemed to have the meanings respectively assigned to them by that Ordinance. Ord. No. 14 of 1950.

3. Except where it is herein otherwise expressly provided, nothing in this Ordinance shall be deemed— Savings.

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(*c*) to affect the operation of any law in force for the time being relating to the registration of documents.

4. Specific relief is given— Specific relief how given.

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a receiver.

5. Specific relief granted under paragraph (*c*) of section 4 of this Ordinance is called preventive relief. Preventive relief.

6. Specific relief cannot be granted for the mere purpose of enforcing a penal law. Relief not granted to enforce penal law.

PART II.
SPECIFIC RELIEF.

CHAPTER I.
RECOVERING POSSESSION OF PROPERTY.
POSSESSION OF IMMOVABLE PROPERTY.

7. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the law relating to Civil Procedure in force in any Malay State. Recovery of specific immovable property. F.M.S. Cap. 7.

Suit by person dispossessed of immovable property.

8. (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

(3) No suit under this section shall be brought against any Government in the Federation.

(4) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

POSSESSION OF MOVABLE PROPERTY.

Recovery of specific movable property.
F.M.S. Cap. 7.

9. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the law relating to Civil Procedure in force in any Malay State.

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*) *A.* pledges certain jewels to *B.* to secure a loan. *B.* disposes of them before he is entitled to do so. *A.*, without having paid or tendered the amount of the loan, sues *B.* for possession of the jewels. The suit should be dismissed, as *A.* is not entitled to their possession, whatever right he may have to secure their safe custody.

(*b*) *A.* receives a letter addressed to him by *B.* *B.* gets back the letter without *A.*'s consent. *A.* has such a property therein as entitled him to recover it from *B.*

(*c*) *A.* deposits books and papers for safe custody with *B.* *B.* loses them and *C.* finds them, but refuses to deliver them to *B.* when demanded. *B.* may recover them from *C.*, subject to *C.*'s right if any, under section 121 of the Contracts (Malay States) Ordinance, 1949.
Ord. No. 14 of 1950.

(*d*) *A.*, a warehouse-keeper, is charged with the delivery of certain goods to *Z.*, which *B.* takes out of *A.*'s possession. *A.* may sue *B.* for the goods.

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

10. Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases—

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations

Of paragraph (*a*).

A., proceeding to Europe, leaves his furniture in charge of *B.* as his agent during his absence. *B.*, without *A.*'s authority, pledges the furniture to *C.*, and *C.*, knowing that *B.* had no right to pledge the furniture, advertises it for sale. *C.* may be compelled to deliver the furniture to *A.*, for he holds it as *A.*'s trustee.

Of paragraph (*b*).

Z. has got possession of an idol belonging to *A.*'s family, and of which *A.* is the proper custodian. *Z.* may be compelled to deliver the idol to *A.*

Of paragraph (*c*).

A. is entitled to a picture by a dead painter and a pair of rare China vases. *B.* has possession of them. The articles are of too special a character to bear an ascertainable market-value. *B.* may be compelled to deliver them to *A.*

CHAPTER II.

SPECIFIC PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MAY BE SPECIFICALLY ENFORCED.

Cases in which specific performance enforceable.

11. Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the Court, be enforced—

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(*b*) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

Illustrations

Of paragraph (*a*).

A. holds certain stock in trust for *B*. *A*. wrongfully disposes of the stock. The law creates an obligation on *A*. to restore the same quantity of stock to *B*., and *B*. may enforce specific performance of this obligation.

Of paragraph (*b*).

A. agrees to buy, and *B*. agrees to sell, a picture by a dead painter and two rare China vases. *A*. may compel *B*. specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

Of paragraph (*c*).

A. contracts with *B*. to sell him a house for $1,000. *B*. is entitled to a decree directing *A*. to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contracts with *Z*. to make an archway through their railway to connect lands of *Z*. severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. *Z*. is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding, and wharf.

A. contracts to sell, and *B*. contracts to buy, a certain number of railway-shares of a particular description. *A*. refuses to complete the sale. *B*. may compel *A*. specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A. contracts with *B*. to paint a picture for *B*., who agrees to pay therefor $1,000. The picture is painted. *B*. is entitled to have it delivered to him on payment or tender of the $1,000.

Of paragraph (*d*).

A. transfers without endorsement, but for valuable consideration, a promissory note to *B*. *A*. becomes insolvent, and *C*. is appointed his assignee. *B*. may compel *C*. to endorse the note, for *C*. has succeeded to *A*.'s liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contracts of which the subject has partially ceased to exist. Ord. No. 14 of 1950.

12. Notwithstanding anything contained in section 57 of the Contracts (Malay States) Ordinance, 1950, a contract is not wholly impossible of performance because a portion of its subject-matter, existing, at its date, has ceased to exist at the time of the performance.

Illustrations.

(*a*) *A*. contracts to sell a house to *B*. for $10,000. The day after the contract is made, the house is destroyed by a cyclone. *B*. may be compelled to perform his part of the contract by paying the purchase-money.

(*b*) In consideration of a sum of money payable by *B*., *A*. contracts to grant an annuity to *B*. for *B*.'s life. The day after the contract has been made, *B*. is thrown from his horse and killed. *B*.'s representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

13. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustration.

In a contract for the sale and purchase of a house and lands for $20,000, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

14. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Specific performance of independent part of contract.

15. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

16. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

17. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(*c*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

18. (1) Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

(2) If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

(3) If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations

Of sub-section (2).

A. contracts to sell a hundred gantangs of rice to *B.* *B.* brings a suit to compel *A.* to perform the contract or to pay compensation. The Court is of opinion that *A.* has made a valid contract and has broken it, without excuse, to the injury of *B.*, but that specific performance is not the proper remedy. It shall award to *B.* such compensation as it deems just.

Of sub-section (3).

A. contracts with *B.* to sell him a house for $1,000, the price to be paid and the possession given on the 1st January. *A.* fails to perform his part of the contract, and *B.* brings his suit for specific performance and compensation, which is decided in his favour. The decree may, besides ordering specific performance, award to *B.* compensation for any loss which he has sustained by *A.*'s refusal.

Of the Explanation.

A., a purchaser, sues *B.*, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award *A.* compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A. sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award *A.* compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

19. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration

A. contracts to grant *B.* an under-lease of property held by *A.* under *C.*, and that he will apply to *C.* for a licence necessary to the validity of the under-lease, and that, if the licence is not procured, *A.* will pay *B.* $10,000. *A.* refuses to apply for the

licence and offers to pay *B.* the $10,000. *B.* is nevertheless entitled to have the contract specifically enforced if *C.* consents to give the licence.

CONTRACTS WHICH CANNOT BE SPECIFICALLY ENFORCED.

Contracts not specifically enforceable.

20. The following contracts cannot be specifically enforced—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty;

(*d*) a contract which is in its nature revocable;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(*h*) a contract of which a material part of the subject-matter supposed by both parties to exist, has, before it has been made, ceased to exist.

F.M.S. Cap. 7.

And, save as provided by the law relating to Civil Procedure in force in any Malay State, no contract to refer a controversy to arbitration shall be specifically enforced.

Illustrations

To paragraph (*a*).

A. contracts to sell, and *B.* contracts to buy, $10,000 in the four per cent. loan of the Singapore Municipality;

A. contracts to sell, and *B.* contracts to buy, 40 pikuls of coffee at $30 per pikul;

In consideration of certain property having been transferred by *A.* to *B.*, *B.* contracts to open a credit in *A.*'s favour to the extent of $10,000, and to honour *A.*'s drafts to that amount;

The above contracts cannot be specifically enforced, for in the first and second both *A.* and *B.*, and in the third *A.*, would he reimbursed by compensation in money.

To paragraph (*b*).

A. contracts to render personal service to *B.*:

A. contracts to employ *B.* on personal service:

A., an author, contracts with *B.*, a publisher, to complete a literary work:

B. cannot enforce specific performance of these contracts.

A. contracts to buy *B.*'s business at the amount of a valuation to be made by two valuers, one to be named by *A.* and the other by *B.* *A.* and *B.* each name a valuer, but before the valuation is made *A.* instructs his valuer not to proceed:

By a charter-party entered into in Telok Anson between *A.*, the owner of a ship, and *B.*, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London:

A. lets land to *B.*, and *B.* contracts to cultivate it in a particular manner for three years next after the date of the lease:

A. and *B.* contract that, in consideration of annual advances to be made by *A.*, *B.* will, for three years next after the date of the contract, grow particular crops on the land in his possession and deliver them to *A.* when cut and ready for delivery:

A. contracts with *B.* that, in consideration of $1,000 to be paid to him by *B.*, he will paint a picture for *B*:

A. contracts with *B.* to execute certain works which the Court cannot superintend:

A. contracts to supply *B.* with all the goods of a certain class which *B.* may require:

A. contracts with *B.* to take from *B.* a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach:

A. contracts to marry *B.*:

The above contracts cannot be specifically enforced.

To paragraph (*c*).

A., the owner of a refreshment-room, contracts with *B.* to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. *A.* refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

To paragraph (*d*).

A. and *B.* contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either *A.* or *B.* might at once dissolve the partnership.

To paragraph (*e*).

A. is a trustee of land with power to lease it for seven years. He enters into a contract with *B.* to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, *A.* and *B.*, empowered to sell trust property worth $10,000, contract to sell it to *C.* for $3,000. The contract is so disadvantageous as to be a breach of trust. *C.* cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To paragraph (*f*).

A company existing for the sole purpose of making and working a railway contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To paragraph (*g*).

A. contracts to let for twenty-one years to *B.* the right to use such part of a certain railway made by *A.* as was upon *B.*'s land, and that *B.* should have a right of running carriages over the whole line on certain terms, and might require *A.* to supply the necessary engine-power, and that *A.* should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to *B.*

To paragraph (*h*).

A. contracts to pay an annuity to *B.* for the lives of *C.* and *D.* It turns out that, at the date of the contract, *C.*, though supposed by *A.* and *B.* to be alive, was dead. The contract cannot be specifically performed.

DISCRETION OF THE COURT.

Discretion as to decreeing specific performance.

21. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:

I. Where the circumstances under which the contract is made are such as to give the plaintiff an

unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) *A.* contracts to sell to *B.* the interest of *C.* in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that *C.'s* interest is worth nothing. In fact, the value of *C.'s* interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to *A.*, but not to *B.* Specific performance of the contract should be refused to *A.*

(*b*) *A.* contracts to sell, and *B.* contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. *B.* does not know of this circumstance, and *A.* conceals it from him. Specific performance of the contract should be refused to *A.*

(*c*) *A.'s* property is put up to auction. *B.* requests *C.*, *A.'s* attorney, to bid for him. *C.* does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to *B.* at a low price. Specific performance of the contract should be refused to *B.*

II. Where the performance of a contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*d*) *A.* and *B.*, trustees, join their beneficiary, *C.*, in a contract to sell the trust-estate to *D.*, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to *D.*

(*e*) *A.* contracts with *B.* to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that *A.* cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to *B.*, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*f*) *A.*, a lessee of mines, contracts with *B.*, his lessor, that at any time during the continuance of the lease *B.* may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to *B.*

(*g*) *A.* contracts with *B.* to buy from *B.'s* manufactory and not elsewhere all the goods of a certain class used by *A.* in his

trade. The Court cannot compel *B.* to supply the goods, but if he does not supply them *A.* may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to *B.*

The following is a case in which the Court may properly exercise a discretion to decree specific performance:

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A. sells land to a railway company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of *A.*

FOR WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED.

Who may obtain specific performance.

22. Except as otherwise provided for this Chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto;

(*b*) the representative in interest, or the principal, of any party thereto:

Provided that, where the learning, skill, solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a public company have, before its incorporation, entered into contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

FOR WHOM CONTRACTS CANNOT BE SPECIFICALLY ENFORCED.

Personal bars to the relief.

23. Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations

To paragraph (*a*).

A., in the character of agent for *B.*, enters into an agreement with *C.* to buy *C.*'s house. *A.* is in reality acting not as agent for *B.* but on his own account. *A.* cannot enforce specific performance of this contract.

To paragraph (*b*).

A. contracts to sell *B.* a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. *A.* becomes insolvent. Neither he nor the official receiver of his estate can enforce specific performance of the contract.

A. contracts to sell *B.* a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. *A.*, without *B.*'s consent, fells the trees. *A.* cannot enforce specific performance of the contract.

A., holding land under a contract with *B.* for a lease, commits waste, or treats the land in an unhusbandlike manner. *A.* cannot enforce specific performance of the contract.

A. contracts to let, and *B.* contracts to take, an unfinished house, *B.* contracting to finish the house and the lease to contain covenants on the part of *A.* to keep the house in repair. *B.* finishes the house in a very defective manner: he cannot enforce the contract specifically, though *A.* and *B.* may sue each other for compensation for breach of it.

To paragraph (*c*).

A. contracts to let, and *B.* contracts to take, a house for a specified term at a specified rent. *B.* refuses to perform the contract. *A.* thereupon sues for, and obtains, compensation for the breach. *A.* cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settlor.

24. A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(*b*) who, though he entered into the contract believing that he had a good title to the property; cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(*a*) *A.*, without *C.*'s authority, contracts to sell to *B.* an estate which *A.* knows to belong to *C.* *A.* cannot enforce specific performance of this contract, even though *C.* is willing to confirm it.

(*b*) *A.*, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. *A.* cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

FOR WHOM CONTRACTS CANNOT BE SPECIFICALLY ENFORCED, EXCEPT WITH A VARIATION.

Non-enforcement except with variation.

25. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into a contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon

some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) *A.*, *B.*, and *C.* sign a writing by which they purport to contract each to enter into a bond to *D.* for $1,000. In a suit by *D.*, to make *A.*, *B.*, and *C.* separately liable each to the extent of $1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for $1,000. *D.* can obtain the performance sought only with the variation thus set up.

(*b*) *A.* contracts in writing to let to *B.* a wharf, together with a strip of *A.*'s land delineated in a map. Before signing the contract, *B.* proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of *A.*'s land of the same dimensions, and to this *A.* expressly assented. *B.* then signed the written contract. *A.* cannot obtain specific performance of the written contract, except with the variation set up by *B.*

(*c*) *A.* contracts in writing to let a house to *B.*, for a certain term, at the rent of $100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with *B.*'s consent, *A.* pulls it down and erects a new house in its place: *B.* contracting orally to pay rent at $120 per mensem. *B.* then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED.

Relief against parties and persons claiming under them by subsequent title.

26. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations

To paragraph (*b*).

A. contracts to convey certain land to *B.* by a particular day. *A.* dies intestate before that day without having conveyed the land. *B.* may compel *A.*'s heir or other representative in interest to perform the contract specifically.

A. contracts, in consideration of $1,000, to bequeath certain of his lands to *B.* Immediately after the contract *A.* dies intestate, and *C.* takes out administration to his estate. *B.* may enforce specific performance of the contract against *C.*

A. contracts to sell certain land to *B.* Before the completion of the contract, *A.* becomes mentally disordered, and *C.* is appointed his committee. *B.* may specifically enforce the contract against *C.*

AGAINST WHOM CONTRACTS CANNOT BE SPECIFICALLY ENFORCED.

What parties cannot be compelled to perform.

27. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases—

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension, or surprise :

Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract specifically enforced in other respects if proper to be so enforced.

Illustrations

To paragraph (*c*).

A., one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to *B*. of his testator's property. *B*. cannot insist on the sale being completed.

A. directs an auctioneer to sell certain land. *A*. afterwards revokes the auctioneer's authority as to 20 acres of this land, but the auctioneer inadvertently sells the whole to *B*., who has not notice of the revocation. *B*. cannot enforce specific performance of the agreement.

THE EFFECT OF DISMISSING A SUIT FOR SPECIFIC PERFORMANCE.

Bar of suit for breach after dismissal.

28. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

AWARDS AND DIRECTIONS TO EXECUTE SETTLEMENTS.

Application of preceding sections to awards and testamentary directions to execute settlements.

29. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

30. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified : and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations

(*a*) *A.*, intending to sell to *B.* his house and one of three godowns adjacent to it, executes a conveyance prepared by *B.*, in which, through *B.'s* fraud, all three godowns are included. Of the two godowns which were fraudulently included, *B.* gives one to *C.* and lets the other to *D.* for a rent, neither *C.* nor *D.* having any knowledge of the fraud. The conveyance may, as against *B.* and *C.*, be rectified so as to exclude from it the godown given to *C.*, but it cannot be rectified so as to affect *D.'s* lease.

(*b*) By a marriage settlement, *A.*, the father of *B.*, the intended wife, covenants with *C.*, the intended husband, to pay to *C.*, his executors, administrators, and assigns, during *A.'s* life, an annuity of $5,000. *C.* dies insolvent and the official receiver claims the annuity from *A.* The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for *B.* and her children, may rectify the settlement and decree that the official receiver has no right to any part of the annuity.

Presumption as to intent of parties.

31. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

32. In rectifying a written instrument, the Court may enquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

33. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration.

A. contracts in writing to pay his solicitor, *B.*, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude *B.* from all rights under it. *B.* is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

RESCISSION OF CONTRACTS.

When rescission may be adjudged.

34. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely—

(*a*) where the contract is voidable or terminable by the plaintiff;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profit, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Rescission for mistake.

35. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

36. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

37. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.
CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered.

38. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under any law in force for the time being relating to the registration of documents, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) *A.*, the owner of a ship, by fraudulently representing her to be seaworthy, induces *B.*, an underwriter, in insure her. *B.* may obtain the cancellation of the policy.

(*b*) *A.* conveys land to *B.*, who bequeaths it to *C.* and dies. Thereupon *D.* gets possession of the land and produces a forged instrument stating that the conveyance was made to *B.* in trust for him. *C.* may obtain the cancellation of the forged instrument.

(*c*) *A.* agrees to sell and deliver a ship to *B.*, to be paid for by *B.*'s acceptances of four bills of exchange, for sums amounting to $30,000 to be drawn by *A.* on *B.* The bills are drawn and accepted, but the ship is not delivered according to the agreement. *A.* sues *B.* on one of the bills. *B.* may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

39. Where an instrument is evidence of different rights or different obligations, the Court may in a proper case cancel it in part and allow it to stand for the residue.

Illustration.

A. draws a bill on *B.*, who endorses it to *C.*, by whom it appears to be endorsed to *D.*, who endorses it to *E.* *C.*'s endorsement is forged. *C.* is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

40. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

DECLARATORY DECREES.

Discretion of Court as to declaration of status or right.

41. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

Explanation.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a*) *A.* bequeaths his property to *B.*, *C.* and *D.*, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No

such children are in existence. In a suit against *A.'s* executor, the Court may declare whether *B.*, *C.* and *D.* took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(*b*) *A.* covenants that, if he should at any time be entitled to property exceeding $100,000, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*c*) *A.* is in possession of certain property. *B.*, alleging that he is the owner of the property, requires *A.* to deliver it to him. *A.* may obtain a declaration of his right to hold the property.

(*d*) *A.* bequeaths property to *B.* for his life, with remainder to *B.'s* wife and her children, if any, by *B.*, but, if *B.* die without any wife or children, to *C.* *B.* has a putative wife, *D.*, and children, but *C.* denies that *B.* and *D.* were ever lawfully married; *D.* and her children may, in *B.'s* lifetime, institute a suit against *C.* and obtain therein a declaration that they are truly the wife and children of *B.*

Effect of declaration.

42. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Chapter VII.

Appointment of Receivers.

Appointment of Receivers discretionary.

43. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment, and his rights, powers, duties, and liabilities, are regulated by the law relating to Civil Procedure in force in any Malay State.

F.M.S. Cap. 7.

Chapter VIII.

Enforcement of Public Duties.

Power to order public servants and others to do certain specific acts.

44. (1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any Court subordinate to the High Court:

Provided that—

(*a*) an application for such order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(*b*) such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(*c*) in the opinion of the Judge such doing or forbearing is consonant to right and justice;

(*d*) the applicant has no other specific and adequate legal remedy; and

(*e*) the remedy given by the order applied for will be complete.

Exemptions from such power.

(2) Nothing in this section shall be deemed to authorise a Judge—

(*a*) to make any order binding on the High Commissioner;

(*b*) to make any order on any servant of any Government in the Federation, as such, merely to enforce the satisfaction of a claim upon such Government; or

(*c*) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application how made: Procedure thereon:

45. Every application under section 44 of this Ordinance must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof; and a Judge may, in his discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

If, in the last case, the person, Court, or corporation complained of shows no sufficient cause, the Judge may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the Judge fixes in this behalf.

Peremptory order.

46. If the person, Court, or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the Judge may then issue a peremptory order to do or forbear the act absolutely.

Execution of, and appeal from, orders.

47. Every order under this chapter shall be executed and may be appealed from, as if it were a decree made in the exercise of the ordinary jurisdiction of the High Court.

Costs.

48. The costs of all applications and orders under this Chapter shall be in the discretion of the Judge.

Bar to issue of *mandamus*.

49. Neither the High Court nor any other Court in the Federation shall hereafter issue any writ of *mandamus*.

PART III.

PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

50. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

51. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the law relating to Civil Procedure in force in any Malay State. F.M.S. Cap. 7.

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

52. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Ordinance.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.—For the purpose of this section a trade-mark is property.

Illustrations.

(*a*) *A.* lets certain land to *B.*, and *B.* contracts not to dig sand or gravel thereout. *A.* may sue for an injunction to restrain *B.* from digging in violation of his contract.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d*) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) *A.*, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) *A.*, a trustee for *B.*, is about to make an imprudent sale of a small part of the trust-property. *B.* may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) *A.* makes a settlement (not founded on marriage or other valuable consideration) of an estate on *B.* and his children. *A.* then contracts to sell the estate to *C.* *B.* or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of *A.*'s employment as a solicitor, certain papers belonging to his client, *B.*, come into his possession. *A.* threatens to make these papers public, or to communicate their contents to a stranger. *B.* may sue for an injunction to restrain *A.* from so doing.

(*i*) *A.* is *B.*'s medical adviser. He demands money of *B.* which *B.* declines to pay. *A.* then threatens to make known the effect of *B.*'s communications to him as a patient. This is contrary to *A.*'s duty, and *B.* may sue for an injunction to restrain him from so doing.

(*j*) *A.*, the owner of two adjoining houses, lets one to *B.* and afterwards lets the other to *C.* *A.* and *C.* begin to make such alterations in the house let to *C.* as will prevent the comfortable enjoyment of the house let to *B.* *B.* may sue for an injunction to restrain them from so doing.

(*k*) *A.* lets certain arable lands to *B.* for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, *B.* threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. *A.* may sue for an injunction to restrain *B.* from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l*) *A.*, *B.*, and *C.* are partners, the partnership being determinable at will. *A.* threatens to do an act tending to the destruction of the partnership-property. *B.* and *C.* may, without seeking a dissolution of the partnership, sue for an injunction to restrain *A.* from doing the act.

(*m*) *A.*, the owner of certain houses in Klang, becomes insolvent. *B.* buys them from the Official Receiver of *A.*'s estate and enters into possession. *A.* persists in trespassing on and damaging the houses, and *B.* is thereby compelled, at considerable expense, to employ men to protect the possession. *B.* may sue for an injunction to restrain further acts of trespass.

(*n*) *A.*, in an administration-suit to which a creditor, *B.*, is not a party, obtains a decree for the administration of *C.*'s assets, *B.* proceeds against *C.*'s estate for his debt. *A.* may sue for an injunction to restrain *B.*

(*o*) *A.* and *B.* are in possession of contiguous lands and of the mines underneath them. *A.* works his mine so as to extend under *B.*'s mine and threatens to remove certain pillars which help to support *B.*'s mine. *B.* may sue for an injunction to restrain him from so doing.

(*p*) *A.* rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, *B.* *B.* may sue for an injunction restraining *A.* from making the noise.

(*q*) *A.* pollutes the air with smoke so as to interfere materially with the physical comfort of *B.* and *C.*, who carry on business in a neighbouring house. *B.* and *C.* may sue for an injunction to restrain the pollution.

(*r*) *A.* infringes *B.*'s patent. If the Court is satisfied that the patent is valid and has been infringed, *B.* may obtain an injunction to restrain the infringement.

(*s*) *A.* pirates *B.*'s copyright. *B.* may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*t*) *A.* improperly uses the trade-mark of *B.* *B.* may obtain an injunction to restrain the user, provided that *B.*'s use of the trade-mark is honest.

(*u*) *A.*, a tradesman, holds out *B.* as his partner against the wish and without the authority of *B.* *B.* may sue for an injunction to restrain *A.* from so doing.

(*v*) *A.*, a very eminent man, writes letters on family topics to *B.* After the death of *A.* and *B.*, *C.*, who is *B.*'s residuary legatee, proposes to make money by publishing *A.*'s letters. *D.*, who is *A.*'s executor, has a property in the letters, and may sue for an injunction to restrain *C.* from publishing them.

(*w*) *A.* carries on a manufactory and *B.* is his assistant. In the course of his business, *A.* imparts to *B.* a secret process of value. *B.* afterwards demands money of *A.*, threatening, in case of refusal, to disclose the process to *C.*, a rival manufacturer. *A.* may sue for an injunction to restrain *B.* from disclosing the process.

Mandatory injunctions.

53. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(*a*) *A.*, by new buildings, obstructs lights to the access and use of which *B.* has acquired a right by prescription. *B.* may obtain an injunction, not only to restrain *A.* from going on with the buildings, but also to pull down so much of them as obstructs *B.*'s lights.

(*b*) *A.* builds a house with eaves projecting over *B.*'s land. *B.* may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as *Illustration* (*i*) to section 52, the Court may also order all written communications made by *B.*, as patient, to *A.*, as medical adviser, to be destroyed.

(*d*) In the case put as *Illustration* (*v*) to section 52, the Court may also order *A.*'s letters to be destroyed.

(*e*) *A.* threatens to publish statements concerning *B.* which would be punishable under Chapter XXI of the Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to *B.*'s property.

(*f*) *A.*, being *B.*'s medical adviser, threatens to publish *B.*'s written communications with him, showing that *B.* has led an immoral life. *B.* may obtain an injunction to restrain the publication.

(*g*) In the cases put as *Illustrations* (*s*) and (*t*) to section 52, and as *Illustrations* (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements, and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

54. An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of any Government in the Federation, or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) *A.* seeks an injunction to restrain his partner, *B.*, from receiving the partnership-debts and effects. It appears that *A.* had improperly possessed himself of the books of the firm and refused *B.* access to them. The Court will refuse the injunction.

(*b*) *A.* manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. *B.* pirates the designation. *A.* cannot obtain an injunction to restrain the piracy.

(*c*) *A.* sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. *B.* commences to sell a similar article to

which he gives a name and description such as to lead people into the belief that they are buying *A.*'s Mexican Balm. *A.* sues *B.* for an injunction to restrain the sale. *B.* shows that *A.*'s Mexican Balm consists of nothing but scented hog's lard. *A.*'s use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

55. Notwithstanding paragraph (*f*) of section 54 of this Ordinance, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*) *A.* contracts to sell to *B.* for $1,000 the good-will of a certain business unconnected with business premises, and further agrees not to carry on that business in Klang. *B.* pays *A.* the $1,000 but *A.* carries on the business in Klang. The Court cannot compel *A.* to send his customers to *B.*, but *B.* may obtain an injunction restraining *A.* from carrying on the business in Klang.

(*b*) *A.* contracts to sell to *B.* the good-will of a business. *A.* then sets up a similar business close by *B.*'s shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and *B.* may obtain an injunction to restrain *A.* from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from *B.*

(*c*) *A.* contracts with *B.* to sing for twelve months at *B.*'s theatre and not to sing in public elsewhere. *B.* cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining *A.* from singing at any other place of public entertainment.

(*d*) *B.* contracts with *A.* that he will serve him faithfully for twelve months as a clerk. *A.* is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining *B.* from serving a rival house as clerk.

(*e*) *A.* contracts with *B.* that, in consideration of $1,000 to be paid to him by *B.* on a day fixed, he will not set up a certain business within a specified distance. *B.* fails to pay the money. *A.* cannot be restrained from carrying on the business within the specified distance.

PART IV.

REPEAL.

Repeal.

56. The Ordinance and Enactment set out in the schedule to this Ordinance are hereby repealed to the extent specified in the third column of such schedule.

SCHEDULE.

(Section 56.)

REPEAL.

(1) No.	(2) Title.	(3) Extent of repeal.
F. of M. No. 9 of 1949.	The Johore (Replacement of Laws) Ordinance, 1949.	The words "F.M.S. Cap. 5 ... Specific Relief Enactment" in the Schedule.
F.M.S. Cap. 5 ...	The Specific Relief Enactment.	The whole.

Passed in the Legislative Council on the fourteenth day of June, 1950.

H. R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 30 of 1950.

THE BILLS OF SALE ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....June, 1950.

.....

High Commissioner.

.....June, 1950.

An Ordinance to unify the law relating to Bills of Sale.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Bills of Sale Ordinance, 1950, and shall come into force on such date as the High Commissioner in Council may appoint.

Application of Ordinance.

2. This Ordinance shall apply to every bill of sale, whether the same is absolute or subject or not subject to any trust, whereby the holder or grantee has power, either with or without notice and immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale, but shall not, except as in this Ordinance expressly mentioned, apply to any mortgages, charges or debentures issued by any incorporated company and secured upon the stock or goods, chattels and effects of such company.

Interpretation.

3. (1) In this Ordinance, unless the context otherwise requires—

"bill of sale" includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase money of goods, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon is conferred, but does not include the following documents—

(*a*) assignments for the benefit of the creditors of the person making or giving the same;

(*b*) ante-nuptial marriage settlements;

(*c*) transfers or assignments of any ship or vessel or share thereof;

(*d*) transfers of goods in the ordinary course of business of any trade or calling;

(*e*) bills of sale of goods in foreign ports or at sea;

(*f*) bills of lading, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such documents to transfer or receive goods thereby represented;

"bill of sale" also includes, as regards any personal chattels which may be seized or taken thereunder, every attornment, instrument or agreement whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only, but does not include or extend to any mortgage or charge of any estate or interest in any land which the mortgagee or chargee being in possession demises to the mortgagor or chargor as his tenant at a fair and reasonable rent;

"bill of sale" also includes agreements for the hire of personal chattels entered into for the purpose of securing the repayment to the lessor of such chattels of money advanced by him to the hirer; and the hirer shall in every such case be deemed to be the grantor of the bill of sale and the lessor shall be deemed to be the grantee thereof;

"personal chattels" means goods, furniture and other articles capable of complete transfer by delivery, and trade machinery as hereinafter defined, and, when separately assigned or charged, fixtures and growing crops; but does not include chattel interests in real estate, nor fixtures, except trade machinery as hereinafter defined, when assigned together with any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stocks, funds or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor things in action;

"Registrar" and "Assistant Registrar" mean respectively the Registrar and an Assistant Registrar of the Supreme Court;

"trade machinery" means the machinery used in or attached to any factory or workshop exclusive of—

(*a*) the fixed motive powers, such as the water-wheels and steam-engines, and the steam boilers, donkey-engines, and other fixed appurtenances of such motive powers;

(*b*) the fixed power machinery such as the shafts, wheels, drums and their fixed appurtenances which transmit the action of the motive powers to the other machinery, fixed and loose; and

(*c*) the pipes for steam, gas and water in the factory or workshop;

"factory or workshop" means any premises on which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes or any of them—

(*a*) the making of any article or part of an article; or

(*b*) the altering, repairing, ornamenting or finishing of any article; or

(*c*) the adapting for sale of any article.

(2) No fixtures or growing crops shall be deemed to be "separately assigned or charged" by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed or from the land on which they grow, without otherwise taking possession of or dealing with such land or building if by the same instrument any interest in the land or building to which such fixtures are affixed or in the land on which such crops grow is also conveyed to the same person or persons.

Bill of sale to be void under certain circum-stances unless attested and registered.

4. (1) Every bill of sale shall be attested and registered under this Ordinance within seven clear days after the execution thereof, or, if it is executed in any place out of the Federation, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in the Federation if posted immediately after the execution thereof, and shall truly set forth the consideration for which it was given, otherwise the following consequences shall ensue—

(*a*) in the case of a bill of sale made or given by way of security for the payment of money by the grantor thereof, such bill of sale shall be void in respect of the personal chattels comprised therein; and

(*b*) in the case of any other bill of sale it shall, as against all trustees or assignees of the estate of the person whose chattels or any of them are comprised in such bill of sale under the law of bankruptcy or liquidation or under any assignment for the benefit of the creditors of such person, and also as against all bailiffs, sheriffs and other persons seizing any chattels comprised in such bill of sale in the execution of any process of any Court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which at or after the time of filing the petition for bankruptcy or liquidation or of the execution of such assignment or of executing such process, as the case may be, and after the expiration of seven days after the execution of such bill of sale are in the possession or apparent possession of the person making such bill of sale or of any person against whom the process has issued under or in the execution of which such bill has been made or given as the case may be.

(2) Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale so long as they remain or are in or upon any house, warehouse, shop, building, vessel, works, yard, land or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken or given by or to any other person.

(3) Personal chattels comprised in a valid bill of sale which is duly attested and registered under this Ordinance shall not, so long as such bill of sale continues to be duly registered under this Ordinance, be deemed to be in the possession, order or disposition of the grantor of the bill of sale within the meaning of the law of bankruptcy.

(4) Sub-section (3) of this section shall not apply to personal chattels in the possession, order or disposition of the grantor in his trade or business.

Bill of sale to be accompanied by schedule of property.

5. (1) Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale, and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in such schedule and shall be void in respect of any personal chattels not so specifically described.

(2) Save as hereinafter mentioned, every bill of sale shall be void except as against the grantor in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

(3) Nothing in this section shall render a bill of sale void in respect of any of the following things—

(*a*) any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed;

(*b*) any fixtures separately assigned or charged and any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, plantation, factory, workshop, warehouse or other place in substitution for any of the like fixtures, plant or trade machinery specifically described in the schedule to such bill of sale.

Bill of sale given by way of security void in certain cases.

6. Subject and without prejudice to the other provisions of this Ordinance for invalidating bills of sale, every bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void in the following cases—

(*a*) if the amount the payment of which is thereby secured is less than one hundred dollars; or

(*b*) if it is not made in the form in the First Schedule to this Ordinance.

Bill of sale not to protect chattels against rates.

7. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be no protection against a distress for the recovery of rent or municipal or town board rates or assessments.

Possession to be taken under bill of sale under certain circumstances only.

8. (1) Personal chattels included in a bill of sale made or given by way of security for the payment of money by the grantor thereof shall not be liable to be seized or taken possession of by the grantee for any other than the following causes—

(*a*) if the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(*b*) if the grantor becomes a bankrupt or suffers the said chattels or any of them to be distrained for rent, or municipal or town board rates or assessments or otherwise;

(*c*) if the grantor fraudulently either removes or suffers to be removed from the premises the said chattels or any of them;

(*d*) if the grantor does not without reasonable excuse upon demand in writing by the grantee produce to him his last receipts for rent and municipal or town board rates and assessments;

(*e*) if execution has been levied against the goods of the grantor under process of any Court.

(2) All personal chattels seized or taken possession of under or by virtue of any bill of sale shall remain on the premises where they were so seized or taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day on which they were so seized or taken possession of.

(3) The grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, and such Court, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels and may make such other order as seems just:

Provided that if the amount, the payment of which is secured by the bill of sale, does not exceed one thousand dollars such application may be made to the Sessions Court having jurisdiction over the place in which such chattels are situate and such Sessions Court shall have and may exercise in respect of such application all the powers conferred upon the High Court under this sub-section.

Sales by public auction.

9. (1) No sale by the grantee of any chattels so seized or taken possession of as aforesaid shall be made otherwise than by public auction, conducted by some person duly licensed under any statutory provision in the Federation for the licensing of auctioneers.

(2) Any sale made in contravention of this section shall be absolutely void, and any person aiding or abetting such sale shall be liable to a fine not exceeding one hundred dollars.

(3) Not more than one year's arrear of interest shall be recoverable under any bill of sale made or given after the commencement of this Ordinance or under any bill of sale which was immediately before the commencement of this Ordinance subject to the provisions of the Bills of Sale Ordinance of the Straits Settlements.

Mode of registering bills of sale.

10. (1) A bill of sale shall be attested and registered under this Ordinance as in this section provided.

(2) The execution by the grantor of every bill of sale shall be attested—

(*a*) by an advocate and solicitor of the Supreme Court not being the advocate and solicitor of the grantee; or

(*b*) by a Magistrate or by a Registrar or Assistant Registrar of the Supreme Court; or

(*c*) by a commissioner for oaths or a notary public;

who shall personally explain to the grantor the effect thereof, and the attestation shall state that before the execution of the bill of sale the effect thereof was so explained as aforesaid.

(3) Such bill, with every schedule or inventory thereto annexed, and also a true copy of such bill and of every such schedule or inventory and of every attestation of the execution of such bill, together with a statutory declaration of the time when such bill was executed by the grantor and of its due execution and attestation, which declaration may be in Form A or Form B of the Second Schedule to this Ordinance, and a description of the residence and occupation of the grantor, or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued, and of the grantee, and of every attesting witness to such bill, shall be presented to, and the said duplicate and

declaration shall, within seven clear days after the execution by the grantor of such bill, be filed in the office of a Registrar or Assistant Registrar in the district of the State or Settlement within which the property comprised in the bill of sale is situate at the time of registration.

(4) If the Registrar or Assistant Registrar is of opinion that the property scheduled in any bill of sale is not sufficiently described therein, he shall refuse to register the same until such further particulars shall have been added as may be sufficient to clearly identify the property scheduled, and may, if it appears to him necessary or expedient for such clear identification, require or cause the property to be marked or branded with some permanent mark but in such manner as not to injure or disfigure the same. All things required by the Registrar or Assistant Registrar to be added or done under the provisions of this sub-section shall be added or done within seven days after the bringing of the bill of sale before the Registrar or Assistant Registrar under the provisions of sub-section (3) of this section.

(5) If the bill of sale is made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance, condition or declaration shall be deemed to be part of the bill and shall be written on the same paper therewith before the registration, and shall be truly set forth in the copy filed under this Ordinance therewith and as part thereof, otherwise the registration shall be void.

Priority given by registration.

11. In case two or more bills of sale are given comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

Transfers need not be attested.

12. A transfer or assignment of a registered bill of sale need not be attested under this Ordinance, but the transferee or assignee of such bill of sale must, within seven clear days after the execution of such transfer or assignment, file with the Registrar or Assistant Registrar, as the case may be, a statutory declaration, in the form in the Third Schedule to this Ordinance, stating the date of the bill of sale and of the last registration thereof, the names, residences and occupations of the parties thereto as stated therein, the names, residences and occupations of the

parties to each transfer or assignment, and that such bill of sale is still a subsisting security, and shall also produce at the same time to the Registrar or Assistant Registrar, as the case may be, such transfer or assignment; otherwise such transfer or assignment shall be void.

Renewal of registration.

13. (1) The registration of a bill of sale must be renewed once at least every twelve calendar months, and if a period of twelve calendar months elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal, as the case may be, the registration shall become void.

(2) The renewal of a registration shall be effected by filing with the Registrar or Assistant Registrar, as the case may be, a statutory declaration in the form in the Fourth Schedule to this Ordinance, stating the date of the bill of sale and of the last registration thereof and the names, residences and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Form of register.

14. (1) The Registrar and every Assistant Registrar shall keep a register of bills of sale, and shall, upon the filing of any copy of a bill of sale, enter in such register, in the form set out in the Fifth Schedule to this Ordinance or in such other form as may be prescribed, the name, residence and occupation of the grantor, or, in case the same is made or given by any person under or in execution of any process, then the name, residence and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill is given, together with such other particulars as are shown in such Schedule or as may be prescribed, and shall number all such bills registered in each year consecutively according to the respective dates of their registration.

(2) Upon the registration of any declaration of renewal, the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the copy of the bill of sale originally filed shall thereupon be marked with the number affixed to such declaration of renewal.

(3) Upon the registration of any declaration of transfer or assignment of a bill of sale, an entry thereof shall be made in the register over against the last previous entry relating to such bill of sale.

Rectification of register.

15. (1) Any Judge of the High Court, on being satisfied that the omission to register a bill of sale or a declaration of renewal or transfer or assignment thereof within the time prescribed, or the omission or mis-statement of the name, residence or occupation of any person, was accidental or due to inadvertence or to absence from the Federation, may, in his discretion, order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence or occupation, or by extending the time for such registration on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit.

(2) An application for the rectification of a register under this section shall be made in Chambers.

Entry and satisfaction.

16. (1) Where the amount, the payment of which is secured by a registered bill of sale, exceeds one thousand dollars a Judge of the High Court, or, in any other case, a President of a Sessions Court having jurisdiction over the district in which such bill of sale is registered may order a memorandum of satisfaction to be written on any registered copy of a bill of sale upon being satisfied that the debt, if any, for which such bill was made or given has been satisfied or discharged.

(2) The Registrar or Assistant Registrar may write a memorandum of satisfaction upon any registered copy of a bill of sale on a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale and verified by affidavit being presented to and filed with him, and on the original bill of sale being also produced to him.

Inspection of register and office copies.

17. (1) Any person shall be entitled to have an office copy of or extract from any registered bill of sale and declaration of execution filed therewith, or registered declaration of renewal, upon paying for the same at the rate of twenty-five cents for every folio of one hundred words or at such other rate as may be prescribed, and every such copy shall be *prima facie* evidence of the original and of the fact and date of registration as shown thereon.

(2) Any person shall be entitled at all reasonable times and subject to such rules as may be prescribed—

(*a*) to search the register on payment of a fee of one dollar or such other fee as may be prescribed;

(*b*) on a like payment in respect of each bill of sale inspected, to inspect, examine and make extracts from any registered bill of sale:

Provided that such extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Particulars to be forwarded for record in Kuala Lumpur.

18. (1) Every Assistant Registrar shall, forthwith after making any entry in his register under this Ordinance, transmit to the Registrar at Kuala Lumpur a verified copy of such entry.

(2) The Registrar shall keep at Kuala Lumpur a register of all particulars transmitted to him under sub-section (1) of this section, and any person may, during the usual office hours and upon payment of a fee of one dollar or such other fee as may be prescribed, search such register and take a copy of any particulars recorded therein.

Declarations.

19. (1) Every declaration required by or for the purposes of this Ordinance may be made before any Registrar or Assistant Registrar or before any commissioner for oaths or before a notary public.

(2) Every such declaration shall be deemed to be a declaration within the meanings of section 199 and section 200 of the Penal Code.

Assistant Registrars. F. of M. Ord. No. 43 of 1948.

20. All First Class Magistrates, other than Magistrates constituted as such under section 77 of the Courts Ordinance, 1948, shall be deemed to be *ex officio* Assistant Registrars of the Supreme Court for the purpose of registering bills of sale.

Fees.

21. A filing fee of one dollar or such other fee as may be prescribed shall be payable in every case of registration, renewal of registration, or transfer of a bill of sale.

Rules. F. of M. Ord. No. 35 of 1948.

22. The Supreme Court Rule Committee established by the Rule Committee Ordinance, 1948, may from time to time make rules in respect of all or any of the following matters—

(*a*) the form of registers of bills of sale and the mode in which the same shall be made and kept;

(*b*) the mode in which registration is to be conducted;

(*c*) the making of entries in the register of the satisfaction or discharge of the debt secured by a registered bill of sale;

(*d*) the forms of declarations and other instruments to be used for the purposes of this Ordinance;

(*e*) the fees to be taken;

(*f*) generally for carrying into effect the objects of this Ordinance.

Repeal and saving.

23. (1) The Ordinance and Enactments set out in the Sixth Schedule to this Ordinance are hereby repealed :

Provided that such repeal shall not affect any bill of sale executed before the commencement of this Ordinance, and, as regards any bill of sale so executed, the Ordinance or Enactment applicable to such bill of sale shall be deemed to continue in force.

(2) Any renewal after the commencement of this Ordinance of the registration of a bill of sale executed before such commencement, and registered under any Ordinance or Enactment repealed by this Ordinance, shall be made under this Ordinance in the same manner as the renewal of a registration made under this Ordinance.

THE FIRST SCHEDULE.

(Section 6.)

BILL OF SALE.

These Presents made the.....day of....., 19..., between A. B. of.....of the one part and C. D. of.....of the other part, witnesseth that in consideration of the sum of..... dollars now paid to A. B. by C. D. the receipt of which the said A. B. hereby acknowledges (*or whatever else the consideration may be*), he the said A. B., doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specified in the schedule hereto annexed by way of security for the payment of the sum of..... dollars, and interest thereon (*if interest is payable*) at the rate of.....per centum per annum, and the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with (*if interest is payable*) the interest then due, by equal.....payments of.....dollars on the.....day of.....(*or whatever else may be the stipulated times or time of payment*): And the said A. B. doth also agree with the said C. D. that he will (*here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security*):

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C. D. for any cause other than those specified in section 8 of the Bills of Sale Ordinance, 1950.

In witness, etc.

Signed and sealed by the said A. B. in the presence of me, E. F. (*add witness's name, address and description*) after I had fully explained to the said A. B. the nature and effect hereof.

THE SECOND SCHEDULE.

(Section 10.)

FORM A.

DECLARATION ON REGISTRATION OF BILL OF SALE ATTESTED BY AN ADVOCATE AND SOLICITOR.

I,....., of....., do solemnly and sincerely declare as follows—

1. The paper writing hereto annexed and marked "A" is a true copy of the bill of sale and of every schedule or inventory thereto annexed or therein referred to and of every attestation of the execution thereof as made and given and executed by *.....

2. The said bill of sale was made and given by the said *.....on the.....day of....., 19..., to †.....

3. I was present and saw the said *.....duly execute the said bill of sale on the said.....day of....., 19....

4. The said *.....resides at (*state residence at time of making the declaration*) and is (*state occupation*).

5. The said †.....resides at (*state residence at time of making the declaration*) and is (*state occupation*).

6. The name.....subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of this declarant.

7. I am an advocate and solicitor of the Supreme Court and reside at.....

8. Before the execution of the said bill of sale by the said *.....I fully explained to him (*or* her) the nature and effect thereof.

9. The said bill of sale was not prepared by me or by any person in my employment, nor am I the advocate and solicitor of the grantee thereof.

10. I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Ordinance, 1949 (*or, if made in one of the Settlements*, by virtue of the provisions of the Statutory Declarations Act, 1835).

Subscribed and solemnly declared by the above-named.....at..... in the State/Settlement of..... this.....day of.....19....

Before me

Registrar, etc.

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* i.e., the grantor. † i.e., the grantee.

FORM B.

DECLARATION ON REGISTRATION OF A BILL OF SALE NOT ATTESTED BY AN ADVOCATE AND SOLICITOR.

I,....., of....., do solemnly and sincerely declare as follows—

1. The paper writing hereto annexed and marked "A" is a true copy of a bill of sale and of every schedule or inventory thereto annexed or therein referred to and of every attestation of the execution thereof as made and given and executed by *.....

2. The said bill of sale was made and given by the said *.....on the.....day of.....19..., to †.....

3. I was present and saw the said *.....duly execute the said bill of sale on the said.....day of....., 19....

4. The said *.....resides at (*state residence at time of making the declaration*) and is (*state occupation*).

5. The said †.....resides at (*state residence at time of making the declaration*) and is (*state occupation*).

6. The said bill of sale was duly attested in my presence by....., of.....(*a Magistrate, Registrar, Assistant Registrar, etc.*), who before its execution fully explained to the said..... the nature and effect thereof.

7. The name.....subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of the said.....

8. I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Ordinance, 1949 (*or, if made in one of the Settlements*, by virtue of the provisions of the Statutory Declarations Act, 1835).

Subscribed and solemnly declared by the above-named.....at..... in the State/Settlement of..... this.....day of.....19....

Before me

Registrar, etc.

* i.e., the grantor. † i.e., the grantee.

THE THIRD SCHEDULE.

(Section 12.)

DECLARATION OF TRANSFER OF BILL OF SALE.

I,....., of....., do solemnly and sincerely declare that a bill of sale bearing date the.....day of....., 19..., and made between.....of the one part and.....of the other part, which said bill of sale was registered on the.....day of....., 19..., (and the registration whereof was last renewed on the..... day of....., 19...), is still a subsisting security, and was by an instrument bearing date the.....day of....., 19..., transferred to.....of.....which said instrument is now produced and shown to me, marked....., and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Ordinance, 1949 (*or, if made in one of the Settlements*, by virtue of the provisions of the Statutory Declarations Act, 1835).

Subscribed and solemnly declared by the above-named.....at..... in the State/Settlement of..... this.....day of.....19....

Before me

Registrar, etc.

THE FOURTH SCHEDULE.

(Section 13.)

DECLARATION OF RENEWAL OF REGISTRATION.

I,....., of....., do solemnly and sincerely declare that a bill of sale bearing date the.....day of....., 19..., and made between.....of the one part and.....of the other part, which said bill of sale was registered on the.....day of....., 19.... is still a subsisting security, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Ordinance, 1949 (*or, if made in one of the Settlements*, by virtue of the provisions of the Statutory Declarations Act, 1835).

Subscribed and solemnly declared by the above-named.....at..... in the State/Settlement of..... this.....day of.....19....

Before me

Registrar, etc.

THE FIFTH SCHEDULE.

(Section 14.)

FORM OF REGISTER.

No.	By whom given (or against whom process issued).			To whom or in whose favour given.			Date of instrument.	Date of original registration.	Date of registration of declaration of renewal.	Date of registration of declaration of transfer.	To whom transferred.			Satisfaction entered.
	Name.	Residence.	Occupation.	Name.	Residence.	Occupation.					Name.	Residence.	Occupation.	

THE SIXTH SCHEDULE.

(Section 23.)

REPEAL.

No.	Title.
S.S. Cap. 61	The Bills of Sale Ordinance.
F.M.S. Cap. 57	The Bills of Sale Enactment.
Johore Enactment No. 39 ...	The Bills of Sale Enactment.
Kedah Enactment No. 10 ...	Enactment No. 10 (Bills of Sale).
Trengganu Enactment No. 30 of 1356	The Bills of Sale Enactment, 1356.

Passed in the Legislative Council on the fourteenth day of June, 1950.

A.R. Talib

Clerk of Council.

FEDERATION OF MALAYA.

No. 31 of 1950.

THE FEDERATION OF MALAYA AGREEMENT (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman ..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lunney ..... *High Commissioner.*

..... *Sultan of Selangor.*

6th July, ~~June~~, 1950.

30th June, 1950.

An Ordinance to amend the Federation of Malaya Agreement, 1948.

[*1st February, 1948.*]

WHEREAS it is desired to amend the Federation of Malaya Agreement, 1948, to provide that nothing contained in clause 21 of the said Agreement shall affect the power of the appropriate authority in a State or Settlement, under any law dealing with the compulsory acquisition of land for public purposes, to acquire land for any purpose connected with any matter specified in the first column of the Second Schedule to the said Agreement:

AND WHEREAS it is desired that this provision shall be deemed to have had effect from the day which was appointed for the said Agreement to come into operation:

AND WHEREAS the prior approval of His Majesty and the Conference of Rulers under clause 6 of the said Agreement has been obtained:

NOW, THEREFORE, IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and date of commencement.

1. This Ordinance may be cited as the Federation of Malaya Agreement (Amendment) Ordinance, 1950, and shall be deemed to have come into operation on the 1st day of February, 1948, and shall be read as one with the Federation of Malaya Agreement, 1948, hereinafter referred to as the Agreement.

Amendment of clause 21 of the Agreement.

2. Clause 21 of the Agreement is hereby amended—

(1) by inserting the figure and brackets "(1)" between the figures "21" and the word "The" in line one thereof;

(2) by adding the following sub-clause:

"(2) Nothing contained in this clause shall affect the power of the appropriate authority in any State or Settlement to acquire, without a requirement by the High Commissioner under sub-clause (1) of this clause, in a Malay State any alienated land or in a Settlement any

land other than Crown land for any purpose connected with any matter specified in the first column of the Second Schedule to this Agreement in accordance with the law for the time being in force dealing with the acquisition of land for public purposes, or to reserve, grant or lease any State or Crown land for the use of the Federation; and accordingly it is hereby declared that no acquisition of land in any State or Settlement for any such purpose before the commencement of this Ordinance shall be deemed to be, or to have been, invalid by reason only of the fact that the High Commissioner had not required the appropriate authorities in such State or Settlement to acquire such land under the provision of Clause 21 of the Federation Agreement."

Passed in the Legislative Council on the fourteenth day of June, 1950.

H. R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 32 of 1950.

THE NURSES REGISTRATION ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....June, 1950.

.....June, 1950.

An Ordinance to provide for the registration of nurses for the sick.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

1. This Ordinance may be cited as the Nurses Registration Ordinance, 1950, and shall come into force on such date as the High Commissioner may by notification in the *Gazette* appoint.

Establishment and constitution of a Nursing Board.

2. (1) For the purposes of this Ordinance there shall be established a Nursing Board (in this Ordinance referred to as the Board).

(2) The Board shall be constituted in accordance with the provisions contained in regulations made under this Ordinance.

Register of nurses.

3. (1) It shall be the duty of the Board to form and keep a register of nurses for the sick (in this Ordinance referred to as "the Register") subject to and in accordance with the provisions of this Ordinance, and the names of all persons included in the Register shall be published annually in the *Gazette*.

(2) The Register shall consist of the following parts—

(*a*) a general part containing the names of all nurses who satisfy the conditions of admission to that part of the Register;

(*b*) a supplementary part containing the names of male nurses;

(*c*) a supplementary part containing the names of nurses trained in the nursing and care of persons suffering from mental diseases;

(*d*) a supplementary part containing the names of nurses trained in the nursing of sick children; and

(*e*) any other prescribed part.

Where any person satisfies the conditions of admission to any supplementary or prescribed part

of the Register, his or her name may be included in that part of the Register notwithstanding that it is also included in the general part.

(3) In any proceedings, a copy of the *Gazette* containing the most recent list of names on the Register shall be *prima facie* evidence, and a certificate under the hand of the Chairman of the Board shall be conclusive evidence, that the persons named in the list or certificate are, or are not, registered under this Ordinance.

(4) Any reference in this Ordinance to the Register shall, unless the context otherwise requires, be deemed to include a reference to any part of the Register, and the expression "registered" shall be construed accordingly.

Regulations.

4. (1) It shall be lawful for the High Commissioner in Council to make regulations for any of the following purposes—

(*a*) for regulating the formation, maintenance and publication of the Register;

(*b*) for regulating the conditions of admission to the Register;

(*c*) for regulating the conduct of any examinations which may be prescribed as a condition of admission to the Register, and any matters ancillary to or connected with any such examinations;

(*d*) for prescribing the causes for which, the conditions under which and the manner in which nurses may be removed from the Register, and the procedure for the restoration to the Register of nurses who have been removed therefrom;

(*e*) for prescribing the constitution of the Board and for regulating the summoning of meetings of the Board and the proceedings (including quorum) of the Board;

(*f*) for enabling the Board to constitute committees and for authorizing the delegation to committees of any of the powers of the Board and for regulating the proceedings (including quorum) of committees;

(*g*) for prescribing the fees to be payable;

(*h*) generally for making provision for any matters regarding which the High Commissioner in Council considers that provision should be made for the purposes of carrying this Ordinance into effect (including provision for the issue of certificates to nurses registered under this Ordinance and with respect to the titles which may be used and the uniforms or badges which may be worn by nurses so registered), and for prescribing anything which under this Ordinance is to be prescribed.

(2) Regulations under this section shall contain provisions—

(*a*) requiring as a condition of the admission of any person to the Register that that person shall have undergone the prescribed training, and shall possess the prescribed experience, in the nursing of the sick;

(*b*) requiring that the prescribed training shall be carried out either in an institution approved by the Board in that behalf or in the service of the Admiralty, the Army Council or the Air Council; and

(*c*) enabling persons who, within a period of two years after the date on which the regulations to be made under the provisions of this paragraph first come into operation, make an application in that behalf (in this Ordinance referred to as "an existing nurse's application") to be admitted to the Register on producing evidence, to the satisfaction of the Board, that they are of good character, are of the prescribed age, and are persons who were before the first day of January, 1950, *bona fide* engaged in practice as nurses in attendance on the sick under conditions which appear to the Board to be satisfactory for the purposes of this provision and have adequate knowledge and experience of the nursing of the sick.

(3) All regulations made under this Ordinance shall be laid on the table of the Legislative Council and if a resolution be passed, within three months after such

regulations have been laid on the table of the said Council, resolving that any such regulation shall be rescinded or amended in any manner whatsoever, such regulation shall, without prejudice to anything done thereunder, be deemed to be rescinded or amended as the case may be, as from the date of publication in the *Gazette* of the passing of such resolution.

Admission to register of persons trained outside the Federation.

5. (1) Any person whose name is registered in any part of the Register kept by the General Nursing Council for England and Wales, or of the register kept by the General Nursing Council for Scotland, or of the register kept by the Joint Nursing and Midwives Council of Northern Ireland or of the register kept by the General Nursing Council for the Irish Republic and who produces a certificate under the seal of the said Council for England and Wales or for Scotland, or for Northern Ireland or for the Irish Republic, as the case may be, certifying that his or her name is so registered as a nurse, shall, upon making an application in the prescribed manner and upon satisfying the Board of his or her identity and good character and upon paying the fee prescribed for ordinary applications for registration under this Ordinance, be entitled to be registered in a corresponding manner under this Ordinance.

(2) If any person proves to the satisfaction of the Board that he or she has been trained in any place outside the Federation where the standard of training and examination is not lower than the standard of training and examination required under this Ordinance, either as a general nurse for the sick or as a nurse of some special class, and satisfies the Board as to his or her identity and good character, the Board may, either after examination or without examination, upon payment of the fee prescribed for registration under this Ordinance, direct that such person shall be registered in the appropriate part or parts of the Register.

Appeal against removal from the register or against refusal to approve institution.

6. (1) Any person aggrieved by the removal of his or her name from the Register may, within three months after the date on which notice has been served on him or her by the Board that his or her name has been so removed, appeal against the removal to the High Commissioner in Council, and on such appeal the High Commissioner in Council may give such directions in the matter as he thinks proper.

(2) Any person aggrieved by the refusal of the Board to approve any institution for the purpose of the regulations under this Ordinance relating to training may appeal against the refusal to the High Commissioner in Council and the High Commissioner in Council may give such directions therein as he thinks proper and the Board shall comply with any directions so given.

Service of notice.

7. Any notice, directed to be served on any person under the provisions of this Ordinance or the regulations made thereunder shall be deemed to have been served on such person if such notice has been posted by registered post to his address given in the Register, or if such person be not registered, then to the address furnished by him to the Board.

Procedure on appeal.

8. Every appeal under section 6 of this Ordinance shall be by means of a written petition and such petition, unless otherwise provided shall be presented within fourteen days of the date of service of notice of the decision of the Board on the person concerned. With such petition the High Commissioner in Council may consider any written reply of the Board to such petition. The decision of the High Commissioner in Council on such petition shall be final.

Penalties for unlawful assumption of title of registered nurse and for falsification of register.

9. (1) Every person who—

(*a*) not being a person duly registered under this Ordinance takes or uses the title of registered nurse or its equivalent in any other language, either alone or in combination with any other words or letters, or uses any name, title, addition, description, uniform or badge implying that he or she is registered under this Ordinance or is recognized by law as a registered nurse, or uses any title, uniform or badge prescribed for the use of nurses registered under this Ordinance; or

(*b*) being a person whose name is included in any part of the Register, takes or uses any name, title, addition, description, uniform or badge, or otherwise does any act of any kind, implying that his or her name is included in some other part of the Register in which it is not included; or

(*c*) with intent to deceive makes use of any certificate of registration as a nurse issued under this Ordinance to him or her or to any other person,

shall upon conviction by a Magistrate's Court be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(2) Every person who wilfully makes or causes to be made any false entry in the Register shall upon conviction by a Magistrate's Court be liable to a fine not exceeding one thousand dollars and to imprisonment for any term not exceeding twelve months.

Passed in the Legislative Council on the fifteenth day of June, 1950.

A.R. Collins

Clerk of Council.

FEDERATION OF MALAYA.

No. 33 of 1950.

THE REGISTRATION OF DENTISTS (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

30th .....June, 1950.

.....June, 1950.

An Ordinance to amend the Registration of Dentists Ordinance, 1948.

[4th July, ~~June,~~ *1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

F. of M. Ord. No. 7 of 1948.

1. This Ordinance may be cited as the Registration of Dentists (Amendment) Ordinance, 1950, and shall be read as one with the Registration of Dentists Ordinance, 1948, hereinafter referred to as the principal Ordinance.

Amendment of section 2.

2. Sub-section (1) of section 2 of the principal Ordinance is hereby amended—

(1) by deleting paragraph (*c*) thereof and substituting the following paragraph—

"(*c*) a registered medical practitioner or a registered dental surgeon to be appointed by the High Commissioner upon the nomination of the Vice Chancellor of the University of Malaya";

(2) by deleting the words "King Edward VII College of Medicine, Singapore" appearing in paragraph (*d*) thereof and substituting therefor the words "University of Malaya".

Amendment of section 5.

3. Section 5 of the principal Ordinance is hereby amended—

(1) by the insertion of the figures "(1)" between the figure "5" and the words "Subject to the provisions of this Ordinance" which appear at the beginning thereof;

(2) by adding immediately after the word "Singapore" appearing at the end of paragraph (*b*) thereof the words "or of the University of Malaya";

(3) by the addition of the word "or" after the semi-colon at the end of paragraph (*e*) thereof;

(4) by the insertion of the following three paragraphs immediately after paragraph (*e*) thereof:

"(*f*) was actually engaged, as his principal means of livelihood, in the practice of dentistry in the State of Perlis for a period of three years prior to the 15th day of April, 1948; or

(*g*) was engaged, as his sole means of livelihood, in the practice of dentistry in any State or Settlement, other than the State of Perlis, for a period of three years prior to the 15th day of April, 1948, and has—

(i) by passing such examination in the practice of dentistry as may be prescribed, and

(ii) by showing that during the said period of three years he practised dentistry, or if he is still in practice, that he is practising dentistry, under conditions not detrimental to public health,

satisfied the Board that he is a fit and proper person to practise dentistry and to be registered as a dentist; or

(*h*) is registered as a tooth extractor under sub-section (2) of this section and has—

(i) by passing such examination in the practice of dentistry as may be prescribed, and

(ii) by showing that during the period in which he has practised as a registered tooth extractor that he has so practised under conditions not detrimental to public health,

satisfied the Board that he is a fit and proper person to practise dentistry and to be registered as a dentist;"

(5) by the addition of the following two new sub-sections as sub-sections (2) and (3):

"(2) Subject to the provisions of this Ordinance, any person who was resident in any Malay State for a period of three years prior to the 15th day of April, 1948, and who, for the same period, was engaged as 'tooth extractor' as his sole means of livelihood may be registered under this Ordinance if, after submitting to such examination as may be prescribed, he satisfies the Board that he is competent to extract teeth without detriment to public health:

Provided that a person so registered—

(*a*) shall be registered in a separate part of the register as a 'tooth extractor';

(*b*) shall not be entitled to use any other title other than 'tooth extractor';

(*c*) shall not use or administer or cause to be used or administered any deleterious drug, or use or cause to be used any anaesthetic apparatus including hypodermic or dental syringes;

(*d*) shall not practise any form of dentistry except the extraction of teeth; and

(*e*) shall, if he has not previously ceased to be registered under this sub-section, cease to be so registered immediately upon the expiration of the period of three years from the 1st day of May, 1950, and shall not thereafter practise any form of dentistry whatsoever, including the extraction of teeth, unless he is registered under sub-section (1) of this section and is entitled to practise under the provisions of section 9 of this Ordinance.

(3) Every person applying for registration under paragraph (*f*) or (*g*) of sub-section (1) or under sub-section (2) of this section shall furnish evidence of good character to the satisfaction of the Board and shall make application for registration before the 1st day of September, 1950, or within such further period, not exceeding two years, as the Board may, in special circumstances, allow.''

Amendment of section 9.

4. Section 9 of the Principal Ordinance is hereby amended by deleting the word ''section'' appearing in the first line thereof and substituting therefor the words ''sub-section (2) of section 5 and section''.

Amendment of section 26 (2).

5. Sub-section (2) of section 26 of the principal Ordinance is hereby amended by the substitution of a semi-colon for the full stop at the end of paragraph (*i*) and by the insertion of the following paragraph immediately after paragraph (*i*) thereof:

''(*j*) the nature of the examination to be held for the purposes of paragraph (*g*) of sub-section (1) and of sub-section (2) of section 5 of this Ordinance and the manner in which such examinations shall be conducted, including the appointment of examiners, the fees to be paid by candidates for such examinations and the fees to be payable to examiners.''

Passed in the Legislative Council on the fifteenth day of June, 1950.

H. R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 34 of 1950.

THE ADVOCATES AND SOLICITORS (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....Yang di-Pertuan Besar of Negri Sembilan.

.....High Commissioner.

.....Sultan of Selangor.

30th .....June, 1950.

.....June, 1950.

..30th..June, 1950.

An Ordinance to amend the Advocates and Solicitors Ordinance, 1947.

[4th July, *1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

M.U. No. 4 of 1947.

1. This Ordinance may be cited as the Advocates and Solicitors (Amendment) Ordinance, 1950, and shall be read as one with the Advocates and Solicitors Ordinance, 1947 (hereinafter called the Principal Ordinance).

Amendment of section 5 of Principal Ordinance.

2. Section 5 of the Principal Ordinance is hereby amended

(*a*) by inserting immediately after the words "shall have" and before the word "attended" appearing in the second line of sub-section (3) thereof the word "continuously";

(*b*) by inserting immediately after the word "standing" appearing in the ninth line of paragraph (*a*) of sub-section (3) thereof and before the words "and has" the words following :

"or in the office of a practising Solicitor of the Supreme Court of Judicature of England and Northern Ireland (or of Ireland admitted before the first day of October, 1921), or of a Writer to the Signet or of a practising Solicitor in Scotland and in each case of more than seven years standing";

(*c*) by inserting immediately after the word "chambers" appearing in sub-paragraph (i) of paragraph (*a*) of sub-section (3) aforesaid the words "or in such office";

(*d*) by inserting immediately after the word "chambers" wherever appearing in sub-paragraph (ii) of paragraph (*a*) of sub-section (3) aforesaid in each case the words "or in such office";

(*e*) by adding at the end of the proviso to sub-section (4) thereof the following sentence :

"In computing such period of twelve months, any period during which proceedings on the petition were stayed by an order made under sub-section (4) of section 7 of this Ordinance shall be excluded unless the Chief Justice in making such order shall otherwise direct."

Amendment of section 7 of the Principal Ordinance.

3. Sub-section (1) of section 7 of the Principal Ordinance is hereby repealed and replaced by the following sub-section—

"(1) (*a*) Every person applying to be admitted and enrolled as an advocate and solicitor shall, before the hearing of the petition, appear before a Board appointed by the Bar Council for the purpose of reporting to such Council whether, in the opinion of the Board, the petitioner has an adequate knowledge of the practice and etiquette of the profession and of the English language and is a suitable person for admission.

(*b*) The Board shall consist of three practitioners not including the practitioner whose office the petitioner has attended.

(*c*) The opinion of the Board shall be communicated to the Bar Council by the senior practitioner of the Board; and where such opinion is not unanimous the opinion of the majority shall prevail."

Amendment of section 29 of the Principal Ordinance.

4. Section 29 of the Principal Ordinance is hereby amended

(*a*) by inserting immediately after the words "Chief Justice" appearing in sub-section (2) thereof the words "and to the Bar Council";

(*b*) by the addition of the following new sub-section at the end thereof :

"(5) It shall be competent for the Bar Council to make such report or recommendation to the Chief Justice as it may think fit concerning any report of which a copy has been forwarded to it pursuant to sub-section (2) of this section."

Amendment of section 30 of the Principal Ordinance.

5. Section 30 of the Principal Ordinance is hereby amended by adding the following sentence at the end of sub-section (1) thereof :

"Such application and affidavit or affidavits shall be served on the Secretary of the Bar Council and it shall be competent for the Bar Council to appear and be heard on the hearing of such application."

Amendment of section 42 of the Principal Ordinance.

6. Section 42 of the Principal Ordinance is hereby amended by inserting immediately after the words "The Registrar" appearing at the beginning of sub-section (8) thereof the words "and the Secretary of the Bar Council".

Amendment of section 44 of the Principal Ordinance.

7. Section 44 of the Principal Ordinance is hereby amended by adding at the end of sub-section (3) thereof the following new sentence :

"Such Secretary may be appointed to serve until the first meeting of the Bar Council elected for the next ensuing year."

Amendment of section 50 of the Principal Ordinance.

8. Section 50 of the Principal Ordinance is hereby amended

(*a*) by renumbering section 50 as 50 (1);

(*b*) by the addition of the following new sub-section at the end thereof :

"(2) Any subscription levied by the Bar Council or by a Local Bar Committee and unpaid may be recovered as a debt by suit brought in the name of the Bar Council or of such Local Bar Committee, respectively, at the instance of the Chairman of the Bar Council or of such Local Bar Committee respectively and the Chairman of or the Secretary to the Bar Council or such Local Bar Committee, as the case may be, shall be competent to sign and verify any necessary plaint."

Amendment of section 56 of the Principal Ordinance.

9. Section 56 of the Principal Ordinance is hereby amended by adding at the end of sub-section (1) thereof the following sentence:

"Every such application shall be served upon the Secretary to the Bar Council and the Secretary to the Local Bar Committee concerned and it shall be competent for the Chairman of the Bar Council and the Chairman of such Committee or any member of the Council or Committee specially authorised in that behalf by the Chairman of the Council or Committee, as the case may be, to appear at the hearing of such application."

Passed in the Legislative Council on the fifteenth day of June, 1950.

H. R. Collin

Clerk of Council.

FEDERATION OF MALAYA.

No. 35 of 1950.

THE BRITISH NATIONALITY (FEES) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

Tuanku Abdul Rahman ..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lovett ..... *High Commissioner.*

..... *Sultan of Selangor.*

30th June, 1950.

30th June, 1950.

An Ordinance to provide for the fees to be paid in the Federation of Malaya in respect of various things and matters to be granted or done under the provisions of the British Nationality Act, 1948.

[4th July ~~June~~, *1950*.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and application.

11 and 12 Geo. 6 c. 56.

1. This Ordinance may be cited as the British Nationality (Fees) Ordinance, 1950, and shall relate only to fees payable for matters granted or done within the Federation under the British Nationality Act, 1948 (hereinafter referred to as " the Act").

Schedule of fees.

2. The fees appointed in the Schedule hereto shall be taken in the various matters respectively specified, and shall be paid to the officers and in the manner therein shown.

High Commissioner in Council to have power to amend Schedule.

3. The High Commissioner in Council shall have power to amend or add to the said Schedule in any manner whatsoever.

Interpretation of the Schedule.

4. The expressions "alien", "British protected person" and "citizen of the United Kingdom and Colonies", respectively, appearing in the Schedule hereto, shall have the same meaning as that assigned to it in the Act.

SCHEDULE.

(Section 2.)

TABLE OF FEES.

The matter in which the fee shall be taken.	The amount of the fee.	How and to whom payment of the fee is to be made.
1. For registration under section 6 (2) of the Act of a woman who is married to a citizen of the United Kingdom and Colonies and who is a British protected person or an alien	$ 5 ...	To the Accountant-General
2. For registration of a minor as a citizen under section 7 of the British Nationality Act, 1948:		
If the minor is a British protected person	25 ...	" "

The matter in which the fee shall be taken.	The amount of the fee.	How and to whom payment of the fee is to be made.
If the minor is an alien;	$50 ...	To the Accountant-General
Provided that, where the parent or guardian or person otherwise standing *in loco parentis* to a minor applies for the registration of the minor as a citizen of the United Kingdom and Colonies under section 7 of the British Nationality Act, 1948, and such parent or guardian or other person is a citizen of the United Kingdom and Colonies at the time of the application the fee payable shall be	5 ...	" "
3. For every application for naturalisation by an alien	10 ...	" "
4. For every grant of a Certificate of Naturalisation to an alien	40 ...	" "
Provided that where applications by a husband and wife resident at the same address are submitted simultaneously and certificates are granted in both cases a single fee of $40 shall be payable in respect of both grants, making together with the application fee in respect of each application, a total of $60 for the certificates.		
5. For every application for naturalisation by a British protected person	5 ...	" "
6. For every grant of a Certificate of Naturalisation to a British protected person	20 ...	" "
(Provided that where applications by a husband and wife resident at the same address are submitted simultaneously, and certificates are granted in both cases, a single fee of $20 shall be payable in respect of both grants, making together with the application fee in respect of each application a total of $30 for the two certificates).		
7. For witnessing the signing of an application or declaration mentioned in Regulation 17 of the British Nationality Regulations, 1948 ...	1	If the application or declaration is witnessed or the oath administered by a person who is a public officer, payable by means of stamps affixed to the declaration or form of oath, and, if by a person who is not a public officer, to such person
8. For administering the Oath of Allegiance	1 ...	
9. For supplying a certified true copy of any notice, certificate, order, declaration or entry given, granted or made by or under the British Nationality Act, 1948	5 ...	To the Accountant-General

Passed in the Legislative Council on the fifteenth day of June, 1950.

H. K. Collis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 36 of 1950.

THE MARRIED WOMEN AND CHILDREN (MAINTENANCE) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

..... } *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Sultan of Selangor.*

.....June, 1950.

..... *High Commissioner.*

.....June, 1950.

An Ordinance to provide for the maintenance of wives and children.

[4th July, ~~June,~~ *1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Married Women and Children (Maintenance) Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires, "Court" means a Sessions Court or a Court of a First Class Magistrate.

Court may make order for maintenance of wife and children.

3. (1) If any person neglects or refuses to maintain his wife or a legitimate child of his which is unable to maintain itself, a Court, upon due proof thereof, may order such person to make a monthly allowance for the maintenance of his wife or such child, in proportion to the means of such person, as to the Court seems reasonable.

(2) If any person neglects or refuses to maintain an illegitimate child of his which is unable to maintain itself, a Court, upon due proof thereof, may order such person to make such monthly allowance, not exceeding fifty dollars, as to the Court seems reasonable.

(3) Such allowance shall be payable from the date of such neglect or refusal or from such later date as may be specified in the order.

Levy of amount.

4. If any person wilfully neglects to comply with any order made under the provisions of this Ordinance, the Court, which made such order may, for every breach thereof, by warrant, direct the amount due to be levied in the manner by law provided for levying fines imposed by such Court, or may sentence him to imprisonment of either description for a term which may extend to one month for each month's allowance remaining unpaid.

Wife living separate from husband.

5. (1) If any person, against whom an order has been applied for or made for the maintenance of his wife, offers to maintain his wife on condition of her living with him, and his wife refuses to do so, the

Court shall consider any grounds of refusal stated by such wife, and may make or enforce the order aforesaid, notwithstanding such offer, if it is satisfied that such person is living in adultery or for any other reason it is just so to do.

Cases in which wife not entitled to allowance.

(2) No wife shall be entitled to receive an allowance from her husband under the provisions of this Ordinance if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband.

Rescission and variation of order.

6. (1) On the application of any person receiving or ordered to pay a monthly allowance under this Ordinance, and on proof of a change in the circumstances of such person, his wife or child, or for other good cause being shown to the satisfaction of the Court, the Court by which such order was made, may rescind the order or may vary it as to it seems reasonable.

(2) Without prejudice to the extent of the discretion conferred upon the Court by sub-section (1) of this section, the Court may, in considering any application made under this section, take into consideration any change in the general cost of living which may have occurred between the date of the making of the order sought to be varied and the date of the hearing of the application.

Application of Ordinance to orders made under previous Enactments.

7. (1) All orders, made by a Court under any of the provisions of the Enactments set out in the Schedule hereto, and in force at the commencement of this Ordinance, shall be deemed to have been made by such Court under this Ordinance, and the provisions of this Ordinance shall apply to the same accordingly.

(2) Upon an application to vary any order referred to in sub-section (1) of this section, made in respect of the maintenance of an illegitimate child, the Court may make, under section 6 of this Ordinance, any order which it could have made upon an application under sub-section (2) of section 3 of this Ordinance.

Power of Court to refuse order where High Court proceeding more convenient.

8. If in the opinion of the Court the matters in question between the parties or any of them could be more conveniently dealt with by the High Court, the Court may refuse to make an order and in such case there shall be no appeal from its decision:

Provided always that the High Court or a Judge thereof shall have power, by order in any proceeding in the High Court relating to or comprising the same subject matter as the application refused as aforesaid or any part thereof, to direct the Court to rehear or determine the same.

Jurisdiction of High Court.

9. The High Court shall have the jurisdiction and powers which belong to and are exercisable by any Court under this Ordinance.

Procedure.

10. All applications to a Court under this Ordinance shall be made and heard substantially in the same manner and in accordance with the same procedure as applications under any of the provisions of the Enactments set out in the Schedule hereto were made and heard by such Court immediately before the commencement of this Ordinance.

Enforceable by any Court.

11. A copy of the order of maintenance shall be given to the person for whose maintenance it is made, or to the guardian of such person, and payment shall be enforced by any Court within whose local limits of jurisdiction the person to whom the order is addressed may be found, on production of the copy of the order, and on the Court being satisfied as to the identity of the parties and the non-payment of the sum claimed.

Repeal and saving.

12. The Ordinance and Enactments set out in the Schedule hereto are hereby repealed to the extent specified in the third column of the said Schedule.

Power of State legislatures to exempt cases between persons professing the Muslim religion.

13. It shall be within the competency of the Council of State of any Malay State to pass laws providing that the provisions or any of them of this Ordinance shall not apply to any person professing the Muslim religion and whose wife or whose legitimate or illegitimate child, as the case may be, professes the Muslim religion, if under the law in force in such State there is provision for the making of orders for the maintenance of wives and of children, legitimate and illegitimate, and for the enforcement of such orders against such persons professing the Muslim religion.

SCHEDULE.

(Section 12.)

ORDINANCE AND ENACTMENTS REPEALED.

(1) No.	(2) Short title.	(3) Extent of repeal.
Kedah Enactment No. 61	Enactment No. 61 (Maintenance of Wives and Children)	The whole
Johore Enactment No. 79	The Maintenance of Wives Enactment	The whole
F.M.S. Cap. 6	The Criminal Procedure Code	Sections 360, 361, 362, 363 and 364
S.S. Cap. 24	The Minor Offences Ordinance	Section 37

Passed in the Legislative Council on the fifteenth day of June, 1950.

H. R. Sollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 37 of 1950.

THE PORTS (FEDERATED MALAY STATES) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

Tuanku Abdul Rahman ..... *Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lumley ..... *High Commissioner.*

..... *Sultan of Selangor.*

30th June, 1950.

..... June, 1950.

An Ordinance to amend the Ports Enactment of the Federated Malay States.

[4th July, ~~June,~~ 1950.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows:

Short title.

F.M.S. Cap. 171.

1. This Ordinance may be cited as the Ports (Federated Malay States) (Amendment) Ordinance, 1950, and shall be construed as one with the Ports Enactment of the Federated Malay States hereinafter referred to as the Enactment.

Amendment of section 9 (i) of the Enactment.

2. Sub-section (i) of section 9 of the Enactment is hereby amended by deleting paragraph (*o*) thereof and by adding after paragraph (*n*) thereof the following paragraphs:

"(*o*) for classifying goods as dangerous goods;

(*p*) for regulating and controlling the lighterage, landing, loading and unloading of dangerous goods;

(*q*) for prescribing the conditions subject to which and the times at which dangerous goods of any particular class or description may be lightered, landed, loaded or unloaded;

(*r*) for prescribing places where dangerous goods of any particular class or description may be loaded or unloaded;

(*s*) generally for carrying out the purposes of this Enactment."

Passed in the Legislative Council on the fifteenth day of June, 1950.

H R Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 38 of 1950.

THE MERCHANT SHIPPING (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

30th June, 1950.

30th June, 1950.

An Ordinance to amend the Merchant Shipping Ordinance of the Straits Settlements.

[4th July, ~~June,~~ *1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Merchant Shipping (Amendment) Ordinance, 1950, and shall be construed as one with the Merchant Shipping Ordinance of the Straits Settlements hereinafter referred to as the principal Ordinance.

S.S. Cap. 150.

Amendment of section 406 of the principal Ordinance.

2. Sub-section (1) of section 406 of the principal Ordinance is hereby amended by deleting paragraph (*m*) thereof and adding after paragraph (*l*) thereof the following paragraphs:

"(*m*) classifying goods as dangerous goods;

(*n*) regulating and controlling the lighterage, landing, loading and unloading of dangerous goods;

(*o*) prescribing the conditions subject to which and the times at which dangerous goods of any particular class or description may be lightered, landed, loaded or unloaded;

(*p*) prescribing places where dangerous goods of any particular class or description may be loaded or unloaded;

(*q*) generally carrying out the purposes of this Part."

Passed in the Legislative Council on the fifteenth day of June, 1950.

H. R. Sollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 39 of 1950.

THE BETTING AND SWEEPSTAKE DUTIES (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

Abdul Rahman .....{*Yang di-Pertuan Besar of Negri Sembilan.*

Henry Lamm .....
High Commissioner.

.....*Sultan of Selangor.*

9th .....August, 1950.

8th .....August, 1950.

An Ordinance to amend the Betting and Sweepstake Duties Ordinance, 1948.

[15th *August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Betting and Sweepstake Duties (Amendment) Ordinance, 1950, and shall be read as one with the Betting and Sweepstake Duties Ordinance, 1948, hereinafter referred to as the principal Ordinance.

F. of M. No. 6 of 1948.

Amendment of section 2 of principal Ordinance.

2. Sub-section (2) of section 2 of the principal Ordinance is hereby amended by deleting the word "fifteen" appearing in the penultimate line thereof and substituting therefor the word "twenty".

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H. R. Hollis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 40 of 1950.

THE CRIMINAL PROCEDURE CODE (STRAITS SETTLEMENTS) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *High Commissioner.*

..... *Sultan of Selangor.*

.....7th.....August, 1950.

..8th...August, 1950.

An Ordinance to amend the Criminal Procedure Code of the Straits Settlements.

[15th *August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Criminal Procedure Code (Straits Settlements) (Amendment) Ordinance, 1950, and shall be read as one with the S.S. Cap. 21. Criminal Procedure Code of the Straits Settlements, hereinafter referred to as the Code.

Amendment of section 302 (1).

2. Sub-section (1) of section 302 of the Code is hereby amended by inserting the words "or on the ground of the excessive severity or of the inadequacy of the sentence" immediately after the words "error in law or in fact" which occur therein.

Amendment of section 310.

3. Section 310 of the Code is hereby amended—

(i) by re-lettering paragraph (*c*) as paragraph (*d*); and

(ii) by inserting the following new paragraph immediately after paragraph (*b*) thereof—

"(*c*) in an appeal as to sentence, reduce or enhance the sentence, or alter the nature of the sentence;".

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H. R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 41 of 1950.

THE ESTATE DUTY (TRANSITIONAL PROVISIONS) (No. 2) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

8th August, 1950.

.....
High Commissioner.

9th August, 1950.

An Ordinance to amend the Estate Duty (Transitional Provisions) (No. 2) Ordinance, 1946.

[*15th August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows :

Short title and construction.

No. 35 of 1946.

1. This Ordinance may be cited as the Estate Duty (Transitional Provisions) (No. 2) (Amendment) Ordinance, 1950, and shall be read as one with the Estate Duty (Transitional Provisions) (No. 2) Ordinance, 1946, hereinafter referred to as the principal Ordinance.

Amendment of section 4.

2. Section 4 of the principal Ordinance is hereby amended by the addition at the end thereof of the words "or affect or be deemed to have affected the operation of any written law in force in any State or Settlement and relating to estate duty with regard to the assessment determination or collection of such duty or duties in the case of such persons or to other matters incidental to such assessment, determination or collection".

Amendment of section 5.

3. Section 5 of the principal Ordinance is hereby amended by deleting the word "The" appearing in the first line thereof and by substituting therefor the words "Subject to the provisions of section 4 of this Ordinance, the".

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

A. R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 42 of 1950.

THE PENANG HILL RAILWAY ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *High Commissioner.*

.....*Sultan of Selangor.*

.....August, 1950.

....August, 1950.

An Ordinance to provide for the administration, maintenance, operation and control of the Penang Hill Railway.

[*15th August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Penang Hill Railway Ordinance, 1950.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"High Commissioner in Nominated Council" means the High Commissioner acting after consultation with the Nominated Council of the Settlement but not necessarily in accordance with the advice of such Council nor necessarily in such Council assembled;

"Manager" means the Manager of the Penang Hill Railway appointed under section 3 of this Ordinance, and any person for the time being performing the duties of Manager;

"Resident Commissioner" means the Resident Commissioner in and for the Settlement of Penang, and any person for the time being performing the duties of Resident Commissioner;

"Settlement" means the Settlement of Penang;

"railway" means the Penang Hill Railway.

Appointment and duties of Manager.

3. (1) The High Commissioner may appoint a fit and proper person to be Manager of the railway and may appoint such other railway officials as may from time to time be necessary or expedient for the purposes of this Ordinance.

(2) The Manager shall, subject to any regulations made under this Ordinance and to any instructions which he may from time to time receive from the Resident Commissioner, have power and authority generally to do all such acts, deeds and things as may be necessary for the proper administration, maintenance, operation and control of the railway.

(3) The Manager shall employ on such terms and conditions of service as may be approved by the High Commissioner in Nominated Council such servants as may be necessary for carrying out the purposes of this Ordinance.

Railway officials and servants to be deemed public servants.

4. All officials and servants of the railway appointed or employed under the provisions of section 3 of this Ordinance shall be deemed to be public servants for the purposes of Chapter IX of the Penal Code.

Vesting of movable property of the railway.

5. (1) All movable property, used for the purposes of the railway, which, immediately before the commencement of this Ordinance was, by virtue of Clause 141 of the Federation of Malaya Agreement, 1948, vested in the Chief Secretary for the purposes of the Settlement, shall, on the commencement of this Ordinance, vest in the Resident Commissioner for the purposes of the Settlement.

(2) The Resident Commissioner may acquire, purchase, hold and enjoy movable property of every description for the administration, maintenance, operation and control of the railway.

(3) The Resident Commissioner may sell, assign, dispose or otherwise deal with any movable property, used for the purposes of the railway, vested in or held by him, upon such terms as he deems fit and all proceeds of sale or other moneys arising from any such transaction shall be paid to the general revenue of the Settlement.

(4) All such movable property vested in or held or acquired by Resident Commissioner shall pass from Resident Commissioner to Resident Commissioner for the time being during his continuance of office without any assignment or transfer whatever.

Account of railway revenue and expenditure.

6. The revenue and expenditure of the railway shall be included in the annual estimates of the Settlement and for that purpose the Manager shall prepare at the end of each financial year an account of the revenue and expenditure of the railway for that year.

Existing liabilities.

7. All liabilities arising out of the administration, maintenance, operation and control of the railway, existing on the commencement of this Ordinance, shall be enforceable against the Government of the Settlement.

Manager to enter into contracts, sue and be sued.

8. Notwithstanding the provisions of any other written law, the Manager may on behalf of the Government of the Settlement sue and be sued in respect of all matters arising out of the administration, maintenance, operation and control of the railway.

Compulsory acquisition of land.

9. When any immovable property, not being Crown land, required for the purposes of the railway cannot be acquired by agreement, such property may be acquired in accordance with the written law for the time being in force in the Settlement for the acquisition of land.

Regulations.

10. (1) The High Commissioner in Nominated Council may make regulations for the proper administration, maintenance, operation and control of the railway and, without prejudice to this generality, may make regulations—

(*a*) fixing the fares to be paid by passengers;

(*b*) classifying goods and fixing the general rates to be charged for the transport thereof;

(*c*) fixing the general rates to be charged for the conveyance of passengers' luggage, parcels and animals;

(*d*) prescribing conditions under which passengers, accompanied and unaccompanied luggage, goods, animals or other freight will be carried;

(*e*) regulating the conditions under which persons suffering from infectious or contagious diseases may be conveyed on the railway and providing for the disinfection of carriages used by such persons;

(*f*) regulating or prohibiting the carriage of wild or diseased animals, dangerous or offensive goods, goods of unusual weight or bulk and damageable goods not properly protected by packing;

(*g*) regulating the terms and conditions on which passengers' luggage, parcels and other goods will be retained or stored in railway property;

(*h*) limiting the liability for personal injury to passengers or for loss of goods, luggage, animals or other freight carried on the

railway or retained in railway property unless such injury or loss is caused by misconduct or want of ordinary care, diligence or skill on the part of the railway officials or servants;

(*i*) providing for the disposal of unclaimed goods;

(*j*) regulating the conditions on which, the times when and the place where authorised fares, freight or other charges are to be paid;

(*k*) regulating the conditions upon which ordinary and special tickets and free passes shall be issued and the prevention of abuse thereof;

(*l*) regulating the times of arrival and departure of trains;

(*m*) prohibiting or regulating smoking on any part of the railway or in any train;

(*n*) providing for the prevention of trespass, nuisance or obstruction upon, or damage or injury to, or improper use of any railway property;

(*o*) prohibiting the entering or leaving of any train by any person while such train is in motion;

(*p*) prohibiting any person who is in a state of intoxication or in possession of alcohol from entering or remaining on railway property;

(*q*) prohibiting any act on any railway property which causes or is likely to cause damage to any railway property or danger to passengers;

(*r*) providing for the preservation and promotion of good order, sanitation, cleanliness and decency on the railway;

(*s*) regulating the conduct of servants of the railway;

(*t*) prescribing the maximum number of passengers or the maximum weight of any load which may be carried in any train or any part thereof;

(*u*) generally with respect to the use or working of the railway, for the good government thereof, the maintenance of order thereon and therein and for the carrying out of any of the purposes or provisions of this Ordinance.

(2) Where any person is convicted before a Court of criminal jurisdiction for an offence against any regulations made under this Ordinance, the Court may, in addition to imposing any penalty prescribed therefor, fix or assess the amount of any fare, charge, damages, expenses or sum of money whatsoever which may have become payable by such person under the provisions of any regulations made under this Ordinance and order such amount to be paid by such person to the Manager and such amount may be levied and recovered as if it were a fine imposed upon such person.

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

A. R. Collis

Clerk of Council.

FEDERATION OF MALAYA.

No. 43 of 1950.

THE CUSTODIAN OF ENEMY PROPERTY (DOCUMENTS OF TITLE) (MALAY STATES) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....August, 1950.

.....

High Commissioner.

.....August, 1950.

8th August, 1950.

An Ordinance to authorise the issue of certified copies of register documents of titles to land to the Custodian of Enemy Property where the issue documents of title cannot be found or obtained.

[15th *August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Custodian of Enemy Property (Documents of Title) (Malay States) Ordinance, 1950, and shall apply only to the Malay States.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"The Custodian" means the officer appointed under the provisions of the Proclamation to be Custodian of Enemy Property, Federation of Malaya;

"issue document of title" means a grant, lease of State Land, certificate of title or other document evidencing title, registered and issued under the provisions of the appropriate Land Law, and includes an extract from a mukim register kept under the provisions of the appropriate Land Law;

"Land Law" means the Land Code of the Federated Malay States or any Land Enactment corresponding thereto and in force in any State, and "the appropriate Land Law" means the Land Law in force in the State in which is situate the land referred to in the issue document of title of which a copy is applied for under this Ordinance;

"The Proclamation" means the Custodian of Property Proclamation;

"The proper registering authority" means the officer authorised under the provisions of the appropriate Land Law to register and issue the issue document of title of which a copy is applied for under this Ordinance; and,

"register document of title" means a grant, lease of State Land, certificate of title, entry in the mukim register, or other document evidencing title registered or kept under the provisions of the appropriate Land Law.

Power of proper registering authority to issue certified copy of issue document of title to the Custodian of Enemy Property.

3. (1) Notwithstanding any other written law to the contrary, where the proprietor or chargee of any land in any State is an enemy within the meaning of the Proclamation or is an enemy subject within the meaning of the Proclamation who is absent from the Federation, the proper registering authority, if satisfied by a certificate, purporting to be under the hand of the Custodian, that such land has been vested or is deemed to be vested in the Custodian or been taken into his custody by virtue of or under the provisions of such Proclamation, or of the Essential (Trading with the Enemy) Regulations or of the Trading with the Enemy (Custodian of Enemy Property) General Vesting Regulations, 1947, as the case may be and that the issue document of title in respect of such land is not in the possession of the Custodian, and cannot be found or obtained without unreasonable delay or expense, may, on the application of the Custodian, cause a notice in the form in the Schedule to this Ordinance, with such alterations of the form but not of the substance as he may adopt, to be published locally in the district and in the *Gazette* of the State concerned for a period of not less than one month, and copies of the same to be served upon all persons having interests registered against the title and a copy to be posted on the land:

Provided that it shall not be necessary to serve such notice upon any person whose interest is vested or is deemed to be vested in or taken into custody by the Custodian by virtue of or under the provisions of the Proclamation or of such Regulations or any of them.

(2) Thereafter the proper registering authority may issue to the Custodian a copy, certified by such authority, of the register document of title, containing an exact copy of such document, and a plan of the land, and a statement that such copy was issued under the provisions of this Ordinance, and such authority shall, at the same time, enter in the register document of title a memorial of the issuing of such copy under the provisions of this Ordinance and the date of such issue and such copy shall be available for all purposes and uses for which the issue document of title could have been available and as valid to all intents as such issue document of title was, before the issue of such copy, and from and after the issue of such copy, such issue document of title shall cease to be valid.

SCHEDULE.

(Section 3.)

NOTICE UNDER THE CUSTODIAN OF ENEMY PROPERTY (DOCUMENTS OF TITLE) (MALAY STATES) ORDINANCE, 1950.

Application having been made on.....to the.....at..... by the Custodian of Enemy Property, Federation of Malaya, under the provisions of section 3 of the Custodian of Enemy Property (Documents of Title) (Malay States) Ordinance, 1950, for a certified copy of*.....on the ground that.....is the proprietor or chargee of the land held thereunder and that the said.....is an enemy within the meaning of the Custodian of Property Proclamation or is an enemy subject within the meaning of such Proclamation who is absent from the Federation and that the said land or charge is vested in or deemed to be vested in or has been taken into custody by such Custodian under the provisions of such Proclamation or of the Essential (Trading with the Enemy) Regulations or of the Trading with the Enemy (Custodian of Enemy Property) General Vesting Regulations, 1947, and that the issue document of title is not in the possession of such Custodian and cannot be found without unreasonable delay or expense.

* Here specify the register document of title.

NOW, THEREFORE, in accordance with the provisions of section 3 of the Ordinance aforesaid I.....do hereby give notice that unless within the period of.....months from the date of publication of this notice good cause be shown to me for refusing the application I shall issue to such Custodian a certified copy of.....

Dated this.....day of.....19.....

....
Proper Registering Authority,
State of.....

L. S.

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H. R. Sollis
Clerk of Council.

FEDERATION OF MALAYA.

No. 44 of 1950.

THE JOHORE APPRAISERS ENACTMENT (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *High Commissioner.*

..... *Sultan of Selangor.*

.....August, 1950.

.....August, 1950.

An Ordinance to amend the Appraisers Enactment of the State of Johore.

[15th *August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and construction. Johore En. No. 4.

1. This Ordinance may be cited as the Johore Appraisers Enactment (Amendment) Ordinance, 1950, and shall be read as one with the Appraisers Enactment of the State of Johore hereinafter referred to as the Enactment.

Repeal and re-enactment of section 7 of the Enactment.

2. Section 7 of the Enactment is hereby repealed and the following section substituted therefor—

"7. (i) On every licence granted under this Enactment there shall be paid such fee as may be prescribed by His Highness the Sultan in Council in respect of the class of licence to which such licence belongs and no licence shall be granted until such fee has first been paid.

(ii) His Highness the Sultan in Council may from time to time prescribe any such fee as is referred to in sub-section (i) of this section by Order published in the *Gazette* and may prescribe different fees for different classes of licence.".

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H. R. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 45 of 1950.

THE WAR DAMAGE (AMENDMENT No. 2) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

..... { *Yang di-Pertuan Besar of Negri Sembilan.*

..... *High Commissioner.*

.....*Sultan of Selangor.*

.....August, 1950.

.....August, 1950.

An Ordinance to amend the War Damage Ordinance, 1949 (No. 73 of 1949).

[*1st January, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title, construction and commencement.

1. This Ordinance may be cited as the War Damage (Amendment No. 2) Ordinance, 1950, and shall be read as one with the War Damage Ordinance, 1949 (hereinafter referred to as the principal Ordinance), and shall be deemed to have come into force on the first day of January, 1950.

Amendment of section 9 (1).

2. Sub-section (1) of section 9 of the principal Ordinance is hereby amended by deleting the proviso thereto, and substituting therefor the following:

"Provided that the percentage paid on assessed claims in respect of seizure by the enemy of goods insured under the War Risks (Goods) Insurance Enactment, 1941, or under any Ordinance or Enactment repealed by the War Risks (Goods) Insurance Ordinance, 1948, shall not, in any case where the Board of Management of the War Risks (Goods) Insurance Fund has denied liability solely upon the ground that it is not liable for such seizure, be less than the percentage paid in respect of assessed claims directly related to the business of tin mining or to the rubber planting industry, whichever is the less."

F.M.S. No. 6 of 1941.

F. of M. No. 24 of 1948.

Amendment of section 11.

3. Section 11 of the principal Ordinance is hereby amended by deleting the words "sub-paragraph (iii) of" occurring in line six thereof.

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H.R. Collis

Clerk of Council.

FEDERATION OF MALAYA.

No. 46 of 1950.

THE VENEREAL DISEASE PROCLAMATION (REPEAL) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto



I assent



Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....9th.....August, 1950.

.....8th.....August, 1950.

.....August, 1950.

An Ordinance to repeal the Venereal Disease Proclamation.

[15th *August, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Venereal Disease Proclamation (Repeal) Ordinance, 1950.

Repeal of B.M.A. Proclamation No. 53.

2. The Venereal Disease Proclamation is hereby repealed.

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H.R. Hollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 47 of 1950.

THE WEEKLY HOLIDAYS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
High Commissioner.

.....*Sultan of Selangor.*

.....9th.....August, 1950.

.....8th.....August, 1950.

An Ordinance to provide for a weekly holiday for persons employed in shops, restaurants and theatres.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Weekly Holidays Ordinance, 1950, and shall come into force on a date to be notified by the High Commissioner in the *Gazette*.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"Commissioner" means the Commissioner for Labour, Federation of Malaya;

"controlled business" means any one or more of the following trades or businesses, namely, any retail trade or business (including retail sales by auction but not including the sale of programmes and catalogues and other similar sales at theatres and places of amusement), the sale of intoxicating liquor under licence, the business of a pawnbroker, barber and hairdresser and any wholesale business declared by the High Commissioner in Council, by notification in the *Gazette*, to be a controlled business for the purposes of this Ordinance;

"day" means a period of twenty-four hours beginning at midnight;

"manager" means any person appointed to be in charge of or to manage a shop, theatre or restaurant;

"proprietor" means the owner of the controlled business in any shop or the licensee of any theatre or restaurant;

"restaurant" means any premises in which is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises;

"shop" means all directly inter-connected premises or contiguous places used by any person for—

(*a*) exposing goods for sale as part of any controlled business carried on by him; or

(*b*) the storage, preparation, processing or manufacture of goods, some or all of which are ordinarily disposed of in the course of any controlled business carried on by him; or

(*c*) any other purpose of a controlled business carried on by him,

or, where part only of any premises or places are so used, means that part:

Provided that the term "shop" shall not include a restaurant or any bazaar for charitable or public purposes, or any separate room or workshop used exclusively for the storage, preparation, processing or manufacture of goods which are of a description ordinarily disposed of in substantial quantities otherwise than as part of the business of a controlled business;

"theatre" includes any premises intended principally or wholly for the presentation of moving pictures, dramatic performances or stage entertainment or for use as a dance hall;

"unassisted shop" means any shop in which the controlled business is carried on by the proprietor without assistance other than that of the husband, wife or one of the children of the proprietor;

"week" means the period between midnight on any Saturday night and midnight on the succeeding Saturday night.

Closing of shops.

3. (1) Every shop not included in any class of shops mentioned in the Schedule to this Ordinance shall remain entirely closed on either Friday or Sunday, as the proprietor or manager may choose, in each week, and every person employed therein shall be given a whole holiday on such day:

Provided that—

(*a*) an unassisted shop may remain open on both Friday and Sunday in each week on condition that on either Friday or Sunday in each week only the proprietor shall attend to the customers;

(*b*) the Commissioner may, upon application being made to him in that behalf, in the manner prescribed, by the proprietor or the manager, give written permission in the case of any shop for some other day to be substituted in any particular week

for the day chosen by such proprietor or manager and this sub-section shall thereupon apply in the case of that shop to such day accordingly and not to the day of that week chosen; and

(*c*) the Commissioner may, upon application being made to him in that behalf by the proprietor or manager, give written permission that in any particular week a specified piece of work be performed in any shop on the day on which that shop, in accordance with this sub-section, would otherwise be entirely closed; and the Commissioner shall, if he gives such written permission, specify a day in that particular week or in the week next following on which all persons to be employed in such specified piece of work shall be given a whole holiday in lieu of the whole holiday which they would otherwise have been given under this sub-section.

(2) The proprietor or the manager shall specify in a notice, in such form as may be prescribed, the day in each week on which a shop is closed in pursuance of sub-section (1) and shall exhibit such notice permanently in a conspicuous place in the shop.

(3) The day chosen by the proprietor or manager in accordance with sub-section (1) of this section shall not be altered by the proprietor or manager more often than once in six months.

(4) The High Commissioner in Council may from time to time, by notification in the *Gazette* add to, alter or amend the Schedule to this Ordinance.

Provisions relating to shops where more than one business is carried on.

4. Where several trades or businesses are carried on in the same shop, and any of those trades or businesses is of such a nature that if it were the only trade or business carried on in the shop, the shop would be exempt from the provisions of section 3 of this Ordinance, the exemption shall apply to the shop so far as the carrying on of that trade or business is concerned, subject, however, to such conditions as may be prescribed.

Additional half-day closing or holiday.

5. (1) The High Commissioner in Council may, by notification in the *Gazette*, require in respect of all shops or of any specified class of shops other than unassisted shops and shops included in any class of shops mentioned in the Schedule to this Ordinance that they should be closed at such hour in the afternoon of one day in every week in addition to the day provided for by section 3 of this Ordinance, as may be specified in such notification.

(2) When any shop is closed under the provisions of sub-section (1) every person employed therein shall be given a holiday, in addition to any holiday given under sections 3, 6 or 7 of this Ordinance, during such period as the shop is closed.

(3) The High Commissioner in Council may, for the purposes of this section, specify different hours or days for different shops or different classes of shops or for different areas or for different times of the year.

(4) The proprietor or the manager shall specify in a notice, in such form as may be prescribed, the day in each week on which a shop is closed in pursuance of a requirement under sub-section (1) and shall exhibit such notice permanently in a conspicuous place in the shop.

Weekly holidays in shops, restaurants and theatres.

6. (1) Every person employed in any shop, other than an unassisted shop, in a class of shops mentioned in the Schedule to this Ordinance, or in any restaurant or theatre shall be given in each week a holiday of one whole day :

Provided that nothing in this section shall apply to any person who works on less than six days in the week, such person being deemed to have worked on any day on which he has worked for a total period of not less than six hours.

(2) The Commissioner may, by notification in the *Gazette*, exclude any particular class of employee from the operation of sub-section (1) of this section.

Shops to be closed on five additional days every year.

7. (1) In addition to those other holidays prescribed by this Ordinance, every shop, other than an unassisted shop or a shop included in any class of shops mentioned in the Schedule to this Ordinance, shall be closed on not less than five days every year, to be chosen by the proprietor or manager, and every person employed in any such shop shall be given a whole holiday on each such day.

(2) The proprietor or the manager shall specify in a notice, in such form as may be prescribed, the days chosen in accordance with sub-section (1) and shall exhibit such notice permanently in a conspicuous place in the shop.

No deduction or abatement to be made from wages.

8. No deduction or abatement of the wages of any person shall be made on account of any holiday given under sections 3, 5, 6 or 7 of this Ordinance, and, notwithstanding any agreement to the contrary, such person shall be paid in respect of such holiday the wages which he would have earned had he worked on the day or during that part of the day on which such holiday is given.

Administration of Ordinance.

9. (1) The Commissioner shall be the officer in charge of the general administration of this Ordinance.

(2) The Commissioner may either generally or specially direct any Deputy Commissioner for Labour or Assistant Commissioner for Labour or, with the consent of the High Commissioner, any other public officer to exercise, perform or discharge any power, duty or function of the Commissioner under this Ordinance or under any regulation made thereunder.

(3) The High Commissioner may, by notification in the *Gazette*, appoint persons to be Inspectors for the purposes of this Ordinance within such local limits as he may assign.

(4) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of the Penal Code.

(5) The Commissioner and any Deputy Commissioner for Labour or Assistant Commissioner for Labour may exercise any or all of the powers of an Inspector.

Powers of Inspectors.

10. (1) Subject to any rules made under this Ordinance by the High Commissioner in Council, an Inspector may at any reasonable time, within the local limits for which he is appointed—

(*a*) enter and remain in any shop, theatre or restaurant to which this Ordinance applies and in any quarter, house or other accommodation where persons who are employed in such premises live or sleep;

(*b*) make such examination of any such shop, restaurant, theatre, quarter, house or other accommodation and of any record,

register or notice maintained therein, in pursuance of rules made under sub-section (2) of section 14 of this Ordinance, and take on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Ordinance.

(2) Any person having the custody of any record, register, or notice maintained in pursuance of rules made under sub-section (2) of section 14 of this Ordinance shall be bound to produce the same when so required by an Inspector, but no person shall be compellable to answer any question if the answer may tend directly or indirectly to incriminate himself.

Penalties.

11. In the event of any contravention of the provisions of sections 3, 5, 6, 7 or 8 of this Ordinance or of any requirement duly made thereunder or of any breach of any condition imposed under section 4 thereof or of any contravention of any rule made under paragraphs (*a*) or (*c*) of sub-section (2) of section 14 of this Ordinance, the proprietor and the manager of the establishment in respect of which such contravention takes place shall be punishable with a fine which may extend, in the case of the first offence, to fifty dollars, in the case of a second offence, to one hundred dollars and in the case of a third or subsequent offence to five hundred dollars.

Exemption from application of this Ordinance.

12. Nothing in this Ordinance shall apply to premises maintained by the Government solely for Post Office business.

Power to exempt.

13. The High Commissioner in Council may exempt from all or any of the provisions of this Ordinance any premises or any class of premises.

Rules.

14. (1) The High Commissioner in Council may make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may:

(*a*) prescribe anything required to be, or which may be prescribed under this Ordinance;

(*b*) regulate the exercise of their powers and the discharge of their duties by Inspectors;

(*c*) require registers and records to be maintained and prescribe the notices to be displayed in establishments to which this Ordinance applies and the form and contents thereof and the manner in which such notices shall be displayed.

(3) All rules made under this section shall be published in the *Gazette* and shall be laid as soon as conveniently may be before the Legislative Council who may, by Resolution, amend, approve or disapprove of the same. All rules approved by the Legislative Council with such amendments, if any, as may have been made, shall come into force as from the date of the Resolution approving the same.

THE SCHEDULE.

(*a*) Premises used for carrying on the retail sale of motor fuel from pumps or the repair of motor vehicles.

(*b*) Premises used for carrying on the business of undertakers in connection with funerals.

(*c*) Premises used for carrying on the business of pharmacists, chemists or druggists.

(*d*) Premises used for ships chandleries for the supply of victuals, stores or other necessities for a ship on her arrival in port or immediately before her departure.

(*e*) Premises used for livery stables or garages.

(*f*) Premises used for the business of any person or company producing ice by artificial means.

(*g*) Premises used for the sale of newspapers or their delivery.

(*h*) Premises used for the sale and delivery of fresh milk, cream, meat, fish, bread, fruit, vegetables or other foodstuffs of a perishable nature.

Passed in the Legislative Council on the twenty-seventh day of July, 1950.

H. R. Collin.

Clerk of Council.

FEDERATION OF MALAYA.

No. 48 of 1950.

THE TITLES TO LAND (OCCUPATION PERIOD) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

Abdul Rahman ..... { *Yang di-Pertuan Besar of Negri Sembilan.*

V. Foster Sutton ..... *Officer Administering the Government.*

..... *Sultan of Selangor.* 29th ..... September, 1950.

29th ..... September, 1950.

An Ordinance to amend the Titles to Land (Occupation Period) Ordinance, 1949.

[*1st October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

No. 39 of 1949.

1. (1) This Ordinance may be cited as the Titles to Land (Occupation Period) (Amendment) Ordinance, 1950, and shall be read as one with the Titles to Land (Occupation Period) Ordinance, 1949, hereinafter referred to as the principal Ordinance.

(2) This Ordinance shall come into force on the first day of October, 1950.

Amendment of section 33.

2. Section 33 of the principal Ordinance is hereby amended by—

(*a*) the insertion, immediately after the words "as if the following item were included in" which occur therein, of the words "a new Part IA immediately after"; and

(*b*) the substitution of the words "Eighteen months" for the words "One year" which occur in the second column under the heading "Period of Limitation".

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H.R. Cobbold

Clerk of Council.

FEDERATION OF MALAYA.

No. 49 of 1950.

THE DEBTOR AND CREDITOR (OCCUPATION PERIOD) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Officer Administering the Government.*

.....*Sultan of Selangor.*

29th September, 1950.

29th September, 1950.

An Ordinance to amend the Debtor and Creditor (Occupation Period) Ordinance, 1948.

[*1st October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Debtor and Creditor (Occupation Period) (Amendment) Ordinance, 1950, and shall come into force on the first day of October, 1950.

Amendment of section 11 (5).
F. of M. No. 42 of 1948.

2. Sub-section (5) of section 11 of the Debtor and Creditor (Occupation Period) Ordinance, 1948, is hereby amended by the substitution of the words "eighteen months" for the words "one year" which occur in the sixteenth line thereof.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

A. R. Rollis
Clerk of Council.

FEDERATION OF MALAYA.

No. 50 of 1950.

THE LIMITATION (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Officer Administering the Government.*

.....*Sultan of Selangor.*

.....September, 1950.

.....September, 1950.

.....September, 1950.

An Ordinance to amend the Straits Settlements Limitation Ordinance.

[*1st October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

1. This Ordinance may be cited as the Limitation (Amendment) Ordinance, 1950, and shall come into force on the first day of October, 1950.

Amendment of Schedule to S.S. Cap. 16.
No. 35 of 1949.

2. The Schedule to the Limitation Ordinance of the Straits Settlements as amended by the Limitation (Amendment) Ordinance, 1949, is hereby further amended by—

(*a*) the insertion of the heading "Part IA—Eighteen Months" between item 16 and item 16A which occur in Part I thereof; and

(*b*) the substitution of the words "Eighteen Months" for the word "Ditto" which occurs in the second column of item 16A under the heading "Period of Limitation".

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Sellers
Clerk of Council.

FEDERATION OF MALAYA.

No. 51 of 1950.

THE PRESERVATION OF BOOKS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....October, 1950.

.....*Officer Administering the Government.*

.....October, 1950.

An Ordinance to unify and extend the law relating to the preservation of books.

[31st *October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Preservation of Books Ordinance, 1950.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"book" includes every volume, part or division of a volume, pamphlet, newspaper, sheet of music, map, chart or plan separately produced; but does not include price lists, annual reports, trade circulars, trade advertisements or other legal or business documents;

"printed", as applied to books, means produced by printing, lithography or any other like process, and "printer" has a corresponding meaning.

Publication of books.

3. No book shall be printed or published except in conformity with this Ordinance.

Delivery of copies of books to Government.

4. (1) Three printed copies of the whole of every book which is printed in the Federation, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same are produced, and also of any second or subsequent edition which is so produced with any additions or alterations, whether the same are in the letterpress, or in the maps, prints or other engravings belonging thereto, shall, within one calendar month after the day in which any such book is first delivered out of the press, and notwithstanding any agreement, if the book is published, between the printer and the publisher thereof, be delivered free of charge by the printer bound, sewn or stitched together, and upon the best paper on which the same is printed, at such place and to such officer as the High Commissioner may, by notification in the *Gazette*, appoint.

(2) The publisher or other person employing the printer shall, within a reasonable time before the expiration of the period of one month referred to in

sub-section (1) of this section, supply the printer with all maps, prints, and engravings finished and coloured as aforesaid which are necessary to enable him to comply with the provisions of sub-section (1) of this section.

(3) The officer to whom any copies of books are delivered under this Ordinance shall give a receipt in writing for the same.

Disposal of three copies.

5. One of such copies shall be transmitted to the Trustees of the British Museum, another copy shall be transmitted to the Librarian of the University of Malaya, and the remaining copy, after a memorandum has been registered as provided in sub-section (2) of section 6 of this Ordinance, shall be deposited in such public library or other place in the Federation, or be otherwise disposed of, as the High Commissioner directs.

Registration of memorandum of books.

6. (1) There shall be kept, at such office and by such officer as the High Commissioner in Council appoints, a book to be called "A Catalogue of Books printed in the Federation of Malaya", hereinafter referred to as the catalogue.

(2) As soon as may be after the delivery of any book under this Ordinance, there shall be registered in the catalogue a memorandum of such book, which memorandum shall, so far as is practicable, contain the following particulars:

(*a*) the title of the book and the contents of the title page, with a translation into English of such title and contents when the same are not in the English language;

(*b*) the language in which the book is written;

(*c*) the name of the author, translator or editor of the book;

(*d*) the subject;

(*e*) the place of printing and the place of publication;

(*f*) the name or firm of the printer and the name or firm of the publisher;

(*g*) the date of issue from the press or of the publication;

(*h*) the number of sheets, leaves or pages;

(*i*) the size;

(*j*) the number of the edition;

(*k*) the number of copies of which the edition consists;

(*l*) the price at which the book is sold to the public; and

(*m*) the name and residence of the proprietor of the copyright, or of any portion of such copyright.

Publication of memoranda registered.

7. (1) The memoranda registered during each quarter in the catalogue shall be published in the *Gazette* as soon as may be after the end of each quarter.

(2) A copy of the memoranda so published shall be sent to the Secretary of State, and two copies to the Trustees of the British museum.

Penalties.

8. Any printer who fails to comply with the provisions of sub-section (1) of section 4, and any publisher or other person employing a printer who fails to comply with the provisions of sub-section (2) of section 4, of this Ordinance shall be guilty of an offence and shall, on conviction thereof, be liable to a fine not exceeding one hundred dollars.

Power of High Commissioner in Council to make regulations.

9. The High Commissioner in Council may make regulations—

(*a*) for carrying out the objects of this Ordinance;

(*b*) for excluding any class of books from the operation of the whole or any part of this Ordinance.

Exemption.

10. This Ordinance does not apply to books printed by the Government Printer for or on behalf of the Government of the Federation or of any State or Settlement.

Repeal.

11. The Ordinance and the Enactments set out in the Schedule to this Ordinance are hereby repealed.

SCHEDULE.

(Section 11.)

S. S. Cap. 209 ...	...	The Printers and Publishers Ordinance
F.M.S. Cap. 90 ...	...	The Books Enactment
Johore Enactment No. 110		The Printing and Publication Enactment

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. E. Gallis.

Clerk of Council.

FEDERATION OF MALAYA.

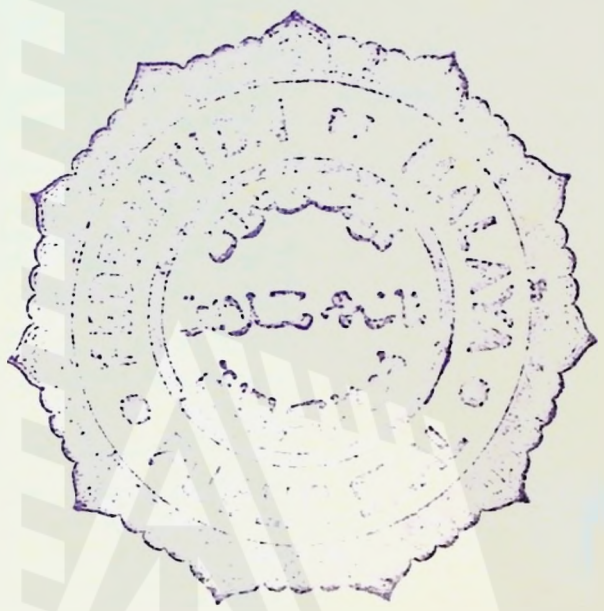
No. 52 of 1950.

THE LOCAL AUTHORITIES ELECTIONS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....Abdul Rahman..... *Yang di-Pertuan Besar of Negri Sembilan.*

.....Sultan of Selangor.

24th October, 1950.

.....H. Foster Sutton.....
Officer Administering the Government.

25th October, 1950.

An Ordinance to make provision for elections to Local Authorities and for matters incidental thereto.

[1st January, 1951.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART I.

SHORT TITLE AND INTERPRETATION.

Short title and commencement.

1. This Ordinance may be cited as the Local Authorities Elections Ordinance, 1950, and shall come into force on such date as the High Commissioner in Council may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"candidate" means a person who is nominated, in accordance with any regulations made under this Ordinance applicable to such nomination, as a candidate for election as a Councillor or as a member of a Town Board or of a Rural Board;

"Constitution" in relation to any municipality means the Constitution for the time being in force granted to such municipality under the provisions of section 4 of this Ordinance;

"Councillor" means the President and any Councillor of a municipality;

"contested election" means an election at which more candidates have been nominated than there are vacancies to be filled;

"election" means an election for the purpose of electing a Councillor or a member of a Town Board or Rural Board;

"elector" means a person entitled to be registered as an elector to vote at an election;

"electoral ward" in relation to a municipality means an electoral ward specified in a Constitution of such municipality and in relation to a Town Board or Rural Board means an electoral ward specified in an order, made under paragraph (*d*) of sub-section (2) of section 51 of this Ordinance, relating to such Town Board or Rural Board;

"municipality" means a municipality created under the provisions of the Municipal Ordinance;

"Municipal Ordinance" means the Municipal Ordinance of the Straits Settlements in force in the Settlements and as applicable to the Malay States by virtue of the Municipal Ordinance (Extended Application) Ordinance, 1948; S.S. Cap. 133. F. of M. No. 3 of 1948.

"register" or "register of electors" in relation to any electoral ward means the register of electors of that ward kept or maintained under any regulations made under section 9 of this Ordinance applicable thereto, and "registered elector" means an elector whose name at the date of the election appears on such register; and "registering officer", "revising officer", "returning officer" and "Supervisor of Elections" or "Supervisor" in relation to any municipality, Town Board, Rural Board or electoral ward mean respectively the registering officer, the revising officer, the returning officer and the Supervisor of Elections appointed under section 5 of this Ordinance in respect of a municipality or electoral ward of a municipality or appointed under that section, as applicable to Town Boards and Rural Boards by virtue of sub-section (4) of section 51 of this Ordinance, in respect of a Town Board, Rural Board or electoral ward of a Town Board or Rural Board;

"Rural Board" means a Rural Board created under the provisions of Part XVII of the Municipal Ordinance;

"Town Board" means a Town Board established in respect of any area declared to be a Town Board area under the provisions of the Town Boards Enactment of the Federated Malay States or of the corresponding written law relating to Town Boards for the time being in force in any Malay State;

"voter" means a person who whether his name does or does not appear in a register of electors applies to vote, or votes, at an election.

Part II.

CONSTITUTIONS OF MUNICIPALITIES.

3. (1) Notwithstanding any provision of the Municipal Ordinance to the contrary the municipal affairs of every municipality in any State or Settlement shall be administered by a Council consisting Administration of Municipalities.

of a President and such numbers of elected or of elected and of appointed Councillors as may be prescribed by the Constitution granted to such municipality.

(2) Such Constitution may provide for the election of the President and of all the Councillors, and shall in all cases provide that—

(*a*) the total number of Councillors, exclusive of the President, shall be not less than six and not more than twenty-four; and

(*b*) the number of elected Councillors shall be a majority of the total number of Councillors, exclusive of the President.

Constitution to be granted to each Municipality.

4. (1) The Ruler in Council of a State and the High Commissioner in Nominated Council of a Settlement shall by order grant to each municipality within such State or Settlement, as the case may be, a constitution under this Ordinance—

(*a*) in the case of a municipality existing at the date of the commencement of this Ordinance, within three months of such date, and

(*b*) in the case of a municipality created under the provisions of the Municipal Ordinance at any time after the commencement of this Ordinance, within three months of the date of the publication of the notification creating such municipality.

(2) Subject to the provisions of sub-section (2) of section 3 of this Ordinance, every such constitution may—

(*a*) prescribe the total number of Councillors;

(*b*) prescribe the number of Councillors to be elected and the number (if any) to be appointed;

(*c*) prescribe the manner in which the President of the Council shall be appointed or elected;

(*d*) prescribe the qualifications of candidates for election as Councillors;

(*e*) prescribe the term of office of elected Councillors and make provision for retirement annually or otherwise of such proportion of the number of Councillors as may be specified and provide for the manner in which Councillors so required to retire shall be determined;

(*f*) prescribe the circumstances in which the seat of any Councillor shall become vacant and the manner in which such vacancy shall be filled;

(*g*) prescribe the number of Councillors present at any meeting which shall constitute a quorum;

(*h*) provide for the payment of a salary or allowance to the Councillor for the time being performing the duties of President;

(*i*) regulate or authorise the making of rules by the municipality to regulate the procedure at meetings;

(*j*) provide for the division of the municipal area into electoral wards and specify the names and boundaries of such wards and the number of Councillors to be returned for each such ward;

(*k*) prescribe the qualifications of electors and the conditions upon which any such elector shall be entitled to have his name entered or retained in any register of electors kept under this Ordinance in respect of such municipality.

(3) Every such Constitution shall be laid on the table of the Council of State or Settlement Council concerned and shall not come into operation until it has been approved, with or without amendment, by a resolution of such Council of State or Settlement Council.

(4) Upon such Constitution being approved under sub-section (3) of this section, it shall, together with any amendments so approved, be published in the *Gazette* of the State or Settlement within which the municipality is situate.

(5) Every Constitution so approved and published shall have the force of law and shall have effect notwithstanding any provision in the Municipal Ordinance to the contrary, and from and after the coming into operation of any such Constitution any reference in any written law to the President of the Municipal Commissioners or to the Municipal Commissioner or Commissioners of a municipality to which such Constitution refers shall be deemed to be a reference to the President or to the Municipal Councillors or Councillor respectively appointed or elected under the provisions of such Constitution

and such Councillors shall be deemed to be the successors of any Commissioners appointed for such municipality under the Municipal Ordinance without any break in such succession as if such Councillors had been duly appointed under the provisions of such Ordinance.

(6) It shall be within the competency of the Council of State of the State, or of the Settlement Council of the Settlement, in which any municipality is situate to pass laws providing for the amendment of the Constitution of such municipality.

(7) No Constitution in operation under this Ordinance shall be amended otherwise than by a law passed in accordance with the provisions of sub-section (6) of this section.

(8) Nothing in this section shall affect the rights and powers of the Legislative Council to make laws relating to municipalities or to the Constitution of any municipality.

PART III.

SUPERVISION OF ELECTIONS.

Appointment of officers.

5. The Ruler in Council of the State, and the High Commissioner in Nominated Council of the Settlement, in which a municipality is situate may appoint in respect of such municipality a Supervisor of Elections and such registering, revising or returning officers for each electoral ward in that municipality as may be necessary and may provide for the payment of salaries, allowances and expenses to such Supervisor or officers of such amount as the Ruler in Council or the High Commissioner in Nominated Council may think fit out of the funds of the municipality.

Powers of Supervisors of Elections.

6. (1) A Supervisor of Elections of a municipality may, from time to time, appoint such number of clerks and interpreters for such municipality as may be necessary for the purposes of this Ordinance.

(2) A Supervisor of Elections of a municipality shall, in regard to such municipality—

(*a*) have general direction and supervision over the administrative conduct of elections of Councillors and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of this Ordinance and of any regulations made thereunder applicable to such elections;

(*b*) have power to issue to returning officers, registering officers, presiding officers, and other election officers such directions as he may deem necessary to ensure effective execution of the provisions of this Ordinance or of any regulation made thereunder applicable thereto;

(*c*) have power to administer any oaths required to be taken under this Ordinance or under any regulation made thereunder;

(*d*) exercise and perform all other powers and duties which are conferred and imposed upon him by this Ordinance or by any regulation made thereunder.

Polling districts and polling stations.

7. A Supervisor of Elections of a municipality may, by notification in the *Gazette*, divide each electoral ward in the municipality into polling districts, define the boundaries thereof, assign a distinguishing letter or letters to each such district and appoint a place, and where he considers it necessary or expedient so to do in the special circumstances of the case, two or more places, within each such district to be the polling station or stations for such district.

PART IV.

ELECTIONS.

Elections.

8. (1) Subject to the provisions of Part VI of this Ordinance, the candidate for an electoral ward who polls the majority of valid votes cast by the registered electors of such ward shall be deemed to be the elected Councillor for such ward:

Provided that if more than one Councillor is required to be elected for such ward, candidates shall be deemed to be elected Councillors in accordance with the relative majority of such valid votes polled by them.

(2) In any poll in a contested election the vote of each voter shall be given by means of a paper (in this Ordinance called a ballot paper) marked by the voter to indicate his vote which shall be inserted by the voter in a closed ballot box provided for the purpose in such manner that the vote given by such voter shall be secret:

Provided that if any voter is unable to read, his vote may be given in any such manner as may be prescribed.

(3) No person shall be entitled to more than one vote at any election or in any municipality.

Power of the Ruler in Council or High Commissioner in Nominated Council to make regulations for the registration of electors.

9. (1) The Ruler in Council of a State and the High Commissioner in Nominated Council of a Settlement may make regulations for the registration of electors in any municipality or in all municipalities in the State or Settlement.

(2) Without prejudice to the generality of the foregoing power, such regulations may—

(*a*) prescribe the keeping and maintenance of registers of electors in any municipality or in any electoral ward of such municipality and the form of such register;

(*b*) prescribe the procedure to be followed in the preparation and publication of registers of electors therein;

(*c*) prescribe the time at which any registers of electors shall be revised and the procedure to be followed in making such revision;

(*d*) prescribe the procedure to be followed in the preparation and publication of new registers of electors of any electoral ward where the boundaries of such ward have been altered or where such ward has been created after the preparation of registers of electors;

(*e*) prescribe the procedure to be followed in the making and determination of claims to have any name inserted in a register of electors or in a new or revised register of electors and of objections to the insertion or inclusion of any name therein;

(*f*) provide for the payment of compensation, not exceeding fifty dollars, to any person aggrieved by the making without reasonable cause of an objection to the insertion or inclusion of his name in any register;

(*g*) prescribe any form of application, notice or other document which it may be necessary or desirable to use in connection with any of the matters dealt with in this section;

(*h*) authorise any registering officer or revising officer, for the purpose of considering or determining any application, claim, objection or appeal which he is required to

consider or determine under any regulations made under this section, to summon any person to appear before him and to give evidence on oath or affirmation and to administer any such oath or affirmation for such purpose and to order the production of any document relevant to any issue which such officer is required to consider and determine;

(*i*) prescribe the fees to be paid upon any application, notice, claim or objection and the manner in which such fees shall be disposed of;

(*j*) prescribe the manner in which any register of electors or new or revised register of electors shall be certified and provide that such register of electors shall be conclusive evidence, in such manner and subject to such exceptions and limitations as may be so provided, of the right or non-existence of the right of any person to vote at any election in the electoral ward to which such register relates;

(*k*) provide for the correction of clerical errors in any register of electors.

Power of the Ruler in Council and the High Commissioner in Nominated Council to make regulations for the conduct of elections.

10. (1) Subject to the provisions of section 8 of this Ordinance, the Ruler in Council of a State and the High Commissioner in Nominated Council of a Settlement may make regulations for the conduct of elections in any municipality or in all municipalities in the State or Settlement and for all matters incidental thereto.

(2) Without prejudice to the generality of the foregoing power such regulations may—

(*a*) prescribe the date of the holding of any election and the manner in which notice of the holding of such election shall be given;

(*b*) prescribe the procedure for the nomination of candidates and for the making of, and decision on, objections to any nomination;

(*c*) prescribe the amount of any deposit, not exceeding two hundred and fifty dollars in each case, to be made by or on behalf of candidates and the circumstances in which such deposit may be forfeited;

(*d*) provide for the publication of notice of the date on which a poll in the case of a contested election will be taken;

(*e*) prescribe the facilities to be provided at polling stations, and the persons who may be admitted to polling stations on the date at which a poll is taken and provide for the appointment of a presiding officer in respect of each polling station;

(*f*) prescribe the manner in which votes may be cast and the construction and sealing of ballot boxes used in such elections and for the issue of ballot papers to electors;

(*g*) provide for the manner in which, and the persons by whom, any question as to the identity of any person claiming to vote shall be determined;

(*h*) prescribe the form of any ballot papers and counterfoils to be used in elections;

(*i*) prescribe the manner in which ballot boxes, unused or spoilt ballot papers, marked copies of the register of electors, counterfoils of ballot papers, and other documents shall be dealt with upon the closing of the poll;

(*j*) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officer as invalid;

(*k*) provide for the making and publication of returns by the returning officer and of a statement of the poll in regard to any election;

(*l*) prescribe such forms as may be necessary or desirable to be used in connection with the matters dealt with in this section or any regulations made thereunder;

(*m*) declare what kind of acts or expenses incurred are to be deemed illegal or corrupt practices for the purposes of this Ordinance or of any regulations made thereunder.

Regulations to be approved by the appropriate Council of State or Settlement Council.

11. Regulations made under section 9 or 10 of this Ordinance by a Ruler in Council of a State or by the High Commissioner in Nominated Council of a Settlement shall be laid before the appropriate Council of State or Settlement Council and shall not come into operation until approved, with or without amendment, by a resolution of such Council of State or Settlement Council.

PART V.

ELECTORAL OFFENCES.

Interpretation.

12. In this Part, unless the context otherwise requires—

"ballot box" means a ballot box used in accordance with regulations made under section 10 of this Ordinance for the purpose of an election;

"ballot paper" means a ballot paper issued in accordance with regulations made under section 10 of this Ordinance for the purpose of an election;

"marking instrument" means any instrument for marking a ballot paper authorised to be used under any regulations made under section 10 of this Ordinance for the purpose of an election;

"nomination paper" means any document nominating a person to be a candidate in an election and purporting to be made in accordance with the requirements of any regulation made under section 10 of this Ordinance.

Offences.

13. (1) Every person who—

(*a*) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper knowing the same to be forged; or

(*b*) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or

(*c*) without due authority supplies any ballot paper to any person; or

(*d*) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person; or

(*e*) not being a person entitled under this Ordinance to be in possession of any ballot paper which has been marked with the official mark in accordance with this Ordinance, has any such ballot paper in his possession; or

(*f*) puts into any ballot box anything other than the ballot paper which is authorised by law to put in; or

(*g*) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station; or

(*h*) without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purposes of an election; or

(*i*) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or

(*j*) for the purposes of an election, manufactures, constructs, imports into the Federation, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported into the Federation, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years and shall, by conviction, become incapable, for a period of seven years from the date of his conviction, of being registered as an elector or of voting at any election under this Ordinance or of being elected a Councillor, and if at that date he has been elected a Councillor, his seat shall be vacated from the date of such conviction.

(2) Every person who attempts to commit an offence specified in this section shall be liable to the punishment prescribed for that offence.

(3) Every offence under this section shall be a seizable offence within the meaning of the Criminal Procedure Code. F.M.S. Cap. 6. S.S. Cap. 21.

(4) In a prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election, the property in such nomination paper, ballot box, ballot paper or marking instrument, as well as the property in the counterfoil of any ballot paper, may be stated to be in the returning officer at that election.

(5) A prosecution for an offence under this section shall not be instituted without the sanction of the Attorney-General.

Maintenance of secrecy at elections.

14. (1) Every officer, clerk, interpreter, candidate, and agent authorised to attend at a polling station, or at the counting of the votes, shall, before so attending make an oath of secrecy, substantially in the form A in the First Schedule to this Ordinance.

(2) Every officer, clerk, interpreter, candidate, and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark but the total number of voters who have voted at any station at any time before the poll is closed may in the discretion of the presiding officer be divulged to the candidate or his agent authorised to attend at the polling station.

(3) No such officer, clerk, interpreter, candidate or agent and no person whosoever shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station.

(4) Every officer, clerk, interpreter, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such

counting the number on the back of any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

(5) No person, except a presiding officer acting for a purpose authorised by this Ordinance, or a person authorised by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

(6) Every person who acts in contravention of the provisions of this section shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months.

CORRUPT PRACTICES.

Personation.

15. Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation, which shall be a seizable offence within the meaning of the Criminal Procedure Code.

F.M.S. Cap. 6.
S.S. Cap. 21.

Treating.

16. Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any meat, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any meat, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such meat, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such meat, drink, refreshment or provision shall be guitly of the offence of treating.

Undue influence.

17. Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, shall be guilty of the offence of undue influence.

Bribery.

18. The following persons shall be deemed guilty of the offence of bribery:

(*a*) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election under this Ordinance;

(*b*) every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election under this Ordinance;

(*c*) every person who, directly or indirectly by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person as a Councillor, or the vote of any elector or voter at any election under this Ordinance;

(*d*) every person who upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the return of any person as a Councillor, or the vote of any elector or voter at an election under this Ordinance;

(*e*) every person who advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election under this Ordinance or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

(*f*) every elector or voter who, before or during any election under this Ordinance directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;

(*g*) every person who, after any election under this Ordinance, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;

(*h*) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment;

(*i*) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

Punishment and incapacities for corrupt practice.

19. (1) Every person who—

(*a*) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation; or

(*b*) commits the offence of treating, undue influence or bribery; or

(*c*) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher; or

(*d*) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate; or

(*e*) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election; or

(*f*) being a candidate or election agent knowingly makes the declaration as to election expenses required by section 31 of this Ordinance falsely;

shall be guilty of a corrupt practice, and shall on conviction by a Sessions Court be liable, in the case referred to in paragraph (*a*) of this sub-section, to a fine of not less than two hundred and fifty dollars and not exceeding one thousand dollars or to rigorous imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment, and, in any other case, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) Every person who is convicted of a corrupt practice shall become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under this Ordinance or of being elected a Councillor, and if at that date he has been elected a Councillor, his seat shall be vacated from the date of such conviction.

(3) A prosecution for a corrupt practice except any corrupt practice as defined in paragraphs (*d*) and (*e*) of sub-section (1) of this section shall not be instituted without the sanction of the Attorney-General.

ELECTION AGENT, ELECTION EXPENSES AND ILLEGAL PRACTICES.

Nomination of election agent.

20. (1) On or before the day of nomination at an election a person shall be named in writing by or on behalf of each candidate as his agent for such election and such person is in this Ordinance referred to as the election agent.

(2) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to the provisions of this Ordinance, both as a candidate and as an election agent, and any reference in this Ordinance to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

(3) On or before the day of nomination the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer, and the returning officer shall forthwith, by affixing a notice in a conspicuous place outside his office, give public notification of the name and address of every election agent so declared.

(4) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked and in the event of such revocation or of his death, whether such event is before, during or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same in the manner aforesaid.

Person convicted of corrupt practice not to be appointed election agent.

21. No person shall be appointed election agent who has within seven years previous to such appointment been convicted of any corrupt practice under this Ordinance.

Making of contracts through election agent.

22. (1) The election agent of a candidate shall appoint every polling agent, clerk and messenger employed for payment on behalf of the candidate at an election, and hire every committee-room hired on behalf of the candidate, and shall before the opening of the poll inform the presiding officer at each polling station in writing of the name of the polling agent or agents appointed to act at that station.

(2) A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election, unless made by the candidate himself or by his election agent:

Provided that inability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice committed by his agent.

Payment of expenses through election agent.

23. (1) Except as permitted by or in pursuance of this Ordinance, no payment and no advance or deposit shall be made by a candidate at an election, or by any agent on behalf of the candidate, or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate; and all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise :

Provided that the provisions of this sub-section shall not be deemed to apply to any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

(2) A person who makes any payment, advance, or deposit in contravention of this section or pays in contravention of this section any money so provided as aforesaid, shall be guilty of an illegal practice.

Period for sending in claims and making payments for election expenses.

24. (1) Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election shall, except where less than ten dollars or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.

(2) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time limited by this Ordinance, shall be barred and shall not be paid; and subject to such exception as may be allowed in pursuance of this Ordinance, an election agent who pays a claim in contravention of this section shall be guilty of an illegal practice.

(3) Except as by this Ordinance permitted, the time limited by this Ordinance for sending in claims shall be fourteen days after the date of publication of the result of the election in the *Gazette*.

(4) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of

or in respect of the conduct or management of such election, shall be paid within the time limited by this Ordinance and not otherwise; and, subject to such exception as may be allowed in pursuance of this Ordinance, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

(5) Except as by this Ordinance permitted, the time limited by this Ordinance for the payment of such expenses as aforesaid shall be twenty-eight days after the date of publication of the result of the election in the *Gazette*.

(6) Where it has been proved to the satisfaction of the Election Judge by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Ordinance by reason only of such payment having been made in contravention of this section.

(7) If the election agent in the case of any claim sent in to him within the time limited by this Ordinance disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.

(8) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court; and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Ordinance, and to be an exception from the provisions of this Ordinance, requiring claims to be paid by the election agent.

(9) On cause shown to the satisfaction of a Judge of the High Court, such Judge on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.

(10) Any sum specified in the order of leave may be paid by the candidate or his election agent; and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Ordinance.

Remuneration of election agent.

25. So far as circumstances admit, this Ordinance shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim, the claim shall be a disputed claim within the meaning of this Ordinance, and be dealt with accordingly.

Personal expenses of candidate and petty expenses.

26. (1) The candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to such election to an amount not exceeding one thousand dollars, but any further personal expenses so incurred by him shall be paid by his election agent.

(2) The candidate shall send to the election agent within the time limited by this Ordinance for sending in claims a written statement of the amount of personal expenses paid as aforesaid by such candidate.

(3) The personal expenses of a candidate include his reasonable travelling expenses, and the reasonable expenses of his living at hotels or elsewhere for the purposes of the election.

(4) Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expense for stationery, postage, telegrams, and other petty expenses to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(5) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Ordinance for the sending in of claims, and shall be vouched for by a bill containing the receipt of that person.

Expenses in excess of maximum to be illegal practice.

27. (1) Subject to such exception as may be allowed in pursuance of this Ordinance, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, in excess of two thousand five hundred dollars or of an amount equal to ten cents for each elector on the register of the electoral ward, whichever amount shall be the larger:

Provided that there shall not be included in such amount any expenditure incurred by the candidate for his personal expenses, nor the fee, if any, paid to the election agent not exceeding five hundred dollars.

(2) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

Certain expenditure to be illegal practice.

28. (1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made—

(*a*) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or

(*b*) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice.

(2) Subject to such exception as may be allowed in pursuance of this Ordinance, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this section, shall also be guilty of an illegal practice.

(3) A person shall not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such vehicle or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll he shall be guilty of an illegal practice.

(4) A person shall not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited by sub-section (3) of this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal practice.

(5) Nothing in sub-section (3) or sub-section (4) of this section shall prevent a vehicle or animal of transport of any kind being let to, or hired, employed, or used by an elector or voter or several electors or voters at their joint cost for the purpose of being conveyed to or from the poll.

(6) Notwithstanding anything in the preceding provisions of this section—

(*a*) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector or voter, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section;

(*b*) where electors or voters are unable at an election to reach their polling stations from their place or residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors or voters by sea to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Ordinance.

Certain employment to be illegal.

29. (1) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following:

(*a*) one election agent and no more;

(*b*) not more than one polling agent for each polling district:

Provided that where more than one polling station is provided in any polling district an additional polling agent may be employed;

(*c*) a reasonable number of clerks and messengers having regard to the area of the electoral ward and the number of electors on the register of electors for such ward.

(2) Subject to such exception as may be allowed in pursuance of this Ordinance, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of an illegal practice.

Saving for creditors.

30. The provisions of this Ordinance prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of expenses in excess of a certain maximum, shall not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Ordinance.

Return and declaration respecting election expenses.

31. (1) Within thirty-one days after the date of publication of the result of an election in the *Gazette* the election agent of every candidate at that election shall transmit to the Supervisor a true return, in this Ordinance referred to as the "return respecting election expenses," in the Form B in the First Schedule to this Ordinance, containing detailed statements as respects that candidate of—

(*a*) all payments made by the election agent together with all the bills and receipts referred to in sub-section (1) of section 26 of this Ordinance, which bills and receipts are in this Ordinance included in the expression "return respecting election expenses" and the dates of payment of all sums for which no receipt is attached;

(*b*) the amount of personal expenses, if any, paid by the candidate;

(*c*) the disputed claims so far as the election agent is aware;

(*d*) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court;

(*e*) all money, securities and other valuable considerations received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise.

(2) The return respecting election expenses shall be signed by the election agent and shall be accompanied by a statement made by the candidate and his election agent which shall be respectively in Forms C and D in the First Schedule to this Ordinance and shall be on oath before a Justice of the Peace.

(3) If the said return and statements are not transmitted before the expiration of the time limited for the purpose, the candidate shall not after the expiration of such time sit or vote as a Councillor until either such return and statements have been transmitted or until the date of the allowance of such authorised excuse for failure to transmit the same as in this Ordinance mentioned; and if he sits or votes in contravention of this Ordinance he shall be liable on conviction, to a penalty of five hundred dollars for every day on which he so sits or votes.

(4) If any candidate or election agent fails to comply with the requirements of sub-section (1) or sub-section (2) of this section he shall be guilty of an illegal practice and the provision of this section shall be in addition to and not in derogation of the provisions of section 19 of this Ordinance.

Publication of deposit of return, etc.

32. (1) When any return respecting election expenses and the statements made in respect thereof have been received by the Supervisor, he shall, as soon as may be, cause a notice of the date on which the return and statements in question were received by him and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and published in the *Gazette*.

(2) The Supervisor shall preserve all such returns and statements with the bills and vouchers relating thereto and at all reasonable times during six months next after the publication in the *Gazette* of the notice mentioned in this section shall permit any person to inspect them and to make extracts therefrom on payment of a fee of one dollar and shall, on payment of thirty-six cents for each folio of one hundred and twenty words, supply a copy or copies of any part thereof; and after the expiration of the said period of six months the said documents may be destroyed or returned to the candidate if application for their return is made by the candidate before they are destroyed.

Employers to allow employees reasonable period for voting.

33. (1) Every employer shall, on polling day, allow to every elector in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.

(2) This section shall extend to the employees of the Malayan Railway except such as are actually engaged in the running of trains and to whom such time cannot be allowed without interfering with the manning of the trains; and the General Manager, Malayan Railway shall be deemed to be the employer of such employees.

(3) Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, as in this section provided, shall on summary conviction be liable to a fine of five hundred dollars or to imprisonment for six months.

(4) The provisions of this section shall be binding on the Crown.

Loud speakers, ensigns, banners, etc., prohibited on polling day.

34. (1) No person shall furnish or supply any loud speaker, bunting, ensign, banner, standard, or set of colours, or any other flag, to any person with intent that it shall be carried, worn or used on motor cars, trucks or other vehicles, as political propaganda, on polling day and no person shall, with any such intent, carry, wear or use, on motor cars, trucks or other vehicles, any such loud speaker, bunting, ensign, banner, standard or set of colours or any other flag, on polling day.

Flags, ribbons or favours not to be furnished or worn.

(2) No person shall furnish or supply any flag or label to or for any person with intent that it be worn or used by any person within any electoral district on polling day, as a party badge to distinguish the wearer as the supporter of any candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate; and no person shall use or wear any flag or label as such badge, within any electoral district on polling day.

(3) Nothing contained in either of the preceding sub-sections of this section shall be deemed to extend to the furnishing or supplying of any rosette or of any favour bearing the symbol allotted to any candidate or to the use of any such rosette or favour on any vehicle.

Penalty.

(4) Any person who contravenes any of the provisions of this section shall be liable, on conviction, to a fine of one thousand dollars or to imprisonment for one year.

Punishment for conviction for illegal practice.

35. (1) Every person who commits an illegal practice shall on conviction by a Sessions Court be liable to a fine not exceeding three hundred dollars and become incapable for a period of three years from the date of his conviction of being registered as an elector or of voting at any election under this Ordinance or of being elected a Councillor, and if at that date he has been elected a Councillor, his seat shall be vacated from the date of such conviction.

(2) A prosecution for an illegal practice shall not be instituted without the sanction of the Attorney-General.

EXCUSE FOR CORRUPT OR ILLEGAL PRACTICE.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

36. Where, upon the trial of an election petition respecting an election under this Ordinance, the Election Judge reports that a candidate at such election has been guilty by his agents of the offence of treating or undue influence or of any illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the Court—

(*a*) that no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent; and

(*b*) that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and

(*c*) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and

(*d*) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Ordinance.

Power of election court to except innocent act from being illegal practice, etc.

37. Where, on application made, it is shown to an Election Judge or to a Judge of the High Court by such evidence as seems to the Judge sufficient—

(*a*) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Ordinance, or of being a payment, engagement, employment, or contract in contravention of this Ordinance, or of otherwise being in contravention of any of the provisions of this Ordinance, be but for this section an illegal practice; and

(*b*) that any such act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith;

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer, and any elector within the electoral ward an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Ordinance of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of this Ordinance which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent or person shall not be subject to any of the consequences under this Ordinance of the said act or omission.

Authorised excuse for non-compliance with provisions as to return and declaration respecting election expenses.

38. (1) Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by this Ordinance, or being transmitted contain some error or false statement, then—

(*a*) if the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or of any

clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or

(*b*) if the election agent of the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness or misconduct of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant;

the Judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as to the Judge seems fit, and after giving the other candidates, the Supervisor and any elector within the electoral ward an opportunity of being heard, make such order for allowing an authorised excuse for the failure to transmit such return and statements, or for an error or false statement in such return and statements, as to the Judge seems just.

(2) Where it appears to the Judge that any person being or having been election agent has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of this Ordinance as to the return and statements respecting election expenses, the Judge before making an order allowing the excuse as in this section mentioned shall order such person to attend before the Judge, and shall, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge seems just, and to make or deliver the same within such time and to such person and in such manner as the Judge may direct, or may order him to be

examined with respect to such particulars, and, in default of compliance with any such order, such person shall be guilty of an illegal practice.

(3) The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the Judge seems best calculated for carrying into effect the objects of this Ordinance, and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Ordinance in respect of the matter excused by the order; and where it is proved by the candidate to the Judge that any act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Judge shall relieve the candidate from the consequences of such act or omission on the part of his election agent.

(4) The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Ordinance as the date of the allowance of the excuse.

PART VI.

GROUNDS FOR AVOIDING ELECTIONS.

Avoidance by convictions of candidate.

39. The election of a candidate as a Councillor is avoided by his conviction for any corrupt or illegal practice.

Avoidance of election on election petition.

40. The election of a candidate as a Councillor shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely—

(*a*) that by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate whom they preferred;

(*b*) non-compliance with the provisions of this Ordinance relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;

(*c*) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;

(*d*) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court or by the report of an Election Judge;

(*e*) that the candidate was at the time of his election a person disqualified for election as a Councillor.

ELECTION PETITIONS.

Appointment and powers of election Judge.

41. (1) Every election petition shall be tried by the Chief Justice or by a Judge of the High Court nominated by the Chief Justice for the purpose.

(2) The Chief Justice or the Judge so nominated is, in this Ordinance, referred to as the Election Judge.

(3) Witnesses shall be subpœnæd and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and shall be subject to the same penalties for the giving of false evidence.

(4) On the trial of an election petition under this Ordinance the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of a contempt of Court. The Election Judge may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After

the examination of a witness as aforesaid by the Election Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

(5) The Election Judge shall be attended on the trial of an election petition in the same manner as if he were a Judge of the High Court sitting at assizes.

(6) Unless otherwise ordered by the Chief Justice, all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the High Court.

Who may present petition.

42. An election petition may be presented to the High Court by any one or more of the following persons, namely—

(*a*) some person who voted or had a right to vote at the election to which the petition relates;

(*b*) some person claiming to have had a right to be returned or elected at such election;

(*c*) some person alleging himself to have been a candidate at such election.

Relief which may be claimed.

43. All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition, namely—

(*a*) a declaration that the election is void;

(*b*) a declaration that the person was not duly returned;

(*c*) a declaration that any candidate was duly elected and ought to have been returned;

(*d*) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.

Certificate of Judge as to validity of election.

44. At the conclusion of the trial of an election petition the Election Judge shall determine whether the Councillor whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and shall certify such determination to the High Commissioner. Upon such certificate being given, such determination shall be final; and the return shall be confirmed or altered, or the High Commissioner shall within one month of such determination give notice of election in the electoral ward concerned, as the case may require, in accordance with such certificate.

Report of Judge as to corrupt or illegal practice.

45. (1) At the conclusion of the trial of an election petition the Election Judge shall also report in writing to the High Commissioner—

(*a*) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and

(*b*) the names and descriptions of all persons if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.

(2) Before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge under this section, the Election Judge shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

(3) When an Election Judge reports that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice, and a person shall be subject to the same incapacities if he was a candidate at the election and the Election Judge reports that such corrupt or illegal practice was committed with his knowledge and consent or by his agent.

(4) The High Commissioner shall cause a copy of such report to be published in the *Gazette*, and it shall be the duty of every registering officer forthwith to peruse the report and forthwith to delete from the register of electors assigned to him the name of every person appearing from the report to be incapable of voting at an election.

Time for presentation.

46. (1) Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette*:

Provided that—

(*a*) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the Councillor whose election is questioned or by an agent of the Councillor or with

the privity of the Councillor or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;

(*b*) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following, that is to say:

(i) at any time before the expiration of fourteen days immediately after the date of the publication in the *Gazette* of the notice required by section 32 of this Ordinance as to the election expenses of the Councillor whose election is questioned;

(ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the Councillor whose election is questioned or by an agent of the Councillor or with the privity of the Councillor or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days immediately after the date of such payment or other act.

(2) An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the High Court within the time within which an election petition questioning the return or the election upon that ground may be presented.

(3) For the purposes of this section, where there is an authorised excuse for failing to make and transmit the return and statements respecting election expenses, the date of the allowance of the excuse or, if there was a failure in two or more particulars and the excuse was allowed at different times, the date of the allowance of the last excuse shall be substituted for the date

of the publication of the notice mentioned in sub-paragraph (i) of paragraph (*b*) of the proviso to sub-section (1) of this section.

Prohibition of disclosure of vote.

47. No elector who has voted at any election shall, in any proceeding to question the election, be required to state for whom he has voted.

Votes to be struck off at a scrutiny.

48. (1) On a scrutiny at the trial of an election petition the following votes only shall be struck off, namely—

(*a*) the vote of any person whose name was not on the register of electors assigned to the polling station at which the vote was recorded or who has not been authorised to vote at such station under any regulations made under sub-section (2) of section 10 of this Ordinance;

(*b*) the vote of any person whose vote was procured by bribery, treating, or undue influence;

(*c*) the vote of any person who committed or procured the commission of personation at the election;

(*d*) where the election was an ordinary election, the vote of any person proved to have voted at such ordinary election in more than one electoral ward;

(*e*) the vote of any person, who, by reason of a conviction of a corrupt or illegal practice or by reason of the report of an Election Judge, or by reason of his conviction of an offence under section 13 of this Ordinance, was incapable of voting at the election;

(*f*) votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.

(2) The vote of a registered elector shall not, except in the case specified in paragraph (*e*) of sub-section (1) of this section, be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register of electors.

(3) On a scrutiny, any tendered vote proved to be a valid vote shall, on the application of any party to the petition, be added to the poll.

Procedure and practice on election petitions.

F. of M. No. 35 of 1948.

49. (1) The procedure and practice on election petitions shall be regulated by rules which may be made by the Supreme Court Rules Committee established under section 3 of the Rule Committee Ordinance, 1948.

(2) Until varied or revoked by rules made under sub-section (1) of this section, the rules contained in the Second Schedule to this Ordinance shall be in force.

Rejection of ballot paper by returning officer to be final.

50. On an election petition the decision of a returning officer, whether or not a ballot paper shall be rejected, under any regulations made under paragraph (*j*) of sub-section (2) of section 10 of this Ordinance shall not be questioned.

PART VII.

TOWN BOARDS AND RURAL BOARDS.

Elections of members of Town and Rural Boards.

51. (1) Notwithstanding anything to the contrary contained in the provisions of any written law which relate to Town Boards and Rural Boards in force in any State or Settlement, the Ruler in Council of a State or the High Commissioner in Nominated Council of a Settlement may, at any time, by order published in the *Gazette*, direct that the whole or a majority of the members of a Town Board or Rural Board established in such State or Settlement under the provisions of any such written law shall be elected instead of appointed or nominated by such Ruler or by the High Commissioner, as the case may be, and where any such order is made in respect of a Town Board such Town Board shall thereupon be called a Town Council and every member thereof shall be styled Town Councillor.

(2) The Ruler in Council or the High Commissioner in Nominated Council may by the same or a subsequent order—

(*a*) prescribe the qualifications of members of a Town Board or Rural Board, as the case may be, and of candidates for election as such members;

(*b*) prescribe the term of office of elected members and provide for the annual retirement of one third, or of a number which is as near as may be to one third, of their number and the method by which the members so to retire shall be determined;

(*c*) prescribe the circumstances in which the seat of any member shall become vacant and the manner in which such vacancy shall be filled :

Provided that when the seat of an elected member becomes vacant such seat shall be filled only by a person elected in accordance with the provisions of this Ordinance;

(*d*) divide the Town Board or Rural Board area as the case may be into electoral wards and specify the names and boundaries of such wards and the number of members to be returned therefor;

(*e*) prescribe the qualifications to be possessed by electors in such Town Board area or Rural Board area.

(3) The Ruler in Council or High Commissioner in Nominated Council may at any time revoke, amend or alter any order made by him under the provisions of this section.

(4) Where an order under sub-section (1) of this section has been made the provisions of Parts III, IV, V and VI of this Ordinance shall *mutatis mutandis* apply to any elections of members of Town Boards or Rural Boards under this Part and particularly as if any reference therein to a municipality had been a reference to a Town Board or Rural Board, as the case may be, and as if any reference therein to a Councillor had been a reference to a member of a Town Board or a member of a Rural Board, as the case may be.

FIRST SCHEDULE.

FORM A.

[Section 14 (1).]

THE LOCAL AUTHORITIES ELECTIONS ORDINANCE, 1950.

FORM OF OATH OF SECRECY.

I swear that I will not at this election for the.....electoral ward do anything forbidden by section 14* of the Local Authorities Elections Ordinance, 1950, which has been read to me.

.....

Signature of person taking the oath.

Before me

.....

Signature.

---

* The section must be read to the declarant by the person taking the declaration.

FORM B.

[Section 31 (1).]

THE LOCAL AUTHORITIES ELECTIONS ORDINANCE, 1950.

RETURN OF ELECTION EXPENSES.

I,.....being election agent for.....candidate for election in the.....electoral ward, make the following return respecting election expenses of the said candidate at the said election (or where the candidate has named himself as election agent, I,.....candidate for election in the.....electoral ward, acting as my own election agent, make the following return respecting my election expenses at the said election:

Receipts—

Here set out the name and description of every person (including the candidate) club, society or association from whom any money security, or valuable consideration was received in respect of expenses incurred on account of or in connection with or incidental to the election, and the amount received from each person, club, society or association separately, and state as to each amount whether it was received as contribution, loan, deposit or otherwise.

Expenditure—

1. Payments made by election agent.

All payments are to be vouched for by a bill stating the particulars except as provided by section 24 of the Local Authorities Elections Ordinance, 1950.

2. Personal expenses paid by the candidate.

The name and description of each person to whom payment is made and the sum paid to each must be shown separately.

3. The name, and the rate, and total amount of the pay of each person employed as an agent (including the election agent), clerk or messenger.

4. The travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent), clerks, or messengers.

5. The travelling expenses of persons, whether in receipt of salary or not, incurred in connection with a candidature and whether paid or incurred by the candidate, his election agent, or the person so travelling.

6. The cost whether paid or incurred of—

(i) Printing.
(ii) Advertising.
(iii) Stationery.
(iv) Postage.
(v) Telegrams.
(vi) Rooms hired either for public meetings or as committee rooms.

7. Any other miscellaneous expenses whether paid or incurred.

8. Disputed claims.

Here set out the name and description of each person whose claim is disputed, the amount of the claim and the goods, work or other matter on account of which the claim is based,

9. Unpaid claims.

Here set out the name and description of each person to whom any such claim is due, the amount of the claim and the goods, work or other matter on account of which the claim is due.

.....
Election Agent.

FORM C.

[Section 31 (2).]

THE LOCAL AUTHORITIES ELECTIONS ORDINANCE, 1950.

STATEMENT ON OATH BY CANDIDATE.

I,.....being a candidate for election in the.....electoral ward, do hereby solemnly affirm (or swear) that the above return of election expenses is true to the best of my knowledge and belief, and that except the expenses therein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in, or for the purposes of, my candidature.

.....
Candidate.

Solemnly affirmed (or sworn to) before me.

.....
Justice of the Peace.

FORM D.

[Section 31 (2).]

THE LOCAL AUTHORITIES ELECTIONS ORDINANCE, 1950.

STATEMENT ON OATH BY AN ELECTION AGENT.

I,.....being appointed election agent for.....a candidate for election in the.....electoral ward, do hereby solemnly affirm (or swear) that the above return of election expenses is true to the best of my knowledge and belief, and that, except the expenses therein set forth, no expenses of any nature whatsoever have to my knowledge or belief been incurred in or for the purpose of.....candidature.

.....
Election Agent.

Solemnly affirmed (or sworn to) before me.

.....
Justice of the Peace.

SECOND SCHEDULE.

[Section 49 (2).]

THE LOCAL AUTHORITIES ELECTIONS ORDINANCE, 1950.

Short title. 1. These Rules may be cited as the **Local Authorities (Municipalities) Elections Petition Rules, 1950.**

Interpretation. 2. In these Rules, unless the context otherwise requires—

"Supervisor" means the Supervisor of Elections appointed under section 5 of the Ordinance;

"Judge" means the Election Judge;

"Registrar" means the Registrar of the Supreme Court;

"the Ordinance" means the Local Authorities Elections Ordinance, 1950.

Manner of presentation of petition.

3. (1) The presentation of an election petition shall be made by delivering it at the office of the Registrar, and the Registrar or the officer of his department to whom the petition is delivered shall, if required, give a receipt in the following form:

Received on the.....day of.....19...., at the Registry of the Supreme Court, a petition touching the election of A.B., Commissioner for.....purporting to be signed by .....(insert the names of petitioners).

C.D.,

Registrar, or other officer to whom the petition is delivered.

(2) There shall also be left with the petition two copies thereof.

Contents and form of election petition.

4. (1) An election petition shall contain the following statements:

(*a*) it shall state the right of the petitioner to petition within section 42 of the Ordinance;

(*b*) it shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

(2) The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or a Judge.

(3) The petition shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, and shall be signed by all the petitioners.

(4) The following form, or one to the like effect, shall be sufficient:

IN THE SUPREME COURT OF THE FEDERATION.

The Local Authorities Elections Ordinance, 1950.

Election for.....(state the electoral ward) holden on the.....day of.....19....

The petition of A., of.....(or of A., of....., and B, of....., as the case may be) whose names are subscribed.

(1) Your petitioner A. is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be returned at the above election, or was a candidate at the above election), and your petitioner B. (here state in like manner the right of each petitioner);

(2) And your petitioners state that the election was holden on the.....day of.....19...., when A.B., C.D., and E.F. were candidates, and the Returning Officer has returned A.B. as being duly elected.

(3) And your petitioners say that (here state the facts and grounds on which the petitioners rely).

Wherefor your petitioners pray that it might be determined that the said A.B. was not duly elected or returned, and that the election was void (or that the said E.F. was duly elected and ought to have been returned).

(Signed) A

B

Evidence not to be stated in petition. Particulars.

5. Evidence need not be stated in the petition, but the Judge may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial upon such terms as to costs and otherwise as may be ordered.

Where more than one petition are presented in relation to same election.

6. Where more petitions than one are presented relating to the same election or return, all such petitions shall be dealt with as one petition, so far as the inquiry into the same is concerned.

List of votes objected to where seat claimed by unsuccessful candidate.

7. When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the Registrar, and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Registrar shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the Judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

List of objections in recriminatory case.

8. The respondent in a petition complaining of an undue return and claiming the seat for some person may lead evidence to prove that the election of such person was undue, and in such case such respondent shall, six days before the day appointed for trial, deliver to the Registrar, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Registrar shall allow inspection of office copies of such lists to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the Judge, upon such terms as to amendments of the list, postponement of the inquiry, and payments of costs, as may be ordered.

Appointment of Solicitor by petitioner.

9. With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing, signed by him or them, giving the name of an advocate and solicitor of the Supreme Court whom he or they authorize to act as his or their solicitor or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address within the Federation at which notices may be left; and if no such writing be left or address given, then all notices may be given by leaving the same at the office of the Registrar. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.

Appointment of Solicitor by respondent.

10. Any person returned as a Councillor may at any time, after he is returned, send or leave at the office of the Registrar a writing, signed by him on his behalf, appointing an advocate and solicitor of the Supreme Court to act as his solicitor in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within the Federation at which notices addressed to him may be left, and if no such writing be left or address given, all notices and proceedings may be given or served by leaving the same at the office of the Registrar. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.

Registrar to keep book with addresses and names of Solicitors.

11. The Registrar shall cause to be kept a book at his office in which shall be entered all addresses and the names of solicitors given under Rule 9 or 10 of these Rules which book shall be open to inspection by any person during his office hours.

Security by petitioner for costs, etc., of election petition.

12. (1) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be to an amount of not less than one thousand dollars. If the number of charges in any petition shall exceed three, additional security to an amount of five hundred dollars shall be given in respect of each charge in excess of the first three. The security required by this Rule shall be given by a deposit of money.

(3) If security as in this Rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition.

Security by deposit of money.

13. (1) The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner shall be made by payment to the Supervisor which shall be vested in and drawn upon from time to time by the Chief Justice for the purposes for which security is required by these Rules. A receipt shall be given by the Supervisor for the same, which shall forthwith be left at the office of the Registrar by the petitioner.

(2) The Registrar shall file such receipt and keep a book open to the inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

Return of money so deposited.

14. (1) Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges and expenses, be returned or otherwise disposed of as justice may require by order of the Chief Justice.

(2) Such order may be made after such notice of intention to apply and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Chief Justice may require.

(3) Such order may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

Notice of petition and copy of petition to be served on respondent.

15. Notice of the presentation of a petition, accompanied by a copy thereof, shall, within ten days of the presentation of the petition, be served by the petitioner on the respondent. Such service may be effected either by delivering the notice and copy aforesaid to the solicitor appointed by the respondent under Rule 10 of these Rules or by posting the same in a registered letter to the address given under Rule 10 of these Rules at such time that, in the ordinary course of post, the letter would be delivered within the time above mentioned, or if no solicitor has been appointed, or no such address given, by a notice published in the *Gazette* stating that such petition has been presented, and that a copy of the same may be obtained by the respondent on application at the office of the Registrar.

When petition to be deemed at issue.

16. On the expiration of the time limited for making petitions, the petition shall be deemed to be at issue.

List of petitions.

17. The Registrar shall make out the election petition list. In it he shall insert the names of the solicitors of the petitioners and respondents appointed under Rules 9 and 10 of these Rules, respectively, and the addresses to which notices may be sent, if any. The list may be inspected at the office of the Registrar at any time during office hours, and shall be affixed for that purpose upon a notice board appropriated to proceedings under the Order, and headed "The Local Authorities Elections Ordinance, 1950".

Time and place of trial of election petition.

18. The time and place of the trial of each election petition shall be fixed by the Judge, and not less than fourteen days' notice thereof shall be given to the petitioner and respondent by letter directed to the address left by such petitioner or respondent with the Registrar, or, if no such address has been left, by notice in the *Gazette*.

Postponement of trial.

19. The Judge may, from time to time, by order made on the application of a party to the petition, postpone the beginning of the trial to such day as he may name; and such order, when made, shall forthwith be published by the Registrar in the *Gazette*.

Adjournment and continuation of trial.

20. No formal adjournment of the Court for the trial of an election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another Judge.

Withdrawal of election petition.

21. (1) An election petition shall not be withdrawn without the leave of the Judge. Such leave may be given upon such terms as to the payment of costs and otherwise as the Judge may think fit.

(2) Before leave for the withdrawal of an election petition is granted, there shall be produced affidavits, as required by this Rule, by all the parties to the petition and their solicitors, and by the election agents of all the said parties who were candidates at the election:

Provided that a Judge of the Supreme Court may, on cause shown, dispense with the affidavit of any particular person if it seems to such Judge on special grounds to be just so to do.

(3) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(4) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

Form of application to withdraw petition.

22. (1) An application for leave to withdraw a petition shall be in writing signed by the petitioner or petitioners or his or their solicitor or solicitors. It shall state the ground on which the application is supported.

(2) The following form shall be sufficient:

"The Local Authorities Elections Ordinance, 1950.

Electoral ward.....petition of.....(state name of petitioner) presented.....day of....., 19.....

The petitioner applies to withdraw his petition upon the following ground (here state the ground), and prays that a day may be appointed for hearing his application.

Dated this.....day of....., 19 .....

(Signed) ....."

(3) The application for leave to withdraw shall be left at the office of the Registrar.

Copy of application to be given to respondent.

23. A copy of such application shall be given by the petitioner to the respondent, and a notice in the following terms signed by the petitioner shall be published forthwith in the *Gazette* by the petitioner at his own expense:

"The Local Authorities Elections Ordinance, 1950.

In the election petition for.....in which.....is petitioner and .....respondent.

Notice is hereby given that the above petitioner did on the.....day of.....lodge at the office of the Registrar of the Supreme Court an application for leave to withdraw the petition, of which application the following is a copy:

(Set it out.)

And take notice that under the Local Authorities (Municipalities) Elections Petition Rules, 1950, any person who might have been a petitioner in respect of the said election may, within five days after the date of publication of this notice, give notice in writing to the Registrar of the Supreme Court of his intention on the hearing of the application to be substituted as a petitioner.

(Signed) ....."

Application to be substituted as petitioner, on withdrawal.

24. Any person who might have been a petitioner in respect of the election to which the petition relates may, within five days after such notice is published by the petitioner, give notice in writing signed by him or on his behalf, to the Registrar, of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

Time and place of hearing of application.

25. The time and place of hearing the application shall be fixed by the Judge but shall not be less than a week after the application for leave to withdraw has been left at the office of the Registrar as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Registrar of an intention to apply to be substituted as petitioners, and otherwise in such manner and such time as the Judge directs.

Substitution of another petitioner.

26. (1) On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the Judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

(2) The Judge may, if he thinks fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is, in the opinion of the Judge, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

(3) If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within three days after the order of substitution.

(4) Subject as aforesaid a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities, as the original petitioner.

(5) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(6) Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

Abatement of petition by death.

27. (1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

Application to be substituted as petitioner, on abatement.

28. (1) Notice of abatement of a petition, by death of the petitioner or surviving petitioner, shall be given by the party or person interested in the same manner as notice of an application to withdraw a petition, and the time within which application may be made to a Judge to be substituted as a

petitioner shall be one calendar month, from the day of the publication of the notice of abatement or such further time as, upon consideration of any special circumstances, the Judge may allow.

(2) Any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Judge to be substituted as a petitioner.

(3) The Judge may, if he thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

On death, resignation, or notice not to oppose of respondent the petition to continue.

29. (1) If before the trial of an election petition a respondent dies or resigns, or gives notice in writing to the Registrar that he does not intend to oppose the petition, the petition shall not be abated but shall continue whether or not any person applies to be admitted as respondent as hereinafter provided.

(2) Notice of the fact that a respondent has died, or resigned, or that he has given notice in writing that he does not intend to oppose the petition, shall be published in the *Gazette* by the Registrar.

(3) Any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Judge to be admitted as a respondent to oppose the petition within ten days after such notice has been published in the *Gazette* or such further time as the Judge may allow.

(4) The manner and time of the respondent's giving notice to the Registrar that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the Registrar, signed by the respondent not less than six days before the day appointed for trial, exclusive of the day of leaving such notice.

Respondent not opposing petition not to appear as party.

30. A respondent who has given notice of his intention not to oppose a petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon.

Countermanding notice of trial where petition abated, etc.

31. After receiving the petitioner's application for leave to withdraw or notice of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in Rule 29 of these Rules, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Registrar shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

Costs.

32. All costs of and incidental to the presentation of a petition and to the proceedings consequent thereon shall be defrayed by the parties to the petition in such manner and in such proportions as the Judge may determine, regard being had to the disallowance of any costs which may, in the opinion of the Judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections, on the part either of the petitioner or the respondent and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

Taxation and recovery of costs.

33. (1) Costs shall be taxed by the Registrar upon the order by which the costs are payable in the same manner as costs are taxed in the Supreme Court, but subject to such express directions, either general or specific, as the Judge may give; and costs when taxed may be recovered in the same manner as the costs of an action at law.

(2) The Chief Justice may direct that the whole or any part of any moneys deposited by way of security under the provisions of Rules 12 and 13 of these Rules may be applied in the payment of taxed costs.

(3) The office fees payable for inspection, office copies and other proceedings under these Rules shall be such as may be prescribed by the Chief Justice.

Notice of appointment of solicitor.

34. A solicitor shall, immediately upon his appointment as such, leave written notice thereof at the office of the Registrar.

Service of notices on solicitors.

35. Service of notices and proceedings upon such solicitors shall be sufficient for all purposes.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. G. Ellis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 53 of 1950.

THE MUNICIPAL (AMENDMENT) (No. 2) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

.....{*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....October, 1950.

.....*Officer Administering the Government.*

.....October, 1950.

An Ordinance to amend the Municipal Ordinance.

[1st January, 1951.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement. S.S. Cap. 133. F. of M. No. 3 of 1948.

1. (1) This Ordinance may be cited as the Municipal (Amendment) (No. 2) Ordinance, 1950, and shall be read as one with the Municipal Ordinance of the Straits Settlements (hereinafter referred to as the principal Ordinance) in force in the Settlements and as extended to apply to the Malay States by virtue of the Municipal Ordinance (Extended Application) Ordinance, 1948.

(2) This Ordinance shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Amendment of section 3.

2. Section 3 of the principal Ordinance is hereby amended by the substitution of the following definitions for the definition of "The Commissioners" which occurs therein :

" 'Councillors' includes elected Councillors and Councillors appointed in accordance with the Constitution granted to a Municipality under the Local Authorities Elections Ordinance, 1950; No. 52 of 1950.

'elected Councillors' means Councillors elected under the provisions of the Local Authorities Elections Ordinance, 1950;".

Substitution of section 6.

3. The following section is hereby substituted for section 6 of the principal Ordinance :

"Administration of municipal affairs.

6. (1) The municipal affairs of every Municipality shall be administered by a Council consisting of a President and such numbers of elected or of elected and of appointed Councillors as may be prescribed by the Constitution granted to the Municipality under the Local Authorities Elections Ordinance, 1950.

(2) Such Councillors shall be styled the Municipal Councillors of George Town, or of the Town and Fort of Malacca, or of Kuala Lumpur, or of other their Municipality, as the case may be, and shall by such name be a body corporate and shall have perpetual succession and a common seal, and power, subject to the provisions of this Ordinance, to acquire, hold and sell property and may by such name sue and be sued."

Substitution of section 7.

4. The following section is hereby substituted for section 7 of the principal Ordinance:

Declaration by Councillor before assuming office.

"7. A Councillor shall not act in the office of Councillor unless he has made and subscribed before a Commissioner for Oaths a declaration of acceptance of office in Form A in Schedule A to this Ordinance and delivered such declaration within one month from the day of election or appointment, as the case may be, to the Secretary. If he shall fail to make and deliver the declaration as aforesaid his office shall become vacant. Such declaration shall be free from stamp duty."

Repeal of section 8.

5. Section 8 of the principal Ordinance is hereby repealed.

Substitution of section 9.

6. The following section is hereby substituted for section 9 of the principal Ordinance:

Councillors exempt from service as assessors or jurors.

"9. No Councillor, so long as he is a Councillor, nor Deputy President shall be liable to serve as assessor or as juror."

Repeal of sections 10 and 11.

7. Sections 10 and 11 of the principal Ordinance are hereby repealed.

Substitution of section 12.

8. The following section is hereby substituted for section 12 of the principal Ordinance:

Acts not invalidated by deficiency in number of Councillors.

"12. Nothing done under this Ordinance shall be invalid by reason only that the number of Councillors of a Municipality is less than the number prescribed by the Constitution granted to that Municipality under the Local Authorities Elections Ordinance, 1950."

Repeal of sections 13 and 14.

9. Sections 13 and 14 of the principal Ordinance are hereby repealed.

Amendment of section 29.

10. Section 29 of the principal Ordinance is hereby amended by—

(*a*) the substitution of a semicolon for the full stop which occurs at the end of paragraph (*t*) therein, and

(*b*) the insertion of the following new paragraphs immediately after paragraph (*t*) therein:

"(*u*) the payment of all expenses incurred in carrying out the provisions of the Local Authorities Elections Ordinance, 1950, in relation to their Municipality;

(*v*) the payment of such salary or allowance to the Councillor for the time being performing the duties of President as may be provided in the Constitution granted to the Municipality under the Local Authorities Elections Ordinance, 1950."

Substitution of Form A.

11. The Form set out in the First Schedule to this Ordinance is hereby substituted for Form A in Schedule A to the principal Ordinance.

General modification of laws.

12. Any reference contained in any written law to the body and officers mentioned in the first column of the Second Schedule to this Ordinance shall be construed as references to the corresponding body and officers respectively mentioned in the second column of the said Schedule.

Saving of rights and duties of present Commissioners.

13. (1) The coming into force of this Ordinance shall be without prejudice to the Commissioners of any Municipality lawfully appointed at the commencement of this Ordinance or at any time prior to the appointed date, holding office, who shall continue in office and shall have and exercise all the rights, powers, duties and privileges appertaining to the office of Commissioner under the principal Ordinance and any by-laws made thereunder as if this Ordinance had not been enacted, but who shall vacate their office on the appointed date.

(2) In this section "appointed date" means such date as the Ruler of a Malay State or the Resident Commissioner in a Settlement in which the Municipality to which a Constitution granted under the Local Authorities Elections Ordinance, 1950, is situate, may appoint in respect of such Municipality by notification in the *Gazette* of such State or Settlement.

FIRST SCHEDULE.
(Section 11).
FORM A.

FORM OF DECLARATION OF ACCEPTANCE OF OFFICE.
(*Section 7*).

I.....having been*$\frac{\text{elected}}{\text{appointed}}$ a Municipal Councillor hereby declare that I take the said office on myself and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

.....
Signature of Declarant.

Declared before me this
.....day of....., 19.....

.....
Signature of Commissioner for Oaths.

* Delete where inapplicable.

SECOND SCHEDULE.
(Section 12.)

Municipal Commissioners ...	Municipal Councillors
Commissioner or Commissioners (in relation to a Municipality)	Councillor or Councillors
Commissioner of a Municipality	Councillor of a Municipality
President of the Commissioners	President of the Councillors
Deputy President of the Commissioners	Deputy President of the Councillors

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Ellis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 54 of 1950.

THE INCOME TAX (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Officer Administering the Government.*

..... *Sultan of Selangor.*

.....October, 1950.

.....October, 1950.

.....October, 1950.

An Ordinance to amend the Income Tax Ordinance, 1947.

[Sections 11 & 13 (*a*)—*1st January, 1948.*]
[Section 4 —*1st January, 1949.*]
[Other provisions —*1st January, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and commencement, M.U. No. 48 of 1947.

1. (1) This Ordinance may be cited as the Income Tax (Amendment) Ordinance, 1950, and shall be read as one with the Income Tax Ordinance, 1947 (hereinafter called the principal Ordinance).

(2) The provisions of section 11 and paragraph (*a*) of section 13 of this Ordinance shall be deemed to have come into force on the 1st day of January, 1948.

(3) The provisions of section 4 of this Ordinance shall be deemed to have come into force on the 1st day of January, 1949.

(4) The provisions of this Ordinance, other than the provisions of sections 4, 11 and paragraph (*a*) of section 13 thereof shall be deemed to have come into force on the 1st day of January, 1950.

Amendment of section 2.

2. Section 2 of the principal Ordinance is hereby amended—

(*a*) by the deletion from the definition of "executor" of the words "and includes a trustee acting under a trust created by the last will of the author of the trust";

(*b*) by the substitution of the following definition for the definition of "replanting" therein—

" 'replanting' means the replacement of the crop of any product on any area of land by the planting on the same area—

(*a*) of a crop of the same product; or

(*b*) of a crop of a different product approved by the High Commissioner in Council."

Amendment of section 13 (1).

3. Sub-section (1) of section 13 of the principal Ordinance is hereby amended—

(*a*) by the substitution of the following sub-paragraph for sub-paragraph (ii) in paragraph (*f*) thereof :

"(ii) any co-operative society registered as such under any Co-operative Societies Ordinance or Enactment for the time being in force, or registered as such in the Colony under the law for the time being in force in the Colony relating to the registration of such societies;";

(*b*) by the addition in paragraph (*n*) thereof of the following new item immediately after item "(vii) sago flour" :

"(viii) cloves".

Amendment of section 13 (2).

4. Sub-section (2) of section 13 of the principal Ordinance is hereby amended by substituting for the words "either generally or in respect of interest payable to persons not resident in the Federation" the words "either generally or in respect of interest payable to certain classes of persons not resident in the Federation."

Amendment of section 14.

5. Section 14 of the principal Ordinance is hereby amended—

(*a*) by the insertion in the proviso to paragraph (*c*) of sub-section (1) thereof of a semi-colon after the word "nature" which occurs in the seventh line and deleting the words "which are the subject of an allowance under section 16 of this Ordinance;" which occur in the eighth and ninth lines;

(*b*) by the deletion in paragraph (*h*) of sub-section (1) thereof of the words "in lieu of the allowances under the provisions of sections 16, 17 and 18 of this Ordinance".

Amendment of section 17.

6. Section 17 of the principal Ordinance is hereby amended by the addition immediately after sub-section (4) thereof of the following new sub-section :

"(5) In calculating any balancing allowance under sub-section (2) of this section or any balancing charge under sub-section (3) of this section any part of any insurance, salvage or compensation moneys which has been taken into account for the purposes of sub-section (6) of section 22c of this Ordinance shall be ignored."

Amendment of section 18 (1).

7. Sub-section (1) of section 18 of the principal Ordinance is hereby amended—

(*a*) by the addition immediately after paragraph (vi) thereof of the following:

"(vii) for the purposes of a trade which consists in the working of a mine or other source of mineral deposits of a wasting nature;";

(*b*) by the substitution of a comma for the colon which occurs after the word "purpose" immediately before the proviso thereto and by the addition immediately after such comma of the words "but does not include a building or structure in respect of which a deduction is prescribed under section 14 (1) (*h*) of this Ordinance".

Amendment of section 19.

8. Section 19 of the principal Ordinance is hereby amended—

(*a*) by the insertion of the words and comma "on due claim," immediately after the words and comma "made to him," which occur in the sixth line of sub-section (1) thereof;

(*b*) by the insertion of the words and commas ", on due claim," immediately after the word "him" which occur in the fourth line of sub-section (2) thereof;

(*c*) by the addition after the words "enemy occupation" which occur at the end of paragraph (i) of the proviso to sub-section (2) thereof of the words "of the territories now comprised in the Federation or the Colony; and in the case of a miner or planter as defined in section 22c of this Ordinance, the period during which he was so deprived of the use of such machinery or plant shall be deemed for the purposes of this proviso to have extended until the end of the basis period for the first year of assessment under this Ordinance".

Amendment of section 20.

9. Section 20 of the principal Ordinance is amended by the addition immediately after sub-section (4) thereof of the following sub-section:

"(5) In calculating any balancing allowance under sub-section (2) of this section or any balancing charge under sub-section (3) of this section any part of any insurance, salvage

or compensation moneys which has been taken into account for the purposes of sub-section (6) of section 22c of this Ordinance shall be ignored.''

Amendment of section 22B (1).

10. Sub-section (1) of section 22B of the principal Ordinance is hereby amended by the insertion of the words ''a company or'' immediately after the words ''include references to'' which occur in the last line thereof.

Amendment of section 22c.

11. Section 22c of the principal Ordinance is hereby amended—

(*a*) by the insertion of the words ''and the Colony'' immediately after the word ''Federation'' which occurs in sub-paragraph (i) of sub-section (2) thereof;

(*b*) by the insertion of the commas and words '', on due claim,'' immediately after the word ''shall'' which occurs in the second line of sub-section (3) thereof;

(*c*) by the insertion of the words ''and the Colony'' immediately after the word ''Federation'' which occurs in sub-paragraph (iii) of paragraph (*b*) of sub-section (4) thereof;

(*d*) by the deletion of sub-section (5) thereof;

(*e*) by the deletion of the word and comma ''sale,'' in paragraph (*b*) of sub-section (6) thereof and the substitution of a comma for the semicolon and the deletion of the word ''or'' at the end of the said paragraph;

(*f*) by the deletion of paragraph (*c*) and of paragraph (iv) in sub-section (6) thereof; and

(*g*) by the substitution of a colon for the semicolon which occurs at the end of paragraph (iii) in sub-section (6) thereof and by the addition of the following proviso to that sub-section :

''Provided that the total of any sums of money or credits whenever received in respect of any particular property, asset or thing which are to be applied in the manner prescribed in paragraphs (i) and (ii) of this sub-section or to be deemed to be income chargeable with tax under paragraphs (ii) or (iii) of this sub-section shall not exceed the extraordinary expenditure incurred on the particular property, asset or thing;''.

Insertion of new section 27A.

12. The following new section is hereby inserted immediately after section 27 of the principal Ordinance:

"Special provision as to interest payable by instalments under Ord. No. 37 of 1949.

27A. Any interest received by a creditor or paid by a debtor by any instalment under the provisions of section 4 of the Moratorium (Repeal) Ordinance, 1949, shall be deemed for the purposes of this Ordinance to have been received or paid in the period within which such interest would have been payable if the Moratorium Proclamation had not been promulgated.".

Amendment of section 31.

13. Section 31 of the principal Ordinance is hereby amended—

(*a*) by the substitution of a colon for the full stop which occurs at the end of the proviso to sub-section (1) thereof and by the addition immediately after such proviso of the following new proviso:

"Provided further that, for the year of assessment 1948, if any person being a miner or a planter within the meaning of section 22c of this Ordinance, by giving notice in writing to the Comptroller on or before the 31st day of March, 1951, so elects, the statutory income of that person for the said year of assessment shall be the full amount of his income for that year of assessment from each such source as aforesaid and no allowances under section 22c shall be granted to that person for any year of assessment.";

(*b*) by the substitution of the following two sub-sections for sub-section (9) thereof:

"(9) The statutory income of an executor of a deceased person for any year of assessment shall be the income of the estate administered by such executor computed in accordance with the provisions of sub-sections (1) to (7) of this section:

Provided that in the case of an estate administered in Malaya a deduction shall be allowed in respect of any income included in the computation of the statutory income which is received by,

distributed to, or applied to the benefit of any beneficiary of the estate before the 31st of March in the year next following the year of assessment.

(9A) The statutory income of any beneficiary of such estate shall be the amount so received by, or distributed to him, or applied to his benefit during the year of assessment.''

(*c*) by the substitution of the following two sub-sections for sub-section (10) thereof :

''(10) The statutory income of a trustee (not being the trustee of an incapacitated person) for any year of assessment shall be computed in accordance with the provisions of sub-sections (1) to (7) of this section.

(10A) The statutory income for any year of assessment of any beneficiary under any trust shall be that share of the statutory income of the trustee for that year of assessment which corresponds to the share of the trust income to which such beneficiary is entitled for that year of assessment.''

Amendment of section 32 (2).

14. Sub-section (2) of section 32 of the principal Ordinance is amended by the deletion of the words from ''the tax payable by the person or persons'' to the words ''as if no such change had occurred'' which occur in the last seven lines thereof and by the substitution therefor of the words ''the statutory income of any person who was engaged in the trade, profession or business both before and after that time shall, notwithstanding the change, be computed according to the gains or profits of the trade, profession or business in accordance with the provisions of this Ordinance as if no such change had occurred''.

Amendment of section 33 (2) (*c*).

15. Paragraph (*c*) of sub-section (2) of section 33 of the principal Ordinance is hereby amended—

(*a*) by the insertion of the words ''on application by the institution concerned'' immediately after the words ''High Commissioner in Council'';

(*b*) by the substitution of the following sub-paragraph for sub-paragraph (v) thereof :

"(v) an educational institution which is not operated or conducted for profit or a public fund for the establishment, enlargement or improvement of such an educational institution or a public or private fund for the provision, establishment or endowment in such an educational institution of a scholarship, exhibition or prize;".

Amendment of section 35 (2).

16. (1) Paragraph (*d*) of sub-section (2) of section 35 of the principal Ordinance is hereby amended—

(*a*) by the deletion of the words from "there shall be allowed a deduction" to the words "for each subsequent child" and by the substitution therefor of the following :

"there shall be allowed in respect of such child according to his rank and age a deduction as follows—

(i) one such child or the elder of two such children or the eldest of three or more such children	$750;
(ii) the second and third child in order of age of such children ...	$500;
(iii) the fourth and fifth child in order of age of such children ...	$300;
(iv) each subsequent child after the fifth of such children	$200;"

(*b*) by the deletion of the words from "a deduction equal to the total amount" in proviso (ii) thereto to the end of that proviso and by the substitution therefor of the following :

"a deduction equal to the total amount so expended but not exceeding twice the amount of the appropriate deduction;" and

(*c*) by the substitution of the following sub-paragraph for the last sub-paragraph thereof (which defines "child")—

"The expression 'child' in this paragraph means a legitimate child, step-child or a child adopted in accordance with any statutory provision of an individual who claims a deduction under this section";

(2) Paragraph (*e*) of sub-section (2) of section 35 of the principal Ordinance is hereby amended by the insertion of the words "or Government of any State or country" immediately after the words "has made insurance on his life or on the life of his wife with an insurance company" which occur at the beginning thereof.

Substitution of section 36.

17. The following section is hereby substituted for section 36 of the principal Ordinance:

Non-resident British subject deductions.

"36. (1) In the case of an individual who is not resident in the Federation in the year of assessment and who proves to the satisfaction of the Comptroller that he is a British subject or a British protected person there shall be allowed such relief as will reduce the amount of tax payable by that individual to an amount which bears the same proportion to the amount of tax which would be payable by him if he were resident in the Federation during the year of assessment and if the tax were charged on his aggregate income as the amount of his assessable income bears to the amount of his aggregate income.

(2) For the purpose of this section the expression "aggregate income" means the sum total of all income whether accruing in, derived from, or received in, the Federation or elsewhere computed in accordance with the provisions of this Ordinance."

Substitution of section 38.

18. The following section is hereby substituted for section 38 of the principal Ordinance:

Rate of tax upon individuals.

"38. There shall be levied and paid for each year of assessment upon the chargeable income of every person, other than a company, a person not resident in the Federation, a trustee (not being the trustee of an incapacitated person), or an executor, tax at the rates set forth in the Second Schedule to this Ordinance."

Substitution of section 39.

19. The following section is hereby substituted for section 39 of the principal Ordinance:

"Rate of tax upon companies and others.

39. Subject to the provisions of section 36 of this Ordinance, there shall be levied and paid for each year of assessment upon the chargeable income of every company, person not resident in the Federation, trustee (other than the trustee of an incapacitated person), and executor, tax at the rate of 20 per centum on every dollar of the chargeable income thereof:

Provided that where any company proves to the satisfaction of the Comptroller that any dividends have been paid out of such chargeable income, or any trustee proves to the satisfaction of the Comptroller that any beneficiary of the trust is entitled to a share of the trust income, an amount equal to such dividends in the case of a company or a corresponding share of the statutory income of the trustee in the case of a trust may be charged at a lower rate or not charged with any tax as the Comptroller shall determine.''.

Amendment of section 40 (1).

20. Sub-section (1) of section 40 of the principal Ordinance is amended by re-numbering proviso (ii) as proviso (iii) and by the insertion of the following new proviso immediately after proviso (i) thereto:

''(ii) deductions of tax from dividends paid subsequent to the 31st day of December, 1947, out of income for any period which formed, or but for the provisos to sub-section (1) of section 31 of this Ordinance would have formed, the basis period for the first year of assessment under this Ordinance shall be deemed to be valid deductions made in accordance with the provisions of this sub-section;''.

Amendment of section 46 (4).

21. Sub-section (4) of section 46 of the principal Ordinance is hereby amended by the substitution of the word ''excluding'' for the word ''less'' which occurs in the sixth line thereof.

Amendment of section 49 (1).

22. Sub-section (1) of section 49 of the principal Ordinance is amended by the insertion of the following new paragraph immediately after paragraph (*b*) thereof:

''(*c*) A non-resident beneficiary of the estate of a deceased person shall, where the estate is being administered in Malaya, be

assessable and chargeable in respect of the income received by or distributed to him or applied to his benefit in the name of the executor of the estate as if the executor were an agent of the non-resident beneficiary.''.

Substitution of section 71.

23. The following section is hereby substituted for section 71 of the principal Ordinance:

Appointment of agents.

''71. For the purpose of facilitating the assessment of the income of persons not resident in Malaya the High Commissioner may appoint an agent for any territory or territories outside Malaya who shall make enquiries on behalf of the Comptroller in respect of any person resident in the territory or territories for which the agent has been appointed who applies to be dealt with through such an agent and shall ascertain and report to the Comptroller the amount of the chargeable income of such person in accordance with this Ordinance and shall forward to the Comptroller the accounts and computations upon which his report is based. The Comptroller on receipt of the report shall enter the amount reported in the assessment list:

Provided that—

(*a*) if it appears to the Comptroller that any error has occurred in the accounts or computation he may refer the report back for further consideration;

(*b*) nothing in this section shall affect any right of appeal under Part XII of this Ordinance.''.

Amendment of Third Schedule.

24. The Third Schedule to the principal Ordinance is amended by the substitution of the word ''change'' for the word ''charge'' which occurs in the fourth line of paragraph 9 thereof.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 55 of 1950.

THE POST OFFICE SAVINGS BANK (REVALUATION OF WITHDRAWALS) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Officer Administering the Government.*

..... *Sultan of Selangor.*

25th October, 1950.

24th October, 1950.

An Ordinance to provide for the revaluation of amounts withdrawn during the occupation period from Post Office Savings Bank and for crediting the accounts of depositors accordingly.

[31st *October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Post Office Savings Bank (Revaluation of Withdrawals) Ordinance, 1950.

Interpretation.

2. In this Ordinance—

Ord. No. 40 of 1948.

"account" means the sum of money due, under the provisions of the Post Office Savings Bank Ordinance, 1948, and the rules made thereunder, at any time to a depositor and the record of deposits, withdrawals, additions of interest and adjustments that enter into the computation of that sum;

"Controller of Savings Bank" means the officer in charge of depositors' ledger accounts at the Central Accounts Office, Postal Services Department;

"depositor" means a person, firm, body corporate, society, Government Department, or body of persons collectively, by whom or on whose behalf a deposit is made in a Post Office Savings Bank;

"occupation period" means the period commencing on the fifteenth day of February, 1942, and ending on the fifth day of September, 1945, both dates inclusive, and includes any part of such period;

"Post Office Savings Bank" means any Post Office Savings Bank established under the Ordinance and Enactments repealed by section 23 of the Post Office Savings Bank Ordinance, 1948.

3. Where during the occupation period any amount of money was withdrawn by any depositor from a Post Office Savings Bank the amount so withdrawn shall, notwithstanding the provisions of the Debtor and Creditor (Occupation Period) Ordinance, 1948, be revalued in accordance with the scale set out in the Schedule to that Ordinance and the Controller of Savings Bank shall credit the account of the depositor with the difference between the face value of the amount withdrawn and the amount revalued as aforesaid.

Revaluation of amounts withdrawn during occupation period. Ord. No. 42 of 1948.

4. Where the account of any depositor has been credited with any amount as provided in section 3 of this Ordinance no interest shall be payable on such amount in respect of any period prior to the first day of October, 1950.

No interest payable.

5. The High Commissioner may make rules prescribing the time when, and the manner in which, pass books shall be sent by depositors to the Controller of Savings Bank for the purposes of making therein the alterations that may be necessary under the provisions of section 3 of this Ordinance.

Power of High Commissioner to make rules.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

A. R. Ballis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 56 of 1950.

THE QUARANTINE AND PREVENTION OF DISEASE ENACTMENTS (APPLICATION TO KEDAH) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer Administering the Government.

.....*Sultan of Selangor.*

25th. October, 1950.

24th October, 1950.

An Ordinance to extend the application of the Quarantine Enactment and of the Prevention of Disease Enactment, of the Federated Malay States to the State of Kedah.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Quarantine and Prevention of Disease Enactments (Application to Kedah) Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Application of F.M.S. Cap. 185 and Cap. 186 to Kedah.

2. (1) The Quarantine Enactment and the Prevention of Disease Enactment of the Federated Malay States shall apply and have effect in the State of Kedah with the modifications referred to in subsection (2) of this section.

(2) The modifications specified in the second column in Part I and in Part II of the Schedule to this Ordinance shall be made in the sections of the Quarantine Enactment and of the Prevention of Disease Enactment of the Federated Malay States specified in the first column in Part I and in Part II, respectively, of the said Schedule.

Extension of subsidiary legislation. F.M.S. *G.N.* 2624/39. M.U. *G.N.* 7360/47.

3. The Quarantine (Medical) Regulations and the Quarantine (Medical) Regulations, 1947, made under the Quarantine Enactment of the Federated Malay States, shall apply to the State of Kedah with such modifications and adaptations as may be necessary in such application and shall have effect and remain in force in the State of Kedah until superseded or revoked by any regulations made under the Quarantine Enactment of the Federated Malay States as extended to apply to the State of Kedah by section 2 of this Ordinance.

Repeal. Enact. No. 17 of 1335.

4. Enactment No. 89 (Quarantine and Prevention of Diseases) of the State of Kedah is hereby repealed.

SCHEDULE.

[*Section 2 (2).*]

PART I.

THE QUARANTINE ENACTMENT.

(F.M.S. Cap. 185).

Section.	Modifications.
2	For the words "Federated Malay States" which occur in paragraph (i) of the definition of "Health Officer" there shall be substituted the word "Kedah".
3 and 4 ...	For the words "Federated Malay States" wherever they occur there shall be substituted the words "the State of Kedah".
5 and 7 ...	For the words "any of the Federated Malay States" there shall be substituted the words "the State of Kedah".
9 and 11 ...	For the words "Federated Malay States" wherever they occur there shall be substituted the words "State of Kedah".
13 (i) ...	For the words "Ports Enactment" there shall be substituted the words "Enactment No. 79 (Ports)".
14, 15, 19 and Schedule I ...	For the words "Federated Malay States" wherever they occur there shall be substituted the words "State of Kedah".

PART II.

THE PREVENTION OF DISEASE ENACTMENT.

(F.M.S. Cap. 186).

Section.	Modifications.
2	For the words "Federated Malay States" which occur in paragraph (i) of the definition of "Health Officer" there shall be substituted the word "Kedah"; For the words "Medical Registration Enactment" which occur in the definition of "medical practitioner" there shall be substituted the words "Enactment No. 64 (Medical Practitioners)"; For the definition of "veterinary authority" there shall be substituted the following: " 'veterinary authority' means a Veterinary Officer within the meaning of Enactment No. 90 [Quarantine and Prevention of Diseases (Animals)]".

Section.		Modifications.
29 (ix)	...	For the words "Federated Malay States" which occur in line 5 there shall be substituted the words "State of Kedah"; The words "and such report shall be made irrespective of whether such area is or is not in the same State within the Federated Malay States as the area of the Health Officer making such report" which occur in lines 9, 10, 11 and 12 shall be deleted.
33 (i)	...	The words "of any State concerned" which occur after the words "after consultation with the Mentri Besar" shall be deleted.
34 (i)	...	The words "of any State concerned" which occur after the words "after consultation with the Ruler in Council" shall be deleted.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Ellis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 57 of 1950.

THE PENANG CORRECTED RE-SURVEYS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Officer Administering the Government.*

.....*Sultan of Selangor.*

.....October, 1950.

.....October, 1950.

An Ordinance to provide for the republication of corrected Re-Survey maps of districts in the Settlement of Penang and to provide that no right or title to any land in such Settlement acquired by long possession after the final ascertainment of boundaries be recognised.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council, as follows:

Short title and commencement.

1. This Ordinance may be cited as the Penang Corrected Re-Surveys Ordinance, 1950, and shall come into force on such date as the High Commissioner may by notification in the *Gazette* appoint.

Interpretation.

S.S. Cap. 130.

2. In this Ordinance—

"the principal Ordinance" means the Boundaries and Surveys Maps Ordinance of the Straits Settlements;

"Re-Survey Map" means a map published under the provisions of section 35 of the principal Ordinance at any time before the commencement of this Ordinance.

Republication of corrected Re-Survey maps.

3. (1) The Surveyor-General of the Federation of Malaya shall, as soon as conveniently may be, cause to be republished all Re-Survey maps of districts in the Settlement of Penang, duly corrected with all corrections, alterations and additions made therein in accordance with the provisions of section 37 of the principal Ordinance at any time after the date of the original publication thereof and in force at the date of such republication.

(2) Every such Re-Survey map so corrected shall be republished in the manner prescribed for the publication of corrected maps by sub-section (1) of section 35 of the principal Ordinance, and the provisions of

sections 36, 38 and 39 of such Ordinance shall apply to the consideration of and inquiry into objections to any such Re-Survey map so republished and to the manner of correcting the same:

Provided that, on an inquiry into any objection to any such Re-Survey map so republished—

(*a*) no boundary which was, by virtue of the provisions of the principal Ordinance, deemed to be finally ascertained, shall be modified or altered, except in a case in which a correction, alteration or addition to the Re-Survey map as originally published under the principal Ordinance could have been lawfully made under the provisions of section 37 thereof, and

(*b*) the validity or finality of any order, made or purported to have been made, at any time before the date of the republication of such Re-Survey map, under the provisions of the principal Ordinance and thereby declared or deemed to be final, shall not be called in question by any person.

Substitution of Republished map for original Re-Survey map.

4. (1) Every Re-Survey map republished under the provisions of section 3 of this Ordinance shall, after it has if necessary been modified, corrected or altered by the Surveyor-General in accordance with the provisions of section 39 of the principal Ordinance, be declared by the Commissioner of Lands, by notification in the *Gazette* of the Settlement, to be confirmed and shall, on and after the date of such notification, notwithstanding the provisions of section 40 of the principal Ordinance, be substituted for the original Re-Survey map of the same local area published under Part IV of the principal Ordinance and shall, subject to the provisions of sub-section (2) of this section, be conclusive evidence in all Courts of the boundaries of the land comprised in every holding shown thereon.

(2) The provisions of sections 37, 38 and 39 of the principal Ordinance shall apply to every Re-Survey map confirmed under sub-section (1) of this section

and no such map shall be modified, altered or corrected except in accordance with the provisions of such sections.

No right or title to be acquired by long possession after confirmation of Re-Survey map.

5. (1) Where the boundaries of any holding in the Settlement of Penang are shown upon any Re-Survey map confirmed under section 4 of this Ordinance, then, excepting the person in possession of such holding at the date of the publication of the notification in the *Gazette* confirming such map and his personal representatives and assigns and any person claiming title thereunder, no person may acquire any right or title to such holding or any part thereof by virtue of long possession.

(2) Subject to the provisions and exceptions contained in sub-section (1) of this section and to any rights acquired before the date of the publication of the notification in the *Gazette* confirming such map, the right and title of any person to any holding or part of any holding shown in any Re-Survey map confirmed under section 4 of this Ordinance shall not be extinguished by virtue of the provisions of the S.S. Cap. 16. Limitation Ordinance nor may that Ordinance be pleaded as a defence to any suit for the possession of any land comprised in such holding or such part of any holding.

Certain recent Re-Survey maps to be deemed to have been republished and confirmed under this Ordinance.

6. The Re-Survey maps of the districts described in the first column of the Schedule to this Ordinance in respect of which the notifications specified in the second column of such Schedule were respectively published shall be deemed to have been duly republished and confirmed under the provisions of this Ordinance and the provisions of this Ordinance shall apply to such Re-Survey map of each district so described, and to the holdings the boundaries of which are shown in such map as if this Ordinance had been in force and such map had been confirmed thereunder upon the date set out in the third column of such Schedule immediately opposite to the description of such district.

SCHEDULE.

(Section 6.)

District.	*Gazette* notification.	Date.
Mukim C.—South West District, Penang Mukim D.—South West District, Penang Mukim E.—South West District, Penang Mukim F.—South West District, Penang Mukim G.—South West District, Penang Mukim H.—South West District, Penang Mukim I.—South West District, Penang Mukim J.—South West District, Penang Mukim 6.—South West District, Penang Mukim 7.—South West District, Penang Mukim 8.—South West District, Penang Mukim 9.—Village of Balik Pulau, South West District, Penang	Settlement of Penang *Gazette* Notification No. 124 of 1949	23- 6-49
Village of Bukit Tengah, Central District, Province Wellesley	Settlement of Penang *Gazette* Notification No. 285 of 1949	8-12-49
Village of Sungei Bakap, Southern District, Province Wellesley	Settlement of Penang *Gazette* Notification No. 286 of 1949	8-12-49

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 58 of 1950.

THE ELECTRICITY (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Officer Administering the Government.*

.....*Sultan of Selangor.*

.....October, 1950.

...24th.....October, 1950.

An Ordinance to amend the Electricity Ordinance, 1949.

[31st *October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Electricity (Amendment) Ordinance, 1950, and shall be read as one with the Electricity Ordinance, 1949, hereinafter referred to as the principal Ordinance.

Ord. No. 30 of 1949.

Amendment of section 85 (1).

2. Sub-section (1) of section 85 of the principal Ordinance is hereby amended—

(*a*) by the deletion of the words "and duly authorised in that behalf by the Board or the licensee, as the case may be," which occur in the second and third lines thereof; and

(*b*) by the deletion of the word "he" which occurs in the sixth line thereof and the substitution therefor of the words "the Board or the licensee or any person duly authorised by the Board or the licensee, as the case may be,".

Amendment of section 86.

3. Section 86 of the principal Ordinance is hereby amended—

(*a*) by the substitution of the following paragraph for the first paragraph in sub-section (3) thereof :

"Any person who in any manner whatsoever dishonestly,

(i) abstracts energy, or

(ii) consumes energy, or

(iii) uses energy, or

(iv) alters the index of any meter or other instrument used on or in connection with any Board installation or any licensed installation for recording the output or consumption of energy, or

(v) prevents any such meter or instrument from duly recording the output or consumption of energy

shall be guilty of an offence and shall be liable to imprisonment of either description for a term which may extend to two years or to a fine not exceeding five thousand dollars or to both such imprisonment and fine.''; and

(*b*) by the substitution of the following sub-section for sub-section (11) thereof:

''(11) Any person who wilfully or negligently—

(*a*) causes energy to be diverted from its proper course or to be wasted; or

(*b*) breaks, throws down, causes to fall or damages any supply line or any post, pole, or other apparatus connected with the supply of energy,

shall be guilty of an offence and shall be liable to imprisonment of either description for a term which may extend to six months or to a fine not exceeding five hundred dollars or to both such imprisonment and fine.''

Substitution of section 87.

4. The following section is hereby substituted for section 87 of the principal Ordinance:

Onus of proof.

''87. In any prosecution for an offence under sub-section (3) of section 86 of this Ordinance, proof of—

(*a*) the existence of artificial means which, either alone or in conjunction with

additional artificial means not found, could be used for altering, or facilitating the alteration, of the index of any meter or instrument used for registering the quantity of energy supplied, or

(*b*) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, would prevent, or facilitate the prevention of, any meter or instrument from duly registering the quantity of energy supplied, or would facilitate the dishonest abstraction, consumption, or use of energy, or

(*c*) (i) the fitting of any mechanical or other means to, or

(ii) the absence or removal of any part or connection from, or

(iii) the interference with any part or connection of

any apparatus in such circumstances that such fitting, absence, removal or interference would prevent or facilitate the prevention of any meter or other instrument from duly registering the quantity of energy supplied, or would facilitate the dishonest abstraction, consumption or use of energy shall be *prima facie* evidence

(i) that there has been dishonest alteration of the index of any meter or instrument, or prevention, abstraction, consumption or use of energy, as the case may be; and

(ii) that such dishonest alteration, prevention, abstraction, consumption or use, as the case may be, has been carried out by

(*a*) the person fitting such artificial, mechanical or other means as aforesaid, and

(*b*) the person removing any such part or connection as aforesaid, and

(*c*) the person interfering with any such part or connection as aforesaid, and

(*d*) the consumer using such meter or instrument, and

(*e*) the person having control of the installation where it is fixed

or that such person or consumer has abetted the offence of such alteration, prevention, abstraction, consumption or use, as the case may be.''

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H.R. Ellis.

Clerk of Council.

FEDERATION OF MALAYA.

No. 59 of 1950.

THE MALAY REGIMENT (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman ..... *Yang di-Pertuan Besar of Negri Sembilan.*

J. Foster Sutton ..... *Officer Administering the Government.*

..... *Sultan of Selangor.*

25th October, 1950.

24th October, 1950.

An Ordinance to amend the Malay Regiment Enactment of the Federated Malay States and to extend its application throughout the Federation.

[*31st October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and commencement. F.M.S. Cap. 42.

1. This Ordinance may be cited as the Malay Regiment (Amendment) Ordinance, 1950, and shall be read as one with the Malay Regiment Enactment of the Federated Malay States, hereinafter referred to as the principal Enactment.

Insertion of new section 13A.

2. The following new section is hereby inserted under the heading "*Disgraceful Conduct*" immediately before section 14 of the principal Enactment:

"Scandalous conduct of an officer. [16]

13A. Every officer who, being subject to military law, commits the following offence, that is to say,

behaves in a scandalous manner, unbecoming the character of an officer and a gentleman,

shall, on conviction by court-martial, be cashiered."

Insertion of new section 39 and re-numbering of section 39 as 39A.

3. (1) The following new section is hereby inserted under the heading "*Redress of Wrongs*" and immediately before section 39 of the principal Enactment:

"Mode of complaint by officer. [42]

39. If an Officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain *to the High Commissioner who shall examine into such complaint and give directions thereon as he may think just.*"

(2) Section 39 of the principal Enactment is hereby re-numbered as section 39A.

Amendment of section 40.

4. Section 40 of the principal Enactment is hereby amended—

(*a*) by the deletion of the words from "Punishments may be inflicted" which occur at the beginning thereof to "(*h*) Forfeitures, fines and stoppages." which occur immediately before the provisos thereto, and by the substitution therefor of the following:

"Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following:

(*a*) Death;

(*b*) *Penal servitude for a term not less than four years;*

(*c*) Imprisonment *for a term not exceeding fourteen years;*

(*d*) Cashiering;

(*e*) Dismissal from *the Regiment;*

(*f*) Forfeiture of seniority of rank, or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for purposes of promotion;

(*g*) Severe reprimand or reprimand;

(*h*) *Forfeitures, fines, and* stoppages;

In the case of soldiers, according to the scale following:

(*i*) Death;

(*j*) *Penal servitude for a term not less than four years;*

(*k*) Imprisonment *for a term not exceeding fourteen years;*

(*l*) Detention for a term not exceeding two years;

(*m*) Discharge with ignominy *from the Regiment;*

(*n*) In the case of a non-commissioned officer, reduction to the ranks or to a lower grade, or forfeiture, in the prescribed manner, of seniority of rank;

(*o*) In the case of a non-commissioned officer, severe reprimand or reprimand;

(*p*) Forfeitures, fines and stoppages.''

(*b*) by the insertion of the following provisos immediately after proviso (3) thereto:

''(3A) an officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment;

(3B) *the High Commissioner* may restore the whole or any part of any lost seniority or forfeited service in the case of an officer who may perform good and faithful service, or who may otherwise be deemed by *the High Commissioner* to merit such restoration;'';

(*c*) by the substitution of the following proviso for proviso (4) thereto:

''(4) an officer or a non-commissioned officer when sentenced to forfeiture of seniority of rank, and an officer when sentenced to forfeiture of all or any part of his service for the purposes of promotion, may also be sentenced to be severely reprimanded or reprimanded;'' and

(*d*) by the substitution of the words ''no officer or non-commissioned officer'' for the words ''no non-commissioned officer'' which occur at the beginning of proviso (11) thereto.

Amendment of section 41.

5. Paragraph (iii) of section 41 of the principal Enactment is hereby amended—

(*a*) by the insertion, immediately after the words ''may order into military custody'' which occur in the first line thereof, of the words ''an officer of inferior rank or''; and

(*b*) by the insertion immediately after the words ''may order into military custody any soldier,'' which occur in the third line thereof of the words ''and an officer may order into military custody any officer (though he be of higher rank) engaged in a quarrel, fray or disorder,''.

6. (1) The following new heading and section is hereby inserted between the heading "Part II" and the heading "ENLISTMENT" which occur immediately before section 57 of the principal Enactment: Insertion of new section 57 and re-numbering of section 57 as 57A.

"COMMISSIONING OF OFFICERS.

57. (i) *Malay Officers may be commissioned by the High Commissioner on behalf of His Majesty and the Rulers and such commission shall not be vacated by the death or retirement of the High Commissioner by whom they were issued.* Malay Officers.

(ii) *Such commission shall be in the form set out in the Second Schedule to this Enactment and may, if it is deemed expedient, be issued for such periods as may be stated in the commission.*

(iii) *The High Commissioner on behalf of His Majesty and the Rulers may, without the publication of any reason therefor, cancel any such commission.*

(iv) *Malay officers commissioned under sub-section (i) of this section and Malay officers in pay as officers of the Regiment shall be deemed to have been officers of the Regiment as from the dates specified in their commissions or from the dates on which pay as officers of the Regiment first began to accrue due to them, whichever is the earlier.*

(v) *Honorary Commissions in the Regiment may be granted by the High Commissioner on behalf of His Majesty and the Rulers to such persons as he may consider fit.*

(vi) *Malay officers may from time to time be promoted or advanced in rank by the High Commissioner at his discretion.*"

(2) Section 57 of the principal Enactment is hereby re-numbered as section 57A.

7. The following new section is hereby inserted immediately after section 57A of the principal Enactment as renumbered by sub-section (2) of section 6 of this Ordinance:

"57B. *Officers and soldiers of the Regiment shall be liable to serve in any part of the Federation or the Colony or beyond the seas and the provisions of this Enactment shall extend to them wherever they may be serving.*" Service required of officers and soldiers.

Insertion of new section 87A.

8. The following new section is hereby inserted immediately after section 87 of the principal Enactment:

"Penal stoppages from ordinary pay of officers. [137]

87A. The following penal deductions may be made from the ordinary pay due to an officer of the *Regiment:*

(i) All ordinary pay due to an officer who absents himself without leave or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been approved by the *High Commissioner;*

(ii) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as may be awarded by the court-martial by whom he is convicted of such offence or by the authority dealing summarily with the charge under section *43* of this *Enactment;*

(iii) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay;

(iv) The sum required to make good any loss, damage, or destruction of public, regimental, or garrison property, or property belonging to the Navy, Army, and Air Forces Institutes, which, after due investigation, appears to the *High Commissioner* to have been occasioned by any wrongful act or negligence on the part of the officer;

(v) In respect of the maintenance of the officer's wife or child, or of any illegitimate child, or towards the cost of any relief given by way of loan to his wife or child, any sum ordered by *the High Commissioner*, or any officer deputed by *him* for the purpose, to be paid as mentioned in this *Enactment*."

Insertions of new sections 117A and 118 and re-numbering of section 118 as 118A.

9. (1) The following new sections are hereby inserted immediately after section 117 of the principal Enactment:

Attachment of officers and soldiers to other units.

"117A. *Any officer or soldier of the Regiment may, with the consent of the commanding officer of his unit, be attached to any unit or detachment of the armed forces of the Government or of His Majesty and while he is so attached the officer commanding such unit or detachment shall be deemed to be his commanding officer, and all officers, warrant officers, and non-commissioned officers serving in or with such unit or detachment shall be deemed to be officers, warrant officers and non-commissioned officers (as the case may be) for the purposes and within the meaning of this Enactment:*

Provided that any officer, non-commissioned officer, warrant officer or soldier, while attached to any unit or detachment of the armed forces of His Majesty beyond the seas, shall, for purposes of discipline, be subject to the Army Act, as if he were a member of His Majesty's regular forces."

Special provisions as to officers.

"118. *A district court-martial shall not try a person subject to military law as an officer*".

(2) Section 118 of the principal Enactment is hereby re-numbered as section 118A.

Addition of Second Schedule.

10. (1) The Schedule set out in the Second Schedule to this Ordinance is hereby added as a Second Schedule to the principal Enactment.

(2) The Schedule to the principal Enactment is hereby amended by the substitution of the words "First Schedule—Section 99 (iv)" for the word "Schedule" which occurs at the beginning thereof.

Application of principal Enactment throughout the Federation.

11. The principal Enactment, as amended by this Ordinance, and any subsidiary legislation made thereunder shall apply and have effect throughout the Federation.

Minor amendments.

12. The amendments set out in the second column of the First Schedule to this Ordinance, being minor amendments consequential to the provisions of this Ordinance, shall be made to the sections of the principal Enactment specified in the first column of the said Schedule.

Saving.

13. Anything done or omitted to be done before the commencement of this Ordinance which would have been validly and properly done or omitted to be done had the provisions of sections 34, 39, 39A, 40, 41, 42, 43, 52, 57, 57A, 57B, 115, 116, 117, 117A, 118, 120 and 124 (2) of the principal Enactment been in force as amended by this Ordinance, shall be deemed to have been validly and properly done or omitted to be done.

FIRST SCHEDULE.

(Section 12.)

Section.	Amendment.
4 (i) and 4 (ii)	After the words "if he commits any such offence not on active service be liable" wherever they occur there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
4 (iii) ...	After the words "shall, on conviction, by court-martial, be liable" there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
6 (ii) and 7 (ii)	After the words "if he commits such offence not on active service, be liable" there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
8, 9, 13, 16, 18, 19 and 23	After the words "shall, on conviction by court-martial be liable" wherever they occur, there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
25	After the words "be liable" there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
27 and 28 ...	After the words "shall, on conviction by court-martial be liable" wherever they occur, there shall be inserted a comma and the words, "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".

Section.	Amendment.
32	The words "*under His Majesty's protection*" shall be deleted. After the words "shall, on conviction, by court-martial, be liable" there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment, as is in this *Enactment* mentioned, and if a soldier,".
33	After the words "shall, on conviction, by court-martial, be liable" there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
34	After the word "Every" there shall be inserted the words "officer or". After the words "shall, on conviction, by court-martial, be liable" there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
35, 36 and 37...	After the words "shall, on conviction by court-martial be liable" wherever they occur, there shall be inserted a comma and the words "if an officer, to be cashiered, or to suffer such less punishment as is in this *Enactment* mentioned, and if a soldier,".
42 (i)	After the words "in the case of" in the seventh line there shall be inserted the words "an officer below the rank of field officer or of".
43 (i)	After the words "Any charge against" there shall be inserted the words "an officer below the rank of field officer or against".
44 (iv) and (v)	For the words "*in any Malay State under His Majesty's protection*" wherever they occur there shall be substituted the words "*in the Federation*".
47 (i) and (iv)	For the words "*Federated Malay States*" wherever they occur there shall be substituted the word "*Federation*".
51 (ii) (*d*) ...	For the words "*Federated Malay States*" which occur in the definition of "civil prison" there shall be substituted the word "*Federation*".
52	Sub-section (iv) shall be deleted.
62	The words "*Federated Malay States*" shall be deleted.

Section.	Amendment.
66	For the words "*Federated Malay States*" wherever they occur there shall be substituted the word "*Federation*".
69	For the words "*Federated Malay States*" wherever they occur there shall be substituted the word "*Federation*".
70	For the words "*Federated Malay States*" there shall be substituted the word "*Federation*". For the words "*Malay Peninsula*" there shall be substituted the word "*Federation*";
73	The words "*under His Majesty's protection*" wherever they occur shall be deleted.
77	For the words "*Malay Peninsula*" there shall be substituted the word "*Federation*".
79 (i) and 82 ...	For the words "*Federated Malay States*" wherever they occur there shall be substituted the word "*Federation*".
87	For the words "The pay of a" there shall be substituted the words "The pay of an officer or".
99 (iv) ...	For the word "Schedule" there shall be substituted the words "*First* Schedule".
104	For the words "*Federated Malay States*" wherever they occur there shall be substituted the word "*Federation*".
107 (*i*)	(i) For the words "a soldier" in the first line substitute the words "an officer or soldier"; (ii) For the words "the soldier" in the third line substitute the words "the officer or soldier"; (iii) For the word "or" in the fifth line substitute the word "of".
107 (*ii*) New ...	The following paragraph shall be inserted immediately after paragraph (*i*) of section 107: "(*ii*) Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has been apprehended and has on arrest been taken into the custody of a provost-marshal, assistant provost-marshal or other officer, a certificate purporting to have been signed by such provost-marshal, assistant provost-marshal or other officer *of any portion of His Majesty's Forces or of the Regiment*, and stating the fact, date and place of arrest, shall be evidence of the matters so stated;"

Section.	Amendment.
107 (*j*)	(i) For the words "*Federated Malay States*" wherever they occur there shall be substituted the word "*Federation*"; (ii) For the words "a soldier" in the first line there shall be substituted the words "an officer or soldier"; (iii) For the word "soldier" in the third line there shall be substituted the words "officer or soldier";
107 (*k*) ...	(i) The words "*or in any Malay State under His Majesty's protection*" shall be deleted. (ii) For the words "a soldier" in the first line there shall be substituted the words "an officer or soldier"; (iii) For the word "soldier" in the sixth line there shall be substituted the words "officer or soldier".
113	For the words "*Theatres Enactment*" there shall be substituted the words "*Theatres Enactment of the Federated Malay States or of the corresponding written law in force in the other Malay States and in the Settlements*".
115	(i) After the word "*all*" in the second line there shall be inserted the words and comma "*warrant officers,*". (ii) After the word "such" in the seventh line there shall be inserted the words "*warrant officer*".
116	After the word "*All*" in paragraph (i) therein there shall be inserted the words "*officers commissioned in pursuance of section 57 of this Enactment and*".
119	For the words "*Malay Peninsula*" which occur in paragraph (ii) thereof there shall be substituted the word "*Federation*".
120	After the words "persons who *are not*" in the first line there shall be inserted the words "*officers or*". After the words "*who is not* " in the second line of paragraph (i) therein there shall be inserted the words "*an officer or*". After the words "*who is not*" in the first line of paragraph (ii) therein there shall be inserted the words "*an officer or*".
123 (ii)	For the words "*in any Malay State under His Majesty's protection*" there shall be substituted the words "*in the Federation*".
123 (iv) ...	For the words "*Federated Malay States*" which occur in line 4 there shall be substituted the word "*Federation*".

Section.	Amendment.
124	(*a*) In paragraph (2) which defines "*officer*" after the words "*but includes*" in the second line there shall be inserted the words "*a Malay Officer and*";
	(*b*) After the words "*of this Enactment*" at the end of paragraph (2) which defines "*officer*" there shall be inserted the words "*and includes also officers holding honorary commissions in the Regiment, and the expression "Malay Officer" means a Malay Officer commissioned by the High Commissioner or in pay as an officer in the Regiment*";
	(*c*) Paragraph (8) which defines the expression "*the High Commissioner*" shall be deleted;
	(*d*) Paragraph (9) which defines the expression "*Malay States under His Majesty's protection*" shall be deleted;
	(*e*) In paragraph (12) which defines the expression "colony"—
	(*a*) for the words "*of British India, and of any dominion,*" there shall be substituted the words "of any dominion *and of the Settlements of Penang and Malacca,* "; and
	(*b*) for the words "*except any Malay State under His Majesty's protection*" there shall be substituted the words "*except any Malay State*";
	(*f*) Paragraph (13) which defines the expression "*the Colony*" shall be deleted;
	(*g*) For the words "*in any Malay State under His Majesty's protection*" which occur in paragraph (14), which defines the expression "foreign country" there shall be substituted the words "*in the Federation*";
	(*h*) For paragraph (15) which defines the expression "beyond the seas" there shall be substituted the following:
	"(15) The expression "beyond the Seas" means *out of Malaya;*";
	(*i*) For paragraph (19) which defines the expressions "*Volunteer Force*" and "*volunteer*" there shall be substituted the following:
F.M.S. Cap. 44. S.S. Cap. 99.	"(19) *The expression "Volunteer Force" means any force established or maintained under the Volunteer Enactment of the Federated Malay States or under the Enactment of any Malay State corresponding to the said Enactment or under the Volunteer Force Ordinance of the Straits Settlements and the expression "volunteer" means a person commissioned or enrolled as a member of any such force.*

SECOND SCHEDULE.

(Section 10.)

SECOND SCHEDULE.

(Section 57.)

FORM OF COMMISSION.

(Signature)

.....

High Commissioner, for and on behalf of His Majesty and Their Highnesses the Rulers of the Malay States.

(Federation Seal)

To the Trusty and well beloved.....

.....Greeting:

I, for and on behalf of His Majesty and Their Highnesses the Rulers of the Malay States, reposing especial Trust and Confidence in your Loyalty, Courage and good Conduct, do by these Presents Constitute and Appoint you to be an Officer in the Malay Regiment from the.....day of .....19.... You are therefore carefully and diligently to discharge your Duty as such in the Rank of.....or in such higher Rank as I may from time to time hereafter be pleased to promote or appoint you to, of which a notification will be made in the Federation *Gazette* and you are at all times to exercise and well discipline in Arms both the inferior Officers and Men serving under you and use your best endeavours to keep them in Good Order and Discipline. And I do hereby Command them to Obey you as their superior Officer, and you are to observe and follow such Orders and Directions as from time to time you shall receive from any of your superior Officers, according to the Rules and Discipline of War, in pursuance of the Trust hereby reposed in you.

Given at King's House, Kuala Lumpur, the day of.....19....

By Command,

(Signature)

Chief Secretary,
Federation of Malaya.

(Name).....
Malay Regiment.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Ellis

Clerk of Council.

FEDERATION OF MALAYA.

No. 60 of 1950.

THE AUCTION SALES (KELANTAN) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....Yang di-Pertuan Besar of Negri Sembilan.

.....Officer Administering the Government.

.....Sultan of Selangor.

.....October, 1950.

.....October, 1950.

An Ordinance to amend the Auction Sales Enactment, 1930, of the State of Kelantan.

[*31st October, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Auction Sales (Kelantan) (Amendment) Ordinance, 1950, and shall be read as one with the Auction Sales Enactment, 1930, of the State of Kelantan hereinafter referred to as the Enactment.

Enactment No. 28 of 1930.

Amendment of Schedule.

2. The Schedule to the Enactment is hereby amended by the deletion of the item "Notice of demand . . . . . .25" and all subsequent items therein and the substitution therefor of the following items—

	$	*c.*
"Notice of demand		50
Notice of sale (original)	1	00
Notice of sale (each copy)		20
Placarding, each notice (towns) ...		20
(country, exclusive of boat or hire of vehicle)		50
Watchman, per diem	1	00
Attendance in the event of postponement of sale (towns)	2	00
Attendance in the event of postponement of sale (country)	3	00
Bell and Crier (towns)	2	00
(country, exclusive of travelling expenses)	3	00."

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Hollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 61 of 1950.

THE PUBLIC TRUSTEE ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

..... *Yang di-Pertuan Besar of Negri Sembilan.*

.....
Officer Administering the Government.

.....*Sultan of Selangor.*

.....October, 1950.

.....October, 1950.

.....October, 1950.

An Ordinance to provide for the appointment of a Public Trustee.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council, as follows:

Short title and commencement.

1. This Ordinance may be cited as the Public Trustee Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

"Board" means the Public Trustee Investment Board referred to in section 13 of this Ordinance;

"Common Fund" means the Common Fund referred to in section 10 of this Ordinance;

"Court" means the High Court;

"expenses" includes costs and charges;

"letters of administration" means letters of administration of the estate and effects of a deceased person, whether general or with a will annexed, or limited either in time or otherwise;

"officer of the Public Trustee" includes a Deputy Public Trustee and an Assistant Public Trustee;

"private trustee" means a trustee other than the Public Trustee;

"trust" includes an executorship or administratorship; and "trustee" shall be construed accordingly; and "trust property" includes all property in the possession or under the control, wholly or partly, of the Public Trustee by virtue of any trust;

F. of M. No. 66 of 1949.

Other expressions have the same meaning as in the Trustee Ordinance, 1949.

ESTABLISHMENT OF PUBLIC TRUSTEE.

Office of Public Trustee.

3. (1) There is hereby established the office of Public Trustee.

(2) The Public Trustee shall be a corporation sole under the name "Public Trustee, Federation of Malaya", with perpetual succession and an official seal, and may sue and be sued under the above name like any other corporation sole.

POWERS AND DUTIES OF PUBLIC TRUSTEE.

General powers and duties of Public Trustee.

4. (1) Subject to and in accordance with the provisions of this Ordinance and rules made thereunder, the Public Trustee may—

(*a*) act in the administration of estates of small value;

(*b*) act as an ordinary trustee;

(*c*) be appointed trustee by the Court.

Powers.

(2) Subject to the provisions of this Ordinance and to the rules made thereunder, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Ordinance and shall have the same powers, duties, and liabilities, and be entitled to the same rights and immunities and be subject to the same control and orders of the Court, as a private trustee acting in the same capacity.

Refusal of trust.

(3) The Public Trustee may decline, either absolutely or except on the prescribed conditions, to accept any trust, but he shall not decline to accept any trust on the ground only of the small value of the trust property.

Public Trustee not to accept a business trust, or a trust for creditors or the administration of insolvent estate.

(4) The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except in the cases in which he may be authorised to do so by rules made under this Ordinance, nor any trust under a deed of arrangement for the benefit of creditors, nor the administration of any estate known or believed by him to be insolvent.

Public Trustee may represent minor in certain cases.

5. (1) The Public Trustee may, on his own application or on the application of any other person by summons, be appointed by the Court to act as next friend of any minor for the purpose of instituting any suit or proceeding in the name of such minor.

(2) If in any pending suit or proceeding it becomes necessary to add any minor as co-plaintiff, the Court may of its own motion or on the application of the

Public Trustee or any other person appoint the Public Trustee to act as next friend of such minor in such suit or proceeding.

(3) In any suit or proceeding in which a minor is defendant or in which it becomes necessary to add a minor as co-defendant, the Court of its own motion or on the application of the Public Trustee or any other person may appoint the Public Trustee to act as guardian for the suit for such minor for the purposes of such suit or proceeding.

(4) The Court shall not make any order under this section unless the Public Trustee has had an opportunity of being heard and provision is made to the satisfaction of the Court for the payment of the Public Trustee's costs as between solicitor and client and for the payment of any costs which may be awarded against the Public Trustee or directed to be paid by him.

(5) In any suit or proceeding in which the Public Trustee is appointed under this section to act for a minor, no costs shall be recoverable from the Public Trustee personally or from the Government.

(6) In this section "suit" means only an action or suit for the administration of the estate of any deceased person or of a trust, and "proceeding" means only a proceeding under Chapter XL of the Civil Procedure Code of the Federated Malay States or the corresponding provision of law in force in any State or Settlement.

F.M.S. Cap. 7.

ADMINISTRATION OF ESTATES OF SMALL VALUE.

Administration of small estates.

6. (1) Any person who in the opinion of the Public Trustee would be entitled to apply to the Court for order for the administration by the Court of an estate, the gross capital value whereof is proved to the satisfaction of the Public Trustee to be less than five thousand dollars, may apply to the Public Trustee to administer the estate, and where any such application is made and it appears to the Public Trustee that the persons beneficially entitled are persons of small means, the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so.

Vesting of trust property.

(2) On the Public Trustee undertaking, by declaration in writing signed and sealed by him, to administer the estate, the property in the estate other than stock shall, by virtue of this Ordinance and notwithstanding anything in any other written law

contained, vest in him, and the right to transfer or call for the transfer of any stock forming part of the estate shall also vest in him, in like manner as if vesting orders had been made for the purpose by the Court under the Trustee Ordinance, 1949, and that Ordinance shall apply accordingly : F. of M. No. 66 of 1949.

Provided that—

(*a*) the operation of this sub-section in respect of land shall be subject to due compliance with the requirements of the laws relating to registration and that for the purposes of such laws the said declaration shall have the same effect as an order of the Court; and

(*b*) the Public Trustee shall not exercise the right of himself transferring the stock without the leave of the Court.

(3) As from such vesting any trustee entitled under the trust to administer the estate shall be discharged from all liability attaching to the administration, except in respect of past acts.

Administrative powers.

(4) For the purposes of the administration the Public Trustee may exercise such of the administrative powers and authorities of the Court as may be conferred on him by rules under this Ordinance.

Rules.

(5) Rules shall be made under this Ordinance for enabling the Public Trustee to take the opinion of the Court on any question arising in the course of any administration without judicial proceedings, and otherwise for making the procedure under this section simple and inexpensive.

Estate ordered by Court to be administered by Public Trustee.

(6) Where proceedings have been instituted in any Court for the administration of an estate and by reason of the small value of the estate it appears to the Court that the estate can be more economically administered by the Public Trustee than by the Court or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of the Court, the Court may order that the estate shall be administered by the Public Trustee, and thereupon, subject to any directions by the Court, this section shall apply as if the administration of the estate had been undertaken by the Public Trustee in pursuance of this section.

(7) When any trust money which is not included in the investment account of the Common Fund is normally insufficient if kept in a bank current account to earn bank interest, the money may be kept in a general banking account and any interest allowed by the bank on the daily balance of such general banking account shall be paid into the general revenues of the Federation.

WHEN THE PUBLIC TRUSTEE ACTS AS AN ORDINARY TRUSTEE.

Appointment of Public Trustee to be trustee, executor, etc.

7. (1) The Public Trustee may by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which he is authorised by rules made under this Ordinance to accept, and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the commencement of this Ordinance, and either as an original or as a new trustee, or as an additional trustee, in the same cases and in the same manner and by the same persons or Court as if he were a private trustee, except that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.

Retirement of co-trustee.

F. of M. No. 66 of 1949.

(2) Where the Public Trustee has been appointed a trustee of any trust, a co-trustee may retire from the trust under and in accordance with section 40 of the Trustee Ordinance, 1949, notwithstanding that there are not more than two trustees, and without such consents as are required by that section.

Contrary provision in trust instrument.

(3) The Public Trustee shall not be so appointed either as a new or additional trustee where the will, settlement, or other instrument creating the trust or duty contains a direction to the contrary, unless the Court otherwise orders.

Notice to beneficiaries.

(4) Notice of any proposed appointment of the Public Trustee either as a new or additional trustee shall, where practicable, be given in the prescribed manner to all persons beneficially interested who are resident in the Federation and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are minors, to their guardians.

(5) If any person to whom such notice has been given within twenty-one days from the receipt of the notice applies to the Court, the Court may, if having regard to the interests of all the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made:

Provided that a failure to give any such notice shall not invalidate any appointment made under this section.

Granting probate to Public Trustee.

8. (1) If, in pursuance of any rule under this Ordinance, the Public Trustee is authorised to accept by that name probates of wills or letters of administration, the Court may grant such probate or letters to the Public Trustee by that name.

(2) For such purpose the Court shall consider the Public Trustee as in law entitled equally with any other person or class of persons to obtain the grant of letters of administration, save that the consent or citation of the Public Trustee shall not be required for the grant of letters of administration to any other person and that, as between the Public Trustee and the widower, widow, or next-of-kin of the deceased, the widower, widow, or next-of-kin shall be preferred, unless for good cause shewn to the contrary.

Transfer by executor after probate to Public Trustee.

(3) Any executor who has obtained probate or any administrator who has obtained letters of administration, and notwithstanding that he has acted in the administration of the deceased's estate, may, with the sanction of the Court and after such notice to the persons beneficially interested as the Court may direct, transfer such estate to the Public Trustee for administration either solely or jointly with the continuing executors or administrator, if any.

(4) The order of the Court sanctioning such transfer shall, subject to the provisions of this Ordinance, give to the Public Trustee all the powers of such executor and administrator.

(5) Such executor and administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date of such order, other than the act or default of himself or of persons other than himself for whose conduct he is in law responsible.

Appointment by Court of Public Trustee in place of executor or administrator.

9. The Court may, on the application of any person beneficially interested, appoint the Public Trustee, if sufficient cause is shewn, in place of all or any existing executors or administrators.

THE COMMON FUND.

Formation of Common Fund.

10. (1) Subject as hereinafter provided all capital moneys available for investment which shall be in the hands of the Public Trustee at the commencement of this Ordinance or which shall thereafter come into his hands shall form one Common Fund and shall be invested in any investments permitted by law for the investment of trust funds.

(2) Any investments of capital moneys belonging to any estate in the hands of the Public Trustee at the commencement of this Ordinance and any investments thereafter coming into his hands may, subject as hereinafter provided, be taken over and included in the investment account of the Common Fund.

(3) All investments taken over under sub-section (2) of this section shall be taken over at the market rate ruling at the date of such taking over, less any interest accrued at such date, and no such investment shall be taken over unless it is an investment permitted by law for the investment of trust funds and, in the opinion of the Board, is and is likely to continue to be readily realisable. For the purposes of this sub-section interest shall be deemed to accrue from day to day and shall be apportionable in respect of time accordingly.

(4) Any investment made on account of the Common Fund or included in its investment account shall not be made or held on account of or belong to any particular estate.

What are not to be included in the Common Fund.

11. (1) The following shall not be included in or form part of the Common Fund—

(*a*) moneys expressly or by necessary implication forbidden to be included in the Common Fund or directed to be invested in investments other than those permitted by law for the investment of trust funds;

(*b*) investments held by the Public Trustee which have not been taken over under sub-section (2) of section 10 of this Ordinance.

(2) The provisions of section 16 of this Ordinance shall not apply to the moneys and investments referred to in sub-section (1) of this section.

(3) Nothing in this section contained shall be deemed to limit or restrict the liability of the revenues of the Federation under section 17 of this Ordinance.

Interest payable on the moneys included in the Common Fund.

12. (1) The interest payable to the respective estates, the moneys of which form part of the Common Fund, shall be at such rate or rates as the High Commissioner may by notification in the *Gazette* prescribe.

(2) Such rate or rates shall be published in the month of December in each year and shall remain in force from the 1st day of January to the 31st day of December of the next ensuing year.

(3) Different rates may be prescribed for payment on capital moneys not payable at call and on capital moneys held in the ordinary course of administration for distribution or at call.

(4) Interest payable from the Common Fund shall be credited half yearly to the respective estates:

Provided that the Public Trustee may at his discretion credit such interest at such more frequent intervals as he may deem fit in the case of any particular estate.

Constitution of the Public Trustee Investment Board.

13. (1) There shall be established a Board styled the Public Trustee Investment Board.

(2) The Board shall consist of the Accountant-General as Chairman, the Solicitor-General, the Public Trustee and two other public officers to be nominated from time to time by the High Commissioner.

(3) Three of the members of the Board shall form a quorum.

(4) The Board may from time to time make by-laws for the control of its business and proceedings.

Powers and duties of the Board.

14. (1) No investments shall be purchased or sold by the Public Trustee without the sanction of the Board.

(2) No investments shall be taken over and included in the investment account of the Common Fund as provided by sub-section (2) of section 10 of this Ordinance without the sanction of the Board.

(3) In the month of November in each year the Board shall present to the High Commissioner a report shewing the estimated value of the capital assets of the Common Fund and the estimated revenue

therefrom for the ensuing year, and shall at the same time recommend to the High Commissioner the rate or rates which in its opinion should be prescribed by him for the ensuing year under sub-section (1) of section 12 of this Ordinance.

(4) In the month of February in each year the Board shall give such directions to the Public Trustee as may be necessary with regard to the disposal of any balance standing to the credit of the income account of the Common Fund at the end of the preceding year after interest payable to the beneficiaries and other lawful charges have been duly debited to the said income account. Such part of such balance as the Board may direct shall be carried to the credit of a reserve fund and any excess shall be carried to the credit of the income account for the current year.

(5) The reserve fund shall be under the control of and shall be dealt with by the Board in such manner as may be prescribed.

Persons dealing with Public Trustee not obliged to enquire whether the dealing has been sanctioned by the Board.

15. No person dealing with the Public Trustee in the matter of the sale or purchase of any investment shall be under any obligation to enquire whether such sale or purchase has received the sanction of the Board.

Government guarantee in regard to moneys included in the Common Fund.

16. (1) The general revenues of the Federation shall be liable to make good any lawful claims on the Common Fund which cannot be met therefrom, whether such claims relate to capital moneys or to income.

(2) The capital moneys claimable by any estate shall include the moneys from such estate included in the Common Fund and, where investments have been taken over under sub-section (2) of section 10 of this Ordinance they shall also include the value of such investments as ascertained in accordance with the provisions of sub-section (3) of the said section 10.

LIABILITY; OFFICERS AND OFFICES; FEES.

Liability of public revenue.

17. The general revenues of the Federation shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge, except where the liability is one to which neither the Public

Trustee nor any of his officers has in any way contributed and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case the Public Trustee shall not, nor shall the general revenues of the Federation, be subject to any liability.

High Commissioner to appoint Public Trustee.

18. (1) The High Commissioner shall appoint a fit person to the office of Public Trustee, who shall hold office during pleasure and receive such salary or fees, and be appointed on such terms, as the High Commissioner determines.

(2) The High Commissioner may appoint a Deputy Public Trustee and such persons to be Assistant Public Trustees and other officers of the Public Trustee as he considers fit and necessary for the purposes of this Ordinance and such Deputy Public Trustee and Assistant Public Trustees and other officers shall hold office upon such terms and be remunerated at such rates and in such manner as the High Commissioner may determine.

(3) The Public Trustee and every officer of the Public Trustee is hereby declared to be a public servant within the meaning of the Penal Code.

(4) The salary or remuneration of the Public Trustee and the officers of the Public Trustee and such other expenses of executing the office of the Public Trustee or otherwise carrying this Ordinance into effect as may be sanctioned by the High Commissioner shall be paid out of the Treasury.

(5) The Deputy Public Trustee and any Assistant Public Trustee shall have and exercise such of the powers and shall perform such of the duties of the Public Trustee under this Ordinance as may be prescribed by rules made under this Ordinance.

Fees charged by Public Trustee.

19. (1) There shall be charged in respect of the duties of the Public Trustee such fees, whether by way of percentage or otherwise, as the High Commissioner in Council prescribes.

(2) Any expenses which might be retained or paid out of the trust property if the Public Trustee were a private trustee shall be so retained or paid, and the fees shall be retained or paid in the like manner as and in addition to such expenses.

(3) Such fees shall be paid into the Treasury.

(4) The fees under this section shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses incidental to the working of this Ordinance, including such sum as the High Commissioner determines to be required to insure the revenues of the Federation against loss under this Ordinance.

(5) The incidence of the fees and expenses under this section as between capital and income shall be determined by the Public Trustee.

SUPPLEMENTAL PROVISIONS AS TO PUBLIC TRUSTEE.

Appeal to Court from Public Trustee.

20. A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust may apply to the Court, and the Court may make such order in the matter as the Court thinks just.

Mode of action of Public Trustee.

21. (1) The Public Trustee shall not, nor shall any of his officers, act under this Ordinance for reward, except as provided by this Ordinance.

Employment of solicitors, bankers, accountants and brokers.

(2) The Public Trustee may, subject to the rules made under this Ordinance, employ for the purposes of any trust such solicitors, bankers, accountants and brokers or other persons as he considers necessary.

(3) In determining the persons to be so employed in relation to any trust the Public Trustee shall have regard to the interests of the trust, but subject to this shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any) and of the beneficiaries, either expressed or as implied by the practice of the creator of the trust or in the previous management of the trust.

(4) On behalf of the Public Trustee such person as may be prescribed may take any oath, make any affirmation or declaration, verify any account, give personal attendance at any Court or place and do any act or thing whatsoever which the Public Trustee is required or authorised to take, make, verify, give or do.

(5) Where any bond or security would be required from a private person upon the grant to him of administration or upon his appointment to act in any capacity, the Public Trustee, if administration is granted to him or if he is appointed to act in such capacity as aforesaid, shall not be required to give

such bond or security but shall be subject to the same liabilities and duties as if he had given such bond or security.

(6) The entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and, in dealings with property, the fact that the person or one of the persons dealt with is the Public Trustee shall not in itself constitute notice of a trust.

INVESTIGATION AND AUDIT OF TRUST ACCOUNTS.

Investigation and audit of trust accounts.

22. (1) Subject to rules under this Ordinance, and unless the Court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given in the prescribed manner by any trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by the Public Trustee or some person appointed by him.

(2) Except with the leave of the Court such an investigation or audit shall not be required within twelve months after any previous investigation or audit, and a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

Access of auditor to books.

(3) The person making the investigation or audit (hereinafter called the auditor) shall have a right of access to the books, accounts, and vouchers of the trustees and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanation as may be necessary for the performance of his duties.

(4) Upon the completion of the investigation and audit such person shall forward to the applicant and to every trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

Inspection by beneficiaries.

(5) Every beneficiary under the trust shall, subject to rules under this Ordinance, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate and, at his own expense, to be furnished with copies thereof or extracts therefrom.

Removal of auditor.

(6) The auditor may be removed by order of the Court, and, if any auditor is removed or resigns or dies or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.

Remuneration and expenses of auditor.

(7) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as may be prescribed by rules under this Ordinance and shall, unless the Public Trustee otherwise directs, be borne by the estate.

(8) In the event of the Public Trustee so directing, he may order that such expenses be borne by the applicant or by the trustees personally or partly by them and partly by the applicant.

(9) If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the auditor may apply to the Court, and thereupon the Court shall make such order as it thinks fit.

(10) Any person who in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular shall be liable to imprisonment of either description for a term not exceeding two years or to a fine or to both.

RULES.

Rules by High Commissioner in Council.

23. (1) The High Commissioner in Council shall make rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following purposes—

(*a*) establishing the office of Public Trustee and prescribing the trusts or duties which he is authorised to accept or undertake and the security, if any, to be given by the Public Trustee and his officers;

(*b*) the transfer to and from the Public Trustee of any property;

(*c*) the accounts to be kept and an audit thereof;

(*d*) the establishment and regulation of any branch office;

(*e*) excluding any trusts from the operation of this Ordinance or any part thereof;

(*f*) the form and manner in which notices under this Ordinance shall be given;

(*g*) the payment of interest;

(*h*) the date from which interest, if allowed, is to be paid;

(*i*) the management, investment and disposal of the reserve fund;

(*j*) generally to carry out the provisions of sections 10 to 16 and 24 of this Ordinance.

(2) Every rule under this Ordinance shall be laid before the Legislative Council and shall not come into operation until approved by a resolution of Legislative Council.

TRANSITIONAL AND REPEAL.

Transfer and vesting of property vested in the Public Trustees under the repealed Enactment or Ordinance.

24. (1) All property movable and immovable, which was, immediately before the commencement of this Ordinance, vested in the Public Trustee incorporated by the Public Trustee Enactment of the Federated Malay States or in the Public Trustee incorporated by the Public Trustee Ordinance of the Straits Settlements in his capacity as Public Trustee in and for the Settlements of Penang and Malacca, is hereby vested in like manner as if vesting orders had been made for the purpose by the Court under the Trustee Ordinance, 1949, in the Public Trustee for the same estate and upon the same tenure and subject to the same trusts and conditions as and upon which the same was previously held by the aforesaid Public Trustees or either of them, and all rights vested in the aforesaid Public Trustees or either of them immediately before the commencement of this Ordinance and all liabilities to which the said Public Trustees or either of them were subject immediately before the commencement of this Ordinance are hereby vested in or transferred to the Public Trustee.

F. of M. No. 66 of 1949.

(2) Any reference in any written law, order of Court, deed, contract, instrument or other document whatsoever to the Public Trustee incorporated under the Public Trustee Enactment of the Federated Malay

States or to the Public Trustee incorporated under the Public Trustee Ordinance of the Straits Settlements, in his capacity as Public Trustee in and for the Settlements of Penang and Malacca, shall be construed as a reference to the Public Trustee and all rights, powers, obligations and duties conferred, imposed on, undertaken or incurred by the said Public Trustees or either of them under or by virtue of any such written law, order of Court, deed, contract, instrument or other document shall be deemed to be conferred or imposed on, or undertaken or incurred by the Public Trustee.

(3) (*a*) Where, under or by virtue of any Japanese decree, any property movable or immovable was, prior to the 12th day of September, 1945, vested in or being administered by any person appointed by any Japanese authority to be Public Trustee or Assistant Public Trustee for the States of Perak, Selangor, Negri Sembilan or Pahang or the Settlements of Penang or Malacca, such property shall, if the Public Trustee, at any time after the end of such period shall have accepted or accepts the trust or administration of such property, be deemed to have vested or to vest at the date of such acceptance, in the Public Trustee in like manner as if vesting orders had been made for the purpose by the Court under the Trustee Ordinance, 1949 or under any Ordinance or Enactment repealed thereby for the same interest and for the same purposes as the same was immediately before the end of such period vested in the Public Trustee or Assistant Public Trustee so appointed by such Japanese authority.

(*b*) For the purposes of this sub-section the Public Trustee shall be deemed to have accepted the trust or administration of property if he—

(i) has at any time acted or purported to act as trustee thereof or has administered the same, or

(ii) has accepted such trust or administration by a declaration in writing signed and sealed by him.

(*c*) The Public Trustee shall not be liable, directly or indirectly, or accept liability, for any act, omission or breach of trust occurring during the period of the Japanese occupation in respect of any property vested in him under this sub-section.

(*d*) In this sub-section "Japanese decree" has the same meaning as that assigned to it in the Japanese Judgments and Civil Proceedings Ordinance, 1946, and "Public Trustee" includes Public Trustee incorporated under the Enactment or Ordinance repealed by this Ordinance. M.U. Ord. 29 of 1946.

25. The Public Trustee Enactment of the Federated Malay States and the Public Trustee Ordinance of the Straits Settlements are hereby repealed. Repeal. F.M.S. Cap. 62. S.S. Cap. 60.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

A. R. Ellis.
Clerk of Council.

FEDERATION OF MALAYA.

No. 62 of 1950.

THE HOUSING TRUST ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

Tuanku Abdul Rahman ..... *Yang di-Pertuan Besar of Negri Sembilan.*

V. Foley Sutton ..... *Officer ~~Administering the~~ Government.*

..... *Sultan of Selangor.*

25th October, 1950.

24th October, 1950.

An Ordinance to constitute a Housing Trust for the Federation of Malaya and to make provision for the development of land for housing and for the charging of development rates in respect of such land.

[, *1950*.]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART I.

PRELIMINARY.

Short title and commencement.

1. This Ordinance may be cited as the Housing Trust Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"Chairman" means the Chairman of the Trust;

"Holding" means any piece or parcel of land in an area comprised in a Housing Scheme or a Housing and Redistribution Scheme held or possessed by the owner under a single title (including in Kelantan land held by entry in a Settlement Index) and "original holding" and "final holding" mean, respectively, with reference to a Housing and Redistribution Scheme made under section 38 of this Ordinance, a holding prior to its amalgamation with other holdings for the purpose of redistribution and a holding allotted in pursuance of such redistribution:

Provided that in Malacca, "Holding" means a piece or parcel of land to the full extent whereof the same is in the actual possession of the owner by himself or other person holding by, through or under him, whether the same is held under one or more than one Crown title and whether the same is or is not wholly comprised in the Crown title or titles relating thereto;

"Local Authority" means a Municipality or the Municipal Commissioners of a Municipality or a Town Board or Rural Board established under any written law in force in any State or Settlement;

"Owner" in relation to any land the title to which is registered under any law relating to the registration of title to land means the registered proprietor of such land, and includes in relation to any land in Kelantan held by entry in a Settlement Index the person recorded in such Index as the proprietor of such land, and in relation to any other land means the person who is for the time being entitled to receive the rack rent payable in respect of such land whether on his own behalf or as a trustee, or who would be so entitled if such land were let at a rack rent and in either case includes a mortgagee or chargee in possession;

"proper registering authority" in relation to any land situate in any State or Settlement means the officer required under the Land Code or Land Enactment in force in such State or under the Registration of Deeds Ordinance or the Mutations in Titles to Land Ordinance or the Malacca Lands Customary Rights Ordinance as the case may be in force in such Settlement to register titles to such land or interests therein or deeds or instruments affecting such land or interests; F.M.S. Cap. 138. S.S. Cap. 121. S.S. Cap. 126. S.S. Cap. 125.

"The Trust" means the Housing Trust of the Federation of Malaya established under section 3 of this Ordinance and in Part IV of this Ordinance includes a Local Authority to whom the powers of the Trust thereunder have been delegated under section 29 (1) (*d*) of this Ordinance;

"Trustee" means a person appointed to be a Trustee under the provisions of sections 5 and 8 of this Ordinance and includes a person appointed in the place of a Trustee under section 9 of this Ordinance.

PART II.

ESTABLISHMENT AND DUTIES AND POWERS OF THE HOUSING TRUST.

Establishment and incorporation of Housing Trust.

3. There is hereby established a body of trustees which shall be a body corporate by the name of "the Housing Trust of the Federation of Malaya" and shall have perpetual succession and a common seal and full power and authority under such corporate name to sue and be sued and, subject to and for the purposes of this Ordinance, to enter into contracts and to acquire, purchase, take, hold and enjoy

movable and immovable property of every description and to convey, assign, surrender, yield up, charge, mortgage, demise, re-assign, transfer or otherwise dispose of or deal with any movable or immovable property or any interest therein vested in the Trust, upon such terms as to the Trust may seem fit.

Duty of the Trust.

4. (1) It shall be the duty of the Trust to promote the building of houses in such parts of the Federation as may be desirable and, subject to the provisions of this Ordinance, to apply to such purpose the funds and property vested in it.

(2) The Trust shall so exercise and perform its functions under this Ordinance as to secure that the total revenues of the Trust are sufficient to meet its total outgoings properly chargeable to revenue account, including depreciation and interest on capital, taking one year with another.

Constitution of the Trust.

5. (1) The Trust shall consist of eleven Trustees, namely two *ex officio* Trustees, two Trustees appointed by the High Commissioner, four Trustees appointed by the Legislative Council, two Trustees appointed by the Rulers jointly, and one Trustee appointed by the High Commissioner on the joint nomination of the Settlement Councils of Penang and Malacca.

(2) The *ex officio* Trustees shall be the officers for the time being discharging the duties of—

(*a*) The Financial Secretary; and

(*b*) The Director of Public Works:

Provided that the High Commissioner may, from time to time, by notification in the *Gazette*, appoint by name or office any other public officer to be an *ex officio* Trustee in the place of the Financial Secretary and such officer shall, notwithstanding the provisions of sub-section (3) of this section, be, by virtue of such appointment and so long as the same remains unrevoked, chairman of the Trust.

(3) The officer for the time being discharging the duties of the Financial Secretary shall be the Chairman of the Trust.

Disqualification of Trustees.

6. No person shall be qualified to be or to continue as a Trustee who holds any office of emolument under any local authority or any office, other than that of Trustee, under the Trust.

Removal of Trustees.

7. (1) The High Commissioner may by notification in the *Gazette* remove any Trustee from office, or suspend any Trustee, if he—

(*a*) has been absent from three consecutive meetings of the Trust without special leave from the Trust; or

(*b*) has acted in contravention of the provisions of section 12 of this Ordinance; or

(*c*) is or has become disqualified under the provisions of section 6 of this Ordinance; or

(*d*) has committed any misconduct, default or breach of trust in the discharge of his duties as Trustee under this Ordinance or otherwise which, in the opinion of the High Commissioner, renders him unfit to continue to be a Trustee; or

(*e*) has been convicted of an offence of such nature as in the opinion of the High Commissioner renders it desirable that he should be removed from office; or

(*f*) is suffering from such mental or physical infirmity as in the opinion of the High Commissioner renders him unfit to discharge his duties as Trustee.

(2) Any Trustee other than an *ex officio* Trustee may resign his office with the consent of the High Commissioner. Notice of every such resignation shall be published as soon as practicable in the *Gazette*.

Casual vacancy of office of Trustee.

8. If any Trustee, other than an *ex officio* Trustee, dies, resigns, or is removed from office under the provisions of section 7 of this Ordinance, the vacancy thereby caused shall be filled by a fresh appointment made in the same manner as that in which the Trustee, whose place it is intended to fill thereby, was appointed.

Temporary absence or incapacity.

9. If any Trustee, other than an *ex officio* Trustee, is temporarily absent from the Federation or temporarily incapacitated through illness or for any other sufficient reason for the performance of his duties as Trustee, another person may be appointed in his place in the same manner as such Trustee was appointed but shall hold office only during such absence or incapacity of such Trustee.

Term of Office of Trustees.

10. (1) Every Trustee, other than an *ex officio* Trustee or a person appointed under section 9 of this Ordinance, shall hold office, subject to the provisions of section 7 of this Ordinance, for a term of three years from the date of his appointment, unless he previously resigns his office.

(2) A Trustee may be re-appointed on the conclusion of his term of office.

Remuneration of Trustees.

11. (1) There may be paid to each Trustee, other than an *ex officio* Trustee, out of the funds of the Trust, such fees as the High Commissioner in Council may from time to time determine.

(2) Every Trustee may, in addition, be paid out of the funds of the Trust, such travelling, lodging or other out of pocket expenses as may be incurred by him in the business of the Trust, subject to such limits and conditions as the High Commissioner in Council may prescribe.

Trustee interested not to act.

12. Any Trustee who has or acquires, directly or indirectly by himself, his partner or agent,

(*a*) any share or interest in any contract made with, or work done for the Trust or in any company or with any person or in respect of any undertaking with which the Trust proposes to contract; or

(*b*) any beneficial interest in land proposed to be acquired, purchased, leased or otherwise dealt in or built on by the Trust or which he knows to be affected or likely to be affected by any Scheme made or proposed to be made under section 38 of this Ordinance,

shall, before taking part in any proceeding at a meeting of the Trust, relating to or affecting directly or indirectly any such contract or land inform the person presiding at such meeting of the nature and extent of such share or interest, and such information shall be recorded in the minutes of the Trust, and such Trustee, unless specifically authorised by the Chairman, shall not vote upon any resolution or question relating to such contract, acquisition, purchase, lease, dealing or Scheme, or take part in any deliberation or decision relating thereto, or to matters incidental thereto:

Provided that no person shall be deemed to have or acquire any share or interest in a contract with

the Trust by reason only that he has or acquires a share in any loan issued by the Trust or in any security for the same.

Meetings of the Trust.

13. (1) Six Trustees, in addition to the Chairman, or, in his absence, the other *ex officio* Trustee, shall constitute a quorum at any meeting, and all acts, matters or things authorised or required to be done by the Trust may be decided by a majority present and voting at any meeting at which a quorum is present.

(2) The Chairman, or in his absence the other *ex officio* Trustee, shall preside at every meeting of the Trust and they shall each have a right to vote upon any question and, in the event of a division of the votes being equal, the Chairman, or other person presiding, as the case may be, shall also have a casting vote.

(3) All acts done by the Trust shall, notwithstanding any vacancy in the Trust or that it is afterwards discovered that there was a defect in the appointment of a person purporting to be a Trustee thereof, be as valid as if no such vacancy or defect had existed.

(4) Subject to the provisions of this Ordinance, the Trust shall have power to regulate its own proceedings, including the manner, time and place of holding meetings, the notices to be given of such meetings, the order of proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, by Standing Orders made under the provisions of section 45 of this Ordinance.

Common seal of the Trust.

14. (1) The common seal of the Trust shall bear such device as the Trust may approve, and may from time to time be broken, changed, altered and made anew by the Trust, as the Trust may think fit.

(2) Until a seal is approved by the Trust under this section a stamp bearing the inscription "Housing Trust of the Federation of Malaya" may be used as the common seal.

(3) The common seal, or the stamp referred to in sub-section (2) of this section so long as it is used as the common seal, shall be in the custody of the Chairman and shall not be affixed to any instrument except in the presence of the Chairman and of either the Secretary of the Trust or a Trustee authorised by the Trust to act in that behalf, who shall sign their names

to such instrument in token of their presence and such signing shall be *prima facie* evidence that such seal or stamp was duly and properly affixed and that the same is or is used as the lawful seal of the Board.

(4) The provisions of section 13 of the Registration of Deeds Ordinance of the Straits Settlements shall not apply to any instrument purporting to have been executed under the provisions of sub-section (3) of this section. S.S. Cap. 121.

Appointment of officers and servants of the Trust.

15. (1) The Trust shall appoint a fit and proper person to be Secretary of the Trust.

(2) The Trust may appoint or employ such other officers and servants as may be reasonably necessary for the purposes of this Ordinance.

(3) The officers and servants of the Trust, other than the Trustees, shall be under the administrative control of the Chairman.

(4) All Trustees, officers and servants of the Trust shall be deemed to be public servants within the meaning of the Penal Code. F.M.S. Cap. 45.

Public Authorities Protection Ordinance, 1948, to apply to the Trust.

16. The Public Authorities Protection Ordinance, 1948 shall apply to any action, suit, prosecution or proceeding against the Trust or against any Trustee, officer, servant or agent of the Trust in respect of any act, neglect or default done or committed by the Trust or such person in such capacity. F.M. Ord. 19/48.

General Powers of the Trust.

17. Subject to the provisions of this Ordinance, the Trust may—

(*a*) purchase, exchange, lease and hold land, buildings and other immovable property;

(*b*) build houses, flats, tenements, shops and shop houses, and convert any house, shop or shop house into flats or tenements;

(*c*) purchase, exchange, lease and hold land for the purpose of development and resale to the public as building lots, and for the purpose of providing open spaces and recreation grounds;

(*d*) do any work on land necessary for the purpose of its development as building land;

(*e*) sell land, buildings or other immovable property;

(*f*) lease to other persons in accordance with the provisions of any law in force in the State or Settlement concerned relating to land or dealings in land, from month to month or otherwise, any land or buildings or other immovable property at such rent and subject to such terms and conditions as the Trust shall think fit;

(*g*) enter into contracts with other persons that such persons should build or do any work on behalf of the trust;

(*h*) enter into any contract or do any other act or matter necessary and proper for carrying into effect the purposes of this Ordinance.

Power of borrowing.

18. (1) The Trust may from time to time borrow, at such rate of interest and for such period and upon such terms as to the time and method of repayment and securing the repayment and otherwise as the High Commissioner in Council may approve, any sum necessary for the purpose of meeting any capital expenditure incurred or to be incurred under the provisions of this Ordinance or repaying any sum previously borrowed.

(2) For the purposes of this section "capital expenditure" means—

(*a*) compensation payable by the Trust to any person under the provisions of section 30 of this Ordinance;

(*b*) the cost of acquiring land, buildings or other immovable property for the purposes of this Ordinance;

(*c*) the cost of constructing or altering buildings or doing work necessary for the development of any land as building land for the purposes of this Ordinance;

(*d*) loans made by the Trust to any person under the provisions of section 25 of this Ordinance;

(*e*) any other expenditure properly chargeable to capital account.

Loans may be secured by mortgage.

19. The Trust may secure the repayment of any sum borrowed, by the mortgage or charge, legal or equitable, of any property vested in the Trust, or of any revenue receivable by the Trust under this or any other Ordinance.

Debentures and debenture stock.

20. (1) The Trust may issue debentures or debenture stock to secure the repayment of any sum borrowed, and such debentures or debenture stock and the interest thereon shall be a charge on the Trust's revenue and property in the same manner as if it were a principal sum and interest charged thereon by deed.

(2) Debentures and debenture stock shall be in such form as may be determined by the Chief Secretary, and shall be sealed with the common seal of the Trust.

Register of debenture stock.

21. (1) The Trust shall cause a register to be kept of debenture stock issued under the provisions of this Ordinance, and shall enter therein—

(*a*) the names, addresses, and description of the holders for the time being of such stock with a statement of the amount of stock held by each person registered; and

(*b*) the date on which the name of any person was entered in the register in respect of any such stock.

(2) Persons to a number not exceeding three may be registered as joint owners of any debenture stock. In any such case, any sum due in respect of such debenture stock whether by way of payment of the amount secured thereby or by way of interest payable thereon, may be paid

(*a*) to that one of the joint owners then living who is first named in the Register as owner of such debenture stock, or

(*b*) to the survivor or survivors then living of such joint owners in the order in which their names appear in such Register, or

(*c*) to the legal personal representative of the last survivor of such persons,

and the receipt of such joint owner or of such survivor or survivors or of such legal personal representative shall be an effectual discharge of the Trust in respect of such payment.

(3) The register shall be evidence of any matters authorised by this Ordinance to be entered therein.

(4) Any person may inspect the register at any reasonable time upon the payment of a fee of one dollar.

Transfer of debenture stock.

22. Debenture stock shall be transferable by deed to be executed by both the transferor and transferee, and the transferor shall be deemed to remain owner of such stock until the name of the transferee is entered in the register in respect thereof.

Trust not affected with notice of a trust.

23. The Trust shall not be affected with notice of any trust or charge or other interest, legal or equitable, whereby any person other than the registered holder for the time being of any debenture stock may claim to be interested in or entitled thereto.

Trustees and public officers may invest in the Trust's securities.

24. (1) A trustee, executor, or administrator may, unless forbidden by the Will or other instrument under which he acts, invest the trust funds in any security issued under this Part and may for that purpose call in any trust funds invested in any other securities.

(2) Where any public officer is by law authorised or required to invest moneys in the securities of the Federation of Malaya, he may invest such moneys in any security issued under this Part.

Power to make loans.

25. (1) The Trust may make loans or advances out of the funds of the Trust to any person for the purpose of enabling or assisting such person to purchase immovable property for the purpose of building houses or to construct or alter buildings or to do any work necessary for the development of any land as building land for the purposes of housing.

(2) Every loan or advance under sub-section (1) of this section shall be made upon the security of freehold titles to or grants in perpetuity of land or leases of land (other than mining leases) for a term whereof sixty years at least is unexpired at the time of such loan or advance and such security shall be by way of legal charge or mortgage.

(3) No loan or advance shall be made under this section upon the security of property subject to a prior charge or mortgage, unless such prior charge or mortgage is in favour of the Trust or is postponed in favour of the security to be granted to the Trust.

(4) The amount of any loan or advance made under this section shall not at any time exceed two-third parts of the then value of the property.

(5) Notwithstanding the provisions of the preceding sub-sections of this section, the High Commissioner in Council may authorise the Trust to make a loan

or advance of such amount to such persons or subject to such terms and conditions as the High Commissioner in Council may think fit.

(6) Subject to the provisions of this section, the Trust may make any loan or advance authorised by this section upon such terms and conditions as it may think fit and desirable for carrying out the purposes of this Ordinance.

Power of Trust to establish Superannuation Schemes.

26. Subject to the approval of the High Commissioner in Council, the Trust may establish a scheme or schemes for the payment of superannuation allowances, pensions or gratuities to officers (other than Trustees) and servants of the Trust who retire from the Trust or otherwise cease to hold office by reason of age or infirmity of body or mind or of abolition of office.

Provisions applicable to Superannuation Schemes.

27. The following provisions shall apply to any scheme established under section 26 of this Ordinance—

(*a*) no assurance on the life of any contributor under any such scheme, and no moneys or other benefits payable under any such assurance, and no pension, gratuity or other allowance granted under any such scheme to any person who has been employed by the Trust shall be assignable or transferable, or liable to be garnished, attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, other than a debt due to the Trust or to the Government or to a State or Settlement Government;

(*b*) no donation or contribution to a fund established under any such scheme or interest thereon shall be assignable or transferable or liable to be garnished, attached, sequestered or levied upon for or in respect of any debt or claim whatsoever, other than a debt due to the Trust or to the Government or to a State or Settlement Government;

(*c*) no such donation or contribution or interest shall be subject to the debts of the contributor, nor shall such donation, contribution or interest pass to any Official Assignee on the bankruptcy of such contributor, but,

if such contributor is adjudicated a bankrupt or is declared insolvent by a Court, such donation or contribution or interest shall, subject to the provisions of this Ordinance, be deemed to be impressed with a trust in favour of the persons entitled thereto on the death of the contributor;

(*d*) the bankruptcy of a contributor shall not affect the making of deductions from the salary of the contributor in accordance with any such scheme, but such deductions shall continue to be made notwithstanding the provisions of any written law, and the portion of salary so deducted shall not be deemed to form part of his after acquired property;

(*e*) subject to the provisions of any such scheme, all moneys paid or payable out of any fund established under any such scheme on the death of a contributor shall be deemed to be impressed with a trust in favour of the persons entitled thereto under the Will or intestacy of such deceased contributor, or under a nomination in such form as may be prescribed in such scheme, and shall not be deemed to form part of his estate or be subject to the payment of his debts.

Power to employ agents.

28. The Trust may employ and pay agents and technical advisers whether solicitors, bankers, stock-brokers, surveyors or valuers or other persons, to transact any business or do any act required to be transacted or done in the execution of the duties of the Trust or for the better carrying into effect the purposes of this Ordinance and may pay all charges and expenses so incurred.

Delegation of powers.

29. (1) Subject to the provisions of this Ordinance and of any Standing Orders made by the Trust, the Trust may delegate to a Local Authority—

(*a*) the exercise of its powers, trusts and discretions under paragraph (*f*) of section 17 of this Ordinance in respect of leases not exceeding one year; and

(*b*) the exercise of its powers, trusts and discretions so far as may be necessary for the management, administration and upkeep

of any property of the Trust situate whether within or without the local limits of such Authority which such Local Authority may agree to manage or administer; or

(*c*) the supervision of any works contracted with the Trust to be done by any person; and

(*d*) the exercise and performance of its powers, duties, discretions and functions under all or any of the provisions of Part IV of this Ordinance.

(2) Where any power, trust, discretion, duty or function has been delegated to a Local Authority under sub-section (1) of this section, such Local Authority shall have and may exercise on behalf of the Trust the powers conferred on the Trust under section 28 of this Ordinance to the extent necessary or convenient to enable such Local Authority to exercise or perform such power, trust, discretion, duty or function and, to a like extent, may, if a Town Board or Rural Board, delegate to any public officer any power, trust, discretion, duty or function delegated to it under sub-section (1) of this section or the exercise of any power under section 28 of this Ordinance conferred upon it by this sub-section:

Provided that in the case of a Federal Officer the consent of the Chief Secretary and in the case of a State or Settlement officer the consent of the Ruler in Council or of the High Commissioner in Nominated Council as the case may be has first been obtained to such delegation.

(3) The Local Authority and its members, officers and servants shall in respect of any act done or omitted by it or them in the course of exercising or performing any power, trust, discretion, duty or function delegated under sub-section (1) of this section be deemed to be the agents of the Trust.

(4) Where any power, trust, discretion, duty or function has been delegated to a Town Board or Rural Board under the provisions of this section, any instrument or document required to be signed in connection with the exercise or performance by such Town Board or Rural Board of such power, trust, discretion, duty or function shall be signed by the Chairman for the time being of such Board.

(5) Notwithstanding any such delegation no Local Authority shall enter into any contract on behalf of the Trust involving the expenditure by the Trust of more than $5,000 without the prior approval of the Trust in writing, or which, if made between private persons, would be required by law to be under seal.

Compulsory acquisition of land by the Trust.

30. (1) When any immovable property, not being Crown or State land, is needed to be acquired by the Trust for the purposes of this Ordinance, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State or Settlement in which such property is situate, and any declaration required under any such written law that such land is so needed may be made notwithstanding that compensation is to be paid out of the funds of the Trust, and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose made in accordance with such written law.

(2) The expenses and compensation in respect of any immovable property acquired by the Trust under this section shall be paid by the Trust.

(3) When any immovable property has been acquired under this section the Trust shall take out the necessary documents of title in respect of such property and shall pay the rent to which such property was subject immediately before such acquisition.

PART III.

FUNDS AND REVENUES OF THE TRUST.

Funds of the Trust.

31. The funds of the Trust shall consist of—

(*a*) the sum of three million dollars to be raised under the provisions of the Loan Ordinance, 1949, and directed by section 5 of such Ordinance and by Item 55 of the Schedule thereto to be appropriated and applied for the purposes of a Housing Trust; F.M. Ord. 16/49.

(*b*) such sums as may from time to time be paid to the Trust out of the general revenues of the Federation, or donated by the Government or any Government in the Federation or by any other person, for the purposes of the Trust;

(*c*) such sums as may from time to time be raised by the Trust by loan or by the issue of debentures or debenture stock under the provisions of this Ordinance;

(*d*) all rents and proceeds of sale and other funds derived by the Trust directly or indirectly from the property belonging to the Trust;

(*e*) all revenue derived from the Development rate levied under section 41 of this Ordinance or otherwise payable by law to the Trust; and

(*f*) all such other sums as may from time to time be paid to the Trust.

Application of Trust Funds.

32. The funds of the Trust may be applied in defraying the following charges—

(*a*) the expenses, fees and allowances of the Trustees;

(*b*) the salaries, fees, remuneration, pensions, superannuation allowances and gratuities of the officers, agents and servants, and technical or other advisers, of the Trust;

(*c*) all costs, charges and expenses of and incidental to the exercise of its powers under this Ordinance;

(*d*) interest on any debentures and debenture stock issued, and on any loan raised, by the Trust;

(*e*) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of making provision for the redemption of debentures or debenture stock or the repayment of other borrowed moneys;

(*f*) such sums as it may be deemed appropriate to set aside in respect of depreciation on the property of the Trust having regard to the amount set aside out of revenue under paragraph (*e*) of this section;

(*g*) any other architect, management and agency fees; and

(*h*) any other expenditure authorised by the Trust and properly chargeable to revenue account.

Bank account.

33. (1) All moneys paid to the Trust shall forthwith be paid into such bank or banks as may be approved by the Trust.

(2) All orders or cheques against the said account shall be signed by the Chairman, and countersigned by the Secretary or such other officer as may be appointed by the Trust for that purpose.

Accounts and Audit.

34. (1) The Trust shall keep proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of account in respect of each financial year.

(2) The accounts of the Trust shall be audited by auditors to be appointed annually by the Trust.

(3) After the end of each financial year, as soon as the accounts of the Trust have been audited, the Trust shall cause a copy of the statement of account to be transmitted to the High Commissioner, together with a copy of any report made by the auditors on that statement or on the accounts of the Trust.

(4) The High Commissioner shall cause a copy of every such statement and report to be laid on the table of the Legislative Council.

Exemption from Stamp Duty, Income Tax and other rates, charges and fees.

35. (1) The Trust shall be exempt from the payment of stamp duty and income tax under any written law for the time being in force relating to stamp duties or income tax.

(2) The Ruler in Council of any State or the High Commissioner in Nominated Council of any Settlement may by order exempt the Trust from any rate, tax, charge or fee leviable or recoverable by any Local Authority in such State or Settlement in respect of any property owned by the Trust on such terms and subject to such conditions as the Ruler in Council or High Commissioner in Nominated Council may think fit to impose.

Annual Report.

36. (1) The Trust shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the High Commissioner a report dealing generally with the activities of the Trust during the preceding financial year and containing such information relating to the proceedings and policy of the Trust as the High Commissioner in Council may from time to time direct.

(2) The High Commissioner shall cause a copy of every such report to be laid on the table of the Legislative Council.

PART IV.

HOUSING SCHEMES AND DEVELOPMENT RATES.

Power to declare a Municipality, Town Board or Rural Board a Housing Area.

37. When it appears to the Ruler in Council of any State or to the High Commissioner in Nominated Council of any Settlement that it is desirable that any Municipality or Town Board or Rural Board area (including in Kelantan a Notified or Controlled area) situate in such State or Settlement should be developed for the purposes of housing, such Ruler in Council or High Commissioner in Nominated Council, as the case may be, may, by notification in the *Gazette*, declare such Municipality or area to be a Housing Area for the purposes of this Ordinance.

Housing Schemes and Housing and Redistribution Schemes.

38. (1) When any Municipality or area has been declared a Housing Area under section 37 of this Ordinance, the Trust, in agreement with the Local Authority concerned, or the Local Authority to whom it has delegated under paragraph (*d*) of sub-section (1) of section 29 of this Ordinance its powers under this section, may prepare a Housing Scheme for the development for housing of any land which is not, in the opinion of the Trust and of the Local Authority, fully developed for the purposes of housing (hereinafter referred to as undeveloped land) situate within such Housing Area, and shall serve upon the owner or reputed owner of such land and upon any other person appearing from any register relating to land or deeds affecting land to be interested therein notice of such Scheme, specifying the manner in which such undeveloped land is to be developed under such Scheme, and notifying such owner or reputed owner or person interested that he may lodge an objection thereto in the manner provided by sub-section (6) of this section, and shall cause a copy of such notice to be published in the *Gazette*.

(2) Such Scheme shall, whenever necessary, exhibit distinctly all roads, streets, passages, thoroughfares, squares, or reserves appropriated or set apart for public use and also all allotments into which an area may be divided marked with distinct numbers or symbols.

(3) Where a Scheme provides for the construction of new roads, streets, passages, thoroughfares, squares, or reserves appropriated or set apart for public use or for the widening of any existing road, street, passage, thoroughfare, square or reserve on the land affected by such Scheme, the Scheme shall provide that compensation for any land required for the same in excess of what the owner is required to contribute free of compensation under any written law in force relating to such land shall be paid to the owner of such land by the owners of all the lands affected by such Scheme, who shall contribute thereto in proportion to the relative value of their lands. For the purpose of determining the amount of compensation payable to the owner there shall be deducted therefrom the amount which such owner would have had to contribute had such compensation been payable to some other person. Where any compensation or part thereof is payable by any owner under the provisions of this sub-section it shall be lawful for the Trust at any time to pay such compensation on behalf of such owner and any sum so paid by the Trust shall be recoverable by the Trust from such person by suit and shall be a first charge upon the final holding or holdings owned by such person.

(4) A Housing Scheme prepared by the Trust under sub-section (1) of this section may relate to the undeveloped land of more than one owner and may, if, in the opinion of the Trust and the Local Authority, it is necessary for the proper development for housing of such undeveloped land, provide for a pooling or redistribution of such land or for readjustment of the boundaries, areas, shapes and positions of any holdings.

(5) Where any Housing Scheme provides for the pooling or redistribution of, or for the readjustment of the boundaries, areas, shapes or positions of, any holdings (hereinafter in this Ordinance referred to as a Housing and Redistribution Scheme), the notice of such Scheme required to be served and published under sub-section (1) of this section shall specify the nature and details of such pooling, redistribution or readjustment.

(6) Any person interested in any land affected by a Housing Scheme or a Housing and Redistribution Scheme may, within six weeks of the date of service

of the notice thereof upon him, lodge an objection in such manner as may be prescribed to such Scheme with the Trust.

(7) At the expiration of the time limited for lodging objections to a Housing Scheme or a Housing and Redistribution Scheme under sub-section (6) of this section, a copy of such Scheme together with copies of all objections (if any) lodged to such Scheme shall be forwarded by the Trust to the Ruler in Council of the State or the High Commissioner in Nominated Council of the Settlement, as the case may be, in which the land affected by such Scheme is situate.

(8) If the Trust and any objector are unable to agree, or if it appears to the Ruler in Council or the High Commissioner in Nominated Council, as the case may be, that there are likely to be persons interested in the Scheme other than persons who have been served under sub-section (1) of this section, the Ruler in Council or the High Commissioner in Nominated Council, as the case may be, shall appoint a Panel of Enquiry consisting of three persons, one of whom shall be a qualified person within the meaning of the Advocates and Solicitors Ordinance, 1947, to hold an enquiry into such Scheme:

M.U. Ord. 4/47.

Provided that no person shall be appointed under this sub-section who is a Trustee or an officer or servant of the Trust or of any Local Authority concerned.

(9) Notice of the date and place of holding any such enquiry shall be served upon every objector and shall in addition be published in the *Gazette* not less than one month before the date of the holding of such enquiry.

(10) Every such enquiry shall be held in public, and the Trust and any person interested in any land affected by the Scheme and, with the permission of the Panel, any other person may appear and be heard in person or by advocate or solicitor or by a duly authorised agent.

(11) The Panel of Enquiry shall, after considering the objections to the Scheme and all such matters brought to their notice in such enquiry relevant thereto, either annul or confirm, with or without modifications, the Scheme.

(12) Where it appears to the Panel of Enquiry that any person interested in any land affected by the Scheme would be injuriously affected by any provisions of such Scheme if confirmed and that it is not reasonably possible or desirable to modify such Scheme so as to prevent such person being so injuriously affected, then, unless such provisions would have been enforceable or could be put into effect without compensation under any law for the time being in force, the Panel may confirm such Scheme only upon condition that such monetary compensation as it may assess in respect of such injury be paid to such person by the Trust or by any other person interested in any land affected by the Scheme in proportion to any benefit likely in the opinion of the Panel to accrue to such other person by reason of the confirmation of the Scheme:

Provided that where a person is entitled to compensation in respect of any matter or thing under any other written law in force as well as under this sub-section he shall not be entitled to compensation under both such written law and under this sub-section nor to any compensation under this sub-section greater than that to which he would have been entitled under such written law:

Provided further that where any such compensation or proportion thereof is so directed under this sub-section to be paid by any person other than the Trust, it shall be lawful for the Trust at any time to pay such compensation on behalf of such person and any sums so paid by the Trust shall be recoverable by the Trust from such person by suit and notwithstanding any other written law shall be a first charge upon the final holding of such person.

(13) Any person, including the Trust aggrieved by any decision of the Panel of Enquiry may appeal within one month of notice of the decision being served upon him to the Ruler in Council or to the High Commissioner in Nominated Council, as the case may be, of the State or Settlement in which the land affected by the Scheme is situate. The decision of such Ruler in Council or of the High Commissioner in Nominated Council shall be final.

(14) If it appears to the Ruler in Council or to the High Commissioner in Nominated Council, as the case may be, that no Panel of Enquiry is required to be appointed under sub-section (8) of this section, such

Ruler in Council or the High Commissioner in Nominated Council, as the case may be, may declare such Scheme to be confirmed subject to any modification to such Scheme as may be agreed between any person interested therein or an objector thereto and the Trust and such Scheme shall thereupon, subject to such modifications, be deemed to be confirmed.

(15) In every case in which a Panel of Enquiry is appointed under this section, a Scheme shall be deemed to be confirmed, with or without modification in accordance with the decision of such Panel, upon the expiration of the time limited for appeal under sub-section (13) of this section if there is no appeal, or, in the event of an appeal, upon such Scheme being confirmed with or without modification by the Ruler in Council or the High Commissioner in Nominated Council under such sub-section in accordance with such decision.

(16) Upon the confirmation of a Scheme a copy thereof shall be served upon the proper registering authority of the land affected thereby, and such authority shall cause an entry to be made in the appropriate register of titles or deeds relating to the lands affected thereby to the effect that such land is so affected.

Withdrawal of Scheme.

(17) The Trust may at any time before the expiration of a period of two months after the date of the confirmation of a Scheme or of one month after the date of a decision by the Ruler in Council or the High Commissioner in Nominated Council as the case may be under sub-section (13) of this section, whichever may be the later, withdraw by notification published in the *Gazette*, such Scheme, or part thereof, upon payment to any person of all such costs as shall be agreed or shall, in the absence of agreement, in the opinion of the Ruler in Council or the High Commissioner in Nominated Council, as the case may be, have been reasonably incurred by such person :

Provided that no Housing and Redistribution Scheme may be withdrawn on or after the date appointed under sub-section (1) of section 39 of this Ordinance :

Provided further that where a Scheme is withdrawn after the confirmation thereof notice of such withdrawal shall be served upon the proper registering

authority of the land affected thereby and such authority shall thereupon cancel any entries made in any register of titles or deeds under sub-section (16) of this section.

(18) No proceedings under this section shall be invalid on account of the omission or failure to serve any such notice as is referred to in sub-section (1) of this section upon any person or persons.

Execution of a Housing and Redistribution Scheme.

39. (1) When a Housing and Redistribution Scheme has been confirmed under the provisions of section 38 of this Ordinance then, upon such date as the Ruler in Council of the State or the High Commissioner in Nominated Council of the Settlement concerned may appoint, the whole of the area subject to such Scheme shall vest in the Crown or in the Ruler as the case may be, and every estate or interest in the land comprised in such area shall be extinguished.

(2) The Crown or Ruler in Council, as the case may be, shall make in favour of each person entitled by the Scheme to a final holding thereunder a fresh grant or lease, as the case may be, of the area comprised in such holding. Every such grant or lease shall be made so far as is practicable on the terms and subject to the conditions on which the person to whom it is made held his original holding and shall be deemed to have vested the estate or interest in the land comprised in such final holding on the day appointed under sub-section (1) of this section.

Every such grant or lease shall be registered and issued in accordance with the law relating to the registration of titles in force in the State or Settlement in which such holding is situate:

Provided that such grant or lease shall not be made until the appropriate entries have been made under sub-section (5) of this section:

Provided further that where any person was by virtue or in consequence of any agreement, mortgage, charge, lease, encumbrance, right, trust or restriction in respect of or in or over an original holding in possession of the documents of title relating to such holding and is by virtue of sub-section (5) of this section entitled to a corresponding estate, right or interest in respect of or in or over a final holding the documents of title to such final holding shall be delivered into the possession of such person who shall

have the same rights in respect thereof as he had in respect of the documents of title of the original holding.

(3) Every person entitled on the date appointed in sub-section (1) of this section to any estate or interest in an original holding shall be deemed to have acquired a corresponding estate or interest in the final holding substituted therefor by the Scheme.

(4) Any person having the custody of any document or instrument of title to any original holding comprised in any Housing and Redistribution Scheme shall deliver up the same to the proper registering authority as soon as possible after the date appointed under sub-section (1) of this section, and the proper registering authority shall make such entries in the appropriate register and take all such steps as may be necessary or desirable to give effect to the cancellation of such document. Any person who fails to deliver up such document or instrument of title shall be guilty of an offence and, upon conviction, shall be liable to a fine not exceeding $100, and the Court shall order him to deliver up to the Court such document or instrument of title within such time as the Court shall prescribe.

(5) Every new estate or interest in a final holding vested in any person under the provisions of this section shall, except in so far as the Scheme otherwise provides, be subject to such mortgages, charges, leases, encumbrances, rights, trusts and restrictions, if any, as the estate or interest formerly had in the original holding was subject to immediately before the vesting or surrender of such estate or interest in or to the Crown or Ruler; and the mortgagees, chargees, lessees and other encumbrancers or persons who were, immediately before such vesting or surrender, interested in any holding which is pooled or redistributed, or the boundaries of which are readjusted under a Housing and Redistribution Scheme, shall have the same remedies and rights against and in the final holding held by any person under a document of title issued to such person in pursuance of this section as they severally had against or in the original holding, and the proper registering authority shall make such entries in the appropriate register as may be necessary to give effect to this sub-section :

Provided that in the Settlement of Malacca any person entitled to any estate or interest in any final

holding subject by virtue of the provisions of this sub-section to any mortgage, charge, lease, encumbrance, right, trust, or restriction shall upon being so required by notice in writing by the person entitled to the benefit of such mortgage, charge, lease, encumbrance, right, trust or restriction within one month of the receipt of such notice execute all documents and do all acts necessary for the purpose of giving effect to the provisions of this sub-section :

Provided further that, if any dispute shall arise between any interested parties and such parties are unable to agree, or if it appears to the proper registering authority doubtful as to what entry should be made in the register for the purpose of giving effect to this section, the proper registering authority shall refer the matter to the Trust who shall take out an originating summons for the determination of such matter by the High Court under the provisions of section 40 of this Ordinance.

(6) No stamp duty or other fee except survey fees shall be payable in respect of any act, document or registration required or necessary to be performed under or for the purposes of carrying into effect this section.

(7) The High Commissioner in Council may make rules relating to the manner in which any registration required to be effected under the provisions of this section shall be effected.

Originating summons to settle questions arising.

40. (1) Whenever in the course of any proceedings for the purpose of the preparation, approval or execution of a Housing or Housing and Redistribution Scheme any question arises in respect of the title to any land affected by the Scheme or any interest therein between or among two or more persons or between the Trust and any person, or if any other question arises, which in the opinion of the Trust it is expedient to refer for judicial decision, the Trust may, if such question cannot otherwise and more conveniently be determined under the provisions of any law in force in the State or Settlement in which such land is situate, take out an originating summons for the determination of the same by the High Court.

(2) Such summons shall be in such form as may be prescribed by the Supreme Court Rule Committee established under the Rule Committee Ordinance, 1948. F.M. Ord. 35/48.

Levy of a development rate.

41. (1) Upon any Scheme being confirmed, with or without modifications, in accordance with the provisions of section 38 of this Ordinance, the Trust shall serve a notice on the owner of any land affected by such Scheme requiring him to develop such land in accordance with the provisions of such Scheme within two years of the date of the service upon him of such notice or of the registration or issue of the title in respect of such land in consequence of such Scheme whichever is the later.

(2) It shall be lawful for any owner upon whom a notice under sub-section (1) of this section has been served to develop the land thereby affected in accordance with the provisions of such Scheme notwithstanding any agreement or trust affecting such land.

(3) If such land shall not, in the opinion of the Trust, have been completely developed in accordance with the provisions of the Scheme relating thereto within the period prescribed under sub-section (1) of this section, or within such further period as the Trust may, in its discretion, allow in respect of such land, there shall be levied and paid in respect of such land by the owner thereof an annual rate to be called a Development Rate.

(4) Such Development Rate shall become payable immediately upon the date of the expiration of the period prescribed under sub-section (1) of this section or of any further period allowed by the Trust under the provisions of sub-section (3) of this section and shall thereafter be payable on the same date in each succeeding year, if at such date the land has not, in the opinion of the Trust, been completely developed in accordance with the provisions of the Scheme relating thereto.

(5) Any owner who is dissatisfied with the decision of the Trust that his land has not been, or had not at any relevant date been, completely developed in accordance with the provisions of the Scheme relating thereto may appeal to the Ruler in Council or to the High Commissioner in Nominated Council, as the case may be, of the State or Settlement in which such land is situate, and the decision of such Ruler in Council or High Commissioner in Nominated Council shall be final.

(6) The amount of Development Rate payable under this section shall, upon first becoming payable, be at the rate of five per centum of the capital value of the

land as estimated by the Local Authority, for the purpose of assessing rates under the Municipal Ordinance or the Town Boards Enactment of the Federated Malay States or under the provisions of any written law in force in any State or Settlement corresponding thereto in respect of which such rate is levied and in each year thereafter such rate shall increase annually by one per centum of the capital value of such land:

S.S. Cap. 133. F.M.S. Cap. 137.

Provided that where, under the provisions of sections 26, 29 and 30 of the Town Boards Enactment of the Federated Malay States, or under the provisions of any written law in force in any State or Settlement corresponding thereto an improvement rate is payable on any such land, the amount of any such improvement rate paid in respect of any relevant year or such portion thereof as is attributable to such year shall be deducted from the amount of Development Rate payable under this section in respect of such year.

F.M.S. Cap. 137.

(7) The Development Rate payable under the provisions of this section shall be paid and recoverable in the same manner as any consolidated rate is required to be paid or may be recovered under the provisions of the Municipal Ordinance or of the Town Boards Enactment applicable to the area in which such land is situate.

S.S. Cap. 133. F.M.S. Cap. 137.

(8) All sums received by a Local Authority in respect of the Development Rate shall be paid by the Local Authority receiving the same to the Trust.

Notice requiring development to be registered.

42. Where any land is affected by any notice served upon the owner under the provisions of sub-section (1) of section 41 of this Ordinance, the Trust shall forthwith cause a copy of such notice to be served upon the proper registering authority; and the proper registering authority, if such land is subject to any law relating to registration of titles to land, shall make a memorial of such notice on the register document of title of the land affected thereby, and in any other case shall register the copy of such notice under the provisions of the Registration of Deeds Ordinance of the Straits Settlements or the Mutations in Titles to Land Ordinance of the Straits Settlements or of the Malacca Lands Customary Rights Ordinance of the Straits Settlements as may be applicable.

S.S. Cap. 121. S.S. Cap. 126. S.S. Cap. 125.

Service of notices.

43. Any notice required to be served upon the owner, or reputed owner, of any land under the provisions of this Ordinance shall be served in the same manner as a notice is required to be served under

F.M.S. Cap. 138.
S.S. Ord. 47/40.

the provisions of the Land Code or Land Enactment in force in the State or under the provisions of the Land Revenue Collection Ordinance in force in the Settlement in which such land is situate.

Power of Trust to develop lands on behalf of the owner.

44. (1) Where a notice has been served upon the owner of any land under the provisions of section 41 of this Ordinance, the Trust may, at its discretion, enter into an agreement with the owner thereof to construct all such buildings and to do all such works as may be necessary to develop such land completely in accordance with the provisions of any Scheme relating thereto made under section 38 of this Ordinance and may construct such buildings and do such works accordingly.

(2) Upon the making of such agreement, the owner shall forthwith take all necessary steps to convey or transfer his title to such land to the Trust, which shall hold the same in trust to sell such land as soon as possible after the same has been developed and to hold the proceeds of such sale in trust for the owner, after deducting therefrom all the costs, charges, expenses, interest and fees incurred by, or payable under such agreement to, the Trust in respect of such development.

(3) Where the title to any land has been conveyed or transferred in trust to the Trust under the provisions of this section, no Development Rate shall, from and after the date of such conveyance or transfer, be payable in respect of the land so conveyed or transferred.

(4) The Trust may, with the consent of the *cestui que trust*, instead of selling any land held by it in trust for sale under the provisions of sub-section (2) of this section, reconvey or retransfer the title to such land to its *cestui que trust* upon such terms as may be agreed.

PART V.

MISCELLANEOUS.

Standing Orders.

45. The Trust may make Standing Orders relating to any of the following matters—

(*a*) the regulation of its procedure;

(*b*) the opening, keeping, closing and audit of accounts;

(*c*) the placing of contracts, and the manner in which, and the persons by whom, such contracts may be entered into on its behalf;

(*d*) the making of loans under the provisions of section 25 of this Ordinance;

(*e*) the delegation of its powers under the provisions of section 29 of this Ordinance;

(*f*) any other matters as to which it is necessary or expedient to make Standing Orders for the more effective carrying out of the purposes of this Ordinance.

Rules.

46. The High Commissioner in Council may make rules relating to—

(*a*) the remuneration of Trustees and the allowances payable to such Trustees;

(*b*) the forms of any notice or objection required to be served or lodged under section 38 of the Ordinance, the procedure to be followed by Panels of Enquiry appointed under such section, the fees and costs payable in respect of any proceedings under such section and the remuneration of members of such Panels and all other matters incidental to such proceedings or necessary or expedient for the better carrying into effect of the purposes of such section and of section 39 of this Ordinance.

Passed in the Legislative Council on the twenty-eighth day of September, 1950.

H. R. Sollis

Clerk of Council.

FEDERATION OF MALAYA.

No. 63 of 1950.

THE RUBBER SHIPPING AND PACKING CONTROL (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer Administering the Government.

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to amend the Rubber Shipping and Packing Control Ordinance, 1949.

[11th *December, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and construction.

F. of M. No. 74 of 1949.

1. This Ordinance may be cited as the Rubber Shipping and Packing Control (Amendment) Ordinance, 1950, and shall be read and construed as one with the Rubber Shipping and Packing Control Ordinance, 1949, hereinafter referred to as the principal Ordinance.

Amendment of section 2.

2. Section 2 of the principal Ordinance is hereby amended by—

(*a*) inserting the words "in the Federation" immediately after the words "means to pack rubber" appearing in the definition of "to pack rubber for export" appearing therein; and

(*b*) by inserting the words "in the Federation" immediately after the words "means to ship rubber" appearing in the definition of "to ship rubber for export" appearing therein.

Amendment of section 3.

3. Section 3 of the principal Ordinance is hereby amended by the addition immediately after sub-section (4) thereof of the following new sub-section to be numbered (5) :

"(5) Any person who, under the provisions of any written law in force in the Colony corresponding to this Ordinance, is registered in the Colony for the purpose of packing or shipping rubber in the Colony shall be deemed to be duly registered under this Ordinance for the corresponding purpose in the Federation, and a certificate to that effect shall be issued under this Ordinance by the Board to such person upon his application and without payment of any fee; and any reference in this Ordinance to a certificate issued under this Ordinance shall, in relation to such person, be deemed to be a reference

to the certificate issued to such person under the provisions of this sub-section:

Provided that the registration of such person under this Ordinance by virtue of this sub-section and any certificate issued under the provisions of this sub-section may, at any time, be cancelled or suspended by the Board under the provisions of section 9 of this Ordinance."

Amendment of section 4.

4. Section 4 of the principal Ordinance is hereby amended by—

(*a*) the addition at the end of sub-section (1) of the following sentence—

"The Board shall have an office in the Federation."; and

(*b*) the deletion of the words "Singapore Chinese Rubber Dealers' Association" appearing in sub-section (2) (*c*) and by the substitution therefor of the words "Rubber Trade Association of Singapore".

Amendment of section 7.

5. Sub-section (1) of section 7 of the principal Ordinance is hereby amended by inserting the words "at the office of the Board in the Federation and" immediately after the words "in that behalf" appearing in the first line thereof.

Amendment of section 10.

6. Section 10 of the principal Ordinance is hereby amended by—

(*a*) adding at the end of sub-section (2) thereof the following sentence—

"Every notice given to the Tribunal of Appeal under the provisions of this sub-section shall be sent to such address in the Federation as may be prescribed by the Tribunal of Appeal"; and

(*b*) adding at the end of sub-section (4) thereof the following sentence—

"Every such hearing shall be held in the Federation."

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 64 of 1950.

THE SOCIAL AND WELFARE SERVICES LOTTERIES BOARD (CLARIFICATION) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

9th December, 1950.

.....
Officer ~~Administering the~~ Government.

5th December, 1950.

An Ordinance relating to the Social and Welfare Services Lotteries Board Ordinance, 1950.

[11th December, 1950]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

F. of M. No. 9 of 1950.

1. This Ordinance may be cited as the Social and Welfare Services Lotteries Board (Clarification) Ordinance, 1950, and shall come into force simultaneously with the Social and Welfare Services Lotteries Board Ordinance, 1950.

Muslims and the Social and Welfare Services Lotteries Board Ordinance.

2. It is hereby declared that nothing contained in the Social and Welfare Services Lotteries Board Ordinance, 1950, or any rule, regulation or order made thereunder shall be deemed to require any Muslim to do any act contrary to his religion.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 65 of 1950.

THE TOWN BOARDS AND MUNICIPALITIES (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent



Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....
Officer Administering the Government.

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to amend the provisions relating to proceedings for the recovery of rates contained in town boards and municipal legislation.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title and commencement.

1. This Ordinance may be cited as the Town Boards and Municipalities (Amendment) Ordinance, 1950, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*; appoint.

Amendment of laws relating to Town Boards and Municipalities.

2. The amendments specified in the fourth column of the Schedule to this Ordinance shall be made in the sections or other provisions, specified in the third column, of the Enactments and Ordinance specified in the first and second columns of the said Schedule.

SCHEDULE.

Enactment or Ordinance.	Short title.	Section.	Amendment.
F.M.S. Cap. 137 ...	The Town Boards Enactment	46 (i) ...	For the words "together with a fee of fifty cents" there shall be substituted the words "together with such fee as the Ruler in Council may fix from time to time,";
		47 (iv) ...	For the words "one dollar and fifty cents" there shall be substituted the words "of such amount as the Ruler in Council may fix from time to time".
Johore Enactment No. 19 of 1921	The Town Boards Enactment, 1921	32 ...	For the words "together with a fee of fifty cents" there shall be substituted the words "together with such fee as the Ruler in Council may fix from time to time".
Johore Enactment No. 118	The Town Boards Enactment	46 (i) ...	For the words "together with a fee of fifty cents" there shall be substituted the words "together with such fee as the Ruler in Council may fix from time to time,";
		47 (iv) ...	For the words "one dollar and fifty cents" there shall be substituted the words "of such amount as the Ruler in Council may fix from time to time".

Enactment or Ordinance.	Short title.	Section.	Amendment.
Trengganu Enactment No. 12 of 1355	The Town Boards Enactment	46 (i) ...	For the words "together with a fee of fifty cents" there shall be substituted the words "together with such fee as the Ruler in Council may fix from time to time,";
		47 (iv) ...	For the words "one dollar and fifty cents" there shall be substituted the words "of such amount as the Ruler in Council may fix from time to time".
Kelantan Enactment No. 20 of 1938	The Municipal Enactment, 1938	34 (i) ...	For the words "together with a fee of fifty cents" there shall be substituted the words "together with such fee as the Ruler in Council may fix from time to time,";
		34 (vi) ...	For the figures "$1.50" there shall be substituted the words "of such amount as the Ruler in Council may fix from time to time".
Kedah Enactment No. 16 of 1334	Enactment No. 106 (Town Boards)	23 ...	For the words "together with a fee of fifty cents" which occur in lines 5 and 6 there shall be substituted the words "together with such fee as the Ruler in Council may fix from time to time".
S.S. Cap. 133	The Municipal Ordinance	Schedule B—Rules for the Collection of Rates and Expenses—Rule 23.	The following Rule shall be substituted: "23. The High Commissioner in Nominated Council may, from time to time, fix the fees that may be demanded under the Ordinance for the service or publication of any notice and for a warrant of attachment."

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

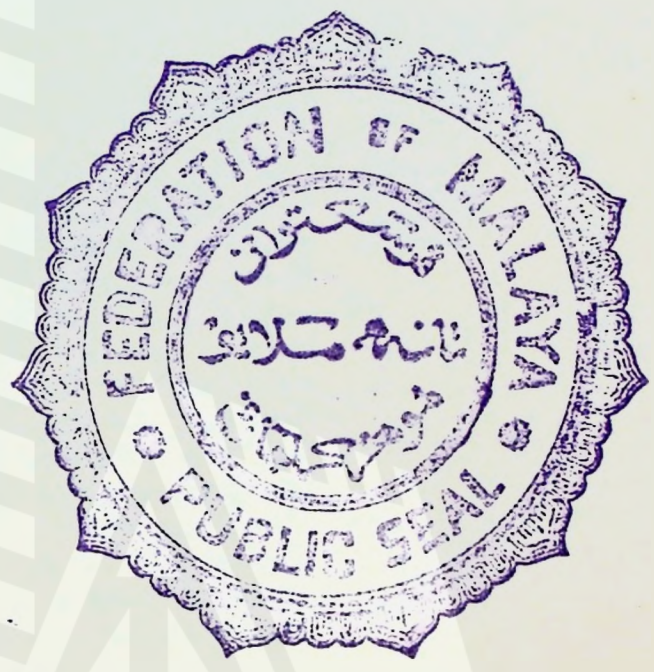
No. 66 of 1950.

THE CHINESE DECREPIT HOSPITALS (REPEAL) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

..... *Yang di-Pertuan Besar of Negri Sembilan.*

..... *Officer Administering the Government.*

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to repeal the Chinese Decrepit Hospitals Enactment of the State of Perak and to make provision for property affected thereby.

[30th *December, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Chinese Decrepit Hospitals (Repeal) Ordinance, 1950.

Repeal of F.M.S. Cap. 211.

2. The Chinese Decrepit Hospitals Enactment of the State of Perak is hereby repealed.

Transfer of assets and liabilities to Federation.

3. All property, movable and immovable, which immediately before the commencement of this Ordinance was vested in the Chinese Decrepit Hospitals Board established under the Enactment repealed by section 2 of this Ordinance shall, on the commencement of this Ordinance, and without any conveyance, assignment or transfer whatsoever, vest in the Chief Secretary for the purposes of the Federation for the like title, estate or interest and on the like tenure as the same was vested or held immediately before the commencement of this Ordinance and all liabilities incurred by or on behalf of such Board before the commencement of this Ordinance, shall, as from such commencement, be deemed to be liabilities incurred by or on behalf of the Government of the Federation.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 67 of 1950.

THE PAHANG REGISTERS OF TITLE REPLACEMENT (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer Administering the Government.

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to amend the Pahang Registers of Title Replacement Ordinance, 1946.

[*11th December, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows :

Short title.

1. This Ordinance may be cited as the Pahang Registers of Title Replacement (Amendment) Ordinance, 1950, and shall be read as one with the Pahang Registers of Title Replacement Ordinance, 1946, hereinafter referred to as the principal Ordinance.

M.U. Ord. No. 36 of 1946.

Amendment of section 5.

2. Section 5 of the principal Ordinance is hereby amended by the addition of the following sub-sections after sub-section (9) thereof :

"(10) Notwithstanding the provisions of sub-section (4) of this section, where all the particulars engrossed on the issue document of title delivered to the Registrar under sub-sections (1) and (2) of this section and all memorials registered thereon are fully legible, but such issue document of title is so fragile, decayed or otherwise in so poor a state of preservation that compliance with the provisions of section 7 of this Ordinance is not, in the opinion of the Registrar, practicable, the Registrar may destroy such issue document of title :

Provided that the Registrar shall not destroy any such issue document of title, until he shall have issued a certificate of title in continuation thereof and shall have endorsed, upon the register copy of such certificate of title, particulars of all restrictions in interest, conditions and agreements expressed in the original title.

(11) The provisions of sub-sections (3) and (4) of section 8 of this Ordinance shall apply to certificates of title issued in continuation of documents of title destroyed under sub-section (10) of this section."

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 68 of 1950.

THE LAND (TRENGGANU) (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman
.....{*Yang di-Pertuan Besar of Negri Sembilan.*

P. Sole Sutton
.....
Officer ~~Administering the~~ Government.

9th December, 1950.

.....*Sultan of Selangor.*

9th December, 1950.

An Ordinance to amend the Land Enactment of the State of Trengganu and to repeal certain obsolete enactments.

[*1st January, 1951.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

1. This Ordinance may be cited as the Land (Trengganu) (Amendment) Ordinance, 1950, and shall come into force on the first day of January, 1951.

Amendment of section 2. Trengganu Enact. No. 3 of 1357.

2. Section 2 of the Land Enactment of the State of Trengganu, hereinafter referred to as the principal Enactment, is hereby amended :

(*a*) by the insertion of the following new definition immediately after the definition of "grant" :

" 'Grant kechil' means a grant of country land not exceeding ten acres in area registered after the thirty-first day of December, 1938, and prior to the first day of January, 1951;"

(*b*) by the deletion of the definition of "Commercial crop", "Mukim land" and "Rubber Plant";

(*c*) by the deletion of the comma immediately after the word "grant" which occurs in the definition of "Proprietor" and by the substitution of the words "entry in the mukim register" for the words "the occupier of mukim land" which occur in that definition.

Substitution of section 13.

3. The following section is hereby substituted for section 13 of the principal Enactment :

"Forms of documents of title.

13. (i) The document of title to any town land or village land or to any country land exceeding ten acres in area shall be a grant or a lease of State land.

(ii) The document of title to any country land not exceeding ten acres in area shall be an entry in the mukim register, or a grant, or a lease of State land.

(iii) The document of title to the foreshore or to the sea bed shall be a lease of State land for any period not exceeding twenty years.''

Amendment of section 28 (i).

4. Sub-section (i) of section 28 of the principal Enactment is hereby amended by the substitution of the words ''land on which rent is reserved to the State'' for the words ''alienated land''.

Amendment of section 30.

5. Section 30 of the principal Enactment is hereby amended—

(*a*) by the substitution of the words ''land held under entry in the mukim register'' for the words ''mukim land or any land held under grant kechil'';

(*b*) by the deletion of the word ''besar'' which occurs after the words ''to deliver up his document of title and cause a grant''; and

(*c*) by the deletion of the words ''or in the grant kechil'' which occur at the end thereof.

Deletion of section 40 (vi).

6. Sub-section (vi) of section 40 of the principal Enactment is hereby deleted.

Substitution of section 41.

7. The following section is hereby substituted for section 41 of the principal Enactment:

Limitation Enactment.

''41. No title to land adverse to or in derogation of the title of the proprietor shall, by virtue of the Limitation Enactment, be acquired by any length of possession nor shall the title of any proprietor be extinguished by the operation of any such Enactment.''

Deletion of section 46 (xv).

8. Sub-section (xv) of section 46 of the principal Enactment is hereby deleted.

Amendment of section 48.

9. Section 48 of the principal Enactment is hereby amended—

(*a*) by the insertion of the words ''from his land over any other alienated land to the nearest public road or river or foreshore'' immediately after the words ''right of way'' in sub-section (i) thereof; and

(*b*) by the insertion of the words "over any alienated land to the nearest public road or river or foreshore" immediately after the words "application for a right of way" in sub-section (viii) thereof.

Substitution of section 49.

10. The following section is hereby substituted for section 49 of the principal Enactment :

"Cancellation of grant kechil.

49. (i) The Registrar shall cancel every grant kechil and shall in its place and free of all charges cause a grant to be registered, if the land is town land or village land, or an entry to be made in the Mukim Register if the land is country land.

(ii) The rent reserved in, and any restrictions in interest and express conditions imposed on, the grant or the entry in the Mukim Register shall in all respects be the same as the rent and any restrictions in interest and express conditions expressed in the grant kechil, and all existing memorials on the grant kechil shall be carried forward with their relative priority to the grant or entry in the Mukim Register, as the case may be. The Registrar shall certify the correctness of the grant or the entry in the Mukim Register, as the case may be, and shall authenticate it with his signature and seal.

(iii) The Registrar shall call upon the registered proprietor of the land held under the grant kechil to surrender his document of title for cancellation and to receive the issue copy of the grant or the extract from the Mukim Register as the case may be. The provisions of section 55 shall apply save that the notice to be given may be a single notice, containing such amendments and additions to the form in Schedule XV to this Enactment as the case requires."

Deletion of section 50.

11. Section 50 of the principal Enactment is deleted.

Amendment of section 51.

12. Section 51 of the principal Enactment is hereby amended—

(*a*) by the deletion of the word "besar" in the first line of sub-section (i) thereof; and

(*b*) by the deletion of sub-section (ii) thereof.

Amendment of section 53.

13. Section 53 of the principal Enactment is hereby amended—

(*a*) by the substitution of the words "under entry in the Mukim Register" for the words "as mukim land" which occur at the end of sub-section (i) thereof; and

(*b*) by the substitution of the words "of land held under entry in the Mukim Register" for the words "of mukim land" which occur immediately after the words "issued to every proprietor" in sub-section (iii) thereof.

Amendment of section 60.

14. Section 60 of the principal Enactment is hereby amended—

(*a*) by the substitution of the words "in land held under entry in the mukim register" for the words "in mukim land" which occur immediately after the words "as having an interest" in sub-section (i) thereof; and

(*b*) by the substitution of the following sub-section for sub-section (ix) thereof:

Former application.

"(ix) No application shall be entertained under this section in which the matter directly and substantially in issue has been directly and substantially in issue in a former application between the same parties or the parties under whom they or any of them claim and has been heard and finally decided."

Amendment of section 62 (ii).

15. Sub-section (ii) of section 62 of the principal Enactment is hereby amended—

(*a*) by the substitution of a fullstop for the comma which occurs immediately before the words "provided that"; and

(*b*) by the deletion of the words from and including "provided that" to the end of the sub-section.

Insertion of new sub-section (iii*a*) to section 64.

16. Section 64 of the principal Enactment is hereby amended by the insertion of the following new sub-section immediately after sub-section (iii) thereof:

"(iii*a*) The Registrar may reject any instrument unless he is satisfied that all land revenue due in respect of the land to be dealt in has been paid."

Substitution of section 65.

17. The following section is hereby substituted for section 65 of the principal Enactment :

"Effect of death.

65. (i) The death of any person subsequently to the presentation of any instrument executed by him shall not prevail so as to prohibit the registration of such instrument, but such instrument may be registered and shall be valid notwithstanding such death.

(ii) The death of any person prior to the presentation of any instrument executed by him shall prevail so as to prohibit the registration of such instrument, and such instrument if registered shall be void."

Substitution of section 68.

18. The following section is hereby substituted for section 68 of the principal Enactment :

"Transfer, charge, lease.

68. No transfer, charge or lease may be registered unless it is executed in favour of an individual person, company or body corporate to whom land may be alienated under section 10."

Amendment of section 99 (i).

19. Sub-section (i) of section 99 of the principal Enactment is hereby amended by the deletion of the words "Subject to the provisions of section 41 (v) any" which occur at the beginning thereof and by the substitution therefor of the word "Any".

Amendment of section 115.

20. Section 115 of the principal Enactment is hereby amended by the substitution of the word "June" for the word "April".

Substitution of section 116.

21. The following section is hereby substituted for section 116 of the principal Enactment :

"Sale of land in respect of which an arrear is due.

116. (i) Upon any sum payable becoming an arrear the Collector shall, subject to the provisions of any Rules made under sub-section (ii) of this section, proceed to sell by public auction the land in respect of which the arrear is due.

(ii) The Ruler in Council may make Rules to give effect to the provisions of this section and such Rules may in particular provide for the imposition of fees in respect of and additional to any sum which may have become an arrear and for the Forms to be used under this Chapter or under Rules made under this section."

22. The following section is hereby substituted for section 117 of the principal Enactment: Substitution of section 117.

"117. (i) The Collector shall, from time to time, issue public notices of sale in the prescribed Form specifying the lands in respect whereof arrears are due and notifying that such lands will be sold for the recovery of such arrears and fees at, and on a specified place, time and date. Public notices of sale.

(ii) Copies of every public notice of sale shall be published in the *Gazette* on a date not less than four weeks prior to the date of the sale.

(iii) Copies of every public notice of sale shall be posted for not less than four weeks prior to the date of the sale on the notice board of every Land Office and every Magistrate's Court and every penghulu's balai in the district within which the land to be sold is situate.

(iv) Copies of every public notice of sale shall be sent by post or otherwise as the Collector shall decide, on a date not less than four weeks prior to the date of the sale, to the managers, secretaries or other persons in charge of such mosques, churches, chapels, temples, clubs or associations situate or carrying on business in the district wherein the land to be sold is situate as the Mentri Besar may from time to time in the case of any particular district direct.

(v) A list of the mosques, churches, chapels, temples, clubs and associations to the managers, secretaries or other persons in charge of which the Mentri Besar has directed that public notices of sale shall be sent for any particular district shall be published in the *Gazette*.

(vi) If in any Court any question shall arise whether any Collector has or has not complied with the provisions of sub-sections (iii) and (iv) of this section it shall be presumed until the contrary is proved that such Collector has complied with the provisions of the said sub-sections."

Substitution of section 120.

23. The following section is hereby substituted for section 120 of the principal Enactment:

"Payment of balance of purchase money.

120. The balance of the purchase money shall be made good by the purchaser before the expiry of three months after the date on which the sale of the land bought by him took place."

Amendment of section 122 (i).

24. Sub-section (i) of section 122 of the principal Enactment is hereby amended by the insertion of the words "and conclusive as provided in section 127A" immediately after the word "final" which occurs in the first line thereof.

Amendment of section 124.

25. Section 124 of the principal Enactment is hereby amended—

(*a*) by the deletion of the words "or a grant kechil" which occur in the second line thereof;

(*b*) by the deletion of the words "or the grant kechil as the case may be" in paragraph (*a*) of sub-section (i) thereof;

(*c*) by the deletion of the words "if the issue document of title is an extract from the mukim register" and of the words "or if the issue document of title is a grant kechil to issue to the purchaser a certified copy thereof" in paragraph (*b*) of sub-section (i) thereof;

(*d*) by the insertion of the following new sub-section immediately after sub-section (i) thereof:

"(i*a*) When such issue document of title is a grant kechil the Collector as Registrar shall proceed as in section 49."; and

(*e*) by the insertion of the words "a grant or a lease of State land" for the words "neither an extract from the mukim register nor a grant kechil" which occur in the first and second lines of sub-section (ii) thereof.

Amendment of section 125.

26. Section 125 of the principal Enactment is hereby amended by the substitution of the words "land held under entry in the mukim register" for the words "mukim land or land held under grant kechil" in both instances where these words occur.

27. The following new sections are hereby inserted immediately after section 127 of the principal Enactment : Insertion of new sections.

"127A. A sale under this Chapter shall become final and conclusive on the expiry of three months from the date thereof unless— Sale final and conclusive.

(*a*) the purchaser has failed to pay the balance of the purchase money as provided by section 120; or

(*b*) the sale has prior to the date of such expiry been annulled by the Court by order served on the Collector on or before such date; or

(*c*) the sale has prior to the date of such expiry been annulled by the Ruler in Council under the provisions of section 127B; or

(*d*) there has, prior to the date of such expiry, been served on the Collector an order of Court extending the period on the expiry of which the sale shall become final and conclusive or directing that the sale shall not become final and conclusive until the further order of the Court.

127B. (i) The Ruler in Council may at any time before a sale under this Chapter has become final and conclusive upon proof to his satisfaction that the sale was contrary to the provisions of this Chapter and that material irregularities occurred or that any proprietor or other person will suffer excessive hardship by reason of such sale, annul such sale by order in writing, provided that no such order shall be valid or capable of registration if it is made after the date of an application to the Court under the provisions of section 130.

(ii) When the sale is annulled under the provisions of sub-section (i) of this section the money deposited or paid by the purchaser shall be refunded to him, together with interest at the rate of 8 per cent. per annum and the purchaser shall have no further claim to compensation."

28. Section 139 of the principal Enactment is hereby amended by the insertion of the words "or the Collector, as the case may be", immediately after the word "Commissioner" which occurs at the end thereof. Amendment of section 139.

Substitution of Schedule I.

29. The following Schedule is hereby substituted for Schedule I to the principal Enactment:

SCHEDULE I.

Section 35 (iii).

RE-ENTRY UPON LAND FOR BREACH OF OR DEFAULT IN THE OBSERVANCE OF CONDITION OF TITLE.

To.....Proprietor of the land held under.....No..... in the mukim of.....in the district of.....

Take notice that whereas you have committed $\frac{\text{a breach of}}{\text{a default in the observance of}}$ the condition of the document of title hereunder specified *which $\frac{\text{breach}}{\text{default}}$ is in my opinion not capable of being repaired or made good I,.....Collector of Land Revenue for the district of.....do hereby in accordance with the provisions of section 35 of the Land Enactment a copy of which is printed on the back of this notice require you to appear before me on the.....day of....., 19..., at..... $\frac{\text{a.m.}}{\text{p.m.}}$ and to show cause to my satisfaction why I should not re-enter on the said land.....*which $\frac{\text{breach}}{\text{default}}$ is in my opinion capable of being repaired or made good I,.....Collector of Land Revenue for the district of.....do hereby in accordance with the provisions of section 35 of the Land Enactment a copy of which is printed on the back of this notice require you to make good such $\frac{\text{breach}}{\text{default}}$ within a period of.....months from the date of this notice.

And take notice further that unless you.....*appear and show cause to my satisfaction why I should not re-enter on the said land.....*make good such $\frac{\text{breach}}{\text{default}}$ within the said period I shall or some other officer authorised by me in writing will re-enter on the land hereunder specified and thereupon the said land will be forfeited to and vest in the Ruler of the State.

SPECIFICATION.

District of.....mukim of.....
Proprietor.....
Nature of document of title.....
Number of document of title.....
Lot Number.....
Area.....

The condition $\frac{\text{expressed}}{\text{implied}}$ in the document of title $\frac{\text{is}}{\text{are}}$ as follows:

The $\frac{\text{breach}}{\text{default}}$ is as follows:

Dated this.....day of....., 19....

[L.S.]

.....
Collector of Land Revenue,
District of.....

* Strike out the inapplicable words.

NOTE.—Section 35 of the Land Enactment to be printed on the back of the notice.

30. Schedule XI to the principal Enactment is hereby deleted. Deletion of Schedule XI.

31. The Enactments set out in the Schedule to this Ordinance shall be deemed to have been repealed as from the first day of January, 1939. Repeal.

SCHEDULE.

(Section 31.)

Trengganu Enactment No. 5 of 1344	The Land Enactment, 1344.
Trengganu Enactment No. 6 of 1350	The Land Titles (Provisional Survey) Enactment, 1350
	Ishtihar No. 35 of 1346.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 69 of 1950.

THE FEDERATION OF MALAYA AIR TRAINING CORPS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal :

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer ~~Administering the~~ Government.

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to provide for the establishment of a Federation of Malaya Air Training Corps.

[ ]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council, as follows:

Short title and commencement.

1. This Ordinance may be cited as the Federation of Malaya Air Training Corps Ordinance, 1950, and shall come into force on such date as the High Commissioner may by notification in the *Gazette* appoint.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

"The Commandant" means the officer appointed under paragraph (*a*) of section 4 of this Ordinance to be in command of the Corps;

"The Committee" means the Advisory Committee appointed under paragraph (*b*) of section 4 of this Ordinance;

"The Corps" means the Federation of Malaya Air Training Corps;

"Officer" means an officer of the Corps commissioned by the High Commissioner.

Constitution of the Federation of Malaya Air Training Corps.

3. (1) There shall be raised and maintained a Corps of volunteers for the purpose of training youths and young women in air defence to be called "the Federation of Malaya Air Training Corps".

(2) The Corps shall be raised and maintained at the expense of the Federation out of moneys provided by the Legislative Council.

Appointment of Commandant and Advisory Committee.

4. The High Commissioner may appoint—

(*a*) an officer, to be known as the Commandant, who shall, subject to the provisions of this Ordinance, command and administer the Corps;

(*b*) an Advisory Committee to advise on the administration of the Corps, to supervise its training and to do such other things as may conduce to the progress of the Corps and which it may be authorised to do by the High Commissioner.

Eligibility for enrolment in the Corps.

5. Every person who is a British subject or a Federal Citizen shall, subject to the provisions of any regulations made under section 9 of this Ordinance, be eligible for enrolment in the Corps.

Officers of the Corps.

6. The officers of the Corps shall be commissioned by the High Commissioner and no such commission shall be deemed to be vacated by the death or retirement from office of the High Commissioner by whom it was granted.

Units of the Corps.

7. The Corps shall consist of such units and sub-units as the High Commissioner may from time to time direct and the High Commissioner may at any time disband any such unit or sub-unit and cause any member thereof to be transferred to another unit or sub-unit.

Powers of the High Commissioner to dispense with the services of members of the Corps.

8. The High Commissioner may at any time dispense with the service of any member of the Corps and cancel any commission granted to him by the High Commissioner or by his predecessor.

Power of the High Commissioner to make regulations respecting the Corps.

9. The High Commissioner may make regulations respecting—

(*a*) the age and other qualifications to be required of members of the Corps;

(*b*) the manner in which, and the conditions subject to which, persons desiring to be enrolled in the Corps may offer themselves for enrolment and the form of declaration to be taken by such persons;

(*c*) the seniority, promotion or reduction in rank of officers of the Corps;

(*d*) the uniform and equipment of the members of the Corps.

Power of the Commandant to make standing orders.

10. The Commandant, with the approval of the High Commissioner, may make standing orders, not inconsistent with the provisions of this Ordinance or of any regulations made under section 9 thereof, respecting—

(*a*) the organisation, general government and discipline of the Corps;

(*b*) the training to be undergone by members of the Corps;

(*c*) the attendances at courses of instruction and training by members of the Corps.

Service.

11. No member of the Corps shall, without his consent in writing and, in the case of a member who is under twenty-one years of age, that of his parent or guardian, be required to serve outside the limits of the Federation.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

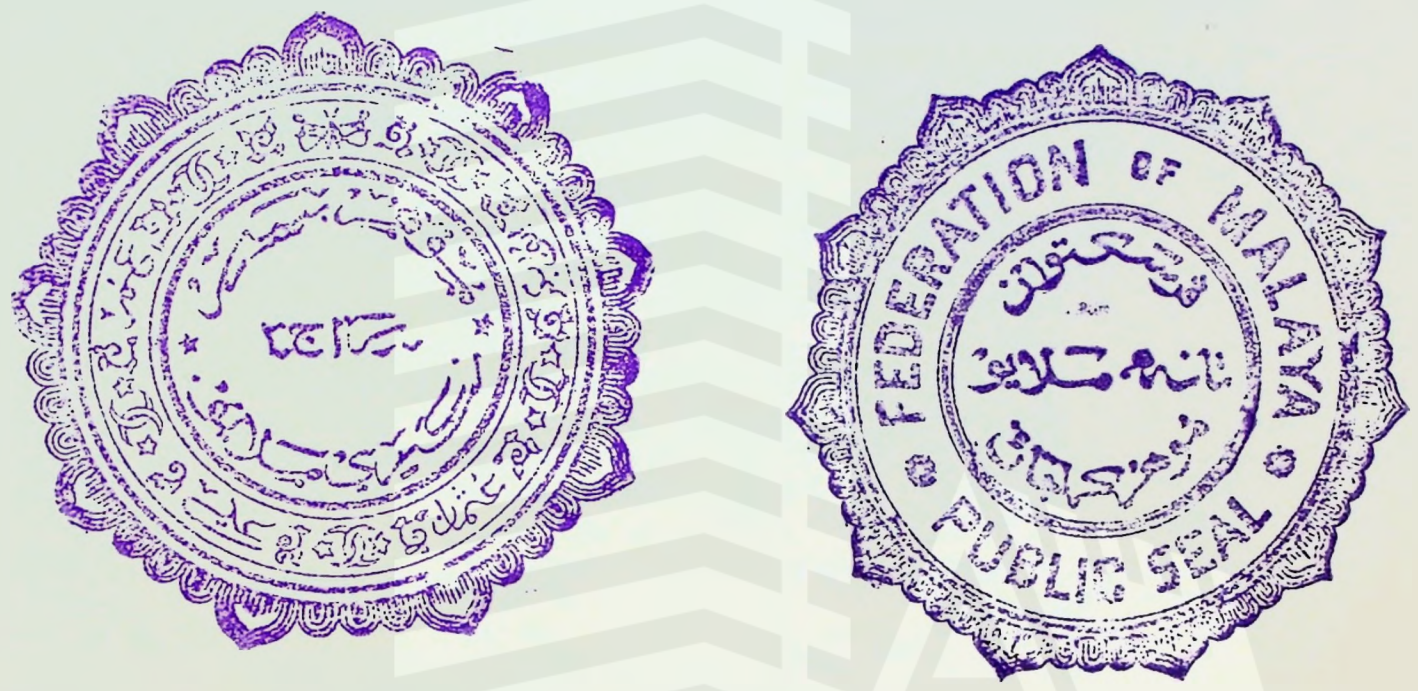
FEDERATION OF MALAYA.

No. 70 of 1950.

THE STAMP (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent



Witnesses to the affixing of the Rulers' Seal:

.....
.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer ~~Administering the~~ Government.

9th December, 1950.

.....
Sultan of Selangor.

9th December, 1950.

An Ordinance to amend the Stamp Ordinance, 1949.

[14th *December, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

1. This Ordinance may be cited as the Stamp (Amendment) Ordinance, 1950, and shall be read as one with the Stamp Ordinance, 1949, hereinafter referred to as the principal Ordinance.

Ord. No. 59 of 1949.

Substitution of section 7 (2).

2. The following sub-section is hereby substituted for sub-section (2) of section 7 of the principal Ordinance :

"(2) Where duty is required to be paid or indicated by means of an adhesive stamp, such stamp shall, unless any other stamp has been issued under this Ordinance for the payment of stamp duty, be a postage stamp of the Federation or of any State or Settlement comprised in the Federation which, at the time the duty is to be paid or indicated, is valid for the purposes of postage and the payment of any fee or other sum under the Post Office Ordinance, 1947."

M.U. Ord. No. 34 of 1947.

Amendment of section 9.

3. Section 9 of the principal Ordinance is hereby amended—

(*a*) by the deletion of the comma and the words " , less five cents per dollar to be allowed to such banker as discount on the sum so due and collected" which appear immediately after the words "on such unstamped cheques" in paragraph (*c*) of sub-section (1) thereof; and

(*b*) by the addition of the following new sub-section immediately after sub-section (2) thereof :

"(3) Where a banker has been authorised to compound for the payment of duty on unstamped cheques as provided in sub-section (1) of this section, the Financial Secretary or any person authorised by him in writing, may, at all reasonable times, inspect

any stocks of unstamped cheques held by the banker and any books kept by him in connection with the issue of such cheques.''

Amendment of section 21.

4. Section 21 of the principal Ordinance is hereby amended—

(*a*) by the substitution of the word ''fifty'' for the word ''twenty-five'' which occurs in the last line of sub-section (2) thereof; and

(*b*) by the substitution of the word ''fifty'' for the word ''twenty-five'' which occurs in the second line of sub-section (4) thereof.

Amendment of First Schedule.

5. The First Schedule to the principal Ordinance is hereby amended by the substitution of the following paragraphs for paragraphs (*d*), (*e*) and (*f*) in the Exemptions under item 64:

''(*d*) given by an officer of the Government or of the Malayan Railway for property received from the Treasury or the Malayan Railway;

(*e*) given by any Town or Rural Board;

(*f*) given for or on account of any salary, pay or wages, or for or on account of any other like payment made to or for the account or benefit of any person, being the holder of an office or an employee, in respect of his office or employment, or for or on account of any money paid in respect of any pension, superannuation allowance, compassionate allowance, or other like allowance.''

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 71 of 1950.

THE SUPPLY (1951) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....*Yang di-Pertuan Besar of Negri Sembilan.*

.....*Officer Administering the Government.*

.....December, 1950.

.....*Sultan of Selangor.*

9th December, 1950.

An Ordinance to make provision for the public service for the year 1951.

[*1st January, 1951.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

1. This Ordinance may be cited as the Supply (1951) Ordinance, 1950, and shall come into operation on the 1st day of January, 1951.

Appropriation.

2. A sum not exceeding four hundred and ten million five hundred and seventy-six thousand one hundred and five dollars shall be and the same is hereby charged upon the revenues and other funds of the Federation of Malaya for the service of the year 1951; and the said sum may be expended as specified in the Schedule to this Ordinance.

SCHEDULE.

PART I.

FEDERAL SERVICES.

No.	Head.	Total.
		$
1	Charges on Account of Public Debt ...	244,912
2	Pensions, Retiring Allowances and Gratuities	3,611,200
3	Commissioner-General	361,657
4	High Commissioner	239,393
5	Legislative Council	417,031
6	Federal Secretariat	1,581,561
7	Civil Service	262,540
8	Agricultural	3,140,665
9	Audit	1,179,277
10	Broadcasting	2,742,067
11	Chemistry	205,685
12	Chinese Affairs	184,627
13	Civil Aviation	1,384,150
14	Commissioner of Lands	35,971
15	Co-operative Development	612,258
16	Custodian of Enemy Property	178,431
17	Customs and Excise	15,620,414
18	Drainage and Irrigation	481,532
	Carried forward ...	32,483,371

No.		Head.	Total.
			$
		Brought forward ...	32,483,371
19	...	Drainage and Irrigation Annually Recurrent	51,150
20	...	Drainage and Irrigation Non-Recurrent	770,412
21	...	Education	6,958,832
22	...	Emergency Detention Camps	6,758,508
23	...	Estate Duty	155,016
24	...	Exchange Control	149,386
25	...	Film Unit	785,381
26	...	Fisheries	1,632,081
27	...	Food and Price Control and Supplies ...	2,372,505
28	...	Forestry	1,163,796
29	...	Game	106,444
30	...	Geological Survey	1,596,754
31	...	Immigration	571,979
32	...	Income Tax	1,017,199
33	...	Judicial	3,166,053
34	...	Labour	1,378,509
35	...	Legal	493,930
36	...	Malayan Establishment Office	366,219
37	...	Malayan Meteorological Service ...	358,565
38	...	Marine	1,510,269
39	...	Medical and Health	12,786,388
40	...	Military and Defence	21,868,133
41	...	Mines	1,579,227
42	...	Miscellaneous Services	31,088,366
43	...	Museums and Libraries	44,864
44	...	Official Assignee, Registrar of Companies, Registrar of Trade Unions and Registrar of Societies	325,661
45	...	Pilgrimage	50,210
46	...	Police	97,185,577
47	...	Postal Services	6,628,774
48	...	Printing	1,939,518
49	...	Prisons	3,441,419
50	...	Public Relations	1,790,914
51	...	Public Trustee	197,181
52	...	Public Works	3,011,580
53	...	Public Works Annually Recurrent ...	11,603,150
54	...	Public Works Non-Recurrent	22,392,517
55	...	Registration	644,000
56	...	Road Transport	976,636
57	...	Social Welfare	2,000,944
58	...	Statistics	261,257
59	...	Survey	4,573,722
60	...	Telecommunications	29,288,758
61	...	Town Planning	137,610
62	...	Trade Union Adviser	189,947
63	...	Treasury	472,409
64	...	Veterinary	799,627
		Total ...	**319,124,748**

PART II.

STATE AND SETTLEMENT ALLOCATIONS.

	$
Johore	16,344,293
Kedah	8,670,383
Kelantan	4,598,424
Malacca	4,143,080
Negri Sembilan	7,007,879
Pahang	6,859,289
Penang	8,436,409
Perak	18,341,296
Perlis	1,481,171
Selangor	11,798,822
Trengganu	3,770,311
Total ...	**91,451,357**
GRAND TOTAL ...	**410,576,105**

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 72 of 1950.

THE MALAYAN RAILWAY SUPPLY (1951) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal :

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

9th December, 1950.

.....
Officer ~~Administering the~~ Government.

9th December, 1950.

An Ordinance to make provision for Malayan Railway Services for the year 1951.

[*1st January, 1951.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement.

1. This Ordinance may be cited as the Malayan Railway Supply (1951) Ordinance, 1950, and shall come into operation on the 1st day of January, 1951.

Appropriation.

2. A sum not exceeding thirty-nine million nine hundred and fifty thousand dollars shall be and the same is hereby charged upon the revenues and other funds of the Malayan Railway and the said sum may be expended for Railway Services for the year 1951.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 73 of 1950.

THE JOHORE PORTS AND SHIPPING ENACTMENT (AMENDMENT) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer ~~Administering the~~ Government.

.....December, 1950.

.....*Sultan of Selangor.*

.....December, 1950.

An Ordinance to amend the Ports and Shipping Enactment of the State of Johore.

[*14th December, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title.

Johore Enactment No. 35.

1. This Ordinance may be cited as the Johore Ports and Shipping Enactment (Amendment) Ordinance, 1950, and shall be read as one with the Ports and Shipping Enactment of the State of Johore hereinafter referred to as the Enactment.

Amendment of section 84.

2. Sub-section (i) of section 84 of the Enactment is hereby amended—

(1) by deleting paragraph (*b*) thereof and by substituting the following paragraph therefor :

"(*b*) providing for the issue of licences to fish and of licences to erect, maintain and use fish traps, fishing stakes and fishing nets, the form of such licences and the term of their duration;";

(2) by adding immediately thereafter the following new paragraphs :

"(*c*) empowering port officers to remove any abandoned fishing stake or any fishing stake in respect of which the licence has expired or been cancelled, where the licensee has failed to comply with the provisions of any rule requiring the removal of the same;

(*d*) providing for the taking of a deposit from any person to whom a licence to fish may be issued or for requiring such person to enter into a bond, with or without sureties, in such sum as may be prescribed and for the forfeiture of such deposit or the enforcement of

such bond to the extent of any expenses that may be incurred by the port officer in removing any disused fishing stake in respect of which the licence has expired or been cancelled or in connection with such removal, if such person fails to comply with any rule requiring the removal of such stake."

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 74 of 1950.

THE MERCHANT SHIPPING (AMENDMENT) (No. 2) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

Abdul Rahman
.....
Yang di-Pertuan Besar of Negri Sembilan.

H. Foster Sutton.
.....
Officer ~~Administering the~~ Government.

9th December, 1950.

.....
Sultan of Selangor.

9th December, 1950.

An Ordinance to amend the Merchant Shipping Ordinance of the Straits Settlements.

[*1st January, 1951.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows :

Short title and commencement. S.S. Cap. 150.

1. (1) This Ordinance may be cited as the Merchant Shipping (Amendment) (No. 2) Ordinance, 1950, and shall be read as one with the Merchant Shipping Ordinance of the Straits Settlements, hereinafter referred to as the principal Ordinance.

(2) This Ordinance shall come into force on the first day of January, 1951.

Substitution of section 439 (10).

2. The following sub-section is hereby substituted for sub-section (10) of section 439 of the principal Ordinance :

"(10) The High Commissioner in Council may, by order, prescribe the fees to be charged for anything done in pursuance of this section."

Substitution of section 442.

3. The following section is hereby substituted for section 442 of the principal Ordinance :

Power of High Commissioner in Council to prescribe fees.

"442. The High Commissioner in Council may, by order, prescribe the fees to be charged for licensing boats for each period of twelve months or for any part of such period and the fees to be charged for the licence book."

Repeal of Schedules I and J.

4. Schedules I and J to the principal Ordinance are hereby repealed.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 75 of 1950.

THE WIDOWS AND ORPHANS PENSIONS (AMENDMENT AND EXTENDED APPLICATION) ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent

Witnesses to the affixing of the Rulers' Seal:

.....
Yang di-Pertuan Besar of Negri Sembilan.

.....
Officer ~~Administering the~~ Government.

.....December, 1950.

.....*Sultan of Selangor.*

9th.....December, 1950.

An Ordinance to amend the Widows and Orphans Pensions Enactment of the Federated Malay States, to extend its application throughout the Federation of Malaya and to make special provisions regarding contributions in the case of officers transferred from Palestine to the Federation of Malaya.

[*11th December, 1950.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Widows and Orphans Pensions (Amendment and Extended Application) Ordinance, 1950.

Interpretation. F.M.S. Cap. 26.

2. In this Ordinance unless the context otherwise requires, "the Enactment" means the Widows and Orphans Pensions Enactment of the Federated Malay States.

Amendment of section 2.

3. Section 2 of the Enactment is hereby amended by the insertion of a comma and of the words and comma "an officer serving on probation or on agreement in a pensionable office," immediately after the words "pensionable office" which occur in the definition of "public servant".

Amendment of section 4.

4. Section 4 of the Enactment is hereby amended—

(*a*) by the substitution of the following new sub-sections for sub-section (i) thereof:

"(i) A monthly abatement shall be made from the salary or pension of every public servant, and all such abatements shall be paid to the credit of the general revenue of the Federation.

(ii) The abatement referred to in sub-section (i) of this section shall be calculated at the rate of four per

centum of the monthly salary of the contributor:

Provided that unless and until notice has been given as provided in sub-section (i) of section 6 of this Enactment, the abatement to be made in the case of a contributor who has retired on pension or who has suffered reduction of salary shall be calculated upon the salary drawn by such contributor immediately prior to such retirement or reduction, as the case may be.

(iii) In the case of an officer holding or having held a post, the salary of which is on a sterling basis, the abatement shall be made in dollars at four per centum of such salary converted into dollars at the rate from time to time fixed by the Federal Government for the payment of such salaries or pensions.

(iv) Contributions shall continue to be made on the full salary whenever an officer is on leave of absence with half salary or without salary;''

(*b*) by re-numbering sub-section (ii) thereof as sub-section (v);

(*c*) by repealing sub-section (iii) thereof; and

(*d*) by re-numbering sub-sections (iv) and (v) thereof as sub-sections (vi) and (vii) respectively.

Insertion of new section 5A.

5. The following new section is hereby inserted immediately after section 5 of the Enactment:

Abatement during period of enemy occupation.

''5A. (1) Notwithstanding anything contained in the foregoing provisions of this Enactment, where a public servant was not, during the period of enemy occupation and during any period thereafter until his re-appointment in the service of the Government, drawing the full salary or any part of his salary, abatements calculated on the salary for which that public servant would have been eligible in accordance with his salary scheme

were it not for the enemy occupation shall be deemed to have been made, during such period or periods, under and in accordance with the provisions of this Enactment:

Provided that for the purpose of any repayment to contributors as provided in sections 7, 8 and 9, in sub-section (iii) of section 10, in section 11 and in paragraph (*b*) of sub-section (ii) of section 12 of this Enactment only the contributions actually made shall be taken into account.

(2) In this section 'period of enemy occupation' means the period commencing on the eighth day of December, 1941, and continuing to the thirty-first day of August, 1945.''

Amendment of section 6.

6. Section 6 of the Enactment is hereby amended—

(*a*) by deleting sub-section (i) and substituting the following new sub-section therefor:

''(i) If the official income of a contributor becomes reduced, whether by reduction of salary or by his retirement on pension, he may, upon giving notice in writing to the Directors of his desire to do so, contribute for the remainder of the thirty-five years or until he attains the age of sixty-five upon the actual amount of his salary or pension, as the case may be, in which case his widow or children shall be entitled to pension accordingly.

Notice given by a contributor under this sub-section as to contribution on actual salary or on pension, as the case may be, shall be irrevocable.''

(*b*) by deleting in sub-section (ii) the words ''unless he contributes'' and by substituting therefor ''if he elects to contribute on his pension'';

(*c*) by deleting in sub-section (ii) the word and figure ''Section 4'' and by substituting therefor ''sub-section (iv) hereof'';

(*d*) by adding the following new sub-section numbered (iv):

"(iv) The pension of a contributor to whom a gratuity and reduced pension have been granted shall, for the purpose of calculating the amount of the abatements to be made under this section, be deemed to be the equivalent of four-thirds of such reduced pension."; and

(*e*) by re-numbering sub-section (iv) as sub-section (v).

Amendment of section 17 (iii).

7. Sub-section (iii) of section 17 of the Enactment is hereby repealed and the following sub-section is substituted therefor:

"(iii) Every contributor who marries or whose marriage is annulled or dissolved by the decree of the competent Court shall, within three months after the date of such marriage or decree, as the case may be, notify the same to the Directors in writing and, in the case of his marriage, state the date of birth of his wife, duly proved as aforesaid."

Amendment of section 21.

8. The following sub-section is hereby added to section 21 of the Enactment:

"(iii) References to 'widow' and to 'child or children of a pensionable age' hereinafter in this Enactment contained, shall not include a widow whose marriage was contracted in the circumstances mentioned in sub-section (i) of this section and the issue of such marriage."

Insertion of new section 23A.

9. The following new section is hereby inserted immediately after section 23 of the Enactment:

Dissolution of marriage.

"23A. Where the marriage of any contributor has been annulled or dissolved by the decree of any competent Court, the wife, party to such marriage, shall for all purposes of this Enactment be deemed to have died, and the contributor to have become a widower, at the date of such decree."

Minor amendments.

10. The amendments set out in the second column of the Schedule to this Ordinance, being minor amendments consequential to the provisions of this Ordinance, shall be made to the sections of the Enactment specified in the first column of the said Schedule.

Extension, repeal and transitory provisions.

11. (1) Subject as hereinafter provided, the Enactment, as amended by the foregoing provisions of this Ordinance shall be deemed to have had effect throughout the territories now comprised in the Federation as from the first day of April, 1946.

S.S. Cap. 79.

(2) The Widows' and Orphans' Pension Ordinance is hereby repealed with effect from the first day of April, 1946.

(3) No public servant, to whom the Enactment applies and who at any time before the date of publication in the *Gazette* of this Ordinance, was in the service of the Government of any of the territories now comprised in the Federation where no provision was made by law for the granting of pensions to widows and orphans or was an officer serving on probation or on agreement, shall be liable to make contributions in respect of the period from the first day of April, 1946, to the aforementioned date or have any rights under the Enactment:

Provided that every such public servant may, by notice in writing to be given to the Directors (appointed under section 2 of the Enactment) not later than three months from the date of publication in the *Gazette* of this Ordinance, elect to become a contributor under the Enactment with effect from the 1st day of April, 1946, or, if, on that date he was not in the service of the Government, from the date on which he entered such service, and, if, within a period of one year, he makes a lump-sum payment to the Directors equal to the monthly abatements which would have been made from his salary had the Enactment, as extended by this Ordinance, been in force, he shall be deemed to have become a contributor as from the 1st day of April, 1946, or the date on which he entered the service of the Government, as the case may be, and, as from such date, he shall be deemed to have enjoyed all the rights and to have been subject to all the liabilities under the Enactment, as extended by this Ordinance.

(4) All monthly abatements made from the salary or pension of any public servant under the Enactment or under the Widows' and Orphans' Pension Ordinance in respect of the period between the first day of April, 1946, and the date on which this Ordinance is published in the *Gazette*, shall be deemed to have been made under and for the purposes of the Enactment as extended by this Ordinance. S.S. Cap. 79.

(5) Officers who immediately before the first day of April, 1946, were—

(*a*) in the service of the Colony of the Straits Settlements;

(*b*) serving in the Settlement of Penang or Malacca; and

(*c*) contributors under the Widows' and Orphans' Pension Ordinance of the said Colony, S.S. Cap. 79.

shall, as from the aforementioned date be deemed to have been transferred to the Government of the Malayan Union under and in accordance with the provisions of the Enactment as extended by this Ordinance.

(6) Where in the Enactment, as extended by this Ordinance, any period of time is specified for the doing of any act by a contributor or by any other person, such period shall begin to run from the date of the event mentioned in the Enactment for the running of such period or from the date on which this Ordinance is published in the *Gazette*, whichever is the later.

(7) Where at any time before the date on which this Ordinance is published in the *Gazette*, a contributor whose official income became reduced, whether by reduction of salary or by his retirement on pension, has given notice under section 6 of the Enactment, of his desire to continue his rate of contribution according to the full amount of contribution paid by him at the date of such reduction or retirement, then notwithstanding the provisions of the Enactment—

(*a*) such contributor may revoke the option so exercised; or

(*b*) if he has revoked such option before the date on which this Ordinance is published in the *Gazette*, such revocation shall be deemed to have been validly and legally made and accepted by the Directors (as defined in section 2 of the Enactment).

Interpretation of "salary". S.S. Cap. 79

12. For the avoidance of doubt it is hereby declared and enacted that in the Enactment and in the Widows' and Orphans' Pension Ordinance the word "salary" shall mean and be deemed at all times to have meant the salary attached to a pensionable office, or, in the case of an officer serving in a pensionable class, the salary payable to such officer as an officer in such class, as the case may be, together in either case with any personal pensionable allowance and expatriation pay (if any) but exclusive of acting pay or other allowance.

SPECIAL PROVISIONS REGARDING OFFICERS TRANSFERRED FROM PALESTINE.

Special provisions regarding lump-sum payment of contributions by officers transferred from Palestine to the Federation.

13. Notwithstanding anything contained in the Enactment, an officer who was a contributor under the Palestine Widows' and Orphans' Pensions Ordinance, 1944, immediately before the fifteenth day of May, 1948, and who is transferred to the service of the Government of the Federation may, not later than three months after such transfer or after the commencement of this Ordinance, whichever is the later, make a lump-sum payment to the Directors, appointed under the Enactment, equal to the accumulated contributions paid by him and by the Government of Palestine on his behalf under the aforesaid Palestine Ordinance.

SCHEDULE.

(*Section 10.*)

Section.	Amendment.
2	In the definition of "public servant" the words "of the Federated Malay States" shall be deleted;
	The definition of "the Government" shall be deleted and the following shall be substituted therefor:
	"the Government" means the Government of the Federation or the Government of any State or Settlement and in respect of the period from the 1st April, 1946, to the 31st January, 1948, means the Government of the Malayan Union;
3 (i) ...	For the words "Federated Malay States" there shall be substituted the word "Federation";
(ii) ...	The words "of the Federation" shall be inserted after the words "general revenue".
6 (ii) ...	For the words "Federated Malay States", wherever they appear, there shall be substituted the word "Federation".

Section.		Amendment.
12 (i)	...	(*a*) For the words "under the Crown of Great Britain in some British Colony or other country or to the service of any Malay State which may for the time being be under the protection of the British Government in which Colony, country or State" which occur in lines 2, 3, 4 and 5 there shall be substituted the following: "under the Government of a British Dominion, Colony, Protected State or Protectorate or a territory in respect of which a mandate, or trusteeship on behalf of the League of Nations or the United Nations is being exercised by His Majesty, where"; (*b*) For the words "Colony, country or State" which occur in lines 1 and 2 of sub-paragraph (*b*) there shall be substituted the words "Dominion, Colony, Protected State, Protectorate or territory".
12 (ii)	...	(*a*) For the words "a Colony, country, or State (not being a Malay State or the State of North Borneo)" which occur in lines 1 and 2 there shall be substituted the following: "such Dominion, Colony, Protected State, Protectorate or territory (other than North Borneo)"; (*b*) For the words "Federated Malay States" which occur in line 6 of sub-paragraph (*a*) of the first paragraph there shall be substituted the word "Federation"; (*c*) For the words "Colony, country, or State" which occur in lines 3 and 4 of the third paragraph there shall be substituted the words "Dominion, Colony, Protected State, Protectorate or territory".
12 (iii)	...	(*a*) The words "any Malay State where no provision has been made by law for granting such pensions as aforesaid or to the State of" which appear in lines 2 and 3 shall be deleted; (*b*) The words "such Malay State or the State of" which occur in line 7 shall be deleted.
12 (iv)	...	(*a*) For the words "Colony, country or State" which occur in line 4 there shall be substituted the words "Dominion, Colony, Protected State, Protectorate or territory"; (*b*) For the words "Colony, country, or State" which occur in lines 1 and 2 of sub-paragraph (*b*) there shall be substituted the words "Dominion, Colony, Protected State, Protectorate or territory"; (*c*) The proviso shall be deleted.

Section.	Amendment.
12 (v) ...	(*a*) The words "the State of" which occur in line 1 shall be deleted; (*b*) For the word "State" which occurs in line 3 there shall be substituted the word "colony"; (*c*) The words "as if the State of North Borneo was therein mentioned" which occur at the end shall be deleted.
13 and 14 ...	The words "of the Federated Malay States" shall be deleted.
15 (i) ...	The words "of the Federated Malay States" shall be deleted.
15 (ii) ...	For the words "in the Federated Malay States" there shall be substituted the words "in the service of the Government".
15 (iv) & (v)...	The words "of the Federated Malay States" shall be deleted.
19 (iii) ...	The word "Federation" shall be substituted for the words "Federated Malay States" wherever they appear. The word "Federal" shall be inserted immediately after the words "annually or periodically fixed by the", which occur in line 7.
20	The whole section shall be deleted.
34	The word "Federation" shall be substituted for the words "Federated Malay States".
The Schedule	The words "or under the Government of a Malay State other than one of the Federated Malay States" which occur, in the Synopsis and in the body of the Rules, in the heading "E—Public officers transferred to employment under the Crown of Great Britain or under the Government of a Malay State other than one of the Federated Malay States" shall be deleted.

Passed in the Legislative Council on the twenty-second day of November, 1950.

Clerk of Council.

FEDERATION OF MALAYA.

No. 76 of 1950.

THE REQUIRED RECORDS AND ACCOUNTS ORDINANCE, 1950.

Their Highnesses the Rulers of the Malay States assent hereto

I assent





Witnesses to the affixing of the Rulers' Seal:

.....{ *Yang di-Pertuan Besar of Negri Sembilan.*

.....*Sultan of Selangor.*

.....
Officer Administering the Government.

.....December, 1950.

.....December, 1950.

An Ordinance to provide that all records and books of account required to be kept by any written law shall be kept in English or Romanised Malay.

[*1st January, 1952.*]

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council, as follows :

Short title and commencement.

1. This Ordinance may be cited as the Required Records and Accounts Ordinance, 1950, and shall come into force on the 1st January, 1952.

Accounts and records, etc., to be kept in English or Romanised Malay.

2. (1) Where, under or by virtue of the provisions of any of the written laws specified in the Schedule to this Ordinance, any book of account, record, return or written statement or other such document is required to be kept or is required, without further order, demand or request, to be furnished by any person or class of persons for the purposes of such written law, then, subject to any express provision of such written law to the contrary, every such book of account, record, return or written statement or other such document shall be kept or furnished in English or Romanised Malay.

(2) If any person, in contravention of sub-section (1) of this section, fails or neglects to keep or furnish any such book of account, record, return, written statement or other document in English or Romanised Malay, he shall be deemed, for the purposes of any such written law, to have failed to keep or furnish the same, as the case may be, as required thereby and shall be guilty of an offence against such written law and be punishable thereunder accordingly.

Power of High Commissioner in Council to exempt.

3. The High Commissioner in Council may, from time to time, by order to be published in the *Gazette*, exempt from the provisions of this Ordinance any person or class of persons or any class of books of account, records, returns, statements or documents, subject to such conditions and limitations as may be imposed by such order :

Provided that every such order shall be subject to the express provisions of any written law, other than this Ordinance, relating to such person or class of persons or books of account, records, returns, statements or documents.

4. (1) The High Commissioner in Council may from time to time, by order, amend the Schedule to this Ordinance. The High Commissioner in Council to have power to amend Schedule.

(2) Any order made under this section shall be laid before the Legislative Council and shall not come into force until it has been approved by resolution of such Council.

SCHEDULE.

F.M.S. Cap. 8	Probate and Administration Enactment
S.S. Cap. 51	Probate and Administration Ordinance
Johore Enact. No. 22	Probate and Administration Enactment
Kedah Enact. No. 1	Enactment No. 1 (Administration of Estates)
Trengganu Enact. No. 22 of 1356	Probate and Administration Enactment
Perlis Enact. No. 1 of 1338 ...	Administration of Estates Enactment, 1338
Kelantan Enact. No. 2 of 1930	Administration Enactment, 1930
F.M.S. Cap. 104	Federated Malay States Chamber of Mines Incorporation Enactment
F.M.S. Cap. 105	Planters' Association of Malaya Incorporation Enactment
F.M.S. Cap. 106	Planters' Benevolent Fund Enactment
F.M.S. Cap. 131	Planters' Loans Fund Enactment
F.M.S. Cap. 148	Mineral Ores
Johore Enact. No. 97	Mineral Ores Enactment
Trengganu Enact. No. 48 of 1356	Mineral Ores Enactment
Perlis Enact. No. 2 of 1330 ...	Mineral Ores Enactment, 1330
Kedah Enact. No. 66	Enactment No. 66 (Mineral Ore Buyers)
F.M.S. Cap. 149	Gold Buyers Enactment
Johore Enact. No. 3 of 1936 ...	Gold Buyers Enactment
Kelantan Enact. No. 8 of 1932 ...	Gold Buyers and Gold Royalty Enactment, 1932
Trengganu Enact. No. 6 of 1342	Goldsmiths Enactment
F.M.S. Cap. 208	Sultan Idris Estate Enactment
F.M.S. Cap. 209	Sultan Idris Religious and Charitable Trust Enactment
F.M.S. Cap. 212	Tai Wa Hospitals Enactment
F.M.S. Enact. No. 11 of 1940 ...	Trade Unions Enactment, 1940, as applicable throughout the Federation by virtue of the Trade Unions Ordinance, 1946 (M.U. Enact. No. 12 of 1946)

No. AKS : N000000008