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SECOND SUPPLEMENT
TO THE
FEDERATED MALAY STATES
GOVERNMENT GAZETTE

OF FRIDAY, THE 18TH OF JUNE, 1920.

(No. 13, Vol. XII.)

PUBLISHED BY AUTHORITY.

FRIDAY, 25TH JUNE, 1920.

The following Notifications are, by direction of the Chief Secretary to Government, published for general information.

A. S. JELF,
Acting Under Secretary, F.M.S.

No. 2660.—The following Bill about to be introduced in the Federal Council is published for general information:

A BILL
intituled

An Enactment to provide for matters relating to Trustees.

IT is hereby enacted by the Rulers of the Federated Malay States in Council as follows:

PRELIMINARY.

1. This Enactment may be cited as "The Trustee Enactment, 1920," and shall come into force on

Short title and commencement.

2. In this Enactment, unless there is something repugnant in the subject or context—

Interpretation.

"Charge" and "chargee" include and relate to every interest regarded in equity as merely a security for money and every person lawfully claiming under the original chargee;

"Contingent right," as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future and whether vested or contingent;

"Convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering or otherwise transferring or disposing of land whereof he is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any less interest, together with the performance of all formalities required by law to the validity of the conveyance;

"Instrument" includes Enactment;

"Land" means immovable property and includes any interest therein and also an undivided share of land;

"Lunatic" means any person found by due course of law to be of unsound mind and incapable of managing his affairs;

"Minor" means a person who is under twenty-one years of age;

"Pay" and "payment," as applied in relation to stocks and securities and in connection with the expression "into Court," include the deposit or transfer of the same in or into Court;

"Person of unsound mind" means any person, not a minor, who, not being a lunatic, is incapable from infirmity of mind of managing his affairs;

"Possessed" applies to receipt of income of, and to any vested interest less than a life interest, legal or equitable, in possession or in expectancy, in any land;

"Property" includes movable and immovable property and any interest therein and any debt and any thing in action and any other right or interest, whether in possession or not;

"Rights" include interests;

"Securities" include stocks, funds and shares;

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“Stock” includes fully paid up shares and, so far as relates to vesting orders made by the Supreme Court under this Enactment, includes any fund, annuity or security transferable in books kept by any corporation, company, association or society or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein ;

“Supreme Court” includes a Judicial Commissioner ;

“Transfer,” in relation to stock, includes the execution and performance of every instrument, power of attorney, act and thing on the part of the transferor to effect and complete the title in the transferee ;

“Trust” and “trustee” include implied and constructive trusts and cases where the trustee has a beneficial interest in the trust property and the duties incident to the office of personal representative of a deceased person.

PART I.

INVESTMENTS.

Investments.

3. A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say—

- (a) in any of the Parliamentary stocks or public funds or Government securities of the United Kingdom of Great Britain and Ireland or of British India or any British Colony or of the Federated Malay States ;
- (b) in any securities the interest on which is or shall be guaranteed by the Parliament of the said United Kingdom ;
- (c) Upon titles to immovable property in the Federated Malay States by grant in perpetuity or by lease (other than mining lease) for a term whereof one hundred years at least shall be unexpired at the time of such investment ;
- (d) upon freehold or leasehold securities in the Straits Settlements, such leasehold securities being held for a term whereof one hundred years at least shall be unexpired at the time of such investment ;
- (e) in or upon the debentures, debenture stock or guaranteed or preference or ordinary stock or shares of any railway or other company a fixed or minimum rate of interest or dividend on which is guaranteed by the Government of the Federated Malay States or of any British Colony ;
- (f) in or upon the debentures or debenture or rent-charge stock of any railway, canal, dock, harbour, gas, water or other company or body incorporated by special legislation of the Federated Malay States or the Straits Settlements or by charter of His Britannic Majesty ;
- (g) in or upon the guaranteed or preference stock or shares of any railway, canal, dock, harbour, gas, water or other company which shall have paid dividends upon its ordinary capital for at least the three years last preceding the making of the advance thereon ;

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(h) in or upon the debentures or debenture or rent-charge stock of any railway, canal, dock, harbour, gas, water or other company or body incorporated in the Federated Malay States or the Straits Settlements which shall have paid a dividend at the rate of not less than five per centum upon its ordinary capital during each of the three years last preceding the time of investment;

(i) in or upon the stocks, bonds, debentures or securities of any public body, municipality or local authority in the Federated Malay States or the Straits Settlements the revenues whereof are under the control of the Government of the said States or Settlements, as the case may be;

and may also from time to time vary any such investment as aforesaid for others of the same nature; provided always that no such original investment as aforesaid shall, where there is a person under no disability entitled in possession to receive the income of the trust fund for his life or for a term of years determinable with his life or for any greater interest, be made without the consent in writing of such person.

4. Every power conferred by section 3 shall be exercised according to the discretion of the trustee but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Discretion of trustees.

5. Sections 3 and 4 shall apply as well to trusts created before as to trusts created after the commencement of this Enactment, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.

Application of preceding sections.

6. (i) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able, practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report and that the loan was made under the advice of the surveyor or valuer expressed in the report.

Loans and investments by trustees not chargeable as breaches of trust.

(ii) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed, either wholly or partly, with the production or investigation of the lessor's title.

(iii) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

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(iv) A trustee shall not be chargeable with breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by this Enactment.

(v) This section applies to transfers of existing securities as well as to new securities and to investments made as well before as after the commencement of this Enactment, except where an action or other proceeding is pending with reference thereto at the commencement of this Enactment.

Liability for loss
by reason of
improper
investments.

7. (i) Where a trustee improperly advances trust money on the security of a charge which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(ii) This section applies to investments made as well before as after the commencement of this Enactment, except where an action or other proceeding is pending with reference thereto at the commencement of this Enactment.

PART II.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

APPOINTMENT OF NEW TRUSTEES.

Power of
appointing
new trustees.

8. (i) Where a trustee, either original or substituted and whether appointed by a Court or otherwise, is dead or remains out of the Federated Malay States for more than twelve months or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or refuses or is unfit to act therein or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person or no such person able and willing to act then the surviving or continuing trustees or trustee for the time being or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the Federated Malay States, desiring to be discharged, refusing or being unfit or being incapable as aforesaid.

(ii) On the appointment of a new trustee for the whole or any part of trust property—

(a) the number of trustees may be increased; and

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first mentioned part; and

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- (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done.
- (iii) Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.
- (iv) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.
- (v) This section applies only if and so far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.
- (vi) This section applies to trusts created either before or after the commencement of this Enactment.
- 9.** (i) Where there are more than two trustees, if one of them by instrument under his hand declares that he is desirous of being discharged from the trust and if his co-trustees, and such other person, if any, as is empowered to appoint trustees, by instruments under their hands consent to the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust and shall, by the said instruments, be discharged therefrom under this Enactment without any new trustee being appointed in his place. Retirement of trustee.
- (ii) Any assurance or thing requisite for vesting the trust property in the continuing trustees shall be executed or done.
- (iii) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.
- (iv) This section applies to trusts created either before or after the commencement of this Enactment.
- 10.** (i) Where an instrument by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any interest in any movable property subject to the trust or the right to recover and receive any debt or other thing Vesting of movable property in new or continuing trustees.

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in action so subject shall vest in the persons who by virtue of the instrument become and are the trustees for performing the trust, that declaration shall without any assignment operate to vest in those persons, as joint owners and for the purposes of the trust, that interest or right.

(ii) Where an instrument by which a retiring trustee is discharged under this Enactment contains such a declaration as is in this section mentioned by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, that declaration shall without any assignment operate to vest in the continuing trustees alone, as joint owners and for the purposes of the trust, the interest or right to which the declaration relates.

(iii) This section does not extend to any such share, stock, annuity or property as is only transferable in books kept by a company or other body or in manner directed by or under any Enactment.

(iv) This section applies only to instruments executed after the commencement of this Enactment.

PURCHASE AND SALE.

Power of trustee for sale to sell by auction, etc.

11. (i) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not and either together or in lots by public auction or by private contract subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale and to re-sell without being answerable for any loss.

(ii) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(iii) This section applies to trusts or powers created by instruments coming into operation either before or after the commencement of this Enactment.

Power to sell subject to depreciatory conditions.

12. (i) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(ii) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(iii) No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid.

(iv) This section applies only to sales made after the commencement of this Enactment.

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VARIOUS POWERS AND LIABILITIES.

13. (i) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust by permitting the solicitor to have the custody of and to produce an instrument having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the instrument being executed or the endorsed receipt being signed by the person entitled to give a receipt for such money or valuable consideration or property; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such instrument by the solicitor shall be sufficient authority to the person liable to pay or give such money or valuable consideration or property for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the instrument.

Power to authorize receipt of money by solicitor or banker.

(ii) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment.

(iii) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Enactment had not been passed in case he permits any such money or valuable consideration or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be) to pay or transfer the same to the trustee.

(iv) This section applies only where the money or valuable consideration or property is received after the commencement of this Enactment.

(v) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust.

14. (i) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

Power to insure building.

(ii) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(iii) This section applies to trusts created either before or after the commencement of this Enactment, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

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Power of trustees of renewable leaseholds to renew and raise money for the purpose.

15. (i) A trustee of any leaseholds for lives or years which are renewable from time to time either under any covenant or contract or by custom or usual practice may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same property on the accustomed and reasonable terms and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting and do all such other acts as are requisite; provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(ii) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by charge of the property to be comprised in the renewed lease or of any other property for the time being subject to the trusts to which that property is subject; and no person advancing money upon a charge purporting to be under this power shall be bound to see that the money is wanted or that no more is raised than is wanted for the purpose.

(iii) This section applies to trusts created either before or after the commencement of this Enactment, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of trustee to give receipts.

16. (i) The receipt in writing of any trustee for any money, securities or other movable property payable, transferable or deliverable to him under any trust or power shall be a sufficient discharge for the same and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(ii) This section applies to trusts created either before or after the commencement of this Enactment.

Power of executors and trustees to compound, etc.

17. (i) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(ii) An executor or administrator or two or more trustees acting together or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts and powers thereof may, if and as he or they may think fit, accept any composition or any security for any debt or for any property, movable or immovable, claimed and may allow any time for payment of any debt and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

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(iii) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(iv) This section applies to executorships, administratorships and trusts constituted or created either before or after the commencement of this Enactment.

18. (i) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

Powers of two or more trustees.

(ii) This section applies only to trusts constituted after or created by instrument coming into operation after the commencement of this Enactment.

19. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying;

Exoneration of trustee in respect of certain powers of attorney.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

20. A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults and not for those of any other trustee nor for any banker, broker or other person with whom any trust moneys or securities may be deposited nor for the insufficiency or deficiency of any securities nor for any other loss, unless the same happens through his own wilful default, and may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of his trusts or powers.

Implied indemnity of trustees.

21. (i) Where an executor or administrator liable, as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the commencement of this Enactment, to the testator or intestate whose estate is being administered has satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary

Liability of executor or administrator in respect of leases.

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estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

(ii) The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

(iii) Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

(iv) This section applies to executorships and administratorships constituted either before or after the commencement of this Enactment.

Distribution of assets of testator or intestate after notice.

22. (i) Where an executor or administrator has given such or the like notices as would be given by the Court in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate or any part thereof amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator has not had notice at the time of distribution of the said assets or a part thereof, as the case may be.

(ii) Nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

(iii) This section applies to executorships and administratorships constituted either before or after the commencement of this Enactment.

PART III.

POWERS OF THE COURT.

APPOINTMENT OF NEW TRUSTEES AND VESTING ORDERS.

Power of the Court to appoint new trustees.

23. (i) The Supreme Court may, whenever it is expedient to appoint a new trustee or new trustees and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may, if it thinks fit, make an order for the appointment of a new trustee in substitution for a trustee who is sentenced to a term of imprisonment or is declared to be an insolvent or is a bankrupt or is a lunatic or of unsound mind.

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(ii) An order under this section and any consequential vesting order or conveyance shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(iii) Nothing in this section shall give power to appoint an executor or administrator.

24. In any of the following cases, namely—

- (1) Where the Supreme Court appoints or has appointed a new trustee; and
- (2) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (a) is a minor, or
 - (b) is a lunatic or person of unsound mind, or
 - (c) is out of the jurisdiction of the Supreme Court, or
 - (d) cannot be found; and
- (3) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and
- (4) Where as to the last trustee known to have been entitled to or possessed of any land it is uncertain whether he is living or dead; and
- (5) Where there is no personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and
- (6) Where a trustee jointly or solely entitled to or possessed of any land or entitled to a contingent right therein has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement;

Vesting orders
as to land.

the Supreme Court may make an order (in this Enactment called a vesting order) vesting the land in any such person in any such manner and for any such interest as the Court may direct or releasing or disposing of the contingent right to such person as the Court may direct.

Provided that—

- (a) Where the order is consequential on the appointment of a new trustee, the land shall be vested for such interest as the Court may direct in the persons who on the appointment are the trustees; and
- (b) Where the order relates to a trustee entitled jointly with another person and such trustee is out of the jurisdiction of the Supreme Court or cannot be found, the land or right shall be vested in such other person either alone or with some other person.

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Orders as to
contingent
rights of
unborn persons.

25. Where any land is subject to a contingent right in an unborn person or class of unborn persons who on coming into existence would in respect thereof become entitled to or possessed of the land on any trust, the Supreme Court may make an order releasing the land from the contingent right or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would on coming into existence be entitled or possessed in the land.

Vesting order
consequential
on judgment for
sale of land.

26. Where any Court gives a judgment or makes an order directing the sale of any land, every person who is entitled to or possessed of the land or entitled to a contingent right therein and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Enactment; and the Supreme Court may, if it thinks expedient, make an order vesting the land or any part thereof for such interest as that Court thinks fit in the purchaser or in any other person.

Vesting order
consequential
on judgment
for specific
performance,
etc.

27. Where a judgment is given for the specific performance of a contract concerning any land or for the partition, or sale in lieu of partition, or exchange of any land, or generally where any judgment is given for the conveyance of any land, the Supreme Court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Enactment or may declare that the interests of unborn persons who might claim under any party to the action or under the will or settlement, made otherwise than for valuable consideration, of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given are the interests of persons who, on coming into existence, would be trustees within the meaning of this Enactment, and thereupon the Supreme Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting
order.

28. Subject to due compliance with the requirements of the laws relating to registration of interests in land, a vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a new trustee have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such interest as the Supreme Court directs or if there is no such person or no such person of full capacity then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such interest as the Court directs and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity and had executed a conveyance or release to the effect intended by the order.

Power to
appoint person
to convey.

29. In all cases where a vesting order can be made under any of the foregoing provisions the Supreme Court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall, subject to due compliance with the requirements of the laws relating to registration of interests in land, have the same effect as an order under the appropriate provision.

TRUSTEE.

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30. (i) In any of the following cases, namely—

Vesting orders
as to stock and
things in action.

- (1) Where the Supreme Court appoints or has appointed a new trustee; or
- (2) Where a trustee entitled alone or jointly with another person to stock or to a thing in action—
 - (a) is a minor, or
 - (b) is a lunatic or of unsound mind, or
 - (c) is out of the jurisdiction of the Supreme Court, or
 - (d) cannot be found, or
 - (e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled, or
 - (f) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, for twenty-eight days next after an order of the Supreme Court for that purpose has been served on him; or
- (3) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead,

the Supreme Court may make an order vesting the right to transfer or call for a transfer of stock or to receive the dividends or income thereof or to sue for or recover a thing in action in any such person as the Court may appoint:

Provided that—

- (a) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who on the appointment are the trustees; and
 - (b) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.
- (ii) In all cases where a vesting order can be made under this section the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.
- (iii) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Enactment may transfer the stock to himself or any other person according to the order, and all corporations, associations and companies shall obey every order under this section according to its tenor.
- (iv) After notice in writing of an order under this section it shall not be lawful for any corporation, association or company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

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(v) The Supreme Court may make declarations and give directions concerning the manner in which the right to any stock or thing in action vested under the provisions of this Enactment is to be exercised.

(vi) The provisions of this Enactment as to vesting orders shall apply to shares in ships registered under any Enactment relating to merchant shipping as if they were stock.

Persons entitled to apply for orders.

31. (i) An order under this Enactment for the appointment of a new trustee or concerning any land, stock or thing in action subject to a trust may be made on the application of any person beneficially interested in the land, stock or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(ii) An order under this Enactment concerning any land, stock or thing in action subject to a charge may be made on the application of any person beneficially interested in the property charged, whether under disability or not, or of any person interested in the money secured by the charge.

Powers of new trustee appointed by Court.

32. Every trustee appointed by a Court of competent jurisdiction shall, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Power to charge costs on trust estate.

33. The Supreme Court may order the costs and expenses of and incident to any application for an order appointing a new trustee or for a vesting order, or of and incident to any such order or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or movable property in respect whereof the same is made or out of the income thereof or to be borne and paid in such manner and by such persons as to the Court may seem just.

Trustees of charities.

34. The powers conferred by this Enactment as to vesting orders may be exercised for vesting any land, stock or thing in action in any trustee of a charity or society over which the Supreme Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Supreme Court under its general or statutory jurisdiction.

Orders made upon certain allegations to be conclusive evidence.

35. Where a vesting order is made as to any land under this Enactment founded on an allegation of the personal incapacity of a trustee or on an allegation that a trustee is out of the jurisdiction of the Supreme Court or cannot be found or that it is uncertain which of several trustees was the survivor or whether the last trustee is living or dead or on an allegation that any trustee has died intestate or has died and it is not known who is the personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the Supreme Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

TRUSTEE.

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PAYMENT INTO COURT BY TRUSTEES.

36. (i) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust may pay the same into the Supreme Court; and the same shall, subject to the provisions of the Civil Procedure Code and to rules of Court, be dealt with according to the orders of the Supreme Court.

Payment into Court by trustees.

(ii) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(iii) Where any moneys or securities are vested in any persons as trustees and the majority are desirous of paying the same into Court but the concurrence of the other or others cannot be obtained, the Supreme Court may order the payment into Court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker or other depository, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court, and every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered.

MISCELLANEOUS.

37. Where in any action the Supreme Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action to serve him with a process of the Court and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served and had also appeared by his advocate and solicitor at the hearing but without prejudice to any interest which he may have in the matters in question in the action in any other character.

Power to give judgment in absence of a trustee.

38. (i) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may, if it thinks fit, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust by way of indemnity to the trustee or person claiming through him.

Power to make beneficiary indemnify for breach of trust.

(ii) This section shall apply to breaches of trust committed as well before as after the commencement of this Enactment but shall not apply so as to prejudice any question in an action or other proceeding which is pending at the commencement of this Enactment.

39. This Enactment and every order purporting to be made under this Enactment shall be a complete indemnity to all persons for any acts done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of the order or whether the Court by which it was made had jurisdiction to make the same.

Indemnity.

40. (i) Any trustee may, without the institution of a suit, apply by petition to the Supreme Court for the opinion, advice or direction of such Court on any question respecting the execution of the trust or the management or administration of the trust property.

Application to Court for advice, etc.

(ii) Summons to attend the hearing of such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application or such of them as the Court thinks expedient.

(iii) The trustee acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the said application unless he has been guilty of fraud or wilful concealment or misrepresentation in connection with the obtaining of such opinion, advice or direction.

(iv) This section applies to trusts created either before or after the commencement of this Enactment.

OBJECTS AND REASONS.

This Bill enacts with the necessary modifications the Straits Settlements Trustee Ordinance 1914, which was modelled on the Imperial Trustee Act of 1893.

The Bill is intended to mitigate the terrors of the office of Trustee by laying down rules for his guidance in the execution of the trust.

It sets out the investments in which a trustee may invest trust funds, and protects him against charges of breach of trust for loss incurred in lawful investments if he acts with prudence and caution.

It provides for the appointment of new trustees and the retirement of trustees and lays down provisions for the guidance of a trustee with power of sale.

It authorizes a trustee to appoint solicitors and bankers to assist him and provides for the conduct of the business of the trust.

Part III empowers the Court to appoint trustees when necessary and makes provision for vesting the trust property in them.

Lastly any trustee may apply to the Court for advice and thereby escape responsibility if he acts honestly.

KUALA LUMPUR,
1st June, 1920.

A. B. VOULES,
Legal Adviser, F.M.S.

"THE COURTS ENACTMENT, 1918."

No. 2661.—Rule made by the Chief Judicial Commissioner, with the approval of the Chief Secretary to Government, under section 51 (ii) of "The Courts Enactment, 1918":

The sitting of the Supreme Court for despatch of Civil and Criminal business, including appeals to a Judicial Commissioner, fixed under *Gazette* Notification No. 4831 to take place at Bentong on 15th June will be held on the 5th July, 1920.

P. J. SPROULE,
Acting Chief Judicial Commissioner, F.M.S.

No. 2662.—THE FOOD CONTROL REGULATIONS, 1918.—

In exercise of the powers conferred upon him by the Food Control Regulations, 1918, the Food Controller hereby orders as follows:

1. From the 1st day of July, 1920, no employer of labour shall supply or sell to any labourer employed by him and to any person dependent on such labourer more than the following quantity of rice in any calendar month:

	Monthly supply.
Adult male	5 gantangs
Adult female	4 ..
Child between 12 and 18	4 ..
Child between 5 and 12	2½ ..
Child under 5	1¼ ..

2. Every employer shall be responsible for securing that the total quantity of rice permitted to be supplied or sold to the labourers employed by him or their dependents in any calendar month is not exceeded, and shall keep on the place of employment a register containing an authentic record of the rice supplied. He shall produce such register to any person authorized by or on behalf of the Food Controller to inspect the same together with all such invoices, vouchers, and other documents as may be necessary or proper for checking the entries in the register.

Notification No. 3426, published in the *Federated Malay States Government Gazette*, dated the 29th August, 1919, is hereby rescinded.

3. Infringements of this order are an offence against the Food Control Regulations, 1918.

E. S. HOSE,
Food Controller.

No. 2663.—LOCAL CLEARING OFFICE.—

Pending the passing into law of the proposed Enactment to be cited as "The Treaty of Peace Enactment, 1920," and published under Notification No. 1166 in the *Gazette* of the 23rd March, 1920, providing for the establishment of a Local Clearing Office in the Federated Malay States for the purpose of settlement of enemy debts due to or by British or Malay Nationals resident or carrying on business in the Federated Malay States such creditors or debtors are invited to put in a provisional statement of their claims or debts to the Custodian of Enemy Property, Federated Malay States, on or before the 5th July, 1920, such debts to be substantiated after the passing of the Enactment and Establishment of the Local Clearing Office.

Any further information can be obtained on application to the Custodian of Enemy Property, Federated Malay States, at Kuala Lumpur.