

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

IN THE MATTER OF CIVIL SUIT NO 586 of 1975 IN THE
HIGH COURT OF KUALA LUMPUR

B E T W E E N :-

10	STATION HOTELS BERHAD	<u>Appellants</u> (Defendants)
	- and -	
	MALAYAN RAILWAYS ADMINISTRATION	<u>Respondents</u> (Plaintiffs)

A P P E N D I X

No. 1
The Railway Ordinance 1948
(NO. 8 of 1948) ss 2, 3, 4,
13,14,15,20,21, 23

No. 1
The Railway
Ordinance
1948 (NO. 8 of
1948) ss 2,
3, 4, 13, 14,
15, 20, 21,
23

20 Section 2 Interpretation

"alienated", in reference to land, means lawfully alienated under the provisions of any written law relating to the alienation of land;

"Board" means the Railway Board established under Section 7 of this Ordinance;

30 "Collector" means any Collector of Land Revenue appointed under the Land Code of the Federated Malay States, or any equivalent Officer, by whatever name called, in a State appointed under the law relating to land in force in that State.

"Federal Lands Commissioner" means the Federal Lands Commissioner appointed under the Federal Lands Commissioner Ordinance, 1957;

(Inserted by L.N. 219/59)

40 "General Manager" means the General Manager, Malayan Railway, appointed under Section 3 of this Ordinance, and any person for the time being performing the duties of General Manager;

"Government" means the Government of the Federation of Malaya;

No. 1
The Railway
Ordinance
1948 (NO. 8 of
1948) ss 2, 3,
4, 13, 14, 15,
20, 21, 23
(Contd.)

"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;

"the Malayan Railway" means the undertakings formerly known as the Federated Malay States Railways and the Johore State Railway, and now known as the Malayan Railway; 10

"property" includes all property, movable or immovable, and all estates, interest, easements and rights, whether equitable or legal, in, to or out of property, and things in actions; and "vested" in relation to property includes rights to property which are future or contingent and rights in reversion and remainder; 20

"Railway Administration" means the corporation entitled the Malayan Railway Administration established under Section 4 of this Ordinance;

"railway land" means land vested in or held by the Federal Lands Commissioners or any other person for the purposes of the railway and land in the occupation, or under the control, of the Railway Administration, and includes railway reserves; 30

"railway premises" means all premises in the occupation, or under the control of or used by the Railway Administration;

"railway reserves" means :

- (a) all lands duly reserved, whether before or after the commencement of the Ordinance, for the purposes of the Federated Malay States Railways or the Johore State Railway or the Malayan Railway under the provisions of Section 24 of the Land Code of the Federated Malay States or the corresponding provision in the law of any State; and 40
- (b) all lands deemed to be railway reserves under the provisions of

section 16 and 17 of this Ordinance;

"railway servant" means any person deemed to be employed by the railway Administration under Section 5 of this Ordinance, and, for the purposes of section 84, 85 and 106 and paragraph (d) of section 100 of this Ordinance, includes a person employed upon the railway by a person fulfilling a contract with the Railway Administration;

No. 1
The Railway
Ordinance
1948 (NO. 8
of 1948) ss 2,
3, 4, 13, 14,
15, 20, 21, 23
(Contd.)

10 Section 3

3. (1) Deleted by L.N. 219/59;

20 (2) The General Manager shall subject to any direction which may be given by the Railway Service Commission in respect of sections 43 and 44 of this Ordinance, and in all other respects by the Minister perform the duties and exercises the rights and powers imposed and conferred upon him by this Ordinance, and all such duties, rights and powers, except those imposed and conferred by Part III and sections, 40,41,42,43,44, and sub-section (8) of section 54 of this Ordinance may be performed and exercise by any railway servant generally or specially authorised in that behalf by the Railway Service Commission or the Minister as the case may be.

(3) deleted by L.N. 219/59;
(Section amended by F. of M. Ord. No. 1 of 1948 and L.N. 663/53 and L.N. 109/54).

Section 4

30 4. (1) The person for the time being discharging the duties of General Manager and his successors in office shall be a corporation sole by the name of the Malayan Railway Administration.

40 (iA) The written laws for the time being in force in the Federation or in any part thereof shall, except where otherwise expressly provided, apply to the Railway Administration in the same manner as they apply to the Government of the Federation and any person in the service of the Railway Administration shall, except where otherwise expressly provided by any other written law be deemed to be also in the service of the Government of the Federation.

(Added by F. of M. Ord. No. 40 of 1951).

No. 1
The Railway
Ordinance
1948 (NO. 8
of 1948) ss
2, 3, 4, 13,
14, 15, 20,
21, 23
(Contd.)

(2) For the purposes of this Ordinance the Railway Administration may enter into contracts and sue and be sued in its said name and shall have perpetual succession and a corporate seal, and the said seal may from time to time be broken changed, altered and made anew as to the Railway Administration seems fit, and until a seal is provided under this section, a stamp bearing the inscription "Malayan Railway Administration" may be used as the Corporate Seal.

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(3) All deeds documents and other instruments requiring the Seal of the Railway Administration shall be sealed with the Seal of the Railway Administration in the presence of the person for the time being discharging the duties of the General Manager who shall sign every such deed, document or other instrument to which the corporate seal is affixed and such signing shall be sufficient evidence that the said Seal was duly and properly affixed and that the same is the lawful Seal of the Railway Administration.

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Section 13

13. (1) The Railway Administration may acquire, purchase, take, hold and enjoy movable property of every description.

(2) Movable property vested in or held by the Railway Administration may be sold or otherwise dealt with by the General Manager in accordance with the provisions of section 20 of this Ordinance.

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Section 14

14. (1) The Federal Lands Commissioner may acquire, purchase, take and hold immovable property of every description for the purposes of the Malayan Railway and, without prejudice to the powers conferred upon the General Manager by section 21 of this Ordinance, may sell, mortgage, charge, reconvey, re-assign, or otherwise deal with any immovable property 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 transactions shall be paid to the Railway Administration.

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(2) All property vested in or held or acquired by the Federal Lands Commissioner shall pass from Federal Lands Commissioners to Federal Lands Commissioner and shall vest in the

Federal Lands Commissioners for the time being during his continuance in office without any conveyance assignment or transfer whatever.

No. 1
The Railway
Ordinance
1948 (NO. 8
of 1948) ss
2, 3, 4, 13,
14, 15, 20,
21, 23
(Contd.)

Section 15

15. (1) Subject to the provisions of section 17 of this Ordinance all property, movable and immovable, which

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(a) immediately before the commencement of this Ordinance, was, by virtue of section 92 of the Malayan Union order in Council, 1946, and the Railway Property (Vesting) Regulations 1947, made thereunder, vested in the Governor of the Malayan Union for the purposes of the Malayan Railway; or

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(b) has been acquired since the coming into operation of the Malayan Union Order in Council, 1946 by His Majesty or by the Governor of the Malayan Union, or by any officer of the Government, including officers of the railway, for the purposes of the Malayan Railway and was, immediately before the commencement of this Ordinance, held by His Majesty or by the Governor or such officer for such purposes,

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shall, on the commencement of this Ordinance, and without any conveyance, assignment or transfer whatever, vest in the Federal Lands Commissioner for the purposes of the Malayan Railway 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.

(2) All existing liabilities incurred by or on behalf of or for the purposes of the Malayan Railway may be enforce against the Federal Lands Commissioner.

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Section 20

20. (1) The General Manager may sell, transfer, assign, surrender and yield up, charge, re-assign and otherwise dispose of, as he thinks fit, any movable property vested in or held by the Railway Administration and may give a good title thereto:

Provided that any such transaction involving property of a value exceeding fifty thousand dollars shall require the approval in writing of the Minister

No. 1
The Railway
Ordinance
1948 (NO. 8
of 1948) ss
2, 3, 4, 13,
14, 15, 20,
21, 23
(Contd.)

of Finance and, in the absence of such approval, any such transaction shall be voidable at the option of the Minister of Finance, without any liability for damages or compensation, at any time within twelve months of the conclusion of the transaction.

(2) All proceeds of sale or other moneys arising from any such transaction shall be paid to the Railway Administration.

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Section 21

21. (1) Notwithstanding the provisions of any written law -

(a) the General Manager may, for and on behalf of the Federal Lands Commissioners grant leases of immovable property vested in the Federal Lands Commissioner for the purposes of the Malayan Railway for any term not exceeding thirty years; and

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(b) the Federal Lands Commissioner may grant leases of immovable property so vested in him as aforesaid for any term not exceeding ninety-nine years.

(2) Except as aforesaid, such leases shall be subject to and shall be granted in accordance with the law for the time being in force in the place where the land is situate, and leases granted by the General Manager under paragraph (a) of sub-section (1) of this section shall, in all respects, be as valid and effectual as if the same has been granted by the Federal Lands Commissioner.

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(3) All rent payable in respect of any lease granted under the provisions of this section shall be paid to the Railway Administration.

Section 23

23. (1) When any immovable property, not being public land, required for the purposes of a railway cannot be acquired by agreement, 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 in which such property is situate.

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(2) All immovable property acquired under this section shall vest in the Federal Lands Commissioner and an entry to that effect in the appropriate register shall be made by the proper registering authority.

No. 1
The Railway
Ordinance
1948 (NO. 8
of 1948) ss
2, 3, 4, 13,
14, 15, 20,
21, 23
(Contd.)

No. 2
The Railway Property (Vesting)
Regulations NO. 27 of 1947 ss
2 and 3

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2. In these Regulations -

(a) words and phrases have the same meaning as in the Malayan Union Order in Council, 1946,

No. 2
The Railway
Property
(Vesting)
Regulations
NO. 27 of
1947 as 2
and 3

(b) the expression "the Railway" means the under-takings formerly known as the Federated Malay States Railways and the Johore State Railway and now known as as the Malayan Railway;

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(c) the expression "railway property" means property, wherever situated, which, immediately before the appointed day, was vested in, or was in the possession, or under the control, or held on account of His Majesty, or the Ruler of any of the Malay States, or the Government of any of the Malay States, or any officer of any such Government, for the purposes of the Railway, and includes all property in the Colony of Singapore which, immediately before the appointed day, was vested in the High Commissioner for the Malay States by virtue of the Singapore Railway Transfer Ordinance and the Federated Malay States (Title to Property) Ordinance, 1936, of the Straits Settlements or had been acquired under the last mentioned Ordinance.

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3. For the purpose of removing doubt as to the person or body in whom railway property has been vested by virtue of section 92 of the Malayan Union Order in Council, 1946, it is hereby declared that all railway property, whether movable or immovable, is, and shall at all times since the appointed day be deemed to have been, vested in the

Governor of the Malayan Union, as successors to the High Commissioner for the Malay States, for the purposes of the Railway.

No. 2
The Railway
Property
(Vesting)
Regulations
NO. 27 of
1947 as 2
and 3
(Contd.)

No. 3
The Control of Rent Act 1966
(NO 56 of 1966) s 4

4. (1) Except for the premises mentioned in subsection (2) all premises shall be subject to the operation of the provisions of this Act and any such premises shall for the purposes of this Act be called "controlled premises"

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No. 3
The Control
of Rent
Act 1966
(NO 56 of
1966 s 4

(2) The following premises shall be free from the operation of any of the provisions of this Act, namely -

(a) buildings completed after the 31st day of January, 1948;

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(b) premises which are the property of the Government of the Federation or of the Government of any State;

(c) premises which are vested in or acquired by or on behalf of any Municipality for the purposes of the Municipal Ordinance of the Stratis Settlement in force in the States of Malacca and Penang, and as extended to apply to the other States by virtue of the Municipal Ordinance (Etended Application) Ordinance, 1948;

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(d) furnished premises let at a rental which includes board; and

(e) premises which cease to be controlled premises by virtue of section 23.

No. 4
The Federal Lands Commissioner
Ordinance 1957 (NO 44 of 1947) ss
3 and 4

No. 4
The
Federal
Lands
Commissioner
Ordinance
1957 (NO 44
of 1957) ss 3
and 4

Section 3

3. (1) The Yang di Pertuan Agong may appoint, from time to time, a public officer to be the Federal Lands Commissioner.

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(2) The Officer for the time being appointed to be the Federal Lands Commissioner and his successors in office shall be a body corporate under the name of "the Federal Lands Commissioner" (hereinafter called "the Corporation").

No. 4
The Federal
Lands
Commissioner
Ordinance
1957 (NO 44
of 1957) ss
3 and 4
(Contd.)

10 (3) The Corporation may sue and be sued in its said name and shall have perpetual succession and a corporate seal, and the said seal may from time to time be broken, changed, altered and made anew as to the Corporation seems fit, and, until a seal is provided under this Section, a stamp bearing the inscription "the Federal Lands Commissioner" may be used as the corporate seal.

Section 7

20 7. (1) All immovable property which immediately before the commencement of this Ordinance was vested in the Chief Secretary for the purpose of the Federal Government or for the purposes of the Government of any State or Settlement or for the purposes of the Malayan Railway including property vested in the Chief Secretary, Federation of Malaya, under the provisions of section 7 of the Chief Secretary (Incorporation) Ordinance, 1949, shall, on the coming into force of this Ordinance and without any conveyance, assignment or transfer whatever, vest in the Corporation for the like title, estate or interest and on the like tenure and for the like purpose as the same was vested or held immediately before the coming into force of this Ordinance.

30 (2) The Yang di Pertuan Agong may, by Order, vest in the Corporation and property, movable or immovable, for the time being vested in any public officer or authority, and upon the coming into operation of any such Order, the property to which such Order relates shall, without any conveyance, assignment or transfer whatever, vest in the Corporation for the like title, estate or interest and on the like tenure and for the like purposes as the same was vested or held immediately before the coming into operation of the Order.

40 (3) The Yang di Pertuan Agong may, by Order, vest in any public officer or authority any property, movable or immovable, for the time being vested in the Corporation and, upon the coming into operation of any such Order, the property to which such Order relates shall, without any conveyance, assignment or transfer whatever, vest in such officer

No. 4
The Federal
Lands
Commissioner
Ordinance
1957 (NO 44
of 1957) ss
3 and 4
(Contd.)

or authority for the like title, estate or interest and on the like tenure and for the like purposes as the same was vested or held immediately before the coming into operation of the Order.

No. 5
The Federal Constitution 1957
clauses 4, 69, 83, 160, 162 and 166

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4. (1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

(2) The validity of any law shall not be questioned on the ground that -

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(a) it imposes restrictions on the right mentioned in Article 9(2) but does not relate to the matters mentioned therein; or

(b) it imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article.

(3) The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provisions with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or -

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(a) if the law was made by Parliament, in proceedings between the Federation and one or more States;

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(b) if the law was made by the Legislature of a State, in proceeding between the Federation and that State.

(4) Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause) shall not be commenced without the leave of a judge of the Federal Court; and the Federation shall be entitled to be a party

to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the same purpose under paragraph (a) or (b) of the Clause.

No. 5
The Federal
Constitution
1957 clauses
4, 69, 83,
160, 162 and
166
(Contd.)

69. (1) The Federation has power to acquire, hold and dispose of property of any kind and to make contracts.

10 (2) The Federation may sue and be sued.

83. (1) If the Federal Government is satisfied that land in a State, not being alienated land, is needed for federal purposes, that Government may, after consultation with the State Government, require the State Government, and it shall then be the duty of that Government, to cause to be made to the Federation, or to such public authority as the Federal Government may direct, such grant of the land as the Federal Government may direct.

20 Provided that the Federal Government shall not require the grant of any land reserved for a State purpose unless it is satisfied that it is in the national interest so to do.

30 (2) Where in accordance with Clause (1) the Federal Government requires the State Government to cause to be made a grant of land in perpetuity, the grant shall be made without restrictions as to the use of the land but shall be subject to the payment annually of an appropriate quit rent and the Federation shall pay to the State a premium equal to the market value for the grant; and where the Federal Government so requires the State Government to cause to be granted any other interest in land, The Federation shall pay to the State the just annual rent therefor and such premium, if any is required by the State Government, as may be just :

40 Provided that if the value of the land has been increased by means of any improvement made (otherwise than at the expense of the State) while the land was reserved for federal purposes, the increase shall not be taken into consideration in determining the market value, rent or premium for the purposes of this Clause.

(3) Where a requirement is made under Clause (1) in respect of any land which, at the date of the requirement, was intended for any State purpose, then if -

(a) other land is acquired by the State for that purpose in substitution for the first-

mentioned land; and

No. 5
The Federal
Constitution
1957 clauses
4, 69, 83,
160, 162 and
166
(Contd.)

- (b) the cost of the land so acquired exceeds the amount paid by the Federation (otherwise than as rent) in accordance with Clause (2) in respect of the interest granted to the Federation,

the Federation shall pay to the State such sum as may be just in respect of the excess.

(4) Where a further grant is made in pursuance of this article in respect of land an interest in which is vested in the Federation or any public authority, any sums payable by way of premium under Clause (2) in respect of the further grant shall be reduced by an amount equal to the market value of any improvements made (otherwise than at the expense of the State) since that interest became vested as aforesaid 10

(5) The foregoing provisions of this Article (except Clause (3)) shall apply in relation to alienated land as they apply in relation to land not being alienated land, but subject to the following modifications : 20

(a) in Clause (1), the words "after consultation with the State Government" shall be omitted;

(b) where a requirement is made under that Clause, it shall be the duty of the State Government to cause to be acquired by agreement or compulsorily such interest in the land as may be necessary for complying with the requirement; 30

(c) any expenses incurred by the State in or in connection with the acquisition of land in accordance with paragraph (b) shall be repaid by the Federation, except that if the acquisition is by agreement the Federation shall, not, unless it is party to the agreement, be liable to pay more than it would have paid on a compulsory acquisition; 40

(d) any sums paid by the Federation to the State in accordance with paragraph (d) shall be taken into consideration in determining for the purposes of Clause (2) the market value, the appropriate

quit rent or the just annual rent, and shall be deducted from any permium to be paid by the Federation under that Clause. No. 5

The Federal Constitution 1957 clauses 4, 69, 83, 160, 162 and 166 (Contd.)

10 (6) Where a grant is made to the Federation in pursuance of Clause (1) in respect of land which, or an interest in which was acquired by the State Government at the expense of the Goernment of the Federation of Malaya before Merdeka Day, paragraph (d) of Clause (5) shall apply to the sums paid in respect of the acquisition by the Goernment of the Federation of Malaya as if they were sums paid by the Federation in accordance with paragraph (c) of Clause (5); and Clause (3) shall not apply to any such land.

20 (7) Nothing in this Article, shall present the reservation of land in a State for federal purposes on such terms and conditions as may be agreed between the Federal Government and the Government of the State, or affect the power of the appropriate authority in a State to acquire in accordance with any law for the time being in force any alienated land for federal purposes without a requirement by the Federal Government under this Article.

160. "Existing law" means any law in operation in the Federation or any part thereof immediately before Merdeka Day;

30 162. (1) Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made by federal or State law.

40 (2) Where any State law amends or repeals an existing law made by the Legislature, of a State, nothing in Article 75 shall invalidate the amendement or repal by reason only that the existing law, relating to a matter with regard to which Parliament as well as the Legislature of a State has power to make laws is federal law as defined by Article 160.

(3) Reference to any existing law to the Federation established by the Federation of Malaya Agreement, 1948, and its territories, and of any officer holding office under that Federation or to any authority or body constituted in or for that

No. 5
The Federal
Constitution
1957 clauses
4, 69, 83,
160, 162 and
166
(Contd.)

Federation (including any references failing to be construed as such references by virtue of Clause 135 of the said Agreement) shall be construed, in relation to any time on and after Merdeka Day, as references to the Federation (that is to say, the Federation established under the Federation of Malaya Agreement, 1957) and its territories and to the corresponding officer, authority or body respectively, and the Yang di Pertuan Agong may by order declare what officer, authority or body is to be taken for the purposes of this Clause to correspond to any officer, authority or body referred to in any existing law.

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(4) (Repealed).

(5) Any order made under Clause (4) may be amended or repealed by the authority having power to make laws with respect to the matter to which the order relates.

(6) Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.

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(7) In this Article "modification" includes amendments, adaptation and repeal.

166. (1) (Repealed).

(2) (Repealed).

(3) Any land vested in the State of Malaya or the State of Penang which immediately before Merdeka Day was occupied or used by the Federation Government or Her Majesty's Government or by any public authority for purposes which in accordance with the provisions of this Constitution become federal purposes shall on and after that day be occupied, used, controlled and managed by the Federal Government or, as the case may be, the said public authority, so long as it is required for federal purposes and -

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(a) shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government, and

(b) shall not be used for federal purposes

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different from the purposes for which it was used immediately before Merdeka Day without the consent of the Government of the State.

No. 5
The Federal
Constitution
1957 clauses
4, 69, 83,
160, 162 and
166
(Contd.)

(4) (Repealed).

(5) (Repealed).

10 (6) (Repealed).

(7) (Repealed).

(8) Any property which was, immediately before Merdeka Day, liable to escheat to Her Majesty in respect of the Government of Malacca or the Government of Penang shall on that day be liable to escheat to the State of Malacca or the State of Penang, as the case may be.

No. 6

Rules of the Supreme Court Orders
14 and 25

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1. (a) Where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under O.3 r.6, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed if any, apply to a Judge for liberty to enter Judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed.

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No. 6
Rules of the
Supreme
Court Orders
14 and 25

- (b) If on the hearing of any application under this Rule it shall appear that any claim which could not have been specially indorsed under 0.3, r.6 has been included in the indorsement on the writ, the Judge may, if he shall think fit, forthwith amend the indorsement by striking out such claim, or may deal with the claim specially indorsed as if no other claim has been included in the indorsement, and allow the action or proceed as respects the residue of the claim. 10
- (c) Where the plaintiff's claim is for the delivery up of a specified chattel (with or without a claim for the hire thereof or for damages for its detention) the Judge may make an order for the delivery up of the chattel without giving the defendant any option of retaining the same upon paying the assessed value thereof, and such order, if not obeyed, may be enforced by a writ of attachment or a writ of delivery. 20
- (d) Where an application is made by a Government under this Rule, the cause of action shall be deemed to be sufficiently verified if an affidavit is made by :
- (i) an officer duly authorised by the department concerned; or 30
 - (ii) the Attorney-General or Legal Adviser of the Government as the case may be; or
 - (iii) a solicitor acting for the Government;
- stating that to the best of his knowledge and belief the plaintiff is entitled to the relief claimed and there is no defence to the action except as to the amount of the damages claimed, if any.
- (e) No application shall be made under this Rule in any proceedings against a Government. 40

2. The application by the plaintiff for leave to enter final judgment under r.1 shall be made by summons returnable not less than four clear days after service accompanied by a copy of the

affidavit and exhibits referred to therein.

3. (a) The defendant may show cause against such application by affidavit, or the Judge may allow the defendant to be examined upon oath.
- (b) The affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part of the plaintiff's claim.
- (c) The judge may, if he thinks fit, order the defendant, or in the case of a corporation, any officer thereof, to attend and be examined upon oath, to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

No. 6
Rules of the
Supreme
Court Orders
14 and 25
(Contd.)

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4. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court, or the taxation of costs, or otherwise, as the Judge may think fit. And the Defendant may be allowed to defend as to the residue of the plaintiff's claim.

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5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issued execution upon such judgment without prejudice to his right to proceed with his action against the former.

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6. Leave to defend may be given unconditionally, or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge may think fit.

7. Upon the hearing of the application, with the consent of the parties, an order may be made referring the action a referee.

7A. Where in the case of any claim for unliquidated damages the Court or a Judge has given leave to enter interlocutory judgment, the judgment shall direct that an enquiry be held to assess the value of the goods and the damages (or the damages only) to be awarded, provided that the Court or a Judge may order that the value and amount of damages or either of them shall be ascertained in any other manner.

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8. Where leave, whether conditionally or unconditionally, is given to defend, or leave is given to enter final judgment subject to a suspension of execution pending the trial of a counter-claim, the Court or a Judge shall have power to give all such directions as to the further conduct of the action as might be given on a summons for directions under O.30, and Rule 1 of Order 30 shall apply.

9. (a) The costs and incident to all applications under this Order shall be dealt with by the Judge on the hearing of the application, who shall order by and to whom, and when the same shall be paid, or may refer them to the Judge at the trial. Provided that in case no trial afterwards takes place, or no order as to costs is made, the costs are to be costs in the cause.

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(b) If the plaintiff makes an application under this Order where the case is not within the Order, or where the plaintiff in the opinion of the Judge, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the application may be dismissed with costs to be paid forthwith by the plaintiff.

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Order 25

1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and

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disposed of at any time before the trial.

3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

No. 6
Rules of the
Supreme
Court Orders
14 and 25
(Contd.)

10 4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

20 5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

6. No proceedings in rem shall be instituted against property belonging to a Government, unless with the prior leave of the Court or a Judge to be obtained by motion or summons.

No. 7
The Interpretation Act 1967
No. 2B of 1967

30 "Federal Constitution" means the Constitution of Malaysia and does not include the Constitution of the States.

"Federal Government" means the Government of Malaysia.

"Federation" means Malaysia.

No. 7
The
Interpre-
tation Act
1967 No.
2 B of 1967