

(ii) Subject to the provisions of this section customary land shall not be charged except to

- (a) A female member of one of the tribes included in Schedule B;
- (b) The Collector of the district wherein the same is situate;
- (c) Subject to the provisions of sub-section (iii) a Co-operative Society duly registered under Section 9 of the Co-operative Societies Enactment.

(iii) Customary land shall not be charged to a Co-operative Society unless

- (a) Such Society habitually carries on business in the district wherein such land is situate;
- (b) The Society has been generally authorised by the Registrar of Co-operative Societies with the consent of the Collector of the district wherein such land is situate to hold charges over customary land.

Such authority may be subject to such limitation as the Registrar of Co-operative Societies may direct and may be withdrawn or varied at any time.

(iv) No customary land or any interest therein shall be transferred, charged or leased except with the assent of the lembaga of the tribe of the registered owner thereof and unless such notice, in writing or otherwise, of the intention to transfer, charge or lease as the Collector may deem sufficient, shall have been published for a period of not less than one month immediately preceding the execution of such transfer or charge or lease.

(v) No instrument of transfer or charge or lease of customary land or of any interest therein shall be valid unless—

- (a) the same be executed in the presence of such lembaga as aforesaid and of the Collector; and

- (b) the execution thereof by the parties and the assent thereto of such lembaga be evidenced by the certificate of the Collector upon the face of the instrument that such execution and assent were made and given in his presence; and
- (c) such instrument be in conformity with the requirement of any Rule made under Section 24 for the regulation of such instruments.

Provided that in any case where the Collector after due enquiry shall find that the assent of the lembaga to any such transfer or charge or lease as is in this section referred to is given contrary to the custom, the Collector shall record such finding in writing, with the grounds therefore, and shall not give the certificate mentioned in subparagraph (b) hereof, except by order of the Resident made under Section 15.

Provided further that in any case where the lembaga shall refuse his assent to such transfer or charge or lease as aforesaid or shall absent himself after being duly notified of the place and time arranged for the execution thereof, the Collector, if after enquiry he shall find no reasonable or proper cause for the refusal of assent by the lembaga or for his absence, as the case may be, shall record such finding in writing, with the grounds therefore, and thereupon the provisions of this section prescribing the assent and the presence of the lembaga shall cease to apply to the said transfer or charge or lease.

(vi) The provisions of this section shall not apply to leases of customary land for a period not exceeding twelve months.

(vii) In any case where it is desired to transfer a charge or lease which has been registered before the date of the coming into force of this Enactment, the following provisions shall apply:

- (a) If the registered chargee or lessee is a female member of one of the tribes

included in Schedule B the foregoing provisions of this section shall be complied with.

- (b) If the registered chargee or lessee is not a female member of one of the tribes included in Schedule B, the foregoing provisions of this section shall not apply and there shall be no restriction on transfer of any such charge or lease.

Execution sales, charge sales and sales for arrears of rent.

8. (i) In the case of a sale of customary land or any interest therein, whether by order of Court or in accordance with the provisions of the Land Code, the following provisions shall apply notwithstanding anything in any other Enactment contained:

- (a) The bidding shall in the first instance be confined to the female members of the tribe of the judgment-debtor, chargor or defaulter as the case may be.
- (b) If no bids are forthcoming from the female members of the tribe of the judgment-debtor, chargor or defaulter the sale shall be postponed and at the postponed sale all female members of the tribes included in Schedule B shall be entitled to bid.
- (c) Save as hereinbefore provided and subject to the provisions of sub-sections (ii) and (iii) no persons shall be entitled to bid.

(ii) (a) In the case of any sale under Section 141 to 144 of the Land Code, where the charge has been registered before the date of the coming into force of this Enactment in the name of any person who is not a female member of one of the tribes included in Schedule B the provisions of sub-section (i) hereof shall not apply.

(b) To any such case the provisions of Section 6 of 'The Customary Tenure Enactment, 1909', shall continue to apply notwithstanding the repeal thereof.

(iii) In the case of any sale by order of Court of an interest in any charge or lease registered before the date of the coming into force of this Enactment in the name of any

person who is not a female member of one of the tribes included in Schedule B the provisions of sub-section (i) hereof shall not apply.

Claims to registration as owner.

9. (i) Any person asserting that she is entitled otherwise than by right of succession to a deceased owner, to be registered as the owner of any customary land may, whether such land shall have been alienated to any other person or not, apply to the Collector to record her as such in the register of the mukim in which the land is situate. The Collector shall thereupon cause a notice of such application substantially in the Form of Schedule C, to be served on the occupier (if any) of such land and also to be published locally in the district and posted on the land for a period of thirty days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of opinion that such application ought to be granted or in the course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to be registered as the owner of such land, then, in either of such cases, he shall make an order substantially in the Form of Schedule D, in accordance with his decision and shall thereupon make any necessary entry in the mukim register.

(iii) A copy of the order above mentioned shall be furnished on application by the Collector to the person in favour of whom such order is made and to any other party to the proceedings or, at the discretion of the Collector, to any other person.

Claims to registration by right of succession.

10. (i) Any person claiming to succeed to the ownership of a customary estate which is registered in the name of a deceased person may apply to the Collector to record her in the mukim register as owner of the customary estate so claimed. The Collector shall thereupon cause a notice of such application substantially in the Form of Schedule E, to be served on the occupier (if any) of the land affected and also to be published locally in the district and posted on such land for a period of thirty days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of

opinion that such application ought to be granted, or if in the course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to succeed to the ownership of such customary estate, then in either such case, he shall make an order, substantially in the Form of Schedule F, in accordance with his decision and shall thereupon make any necessary entry in the mukim register.

(iii) A copy of the order above mentioned shall be furnished on application by the Collector to the person in favour of whom such order is made and to any other party to the proceedings or, at the discretion of the Collector, to any other person.

(iv) None of the provisions of the Probate and Administration Enactment shall apply to any customary estate or any part thereof and no customary estate of a deceased person shall vest in his executor or administrator.

(v) In any case in which a registered owner of customary estate shall have died and no application under subsection (i) shall have been made within six months of the death of the deceased, the Collector may direct any public officer subordinate to him to apply that such customary estate be transmitted to the person entitled thereto and the Collector shall thereupon proceed as if application had been duly made under the provisions of sub-section (i).

(vi) If in the course of any enquiry under this section it shall appear to the Collector that any minor would but for the disability of minority be entitled to be registered as owner of any customary estate the Collector may appoint any fit and proper person to be trustee for the said minor and shall register such person as owner of such estate as trustee and shall at the same time lodge a caveat against the title for the land affected to protect the interests of the said minor. The Collector may at any time on good cause being shewn revoke the appointment of a trustee under this section and appoint a new trustee.

*Debts and
contracts of
deceased
person.*

II. No objection to any application made under Section 10 shall be maintained on the ground of any debt, contract or thing incurred, made or done or alleged to have been

incurred, made or done by or on behalf of the deceased, subject to the following exceptions:

- (i) Where the objection is based on a contract made by the deceased to sell a customary estate or part thereof to any female member of one of the tribes included in Schedule B such estate may with the assent of the lembaga of the tribe of the deceased be transmitted to the person who contracted to acquire the same or to her customary heir.

Provided that the Collector shall give such notice in writing or otherwise of the claim of the objector as the Collector shall deem sufficient in which the land affected is situate, for a period of not less than one month after the recording of the objection, and the Collector shall record and consider any counter-objections to the claim of the objector before ordering that the estate be transmitted to the objector.

Provided further that in any case where the Collector after due enquiry shall find that the assent of the lembaga is given contrary to the custom the Collector shall record such finding in writing and shall refuse to transmit the land to the objector.

Provided further that in any case where the lembaga shall refuse his assent or shall absent himself after being duly notified of the place and time arranged for the hearing of the application the Collector if after enquiry he shall find no reasonable or proper cause for refusal of assent by the lembaga or for his absence as the case may be, may order the transmission of the land to the objector.

- (ii) (a) Where the objection is based on a debt which is properly chargeable in accordance with the custom on customary land owned by the deceased, the Collector, if after enquiry he is of opinion that such debt is due and owing, may in

lieu of transmitting all or any part of such customary land to the customary heir of the deceased direct by order under his hand that the land or any part thereof be auctioned in accordance with the provisions of this sub-section.

(b) The date of the sale shall be not less than six months after the date of the order of sale.

(c) The order of sale shall specify the amount due to the objector and if such sum is paid to him at any time before the sale the order of sale shall be cancelled and the land transmitted to the customary heir of the deceased.

(d) The upset price shall be not less than the amount specified as due to the objector together with an estimated amount to cover the expenses of the sale and all costs.

(e) Copies of the order of sale shall be posted on the land, at the Land Office and in such other places as the Collector may direct.

(f) At the sale only the female members of the tribe of the deceased shall be entitled to bid. If no bids are forthcoming the Collector shall adjourn the sale. At the postponed sale all female members of the tribes included in Schedule B and no others shall be entitled to bid. If at such postponed sale no bids are forthcoming the Collector may at his discretion reduce the upset price.

(g) Any sale under this sub-section shall be conducted by the Collector or by such member of his staff as he may direct.

(h) From the proceeds of sale the Collector shall be entitled to retain and to pay into Government revenue a commission on sale in accordance with the scale laid down for sales under the Land Code.

(i) The order of sale and of transmission to the purchaser may be in the Form provided in Schedule G.

(j) Out of the purchase money the Collector after deducting the commission on sale shall pay to the objector the amount of his debt and the balance, if any, shall be paid to the customary heir of the deceased.

Provision for life-occupancy 12. If in the case of any application under Section 10 it shall appear to the Collector that the deceased has left

- (a) a female customary heir and a lawful son but no female issue or
- (b) a female customary heir and a lawful maternal brother but no issue or maternal sister

it shall be competent for the Collector, in so far only as the customary land owned by the deceased is concerned, to order the transmission of the land to such customary heir subject to beneficial occupancy by and for the life of such lawful son or maternal brother, as the case may be, provided that, where more than one person is entitled to such a life-occupancy, the occupancy shall be a joint occupancy with survivorship.

(ii) The order of the Collector shall be in the Form provided in Schedule H.

(iii) The registered owner and the life-occupant of land subject to life-occupancy shall be jointly and severally liable for the rent due to the State in respect of such land but so that as between the registered owner and the life-occupant the rent shall be payable by the life-occupant.

(iv) The interest of a life-occupant in land under this section shall not be capable of being transferred, charged, leased or otherwise dealt with, provided that a life-occupant may at any time execute a surrender of his interest in favour of the registered owner of the land whereof he is life-occupant or in favour of a joint life-occupant of the land.

(v) The interest of a life-occupant under this section shall not be capable of being attached or sold in execution of a decree.

(vi) Whenever after enquiry it shall appear to the Collector that a life-occupant or, where there are more than one, all the joint life-occupants of any land have abandoned the land for a period exceeding one year the Collector may

by order under his hand cancel the order creating the life-occupancy and the beneficial occupancy of the land shall thereupon vest in the registered owner of the land.

(vii) On proof that a sole life-occupant or all the joint life-occupants of any land are dead the Collector may by order under his hand declare that the life-occupancy affecting the said land has lapsed and the beneficial occupancy of the said land shall thereupon vest in the registered owner thereof with effect from the date of the death of the life-occupant or of the last surviving life-occupant, as the case may be.

(viii) On presentation of an order under this section the Collector shall enter in the mukim register a memorial of the life-occupancy, and in like manner shall record in the mukim register the cancellation or lapse of any life-occupancy under sub-sections (vi) or (vii).

*Failure of
customary
heirs.*

13. (i) If any person shall die and leave a customary estate and it shall appear to the Collector that the deceased has left

- (a) a lawful son but no customary heir
- (b) a lawful maternal brother but no customary heir or lawful son
- (c) no customary heir or lawful son or maternal brother

it shall be lawful for the Collector after such enquiry as he may deem fit, either of his own motion or on the application of such lawful son or brother, to direct by order under his hand that such customary estate be auctioned on such date being not less than one month from the date of such order as may be specified on such order.

(ii) The provisions of Section 11(ii) (e) (f) (g) and (h) with the exception of the words 'If at such postponed sale no bids are forthcoming the Collector may at his discretion reduce the upset price', in Section 11(ii) (f) shall apply to sales under this section.

(iii) The net proceeds of sale shall be paid:

- (a) In the case mentioned in sub-section (i)(a) hereof to the lawful son or sons of the deceased.

(b) In the case mentioned in sub-section (i) (b) hereof to the lawful maternal brother or brothers of the deceased.

(iv) In any other case such net proceeds of sale shall be paid into the District Treasury to the credit of the fund referred to as the 'Muhammadan Religious Fund' in Section 16 of the Muhammadan Laws Enactment, and shall thereupon form part of such fund.

Caveats.

14. The jurisdiction and powers which are by Section 172 of the Land Code vested in the Court shall in so far as customary land is concerned be vested in the Collector.

*Appeal.
N.S.O.C.
1 of 1932.*

15. (i) From any order of a Collector under this Enactment and from any refusal of a Collector to make an order under this Enactment, an appeal shall lie to the Resident; provided that no such appeal shall except with the leave of the Resident be admitted after the expiration of thirty days from the date of the order or refusal appealed against.

(ii) Any person who conceives that a right to or interest in any land which he claims to have is injuriously affected by any such order or refusal as aforesaid, may apply to the Resident within three months after the registration of such order or of the date of such refusal or within such further period as the Resident may allow, to set aside or vary such order, or, where an order has been refused, to make an order, and the Resident shall try the question whether such order be or be not inconsistent with the rights of the applicant; and if the Resident shall decide that the said order is inconsistent with such rights he shall set aside or vary such order or himself make an order, as he may think just, and the Collector shall on receiving notice thereof make any necessary entry in the mukim register.

(iii) In hearing any appeal under this section the Resident shall sit with one or more assessors as follows:

(a) If the land in respect whereof the appeal is lodged is situate in one of the territories of Johol, Jelebu or Rembau the Resident shall sit with one assessor only who shall be the Undang of such territory.

(b) In any other case there shall be two assessors of whom one shall be nominated by His Highness the Yang di Pertuan and the other shall be the Principal Chief of that part of the State wherein the land in respect whereof the appeal is lodged is situate.

(iv) (a) In the case of any appeal subject to the provisions of paragraph (a) of sub-section (iii), if the office of the Undang concerned is vacant or if for any other reason such Undang is unable to act, some other person shall be appointed by the Council of the Yang di Pertuan Besar and Undang to act as assessor in lieu of such Undang.

(b) In the case of any appeal subject to the provisions of paragraph (b) of sub-section (iii), if the office of the Principal Chief concerned is vacant or if for any other reason such Principal Chief is unable to act, some other person shall be appointed by His Highness the Yang Di-pertuan Besar to act as assessor in lieu of such Principal Chief.

(v) If after hearing the appeal the Resident and the assessor or both assessors (as the case may be) are agreed their order shall be final and there shall be no appeal therefrom.

(vi) If the Resident and the assessor or one or both the assessors (as the case may be) are not agreed the case shall be referred to the State Council whose decision shall be final.

(vii) A copy of any order made by the Resident under sub-sections (ii) or (v) shall be furnished on application to the person in favour of whom such order is made and to any other party to the proceedings or, at the discretion of the Collector, to any other person.

(viii) In filing an appeal under sub-section (i) or an application under sub-section (ii) the appellant or applicant shall pay a fee of three dollars to the Collector, provided that the Resident may at his discretion remit the whole or any part of such fee.

*Procedure
on appeal.*

16. (i) Any person desiring to appeal to the Resident under Section 15(i) or to make application under Section 15(ii) shall, within the period prescribed in each case, deliver

to the Collector for transmission to the Resident, a memorandum of appeal substantially in the Form of Schedule I, or an application substantially in the Form of Schedule J, as the case may be, together with a certified copy of the order in question and shall also pay to the Collector the prescribed fee.

(ii) The Collector shall thereupon cause notices substantially in the Form of Schedule K to be served upon all parties directly affected by the appeal or application and shall without delay forward the documents to the Resident together with a copy of the notes of enquiry and a report upon the matter.

*Rectification
of register.*

17. (i) Any person claiming any estate or interest in customary land, not being an estate or interest in respect whereof an application can under the provisions of subsection (i) of Section 10 be made to the Collector, may, at any time, if his claim cannot be properly dealt with under Section 9, apply to the Resident that any register book or journal kept at the Land Office of the district wherein such land is situated shall be rectified, or that any entry may be made or interpolated in any such register book or journal, or that any entry therein may be cancelled: and the Resident may either refuse such application or, if satisfied as to the justice of the case, may make such order in reference thereto as he may think just.

(ii) The Collector and every other person affected by such order of the Resident shall obey the same upon being served with a copy of such order.

(iii) Section 107 of the Land Code shall not apply to land subject to the custom.

(iv) Any order made by the Resident under this section shall be final and there shall be no appeal therefrom.

*Procedure
under
section 17.*

18. Any person desiring to apply to the Resident under Section 17 shall deliver to the Collector, for transmission to the Resident, an application substantially in the Form of Schedule L together with a statutory declaration in support of the alleged facts. Thereupon the Collector shall cause service of notices substantially in the Form of Schedule M and copies of such statutory declaration upon every person

whose rights would be directly affected by the order applied for, and shall without delay transmit the application and the statutory declaration to the Resident together with a report upon the matter.

Power to enforce attendance of witnesses.

19. (i) For the purpose of any enquiry or appeal made or heard by the Collector or by the Resident under this Enactment, the Collector may require by summons under his hand any person being within the State to attend before him or before the Resident, as the case may be, and, if necessary, to produce all documents in his possession relating to any right or interest in any land which forms the subject of any such enquiry or appeal.

(ii) The Collector or Resident as the case may be, may also examine upon oath, or solemn affirmation having the force of an oath, any person so summoned touching any right to such land or interest in the same.

(iii) Any person so summoned or examined who fails to attend as required by the summons or to produce all such documents as aforesaid or to answer on oath or affirmation any lawful questions put to him shall be liable on conviction to a fine not exceeding fifty dollars.

Registers of enquiries and appeals.

20. The Collector shall keep in the Form of Schedule O, a register of enquiries held by him under Sections 9 and 10, and shall take notes in writing of all evidence given before him in the course of any such enquiry and shall also keep in the Form of Schedule P a register of all appeals decided by the Resident under Section 15.

Registration of orders.

21. All orders under Sections 9, 10, 11, 12, 13, 15 and 17 shall be registered in the Land Office of the district wherein the land affected is situated.

Solicitors not entitled to appear.

22. No advocate or solicitor shall be entitled to appear or any person at the hearing of any enquiry or appeal under this Enactment.

Interpretation of Enactment.

23. If doubt shall arise as to the mode of operation of this Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same may be referred through the Resident to the State Council who shall decide the same and

such decision shall be final and shall not be questioned or revised by any Court.

Rules.

24. (i) The State Council by resolution may from time to time, make Rules to embody the custom, to prescribe the extent to which and the manner in which dispositions of lands which are subject to the custom may be made and recorded, and generally for the purpose of giving effect to this Enactment; and may also alter, add to or rescind any of the Forms contained in Schedule C to P.

(ii) Any such Rules or alteration of, addition to or rescission of the said Schedule shall be published in the *Gazette*.

Exception of non-customary estate.

25. Nothing in this Enactment contained shall affect the distribution of the estate, not being customary estate, of any deceased person.

SCHEDULE B

List of Tribes

- | | |
|--------------------------------------|-----------------|
| 1. Biduanda (Waris and/of
Dagang) | 7. Tiga Batu* |
| 2. Batu Hampar* | 8. Tiga Nenek |
| 3. Sri Melenggang | 9. Paiah Kumboh |
| 4. Tanah Datar* | 10. Anak Malaka |
| 5. Sri Lemak* | 11. Anak Achih |
| 6. Mungkal | 12. Batu Belang |

* Excluding the division known as 'Ayer Kaki pada Yam Tuan'.

* Excluding the division known as 'Lengkongan Yam Tuan'.

[See schedule Q to amendment no 3/1960—below at 292]

CUSTOMARY TENURE (AMENDMENT)

ORDINANCE (1949) No. 23

*An Ordinance to amend the Customary Tenure Enactment
of the State of Negri Sembilan.*

[30th August, 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.

1. This Ordinance may be cited as the Customary Tenure (Amendment) Ordinance, 1949, and shall be read as one with the Customary Tenure Enactment of the State of Negri Sembilan, hereinafter referred to as the principal Enactment.

*F.M.S.
Cap. 215*

*Amendment of
section 2 of
principal
Enactment.*

2. Section 2 of the principal Enactment is hereby amended by the insertion, immediately after the word 'Tampin' in the definition of 'custom', of the word, 'Rembau'.

3. Section 4 of the principal Enactment is hereby amended—

- (a) by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'; and
- (b) by the insertion, immediately after the word 'Jelebu' in line 3 of sub-section (i), of the word, 'Rembau'.

*Amendment of
section 7 of
principal
Enactment.*

4. Sub-section (v) of section 7 of the principal Enactment is hereby amended by the deletion of the word 'Resident' in line 6 of the first proviso and the substitution therefor of the words 'Ruler in Council'.

*Amendment of
section 15
of principal
Enactment.*

5. (1) Sub-section (i) of section 15 of the principal Enactment is hereby amended by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'.

(2) Sub-section (ii) of section 15 of the principal Enactment is hereby amended—

- (a) by the deletion of the word 'Resident' wherever it occurs in lines 3 and 5 and the substitution therefor of the words 'Ruler in Council';
- (b) by the deletion of the words 'Resident shall try' in line 7 and the substitution therefor of the words 'Ruler in Council shall appoint a Committee to consider';
- (c) by the deletion of the words 'the Resident' in lines 8 and 9 and the substitution therefor of the words 'upon receipt of the report of such Committee the Ruler in Council'; and

(d) by the deletion of the word 'he' wherever it occurs in lines 10 and 11 and the substitution therefor of the words 'the Ruler in Council'.

(3) Sub-section (iii) of section 15 of the principal Enactment is hereby repealed and the following sub-section substituted therefor—

'(iii) In appointing a Committee under sub-section (ii) of this section the Ruler in Council shall have regard to the following principles—

(a) if the land in respect whereof the appeal is lodged is situate in one of the territories of Johol, Jelebu or Rembau the Committee shall consist of two members, one of whom shall be the Undang of the territory and the other of whom shall be a person having special knowledge of the custom of such territory;

(b) in any other case the Committee shall consist of three members, of whom one shall be appointed by the Ruler in Council, one shall be nominated by His Highness the Yang di-Pertuan Besar and one shall be the Principal Chief of that part of the State wherein the land in respect of which the appeal is lodged is situate.'

(4) Sub-section (iv) of section 15 of the principal Enactment is hereby amended—

(a) by the deletion of the words 'Council of the Yang di Pertuan Besar and Undang to act as assessor' in paragraph (a) and the substitution therefor of the words 'Ruler in Council to act as a member of the Committee'; and

(b) by the deletion of the words 'appointed by His Highness the Yang di-Pertuan Besar to act as assessor' in paragraph (b) and the substitution therefor of the words 'nominated by His Highness the Yang di-Pertuan Besar to act as a member of the Committee'.

(5) Sub-section (v) of section 15 of the principal Enactment is hereby repealed and the following sub-section substituted therefor—

'(v) The order of the Ruler in Council shall be final and there shall be no appeal therefrom.'

(6) Sub-section (vi) of section 15 of the principal Enactment is hereby repealed.

(7) Sub-section (vii) of section 15 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the words 'Ruler in Council'.

(8) Sub-section (viii) of section 15 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the words 'Mentri Besar'.

Amendment of section 16 of principal Enactment. 6. (1) Sub-section (i) of section 16 of the principal Enactment is hereby amended by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'.

(2) Sub-section (ii) of section 16 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the words 'State Secretary for submission to the Ruler in Council'.

Amendment of section 17 of principal Enactment. 7. Section 17 of the principal Enactment is hereby amended by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'.

Amendment of section 18 of principal Enactment. 8. Section 18 of the principal Enactment is hereby amended -

- (a) by the deletion of the word 'Resident' wherever it occurs in lines 1 and 2 and the substitution therefor of the words 'Ruler in Council';
- (b) by the deletion of the word 'Resident' in line 9 and the substitution therefor of the words 'State Secretary for submission to the Ruler in Council'.

Amendment of section 19 of principal Enactment. 9. (1) Sub-section (i) of section 19 of the principal Enactment is hereby amended—

- (a) by the deletion of the words 'the Resident' in line 2 and the substitution therefor of the words 'a Committee appointed by the Ruler in Council';

(b) by the deletion of the word 'Resident' in line 4 and the substitution therefor of the word 'Committee'.

(2) Sub-section (ii) of section 19 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the word 'Committee'.

Amendment of section 20 of principal Enactment.

10. Section 20 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the words 'Ruler in Council'.

Amendment of section 23 of principal Enactment.

11. Section 23 of the principal Enactment is hereby amended by the deletion of the words 'Resident to the Council of the Yang di-Pertuan Besar and Undang' and the substitution therefor of the words 'Mentri Besar to the Ruler in Council'.

Amendment of section 24 of principal Enactment.

12. Section 24 of the principal Enactment is hereby amended by the deletion of the words 'Council of the Yang di-Pertuan Besar and Undang' and the substitution therefor of the words 'Ruler in Council'.

Amendment of schedules to principal Enactment.

13. Schedules I, J, K, L, M and P to the principal Enactment are hereby amended by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'.

CUSTOMARY TENURE (STATE OF NEGRI SEMBILAN) ORDINANCE (1952) No. 33.

An Ordinance to confer upon the Council of State of the State of Negri Sembilan authority to pass laws relating to customary tenure of land and to rights and usages connected therewith.

[12th August, 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.

1. This Ordinance may be cited as the Customary Tenure (State of Negri Sembilan) Ordinance, 1952.

Council of State of Negri Sembilan empowered to legislate on matters affecting customary tenure of laws in Negri Sembilan.

Saving for, Legislative Council.

2. The Council of State of the State of Negri Sembilan is hereby empowered to pass laws relating to the customary tenure of land within such State and to the rights and usages connected therewith and to any other matter incidental thereto or consequential thereupon.
3. Nothing in this Ordinance shall affect the rights and powers of the Legislative Council to pass such laws as it may think fit relating to any of the matters referred to in section 2 of this Ordinance.

CUSTOMARY TENURE ENACTMENT (AMENDMENT) ENACTMENT (1960) No. 3

An Enactment to amend the Customary Tenure Enactment
F.M.S.

[, 1960.]

IT IS HEREBY ENACTED by His Highness and the Ruling Chiefs of Negri Sembilan with the advice and consent of the Legislative Assembly as follows:

- Short title.* 1. This Enactment may be cited as the Customary Tenure Enactment (Amendment) Enactment, 1960.
- F.M.S. Cap. 215. Amendment to section 2.* 2. The Customary Tenure Enactment is hereby amended as follows:

- (a) by inserting the following definitions immediately after the definition 'Principal Chief' in Section 2—

'Lengkongan Land' means land held under Entry in the Mukim Register registered in the names of Malays who are members of one of the tribes specified in the Schedule.

'Lengkongan Custom' means the customary land law of Malays who are members of one of the tribes specified in the Schedule;

- (b) by inserting the following section between sections 15 and 16—

15A. (a) Any person claiming any estate or interest in customary land, the title to which, in addition to the endorsement 'Customary Land', contains one of the following endorsement or variants thereof, namely—

Lengkongan Land or Tanah Lengkongan
Lengkongan Ayer Kaki or Ayer Kaki
Lengkongan Ayer Kaki Orang Empat
Astana

Lengkongan Orang Empat Astana
Lengkongan To' Besar or Lengkongan
Ayer Kaki To' Besar, or which is claim-
ed to be subject to Lengkongan custom,
may apply to the Collector to have
the endorsement 'Customary Land'
expunged from such title.

(b) Upon receiving such application the Collector shall hold an enquiry at which in addition to any person claiming an interest in the land, the Lembaga of the Tribe concerned shall be present.

(c) If at such enquiry the Collector is satisfied that the land in question is Lengkongan Land or subject to Lengkongan Custom and the Lembaga assents to the removal of such endorsement from such title the Collector shall make an order expunging such endorsement from such title.

(d) If no appeal against the Collector's order is received by him within 30 days from the date of such order the Collector shall present the order to the proper registering authority who shall make a memorial upon the register and issue

document of title, recording the expunging of such endorsement from such title.

(e) If it is desired to appeal against the Collector's order, the appellant shall within the period prescribed deliver to the Collector for transmission to the Ruler in Council a memorandum of appeal substantially in the Form of Schedule I together with a certified copy of the order in question and shall also pay a fee of three dollars therefor to the Collector, provided that the Mentri Besar may at his discretion remit the whole or any part of such fee.

(f) Upon receipt of such appeal the Ruler-in-Council may appoint a Committee to consider the same whose composition shall be as specified in paragraph (b) of subsection (iii) of section 15 and the order of the Ruler-in-Council thereon shall be final.

SCHEDULE 'Q'

NAMES OF LONGKONGAN TRIBES (SECTION 2)

- I. *Lengkongan Astana Tribes (Ayer Kaki pada Yam Tuan)*.
 Batu Hampar (Ayer Kaki Yang Jerneh)
 Tanah Datar (Lengkongan Yam Tuan) including
 Tanah Datar Kampong Pauh, Gunong Pasir
 Sri Lemak Pahang (Lengkongan Yam Tuan)
 Sri Lemak Minangkabau (Lengkongan Yam Tuan)
 Tiga Batu (Lengkongan Yam Tuan)
 Anak Acheh
- II. *Other Lengkongan Tribes*.
 Sri Lemak Pahang (Senaling)
 Sri Lemak Minangkabau (Peraku)
 Batu Hampar Empat Puloh (Pelangei)
 Tanah Datar (Gunong Pasir)
 Batu Hampar (Telapak)
 Batu Hampar (Kampong Tengah)

Passed this 21st day of June, 1960.

CUSTOMARY TENURE (LENGKONGAN LANDS)
ENACTMENT (1960) No. 4

An Enactment to secure the maintenance and observance of Lengkongan Custom in the District of Kuala Pilah, Negri Sembilan, in regard to dealings in Lengkongan Land.

[, 1960.]

IT IS HEREBY ENACTED by His Highness and the Ruling Chiefs with the advice and consent of the Legislative Assembly as follows:

- Short title.* 1. (i) This Enactment shall be cited as the Customary Tenure (Lengkongan Lands) Enactment, 1960.
(ii) This Enactment shall be read and construed with the Land Code, but so that nothing in that Enactment shall be deemed to prevail against the provisions hereof.

Interpretation. 2. In this Enactment:-

'Lengkongan Custom' shall mean the customary land law of Malays resident in the District of Kuala Pilah, who are members of one of the tribes having tribal chiefs as specified in Schedule 'A'.

'Lengkongan Land' shall mean land held under Entry in the Mukim Register, registered in the names of Malays who are members of one of the tribes specified in Schedule 'A', the title of which contain [sic] one of the following endorsements or variants thereof:

Lengkongan Land or Tanah Lengkongan
Lengkongan Ayer Kaki or Ayer Kaki
Lengkongan Ayer Kaki Orang Empat Astana
Lengkongan Orang Empat Astana
Lengkongan To' Besar or Lengkongan Ayer To'
Besar.

'Lengkongan estate' shall mean and include lengkongan land and charges and leases of lengkongan land, which are registered in the name of a deceased person.

'Lengkongan heir' shall mean the person who is in accordance with lengkongan custom entitled to be registered as owner of the lengkongan estate of a deceased person.

'Lengkongan Tribes' shall mean those tribes specified in Schedule 'A'.

'Lembaga' shall mean a tribal chief, and shall include any person to act as a lembaga under the provisions of section 3.

'Orang Empat Astana' shall mean the Dato' Amar di-Raja, Dato' Raja di-wangsa, Dato' Panglima Dagang and Dato' Akhirzaman.

'Supervisor of Chiefs' shall mean the officer appointed by His Highness the Yang di-Pertuan Besar to exercise powers and perform duties under this Enactment.

'The Collector' means the Collector of Land Revenue, Kuala Pilah.

*Appointment
of acting
Lembagas or
Orang Empat
Astana*

3. (i) If it shall at any time appear that
- (a) the office of any one of the Lembagas or Orang Empat Astana is vacant, or
- (b) any one of the Lembagas or Orang Empat Astana is unable by reason of sickness or mental or physical infirmity or absence from the District to carry out his duties as Lembaga or Orang Empat Astana as the case may be, it shall be competent for the Supervisor of Chiefs to appoint any other person to act as Lembaga or one of the Orang Empat Astana as the case may be for the purpose of exercising the powers and carrying out the duties conferred and imposed on a Lembaga or Orang Empat Astana by this Enactment.

(ii) Any appointment made in the circumstances specified in paragraph (a) of sub-section (i) shall lapse when the office of Lembaga or Orang Empat Astana ceases to be vacant and any appointment made under sub-section (i) may at any time be revoked by the Supervisor of Chiefs.

(iii) The Supervisor of Chiefs shall notify the Collector in writing whenever he makes or revokes an appointment under this section.

*Record of
lengkongan
tenure in
Mukim
Register.*

4. (i) In the case of any land particulars of which have been or may hereafter be entered in any of the mukim registers of the district of Kuala Pilah in accordance with

the provisions of the Land Code or of any previous Land Enactment, it shall be lawful for the Collector, at the instance of himself or of any interested party, to enquire whether or not such land is occupied subject to the lengkongan custom. If he is satisfied that such land is occupied subject to the lengkongan custom and that it is registered in the name of a member of one of the tribes specified in Schedule 'A', the Collector shall add to the entry in the Mukim Register the words 'Lengkongan Land' or 'Tanah Lengkongan' and authenticate them by his signature; and the addition of such words so authenticated to any entry in the Mukim Register shall, subject to the results of any appeal to the Ruler-in-Council under section 14, be conclusive proof that the land to which such entry relates is occupied subject to the lengkongan custom. If the Collector is not satisfied that such land is occupied subject to the lengkongan custom, he shall record his decision to that effect and such decision shall, subject to the result of any appeal to the Ruler-in-Council under section 14, be conclusive proof that the land to which the entry relates is not occupied subject to the lengkongan custom.

(ii) Whenever the words 'Lengkongan Land' or 'Tanah Lengkongan' shall have been added under sub-section (i) to any entry in the Mukim Register, it shall be lawful for the Collector to add the same words to any extract from the register issued pursuant to the said entry and he shall authenticate the same with his signature.

(iii) The Collector may by notice under his hand require any person possessing such extract as is referred to in sub-section (ii) to produce such extract within such period (not being less than 14 days) after the service on him of the notice as may be therein specified, and the person so required shall be legally bound to produce the same accordingly.

(iv) Any person who shall wilfully neglect to comply with the requirements of any notice duly served on him under sub-section (iii) shall be liable on conviction to a fine not exceeding one hundred dollars.

(v) Where the entry in the Mukim Register has been endorsed by the Collector under sub-section (i), the land to

which such entry relates shall be deemed to be subject to the lengkongan custom with effect from the date of such endorsement, notwithstanding the fact that no action has been taken under sub-section (ii) and (iii).

*Maintenance
of the
lengkongan
custom.*

5. Subject to the provisions of this Enactment, no lengkongan land or any interest therein shall be transferred, charged, or transmitted or otherwise dealt with, except in accordance with the lengkongan custom:

Provided that nothing in this Enactment shall prevent the surrender to the State of any lengkongan land in a town or village by the registered owner thereof for the construction of roads or public ways or the demarcation of road reserves, or for purposes of drainage works or for other public purposes.

*Prohibition
of Grant.*

6. No grant shall be issued for any lengkongan land.

*Limited
right of
dealing.*

7. (i) No lengkongan land or any interest therein shall be transferred or leased to any person other than a member of one of the tribes specified in Schedule 'A'.

(ii) Subject to the provisions of this section, lengkongan land shall not be charged, except to

(a) a member of one of the tribes included in Schedule 'A'; or

(b) a Co-operative Society duly registered under section 9 of the Co-operative Societies Enactment, subject to the provisions of sub-section (iii).

(iii) Lengkongan land shall not be charged to a Co-operative Society, unless

(a) such Society habitually carries on business in the District wherein such land is situate;

(b) the Society has been generally authorised by the Registrar of Co-operative Societies, with the consent of the Collector of the District wherein such land is situate, to hold charges over lengkongan land.

Such authority may be subject to such limitation as the Registrar of Co-operative Societies may direct and may be withdrawn or varied at any time.

(iv) No lengkongan land or any interest therein shall be transferred, charged or leased, except with the assent:-

- (a) in respect of the lengkongan astana tribes of one of the Orang Empat Astana, save that the To' Besar may also give his assent in respect of the Tiga Batu tribe;
- (b) in respect of other lengkongan tribes of the respective Lembagas of the tribes concerned.

It shall be sufficient for the assent to be recorded if the documents of transfer, charge or lease, as the case may be, are witnessed by the Lembaga or the Orang Empat Astana as shewn in Schedule 'A'.

*Execution
Sales, charge
sales and
sales for
arrears of
rent.*

8. In the case of a sale of lengkongan land or any interest therein, the following provisions shall apply notwithstanding anything contained in any other Enactment:

- (a) In respect of the lengkongan astana tribes, the bidding shall be confined to the members of the tribe of the judgment-debtor, chargor or defaulter as the case may be. If no bids are forthcoming from the tribe of the judgment-debtor, chargor or defaulter, the sale can be made to members of the other lengkongan astana tribes;
- (b) in respect of the other lengkongan tribes, the biddings shall be confined only to the members of the respective tribes concerned.

*Claims to
registration
as owner.*

9. (i) Any person asserting that he is entitled otherwise than by right of succession to a deceased owner, to be registered as the owner of any lengkongan land may, whether such land shall have been alienated to any other person or not, apply to the Collector to record him as such in the Mukim Register in which the land is situate. The Collector shall thereupon cause a notice of such application substantially in the form of Schedule 'B', to be served on the occupier (if any) of such land and to be published locally in the District and posted on the land for a period of 30 days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of opinion that such application ought to be granted or in the

course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to be registered as owner of such land, then, in either of such cases, he shall make an order substantially in the Form Schedule 'C', in accordance with his decision and shall thereupon make any necessary entry in the Mukim Register.

(iii) A copy of the order above mentioned shall be furnished on application by the Collector to the person in favour of whom such order is made or to any other party to the proceedings, or at the discretion of the Collector, to any other person on payment of the prescribed fees.

Claims to registration by right of succession.

10. (i) Any person claiming to succeed to the ownership of a lengkongan estate which is registered in the name of a deceased person may apply to the Collector to record his name in the Mukim Register as owner of the lengkongan estate so claimed. The Collector shall thereupon cause a notice of such application substantially in the Form of Schedule 'D' to be served on the occupier (if any) of the land affected and also to be published locally in the District and posted on such land for a period of 30 days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of opinion that such application ought to be granted, or in the course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to succeed to the ownership of such lengkongan estate, then in either such case, he shall make an order, substantially in the Form Schedule "E", in accordance with his decision and shall thereupon make any necessary entry in the Mukim Register.

(iii) A copy of the order above-mentioned shall be furnished on application by the Collector to the person in favour of whom such order is made or to any other party to the proceedings or, at the discretion of the Collector, to any other person on payment of the prescribed fees.

(iv) None of the provisions of the Probate and Administration Enactment or the Small Estates (Distribution) Ordinance shall apply to any lengkongan estate or any part

thereof and no lengkongan estate of a deceased person shall vest in his executor or administrator.

(v) In any case in which the registered owner of a lengkongan estate shall have died and no application under sub-section (i) shall have been made within six months of the death of the deceased, the Collector may direct the Lembaga, or the Orang Empat Astana of the tribe concerned or the Penghulu Mukim to make application for such lengkongan estate to be transmitted to the person entitled thereto, and the Collector shall thereupon proceed as if the application had been duly made under the provisions of sub-section (i).

(vi) If in the course of any enquiry under this section it shall appear to the Collector that any minor would, but for the disability of minority, be entitled to be registered as owner of any lengkongan estate the Collector may appoint any fit and proper person to be trustee to the said minor, and shall register such person as owner of such estate as trustee and shall at the same time lodge a caveat against the title for the land affected to protect the interests of the said minor. The Collector may at any time on good cause being shewn revoke the appointment of a trustee under this section and appoint a new trustee.

Debts and contracts of deceased person.

11. No objection to any application made under section 10 shall be maintained on the grounds of any debt, contract or thing incurred, made or done or alleged to have been incurred, made or done by or on behalf of the deceased, subject to the following exceptions:

(i) Where the objection is based on a contract made by the deceased to sell a lengkongan estate or part thereof to any member of one of the tribes shewn in Schedule 'A', such estate may, with the assent of the Lembaga or the Orang Empat Astana of the tribe of the deceased as the case may be, be transmitted to the person who contracted to acquire the same or to his lengkongan heir.

(a) Provided that the Collector shall, by writing under his hand, or in such other way as he shall deem sufficient, give notice of such objection in the mukim in which the land is situate, for a period of not less than one month after the

recording of the objection, and the Collector shall record and consider any counter-objection to the claim of the objector before ordering that the estate be transmitted to the objector.

- (b) Provided further that in any case where the Collector after due enquiry shall find that the assent of the Lembaga or the Orang Empat Astana as the case may be is given contrary to the lengkongan custom, the Collector shall record such finding in writing and shall refuse to transmit the land to the objector.
- (c) Provided further that in any case where the Lembaga or the Orang Empat Astana as the case may be refuses his assent or shall absent himself after being duly notified of the place and time arranged for the hearing of the application, the Collector, if after enquiry he shall find no reasonable cause for such refusal of assent or absence may order the transmission of the land to the objector.

(ii) (a) Where the objection is based on a debt which is properly chargeable in accordance with the custom on lengkongan land owned by the deceased, the Collector, if after enquiry he is of opinion that such debt is due and owing, may in lieu of transmitting all or any part of such lengkongan land to the lengkongan heir of the deceased direct by order under his hand that the land or any part thereof be auctioned. The procedure for auction shall be, *mutatis mutandis*, in accordance with the provisions of section 11 of the Customary Tenure Enactment, save that the biddings shall be confined to the persons as laid down in section 8 *supra*.

(b) The order of sale and of transmission to the purchase may be in the Form provided in Schedule 'F'.

*Failure of
lengkongan
heirs.*

12. (i) If any person shall die and leave a lengkongan estate with no lengkongan heir, it shall be lawful for the Collector after such enquiry as he may deem fit either of his own motion or on the application of the Lembaga or Orang Empat Astana, or the Penghulu mukim, to direct by order

under his hand that such estate be auctioned on a date being not less than one month from the date of such order.

(ii) The procedure for auction shall be, *mutatis mutandis*, in accordance with the provisions of section 11 of the Customary Tenure Enactment, save that the biddings shall be confined to the persons as laid down in section 8.

(iii) The net proceeds of sale shall be paid to the President of the Religious Council, Department of Religious Affairs, who shall credit it to the account of the State Baitul Mal.

Caveats. 13. The jurisdiction and powers which are by section 172 of the Land Code vested in the Court shall in so far as lengkongan land is concerned be vested in the Collector.

Appeal. 14. (i) From any order of a Collector under this Enactment and from any refusal of a Collector to make an order under this Enactment, an appeal shall lie to the Ruler-in-Council; provided that no such appeal shall, except with the leave of the Ruler-in-Council, be admitted after the expiration of thirty days from the date of the order or refusal appealed against.

(ii) Any person who conceives that a right to or interest which he claims to have in any land is injuriously affected by any such order or refusal as aforesaid, may apply to the Ruler-in-Council within three months after the registration of such order or of the date of such refusal or within such further period as the Ruler-in-Council may allow, to set aside or vary such order, or, where an order has been refused, to make an order.

(iii) On receipt of an appeal under sub-sections (i) and (ii), the Ruler-in-Council shall appoint a Committee consisting of two members one of whom shall be appointed by the Ruler-in-Council and the other shall be nominated by the Yang-di-Pertuan Besar to consider the appeal.

(iv) The Committee shall report and make its recommendations to the Ruler-in-Council on the question whether the Collector's order be or not consistent with the rights of the appellant; and if the Ruler-in-Council shall decide that the said order is inconsistent with such rights, the Ruler-in-Council shall set aside or vary such order or

make an order as the Ruler-in-Council may think just, and the Collector shall on receiving notice thereof make any necessary entry in the mukim register.

*Procedure
of appeal.*

15. Any person desiring to appeal to the Ruler-in-Council under section 14(i) or to make application under section 14 (ii) shall within the prescribed period deliver to the Collector for transmission to the Ruler-in-Council a memorandum of appeal substantially in the Form of Schedule 'G', or an application substantially in the Form of Schedule 'H', together with a certified copy of the order in question and shall also pay to the Collector the prescribed fees. The Collector shall without delay forward the documents to the Ruler-in-Council together with a copy of notes of enquiry (with a Malay translation) and his grounds of decision of the case appealed against.

*Rectification
of register.*

16. (i) Any person claiming any estate or interest in lengkongan land, not being an estate or interest whereof an application can under the provisions of sub-section (i) of section 9 be made to the Collector may, at any time if his claim cannot be properly dealt with under section 9, apply to the Ruler-in-Council that any register book or journal kept at the Land Office of the District shall be rectified, or that any entry may be made or interpolated in any such register book or journal, or that any entry therein may be cancelled; and the Ruler-in-Council may either refuse such application or, if satisfied as to the justice of the case, may make such order in reference thereto as the Ruler-in-Council may think just.

(ii) The Collector and every other person affected by such order of the Ruler-in-Council shall obey the same upon being served with a copy of such order.

(iii) Section 107 of the Land Code shall not apply to land subject to lengkongan custom.

(iv) Any order made by the Ruler-in-Council under this section shall be final and there shall be no appeal therefrom.

*Procedure
under
section 15.*

17. Any person desiring to apply to the Ruler-in-Council under section 16 shall deliver to the Collector, for transmission to the Ruler-in-Council, an application sub-

stantially in the Form of Schedule 'H' together with a statutory declaration in support of the alleged facts.

Thereupon the Collector shall cause service of notices substantially in the Form of Schedule 'I' and copies of such statutory declaration upon every person whose rights would be directly affected by the order applied for, and shall without delay transmit the application and the statutory declaration to the Ruler-in-Council together with a report upon the matter.

Power to enforce attendance of witnesses.

18. (i) For the purpose of any enquiry or appeal made or heard by the Collector or the Ruler-in-Council under this Enactment, the Collector may require by summons under his hand any person *being within the State* to attend before him or before the Appeal Committee appointed by the Ruler-in-Council as the case may be, and, if necessary, to produce all documents in his possession relating to any right or interest in any land which forms the subject of any such enquiry or appeal.

(ii) The Collector or the Appeal Committee appointed by the Ruler-in-Council as the case may be, may also examine upon oath, or solemn affirmation having the force of an oath, any person so summoned touching any right to such land or interest in the same.

(iii) Any person so summoned or examined who fails to attend as required by the summons or to produce all such documents as aforesaid or to answer on oath or affirmation any lawful questions put to him shall be liable on conviction to a fine not exceeding one hundred dollars or one month's imprisonment.

Registers of enquiries and appeals.

19. The Collector shall keep a register of enquiries held by him under sections 9 and 10, and shall take notes in writing of all evidence given before him in the course of such enquiry and shall also keep a register of all appeals decided by the Ruler-in-Council under section 14.

Registration of orders.

20. All orders under sections 9, 10, 11, 12, 14 and 16 shall be registered in the Land Office.

Solicitors not entitled to appear.

21. No advocate or solicitor shall be entitled to appear for any person at the hearing of any enquiry or appeal under this Enactment.

Interpretations of Enactment.

22. If doubt shall arise as to the mode of operation of this Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same may be referred through the Ruler-in-Council to the Legislative Assembly who shall decide the same and such decision shall be final and shall not be questioned or revised by any Court.

Rules.

23. (i) The Ruler-in-Council may from time to time, make Rules to embody the lengkongan custom to prescribe the extent to which and the manner in which dispositions of lands which are subject to the lengkongan custom may be made and recorded, and generally for the purpose of giving effect to this Enactment; and may also alter, add to or rescind any of the Forms contained in the Schedules.

(ii) Any such Rules or alteration of, addition to or rescission of the said Schedules shall be published in the Gazette.

Exception of non-lengkongan estate.

24. Nothing in this Enactment contained shall affect the distribution of the estate, not being lengkongan estate, of any deceased person.

SCHEDULE 'A'

NAMES OF LENGKONGAN TRIBES (SECTION 2)

I. *Lengkongan Astana Tribes:-*

Tribal Chiefs

Ayer Kaki pada Yam Tuan Batu Hampar (Ayer Kaki Yang Jerneh Tanah Datar (Lengkongan Yam Tuan) including Tanah Datar, Kampong Pauh and Gunong Pasir Sri Lemak Minangkabau (Lengkongan Yam Tuan)	}	Orang Empat Astana
--	---	--------------------

Sri Lemak Pahang (Leng- kongan Yam Tuan) ...	}	Dato' Andatar [see Note (b) below]
---	---	---------------------------------------

Anak Aceh Tiga Baut (Lengkongan Yam Tuan)	}	Dato' Besar [see Note (a) below]
---	---	-------------------------------------

II. <i>Other Lengkongan Tribes:-</i>	<i>Tribal Chiefs</i>
Sri Lemak Pahang (Senaling)	Dato' Andika
Sri Lemak Minangkabau (Peraku)	Dato' Sutan Bendahara
Batu Hampar Empat Puloh Pelangei)... ..	Dato' Raja Panglima
Tanah Datar (Gunong Pasir)	Dato' Johan
Batu Hampar (Telapak) ...	Dato' Maharaja
Batu Hampar (Kampong Tengah)	Dato' Panglima Besar

- NOTE (a) The Dato' Besar is the tribal chief of this tribe, but the Orang Empat Astana have equal say with him in the jurisdiction of its tribal affairs.
- (b) The Dato' Andatar is the tribal chief Sri Lemak (Pahang) Tribe, but the Orang Empat Astana have equal say with him in the jurisdiction of its tribal affairs.

UNDANG OF REMBAU (LANDS) ENACTMENT (1949) No. 2.

An Enactment to vest certain lands in the Undang of Rembau and his successors in office and to regulate the disposal thereof.

IT IS HEREBY ENACTED by His Highness the Yang di-Pertuan Besar and the Ruling Chiefs of Negri Sembilan with the advice and consent of the Council of State, as follows:

Short title. 1. This Enactment may be cited as the Undang of Rembau (Lands) Enactment, 1949.

Interpretation. 2. In this Enactment—
 'the lands' means the lands described in the Schedule to this Enactment;
 'Undang' means the Undang of Rembau.

Vesting of lands.

3. The lands, together with any income and profits arising therefrom, are hereby vested in the Undang and shall pass from Undang to Undang without the execution of any document of transfer as if the Undang were a body corporate within the meaning of section 10 of the Land Code.

Dealings restricted.

4. Except as provided in section 5 of this Enactment the lands shall not be leased, transferred, charged or otherwise encumbered and any such lease, transfer, charge or encumbrance shall, except as aforesaid, be void and of no effect.

Power to lease.

5. (i) The Undang for the time being may, subject to the provisions of the Land Code, lease the lands or any part thereof.

(ii) Such lease shall be in writing.

(iii) Upon the Undang for the time being ceasing to hold office, all rights, powers and privileges possessed by the Undang as lessor under any such lease shall pass to and be exercised by his successor in office.

(iv) Every such lease shall expressly provide that upon the Undang who granted it ceasing to hold the office of Undang such lease if it be not sooner determined shall immediately cease and determine but without prejudice to any remedy of his successor in office in respect of any previous breach of such lease by the lessee.

6. The land or any part thereof may be sold subject to the condition that the money obtained therefrom shall be used to purchase other property which has the approval of the Ruler in Council.

THE SCHEDULE

DISTRICT OF REMBAU

No.	E.M.R. No.	Lot No.	Area			Mukim	
			A.	R.	P.		
1	...	898	...	1,125	...	6 3 23	Titian Bintangor
2	...	1,734	...	183	...	3 3 05	Gadong
3	...	1,773	...	1,769	...	9 0 06	„
4	...	1,454	...	512	...	3 06	Selemak
5	...	1,455	...	513	...	1 1 20	„

THE SMALL ESTATES (DISTRIBUTION)
ORDINANCE 1955 (No. 34)

An Ordinance to consolidate and amend the law relating to the distribution of small estates of deceased persons and to provide for matters incidental thereto and to prevent the excessive multiplication of interests in land arising from inheritance.

[]

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

INTRODUCTORY

*Short title
and com-
mencement.*

1. This Ordinance may be cited as the Small Estates (Distribution) Ordinance, 1955, and shall come into force in relation to a State or Settlement on such date as the High Commissioner may, by notification in the *Gazette*, appoint: and the High Commissioner may so appoint different dates for different provisions of this Ordinance.

Interpretation.

2. In this Ordinance unless the context otherwise requires—

‘Central Registry’ means the Central Registry of the Supreme Court at Kuala Lumpur;

‘Collector’ means the principal land officer appointed for a district under the Land Code of the Federated Malay States or under any other written law relating to the keeping of registers of titles to land and includes an assistant land officer and in Kedah a Settlement Officer;

‘Commissioner of Lands’ means the Commissioner of Lands, Federation of Malaya;

‘distribution order’ means an order for the distribution of a small estate made under the provisions of this Ordinance;

'minor' means in the case of a person professing the Muslim religion, a person who has not completed his eighteenth year and in every other case a person who has not completed his twenty-first year;

'Official Administrator' in the States of Perak, Selangor, Negri Sembilan and Pahang, means a person for the time being discharging the duties of Official Administrator or Assistant Official Administrator under the Probate and Administration Enactment of the Federated Malay States and in any other State and in a Settlement a person for the time being discharging the duties of Official Administrator or Assistant Official Administrator under any law in force in such State or Settlement corresponding to such Enactment and includes any other officer appointed by notification in the *Gazette* to be an Official Administrator for the purposes of this Ordinance;

'petition for distribution' means a petition for the distribution of a small estate lodged under the provisions of section 8;

'purchaser' means a person who, at the date of the filing by himself, or by any other person, of a petition for distribution, is in occupation of any land registered in the name of the deceased, whether as sole proprietor or co-proprietor having entered into occupation thereof before the 1st of October, 1949, by virtue of an agreement for the sale of that land or any interest therein by the deceased to himself or to any person through whom he claims;

'Registrar' means the Registrar of the Supreme Court and includes a Senior Assistant Registrar and an Assistant Registrar of the Supreme Court.

PART II

ADMINISTRATION OF SMALL ESTATES

*Application
of part and
definition
of small
estate.*

3. (1) This Part shall have effect only in the Malay States.

(2) For the purposes of this Part a small estate means an estate of a deceased person consisting wholly or partly of immovable property situated in the Malay States and not exceeding five thousand dollars in total value.

(3) For the purposes of this section the value of the property comprised in an estate shall be deemed to be its value at the date of the filing of a petition for probate or letters of administration or lodging of a petition for distribution under this Ordinance in respect of such estate or, if more than one such petition has been filed or lodged in respect of the same estate, at the date of the filing or lodging of the earliest petition.

(4) In ascertaining the value of the property comprised in an estate no deduction shall be made on account of the debts of the deceased but there shall not be included in the estate for such purposes any property which the deceased held or was entitled to as a trustee and not beneficially:

Provided that any land held in the name of the deceased by any form of registered title shall be deemed to be part of his estate whether subject to caveat or not unless such land is expressly registered in his name as representative or as trustee or as guardian.

*Jurisdiction
in respect of
small estates.*

4. (1) Save as in this Ordinance otherwise provided no interest in any small estate shall devolve on or vest in any person by virtue of any instrument other than an order or grant made under the provisions of this Ordinance.

(2) The Collector of the district where the greater part in value of the property is situated shall have exclusive jurisdiction to deal with the distribution and administration of the whole estate wherever situated in the Malay States:

Provided that the State Secretary where all the property is situated in a Malay State or the Commissioner of Lands where the property is situated in partly one State and partly in another, may upon application duly made in that behalf order that any petition under this Ordinance shall be

heard and determined by the Collector of any other district whenever it is made to appear that such an order will tend to the general convenience of the parties or witnesses or is otherwise expedient for the ends of justice: and such Collector shall thereupon have exclusive jurisdiction to order distribution of such estate and, if necessary, to grant letters of administration thereof.

(3) Any order made by the State Secretary or the Commissioner of Lands under sub-section (2) shall be final and not subject to any appeal.

(4) A copy of any order made under sub-section (2) shall be sent to the applicant and to any Collector who in the opinion of the State Secretary or the Commissioner of Lands is affected thereby.

(5) The Collector for each district in which is situated any part of the immovable property comprised in an estate in respect of which a petition for distribution has been lodged shall determine the value of that property, as at the date of lodging the petition, or, if more than one petition has been lodged, as at the date of lodging the earliest petition, and every such valuation shall be conclusive for the purposes of this Ordinance.

Supreme Court to grant probate of testamentary dispositions relating to small estates.

5. (1) Subject to the provisions of this section, nothing in this Ordinance shall affect the exclusive jurisdiction of the Supreme Court to grant probate of any will or testamentary disposition or letters of administration in any case in which the deceased has left a valid will or other valid testamentary disposition in respect of a small estate or part thereof and such grant when made shall have effect in all respects as if the estate had not been a small estate.

(2) If upon the hearing of any petition for probate or for letters of administration with a will or copy of a will annexed, probate or letters of administration with the will or a copy of a will annexed are not granted the Court may if satisfied that all the necessary parties are before the Court—

(a) grant letters of administration to any person to whom such letters would have been granted on an intestacy if such estate had not been a small estate; or

- (b) direct that a petition for distribution of the estate be lodged under section 8; or
- (c) order any Collector named in such order to proceed with the distribution of the estate as if a petition therefor had been duly lodged.

(3) Where any order is made under the provisions of paragraph (c) of sub-section (2) the Collector therein named shall, upon receipt of a copy of such order, forthwith proceed to distribute the estate in accordance with the provisions of this Ordinance.

Supreme Court to have power to reseal a grant of representation affecting a small estate.

6. Nothing in this Ordinance shall affect the exclusive jurisdiction of the Supreme Court to reseal any grant of representation made outside the Federation in respect of the estate of a deceased person and where any grant has been resealed affecting a small estate, such grant shall have effect as if the estate had not been a small estate.

Power of the Registrar to transfer petitions relating to an intestate small estate to a Collector.

7. (1) If the Registrar is satisfied that any intestate estate in respect of which a petition for letters of administration has been filed in the Supreme Court is a small estate he shall transfer such petition to the Collector having jurisdiction to order distribution of such estate under section 4 and the Collector may at his discretion either treat such petition as if it were a petition for distribution of the estate under section 8 or if the case so requires direct that a fresh petition under such section shall be lodged.

(2) If at any stage of any proceedings in the Supreme Court relating to the estate of a deceased person it appears that the deceased was a member of a tribe within the meaning of Part II or that any part of the estate was property affected by a tribal custom within the scope of Part II the proceedings shall be stayed and the matter shall be referred to the Commissioner of Lands and the proceedings shall not be continued in the Supreme Court unless and until the Commissioner of Lands has certified in writing under his hand that the estate is not, or is not deemed to be, a small estate under the provisions of this Ordinance.

Petition for distribution.

8. (1) Where any person has died intestate leaving a small estate, any person claiming to be interested in such estate as a beneficiary, or a creditor, or a purchaser, or in the circum-

stances mentioned in sub-section (1) of section 18 the penghulu of the mukim in which any land of which the deceased was the proprietor is situated, or the Official Administrator, may lodge with the Collector having jurisdiction under section 4 a petition, in the prescribed form, for the distribution of the estate.

(2) The petitioner shall deliver to the Collector all issue documents of title to immovable property relating to the estate in his possession or power.

(3) The Collector shall thereupon give notice to the Central Registry of the lodging with him of such petition and shall ascertain from the Central Registry whether any petition relating to the estate has, previously to such petition having been lodged, been filed in the Supreme Court or lodged with any other Collector.

(4) If no such petition has been so filed or lodged the Collector shall investigate the facts and matters alleged in the petition and determine whether such estate is or is not a small estate and whether he has jurisdiction under section 4.

(5) For the purpose of determining whether any estate is or is not a small estate the Collector shall value the movable property comprised therein wherever situate.

(6) The valuation of the movable property comprised in an estate by the Collector under this section shall be conclusive for the purpose of this Ordinance.

(7) If the Collector decides that the estate is not a small estate he shall transfer the petition, with or without amendment, to the Supreme Court and such petition shall, unless the Court otherwise directs, be treated therein as if it were a petition for letters of administration upon an intestacy:

Provided that this sub-section shall not apply in any case where a petition in respect of the estate has been transferred to the Collector under sub-section (1) of section 7.

(8) If the Collector decides that the estate is a small estate but that the greater part in value of the property comprised therein is not situated in his district, he shall either transfer the petition to the Collector for the district in which in his opinion the greater part in value of such property is situated or apply to the State Secretary or the Commis-

sioner of Lands for an order to be made under sub-section (2) of section 4.

(9) If the Collector has notice that any other petition for distribution had been previously lodged in respect of the estate with any other Collector or that any application has been made to the State Secretary or the Commissioner of Lands under sub-section (2) of section 4 or that any petition for probate or letters of administration with a will or a copy of a will annexed has been filed in the Supreme Court in respect of the estate he shall forthwith stay all proceedings upon the petition before him until either, as the case may be, such other petition has been transferred to him under the provisions of sub-section (8) or an order has been made by the Court under the provisions of paragraph (c) of sub-section (2) of section 5 directing him to distribute the estate or an order has been made under sub-section (2) of section 4 conferring jurisdiction upon him.

*Service of
notice of
petition
for distri-
bution.*

9. (1) Subject to the provisions of section 8 the Collector having jurisdiction in respect of the small estate shall, as soon as possible after the lodging of the petition for distribution thereof, cause notice of the petition and of the date and place of hearing to be served in the prescribed manner upon all persons who are named in such petition as beneficiaries of or claimants to the estate or any interest therein or who appear to the Collector to be interested in the distribution of the estate:

Provided that no proceedings under this Ordinance shall be invalid on account of any omission or failure to serve any such notice upon any person unless such omission or failure has in the opinion of the Supreme Court occasioned any substantial injustice.

(2) The Collector shall also cause notice of the petition and of the date and place of the hearing thereof to be published in such manner and at such times and places as may be prescribed.

*Appointment
of representa-
tives of
minors or
persons of
unsound
mind.*

10. (1) Where any person, who is named in the petition as a beneficiary of or claimant to the estate or any interest therein or who appears to the Collector to be interested in the distribution of the estate, is or appears to the Collector to

be a minor or a person of unsound mind the Collector may, by an order in writing, appoint some suitable and proper person to be the guardian of such minor or person of unsound mind for the purposes of all proceedings for the distribution of the estate under this Ordinance and all such proceedings shall be as effective and binding upon all persons concerned as if such person had not been a minor or person of unsound mind.

(2) In appointing a person to be a guardian under this section, the Collector shall have regard to any personal law or custom affecting such minor or person of unsound mind.

Place of hearing of petition for distribution.

11. (1) Every petition for distribution shall be heard in such place in his district as the Collector having regard to the convenience of the parties and witnesses generally may appoint.

(2) Every place in which a petition for distribution is heard shall during such hearing be deemed an open and public place to which the public shall have access.

(3) Without prejudice to the extent of his powers under sub-section (1), where the question, or one of the questions, at issue in any hearing of a petition for distribution relates to a particular lot of land the Collector may, in his discretion, hold the hearing, or any part thereof at a convenient place on or near to that land.

Procedure on hearing and the duties of Collector thereon.

12. (1) The Collector shall record in writing the evidence of all witnesses in attendance, and allow cross-examination of any such witnesses by any person present who claims to be interested in the estate or who has been appointed a guardian of any such person under section 10. All such evidence shall be given on oath or affirmation.

(2) The Collector may, in his discretion, examine as a witness any person who appears to him to be capable of giving relevant evidence and shall allow him to be cross-examined by any person present who claims to be interested in the estate or who has been appointed a guardian of any such person under section 10.

(3) The Collector may require the attendance of any penghulu whom he believes to be able to give any material

information regarding the deceased or his estate and may examine him as a witness.

(4) The Collector shall call evidence when necessary to ascertain the religious or customary law applicable to the devolution of the estate of the deceased.

(5) The Collector shall ascertain the amounts of the estate duty, if any, the funeral expenses and debts of the deceased, wherever arising.

(6) The Collector shall consider the claims of any alleged purchasers who attend the hearing and shall ascertain and record who, at the date of the hearing, is in actual occupation of any land claimed by an alleged purchaser, the date, as nearly as the evidence admits, when he went into occupation, and who, at the date of lodging the petition, was in possession of the relevant issue document of title.

(7) The Collector shall ascertain, in such manner as may be most appropriate, the law applicable to the devolution of the estate of the deceased, and shall decide who in accordance with such law are the beneficiaries and the proportions of their respective shares and interests.

(8) The Collector may, if he considers it necessary or desirable, adjourn the hearing from time to time and may appoint a different place for any such adjourned hearing.

(9) At any time before the making of a distribution order the Collector may reopen the hearing for the purpose of taking further evidence on any relevant matter and shall reopen such hearing for such purpose if so directed by the Commissioner of Lands.

*Order for
distribution
of small
estate.*

13. (1) At the conclusion of the hearing the Collector shall by his order make provision for the payment out of the estate of the estate duty, if any, and of the funeral expenses and debts of the deceased, wherever arising, and for the repayment to any person of any fees paid by such person under this Ordinance and may, if necessary, direct the whole or such part of the estate as he may specify to be sold and the expenses, debts, fees and duty to be paid from the proceeds of such sale and subject thereto and to the following provisions of this section shall distribute the residue of the estate according to their respective shares and interests

among the beneficiaries but subject to the provisions of section 15:

Provided that where there is in force any written law relating to *Bait-ul-Mal* the Collector shall before distributing any part of the estate of a deceased Muslim satisfy himself that any share of the estate which is due to the *Bait-ul-Mal* has been duly paid or proper provision made for the payment thereof.

(2) The Collector shall by his order direct the share of any infant beneficiary in any immovable property to be registered in the name of a suitable person as trustee and shall enter a caveat to protect his interest during minority.

(3) If the Collector finds that the deceased was a trustee for any person of any land held in the name of the deceased though not registered as such, he shall unless in any case he thinks it proper to refer to the Court order the trust property to be transmitted to a new trustee or to the beneficiary as he shall think fit but without prejudice to any registered rights or interests in such land of any creditor of the deceased or any person deriving title through the deceased.

(4) If the nature of the case so requires the Collector shall, instead of or in addition to making a distribution order, grant letters of administration to such person or persons as he shall think fit, subject to such security as he may require and may in his discretion dispense with security. Such letters of administration shall be subject to such limitations as the Collector may think fit to specify in the grant.

(5) If the Collector finds that any person has proved his claim to be a purchaser within the meaning of section 2 of any land registered in the name of the deceased he shall, by his order, transmit such land to the purchaser, subject to such conditions as to the payment of any outstanding balance of the purchase money or otherwise as he may think fit to impose.

(6) If in the opinion of the Collector any person claiming to be a purchaser of any land registered in the name of the deceased is not such a purchaser but is entitled to any

sum as compensation or relief out of the estate of the deceased he shall record a finding to that effect and shall provide in such order for the payment of such sum to such person as a debt of the deceased.

(7) If it appears that the estate is or is likely to be insolvent the Collector shall grant letters of administration to some fit person on behalf of the general body of creditors or else order the estate to be administered in bankruptcy by the Official Assignee.

*Determination
of collateral
disputes.*

14. (1) If in the course of the hearing it is certified by the Collector to be necessary or desirable in the interests of justice that any collateral dispute should be decided before a distribution order is made, the Collector may defer the making of any distribution order in respect of the estate or of that part of the estate which in his opinion is or may be affected directly or indirectly by the determination of such disputes and shall thereupon cause such dispute to be determined in accordance with the provisions of this section.

(2) For the purposes of this section a 'collateral dispute' means a dispute as to whether—

- (a) any property movable or immovable or any right or interest in any such property forms part of the estate of the deceased;
- (b) any person is entitled beneficially to any property movable or immovable or any right or interest in any such property which the deceased at the time of his death held or was entitled to hold as a trustee and not beneficially;
- (c) any debt or liquidated sum in money is payable to any person claiming the same out of the assets of the deceased or any debt or liquidated sum in money is due or payable by any person to the estate of the deceased;
- (d) any share or any right or interest in any share of a beneficiary in the estate of the deceased has been assigned to or vested in any other person, whether a beneficiary or not.

(3) If in any collateral dispute the subject matter is movable property not exceeding one thousand dollars in

value the Collector shall, after ensuring that all necessary parties are before him or have had sufficient opportunity to attend, proceed to hear and determine such dispute and may make such order thereon as may be just.

(4) If in any collateral dispute the subject matter is immovable property of any value or any right or interest in such property, then, except in any case provided for by sub-section (5), the Collector shall proceed to hear and determine such dispute and may make such order thereon as may be just.

(5) If the subject matter of the collateral dispute is immovable property or any right or interest therein registered in the name of the deceased as proprietor or co-proprietor and if at the date of the death of the deceased some other person was in occupation thereof and if the Collector satisfied that, by reason of an agreement for sale of such property by the deceased, the deceased at the date of his death had no beneficial right or interest in such property, and if such beneficial right or interest is in dispute between two or more claimants then the Collector shall direct the persons claiming any beneficial right or interest in such property within two months of the date of such direction to institute proceedings in a Court of competent jurisdiction with a view to the determination of such dispute by such Court and if no such proceedings are instituted within such period the Collector shall proceed to hear and determine the dispute in the same manner as a dispute referred to in sub-section (4).

(6) If in any collateral dispute the subject matter is movable property exceeding one thousand dollars in value the Collector shall direct the parties to such dispute within two months of the date of such direction to institute proceedings in a Court of competent jurisdiction with a view to the determination of such dispute by such Court and if no such proceedings are instituted within such period the Collector shall proceed to hear and determine such dispute in the same manner as if he had had power to determine the same under sub-section (3).

(7) For the purpose of giving effect to the provisions

of sub-sections (5) and (6) the Collector may grant to such person as he thinks fit letters of administration limited to the purpose of becoming or being made a party to any proceedings which may be instituted under either of the said sub-sections, and carrying the decree which may be made therein into effect.

(8) Subject to the provisions of any Rules made under section 30, the provisions of sections 9, 10, 11 and 12, with such modifications as may be necessary, shall apply to the hearing and determination of collateral disputes by Collectors under this section.

(9) Any order made by a Collector under this section shall have the same force and effect and shall be enforceable in the same manner as if it had been made by a Court of competent jurisdiction, but there shall be no appeal from such order except under section 29.

(10) The Collector shall, when necessary, give effect by his distribution order to any order made by him under this section and in any case referred to in sub-section (5) shall by such distribution order transmit any land or any part or share thereof or interest therein, to the person beneficially entitled thereto notwithstanding that such person may not be a purchaser within the meaning of section 2.

*Powers of the
Collector in
distributing
the estate.*

15. (1) Where the Collector is satisfied that all the beneficiaries of the estate being of full age and capacity have agreed between themselves as to the manner in which the estate should be distributed, the Collector may, after recording in the distribution order the terms of the agreement, and the assent of the parties thereto, distribute the estate in the manner provided for by the agreement unless it shall appear to the Collector to be unjust or inequitable so to do.

(2) Where any such agreement has been entered into by all the beneficiaries who are of full age and capacity the Collector may, if in his opinion it is in the interests of any other beneficiary who is a minor or a person not of full capacity to do so, assent to the agreement on behalf of such minor or person and may thereupon after recording the terms of the agreement and the assent of the parties thereto and of his own assent on the part of such minor or person

distribute the estate in the manner provided for by the agreement.

(3) Where two or more beneficiaries are entitled to share in any land comprised in the estate the Collector may, at his discretion, having regard to the interests of those concerned and the interests of good cultivation—

- (a) allocate separate lots to individual beneficiaries; or
- (b) allocate separate lots to two or more beneficiaries as co-proprietors or tenants in common in undivided shares; or
- (c) subject to the provisions of any other written law restricting the sub-division of land order any lot or lots to be subdivided by survey into parcels proportionate to the shares of the beneficiaries concerned, fixing a time within which they are to deposit the appropriate survey fees in the Land Office and providing that in default of such deposit the land be registered in the names of those beneficiaries as co-proprietors or tenants in common in undivided shares.

(4) The Collector, at his discretion, in order to prevent the excessive sub-division of land or the holding of small lots of land in common by numerous persons or in complicated fractional interests -

- (a) where the share of a beneficiary is small, may order the land or any part thereof allocated to any other beneficiary or a specified interest therein to be charged to the beneficiary for the amount of his share, together with interest at such rate as may be just, not exceeding five per centum per annum, in lieu of allocating to him a proprietary interest; and
- (b) where the value of any interest or share in land or lot allocated to a beneficiary is less than the value of the share in the estate to which such beneficiary is entitled, may direct that the difference in value be made up to him in money by the other beneficiaries in such proportion as is equitable and may order, if necessary, that

any such payment and interest thereon at such rate as may be just, not exceeding five per centum per annum, be secured by a charge upon any share or shares of such other beneficiaries: and

(c) may order the land or any part of it to be sold in such manner as may be prescribed.

(5) In the exercise of any discretion under this section the Collector shall take into consideration the matters set forth in the First Schedule.

(6) No distribution order made in accordance with the provisions of sub-sections (3), (4) and (5) shall have effect where any beneficiary affected thereby is a Muslim, unless every such beneficiary being of full age and capacity shall have assented thereto, and where any beneficiary is a minor or a person not of full capacity, such assent shall have been given on his behalf by a guardian appointed under section 10.

*Procedure
after hearing.*

16. (1) The distribution order shall be drawn up forthwith by the Collector and shall lie in the land office for the period within which notice of appeal to the High Court may be given and, if notice of appeal to the High Court under section 29 has been given, shall continue to lie in the office until the appeal has been withdrawn or decided, and shall if necessary be amended or redrawn to conform with the decision of the High Court. The order shall then be registered and a sealed copy thereof shall be sent to any Registrar of Titles and to any other Collector affected and shall be registered as a transmission.

(2) The Collector making a distribution order may sign and enter any caveat required to be registered with the order, whether in his own or any other registry or office.

*Subsequent
applications.*

17. (1) Where it becomes necessary to appoint a new trustee or a new administrator or to make any other or further order or to withdraw a caveat the party interested may make an application to the Collector, in the prescribed form or in any other form which the Collector may permit, and thereupon the Collector shall investigate the matter and cause notice to be given to any other party affected and if the

matter is contentious he shall set it down for hearing in the same manner as a petition for distribution under this Ordinance and after such investigation or hearing he shall make such order or do any other act as may be necessary to give effect to his decision and if necessary shall register such order and send a sealed copy thereof to any Registrar of Titles and to any other Collector affected for such registration as may be necessary.

(2) Where a minor beneficiary has attained majority the Collector may either withdraw the caveat to enable the trustee to transfer the interest to the beneficiary or make an order transmitting the interest from the trustee to the beneficiary as proprietor and in the latter case an order withdrawing the caveat may be incorporated in the same instrument as the transmission.

(3) The Collector may for any cause he thinks fit at any time either of his own motion or on the application of any beneficiary or creditor revoke any grant of administration made by him and may likewise order any administrator to file accounts or to supply such other particulars concerning the administration of the estate as he may require.

*Duty of
penghulu.*

18. (1) Where a proprietor of any land has died and no proceedings, to the knowledge of the penghulu of the mukim in which such proprietor's land is situated, have within six months of the date of death been taken to obtain a grant of probate or letters of administration or for distribution under this Ordinance of the estate of the deceased, the said penghulu shall report the matter to the Collector and the Collector may thereupon direct the penghulu, or some other penghulu, to lodge a petition for distribution of the estate unless he has reason to believe that such land was not part of a small estate, in which case he shall report the matter to the Official Administrator.

(2) No fees under this Ordinance shall be payable by the penghulu upon the lodging of any petition under this section or on any consequent proceedings but at the conclusion of the hearing the Collector shall assess the fees that would have been payable under this Ordinance if the

petition had been lodged by some person other than the penghulu and shall in his distribution order direct that they shall be paid out of the estate.

Reference on point of law or custom.

19. (1) If any difficult point of law or custom arises in any proceedings under this Ordinance, the Collector may—

- (a) if the question relates to Muslim law or Malay custom, refer the matter for decision to the Ruler in Council of the State in which his district is situated or to such other person or body of persons as the Ruler in Council of such State may direct; or
- (b) if the question relates to any other matter, may state a case for the opinion and directions of the High Court.

(2) Every reference and every statement of case under sub-section (1) shall be in writing and shall contain a statement of the facts on which an opinion or decision is required, and the Collector shall give effect to any opinion, decision or directions thereby obtained.

(3) Where any question is referred to the High Court under this section the reference may be heard and disposed of by a Judge in Chambers.

(4) The High Court shall not give any opinion upon any question referred to it under this section unless all those persons interested in the proceedings who in the opinion of the High Court are likely to be affected by such opinion have had an opportunity to appear and be heard by the Court either in person or by advocate and solicitor and the costs of any such hearing shall be borne by such persons or by the estate and in such proportion as the Court may direct.

PART III

SPECIAL PROVISIONS RELATING TO NEGRI SEMBILAN

Application of Part.

20. (1) This Part shall apply only in the districts of Jelebu, Kuala Pilah, Rembau and Tampin in the State of Negri Sembilan.

(2) The provisions of Part II shall apply without modification in all cases where the deceased was not a member of a tribe.

(3) Where the deceased was a member of a tribe, the provisions of Part II shall take effect subject to the provisions of this Part in respect of any property comprised in the estate of the deceased and situated within the districts to which this Part applies.

Interpretation. 21. (1) In this Part 'the Enactment' means the Customary Tenure Enactment of Negri Sembilan and 'tribe' means one of the tribes specified in Schedule B to the Enactment.

F.M.S.

Cap. 215

(2) This Part shall be read with the Enactment and words defined therein shall have the same meanings in this Ordinance.

(3) In the event of any conflict between this Ordinance and the Enactment the provisions of the Enactment shall prevail.

(4) For the purposes of this Part the estate shall not include such part of the estate as is 'customary estate' within the meaning of the Enactment.

All tribal estates to be 'small'.

22. The estate of any deceased person who was at the time of his death a member of a tribe shall be deemed to be a small estate, whatever its total value, and every such person shall be deemed for the purposes of this Ordinance to have died intestate in respect of such estate.

Jurisdiction.

23. (1) The Collector of the district in which is located the tribe or section of a tribe of which the deceased was a member shall have exclusive jurisdiction over the estate under this Ordinance:

Provided that if the value of the estate exceeds five thousand dollars the hearing of any petition for distribution shall be before one or more officers nominated for that purpose by the Mentri Besar of the State of Negri Sembilan and such officer or officers shall have all the powers of a Collector having jurisdiction over the estate under this Ordinance.

(2) Where the deceased has left customary estate in addition to other property the Collector or other officer or officers nominated under this section shall, wherever

practicable, fix the hearing of the application under section 10 of the Enactment for the same time and place as the hearing under section 12 of this Ordinance.

*Principles
of distribution.*

24. In making any distribution order, the Collector, which expression, in this section, shall be deemed to include the officer or officers nominated under section 23, shall apply the following principles:

- (a) if any land appears to be ancestral customary land, though not registered as such, it shall be transmitted to the customary heiress, subject if necessary to life occupancy;
- (b) where any property is found as a fact to be *harta pembawa* or *harta dapatan* it may be transmitted to the customary heiress of the deceased subject to the right of any other person to a share in or charge over that property according to the principal of *untong*, where applicable, and on registration of the order the Collector may, if necessary, add the words 'Customary Land' to any title affected but he shall not be bound to do so;
- (c) where any property is found as a fact to be *harta charian bujang* or *harta charian laki-bini* it may be transmitted according to the custom of the *luak* and on registration of the order the Collector may, if necessary, add the words 'Customary Land' to any title affected but he shall not be bound to do so;
- (d) the Collector shall give effect to customary adoptions where they are satisfactorily proved;
- (e) in all cases regard shall be had to any partial distribution of property made or agreed upon in the lifetime of the deceased and to the existence of any property which is affected by any such distribution or agreement though not part of the estate;
- (f) wherever practicable the Collector shall avoid transmitting undivided shares in any one lot to members of different tribes;

- (g) where funeral expenses are by the custom chargeable on specific property and the party on whom that property ought to devolve has not paid them, the Collector may require such party to pay the funeral expenses as a condition of inheriting that property or may, by the order, charge that property with the amount of the funeral expenses.

Appeals.

25. (1) Any appeal under section 29 of this Ordinance which relates to customary land or to the estate of a deceased member of a tribe shall be heard by an Appeal Committee appointed by the Ruler in Council, instead of by the High Court, and subject to confirmation by the Ruler in Council the report of the Committee shall be final. The Ruler in Council may make rules of procedure and prescribe fees for such appeals.

(2) Unless and until an Appeal Committee is appointed under sub-section (1) any such appeal shall be heard in the same manner as an appeal under section 15 of the Enactment.

 PART IV

 ESTATES NOT EXCEEDING
 TWO THOUSAND DOLLARS IN VALUE

*Summary
administration
of property
not exceeding
\$2,000 in
value left
by any
deceased
intestate.*

26. (1) Notwithstanding any other provision of this Ordinance where any person has died intestate leaving property in the Federation and the Official Administrator is satisfied after such investigation as he shall think sufficient—

- (a) that the total value of such property without deduction for debts, but not including the value of any property which the deceased possessed or was entitled to as trustee and not beneficially, does not exceed two thousand dollars; and
- (b) that the property does not include any immovable property or any interest therein; and
- (c) that no petition for letters of administration or for distribution under this Ordinance is pending,

he may, if in his discretion he thinks fit to do so, by a writing signed by him, declare that he undertakes to administer such property under this section and thereupon he shall be empowered to administer it as though letters of administration of the estate of the deceased had been granted to him and his receipt shall be a sufficient discharge to any person who pays any money or delivers any property to him. Notice of every such declaration shall be filed in the Central Registry.

(2) The powers conferred on the Official Administrator by this section shall be without prejudice to the powers to deal without a grant of representation with property of a deceased person conferred on any other person by any other written law provided that every such person shall, on request, supply to the Official Administrator a full and true account of any such property dealt with by him and shall, if so required, pay or deliver to the Official Administrator any money or other property remaining under his control.

(3) At any time prior to the distribution of any part of the property among the beneficiaries thereof under this section the Official Administrator may, if he thinks it expedient to do so, notwithstanding any declaration made by him under sub-section (1), decline to proceed with the administration of the property and may retain any such property in his hands until a distribution order or a grant of representation has been obtained in respect of the estate of the deceased.

(4) The Official Administrator shall charge such fees on property administered by him under this section as may be generally or specially authorised in writing by the Financial Secretary.

(5) This section shall not apply in the case of the property of a deceased person to which Part III applies, but subject as aforesaid shall apply to all States and Settlements.

PART V

MISCELLANEOUS

Estates partly administered. 27. (1) Where, before the coming into force of this Ordinance, letters of administration have been granted by the Supreme Court and the estate has not been fully administered, any further application relating to the same estate may be made to the Supreme Court, whether the estate is, or has become, a small estate within the meaning of this Ordinance or not.

(2) Where before the coming into force of this Ordinance a grant of probate or letters of administration has been made in a district registry or by a Court other than the Supreme Court, and the estate has not been fully administered any further application relating to the same estate may be made to a Judge or Registrar of the Supreme Court in the State or Settlement in which the grant was made and thereupon the Registrar shall call for the file of the former proceedings which may be continued as though they had been commenced in his registry; provided that if for any reason, in the opinion of the Judge or the Registrar, the proceedings cannot conveniently be so continued, the Judge or Registrar may direct that a new petition be filed in the Supreme Court or where the property is situated in a Malay State that a petition for distribution be lodged with a Collector pursuant to section 8.

(3) Where before the coming into force of this Ordinance an application for distribution or for a grant of letters of administration of a small estate under the provisions of any written law repealed by this Ordinance has been made in a land office, and the estate has not been fully administered the Collector in charge of that land office shall have jurisdiction to continue the proceedings and shall continue them in accordance with the provisions of this Ordinance, as nearly as the circumstances admit.

Exclusion of provisions of certain other laws. 28. None of the provisions of any law relating to duties on estates of deceased persons or of any rules of Court, so far as all such provisions regulate the practice and procedure in granting letters of administration or the imposition and

collection of duties payable on the estates of deceased persons, shall apply to any proceedings under this Ordinance except in so far and with such modifications as may be prescribed.

Appeal.

29. (1) Subject to the other provisions of this Ordinance any person aggrieved by any order, decision or act made or done by a Collector under this Ordinance may appeal to the High Court:

Provided that no appeal shall lie from any such order decision or act so far as the same is based on and in accordance with a decision of the Ruler in Council or of any other person or body in respect of a reference under paragraph (a) of sub-section (1) of section 19 or in accordance with the opinion of the High Court in respect of a reference under paragraph (b) of the said sub-section:

Provided further that in the State of Trengganu when the appeal is in respect of any decision of the Collector in relation to an interest claimed under the Settlement Enactment the appeal shall lie to the Land Court constituted under that Enactment.

(2) The time limited for appeal and the procedure in every such appeal shall unless otherwise provided by rules made under section 30 conform to the time limited for, and the procedure in, a civil appeal from a Sessions Court, with such variations as may be necessary and the same fees shall be payable.

(3) If any doubt or difficulty shall arise on any point of procedure in any such appeal any party may apply in writing to the Registrar at the Registry in which the appeal is pending or intended to be filed and the Registrar shall give such directions as may be necessary.

(4) The decision of the High Court upon any such appeal shall be final, and shall not be subject to any further appeal.

Rules.

30. The High Commissioner in Council may make rules to carry into effect the objects of this Ordinance and to prescribe anything required to be prescribed under this Ordinance.

Solicitors.

31. (1) No advocate or solicitor shall be entitled to appear on behalf of any party in any proceedings before the Collector under this Ordinance except with the permission of the Collector, who may grant or withhold such permission in each case as he thinks fit.

(2) No solicitor's costs shall be allowed out of any small estate except that in a case where the estate exceeds three thousand dollars in value the Collector may, for special reasons stated in the order, allow such costs to an amount not exceeding the amount of such costs as might be awarded in the Sessions Court in a comparable proceeding.

(3) The provisions of this section shall apply in the State of Trengganu to a pleader in that State in the same manner in all respects as it applies to an advocate and solicitor of the Supreme Court.

Repeal.

32. (1) The Enactments mentioned in the first and second columns of the Second Schedule are repealed to the extent specified in the third column thereof.

(2) The provision of section 105 of the Courts Ordinance, 1948, in so far as they may be inconsistent with the provisions of this Ordinance, shall cease to have effect.

FIRST SCHEDULE

[Section 15 (5)]

In determining whether to make a distribution order in accordance with any agreement between the beneficiaries or in settling the terms of any distribution order providing for the distribution of land the Collector shall have regard to the following considerations:

- (a) dividing land into several lots in several names may seriously diminish the value of the estate as a whole;
- (b) the real value of small shares, especially when represented by complicated fractions, is less than their proportionate values;
- (c) it is not conducive to good cultivation or to peace in a family for persons who may have conflicting interests to be undivided co-proprietors of land;
- (d) it is greatly to the advantage of an infant that his co-proprietors should be those most nearly related to him;

- (e) valuations are necessarily estimates and are only approximately correct; it is therefore unnecessary that the estimated value of a lot should be the precise amount of a beneficiary's mathematical share; it is sufficient if the estimated value of a lot substantially corresponds to the beneficiary's calculated share.

SECOND SCHEDULE

(Section 32)

REPEAL

(1)	(2)	(3)
-	<i>Short title</i>	<i>Extent of Repeal</i>
F.M.S. Cap. 8	... The Probate and Administration Enactment	Chapter XIX
Johore No. 8 of 1936	... The Small Estates Enactment 1936	The whole
Kedah No. 56	... Enactment No. 56 (Land)	Section 86
Kedah No. 1	... Enactment No. 1 (Administration of Estates)	Sections 19, 20, 21 and the words 'or Magistrate' in section 22
Kelantan No. 2 of 1930	... The Administration Enactment, 1930	Section 23
Trengganu En. No. 22 of 1356	... The Probate and Administration Enactment	Section 19(ii) (c) & (d)
Trengganu En. No. 3 of 1357	... The Land Enactment	Section 46
Perlis No. 11 of 1356	... The Land Enactment, 1356	Section 90
Perlis No. 1 of 1338	... The Administration of Estates Enactment, 1338	Sections 17 & 18 and the words 'or Magistrate' in sections 19, 20, 22, 70 respectively and the words 'or the Magistrate' whenever occurring in section 30

SMALL ESTATES (DISTRIBUTION) (AMEND-
MENT) ORDINANCE (1959) No. 26

An Ordinance to amend the Small Estates (Distribution)
Ordinance, 1955.

[30th May, 1959.]

IT IS HEREBY ENACTED by the Yang di-Pertuan
Agong with the advice and consent of the Legislative
Council as follows:

Short title. 1. This Ordinance may be cited as the Small Estates
(Distribution) (Amendment) Ordinance, 1959.

Amendment of 2. The Small Estates (Distribution) Ordinance, 1955, is
Section 3. hereby amended by substituting for sub-section (2) of
34 of 1955. section 3 thereof the following new sub-section:

‘(2) For the purposes of this Part a small estate means an estate of a deceased person consisting wholly or partly of immovable property situated in any State in which this Part has effect and not exceeding ten thousand dollars in total value, but does not include an estate where the total value of the movable property comprised therein exceeds five thousand dollars.’

APPENDIX III

THE CONSTITUTIONAL AND ADAT STRUCTURE OF NEGRI SEMBILAN

This appendix is designed to state very briefly the *adat* constitution of Negri Sembilan. It includes the following material:-

- (a) A Map showing the *adat* districts of the State.
 - (b) A list of precedence of the *adat* office holders in the State.
 - (c) Selected articles of the Negri Sembilan State Constitution, 1959.
- Some comment is necessary on each of these documents.

(a) The Map

The map shows thirteen *adat* districts (*luak*). The name 'Negri Sembilan' traditionally implied a grouping of nine states but the actual number and names of the states has varied from time to time. Newbold, for example, (1839: (2) 78-79) gave the original nine states as follows: Segamat, Johol, Naning, Sungei Ujong, Jelebu, Rembau, Klang, Ulu Pahang and Jelai. Of these states, Segamat is no longer in existence but part of its former area is covered by Gemenchah, Ayer Kuning and the southern half of Jempol. Naning is now included in the present state of Malacca (cf. Article 4 below). Klang is now included in the present state of Selangor. It is questionable whether or not Ulu Pahang ever existed (cf. Nathan and Winstedt 1920: 1-2), Jelai is now included in the states of Johol and Inas: Jelai was also known as Pasir Besar.

The present thirteen districts fall into the following groups:

(i) The Inner Four.

These include, in order of precedence, Luak, Muar, Jempol, Terachi and Gunong Pasir. They are collectively known as the Tanah Mengandong—the 'heartlands'. (Their function in the constitution is discussed by Josselin de Jong, 1951: 148-53).

(ii) The Outer Four.

These include, in order of precedence: Luak, Sungei Ujong, Jelebu, Johol and Rembau. The *penghulu* of these *luak*, are known as *Undang* and collectively as the 'Ruling Chiefs'. Their *adat* function is summarised in the articles of the State Constitution given below.

(iii) Luak Inas, Gemenchah and Ayer Kuning.

These three *luak* are rather peripheral in the sense that they are not

directly involved in the state *adat* constitution. The internal constitution of each of these *luak*, however, is based on *adat perpatih* principles.

(iv) Linggi.

This district, which one hesitates to call a *luak*, is included without much definition of boundary in the *luak* of Sungei Ujong. It owes its existence to power struggles in the nineteenth century (cf. Gullick, 1949: 54-63).

(v) Tampin.

This district also owes its existence to the nineteenth century internal wars in Negri Sembilan. The Tengku Besar, the ruler of Tampin, is one of the 'Ruling Chiefs' for non-*adat* purposes of the State Constitution. He takes no part in the election of the Ruler of the State, the Yamtuan. The internal constitution of the *luak* comprises four territorial *penghulu* who owe loyalty to the Tengku Besar but who have no connexion with any other *adat* ruler. The internal constitution of Tampin is based on *adat perpatih* principles.

Negri Sembilan is divided into six administrative districts (*jajahan*). Tampin includes *luak* Gemencheh, Ayer Kuning and the area under the control of the Tengku Besar of Tampin. The *luak* of Rembau and Jelebu correspond to the administrative districts of those names: *luak* Sungei Ujong and Dato Muda Linggi are incorporated in the *jajahan* of Seremban. The remaining *luak* of Johol, Inas, Gunong Pasir, Terachi, Ulu Muar and Jempol are included in the administrative district of Kuala Pilah.

The term *luak* as used in statutes refers to the *adat* district. Titles to land, however, are denoted by a numbered entry in a *mukim* ('parish') register which refers to a land registration district.

(b) The List of Precedence

This is the official list used at the installation of the present Yamtuan in 1968. First, come the four *undang*, then the Tanah Mengandong, and finally the other groups including the *lembaga* and *waris* of *luak* Sungei Ujong, Jelebu, Johol and Rembau. In effect, this is a list of the effective *adat* officials in the state, but excluding the Tengku Besar of Tampin.

(c) The State Constitution

Little comment is called for in respect of the articles from the State Constitution except to note the connexion which exists between the *adat* officials and the religion of Islam. The *undang* are empowered to deal with Islam in the state: this is a non-traditional function but is part of the Ruler's function in all the Malay States.

We may also mention the following socio-political groupings:

I. The *Perut*

This is the smallest socio-political unit in Negri Sembilan and is headed by an *ipu-bapa* ('mother-father') or *buapa*. Josselin de Jong states that it seems to correspond to the Minangkabau *perui*'. The term itself means "womb" and the members of a *perut* are supposed to be able to trace their descent from a common ancestress. Lewis records that the term appears to cover the lineage (Lewis 1962: 87ff.). The *perut*, she says, 'is a quasi-genealogical territorial group'.

II. The *Suku*

The *suku* is formed from related *perut*. In much of the writing on the *suku* this group is often designated 'tribe' but the term 'clan' seems preferable. The *suku* is a corporate exogamous group. Affiliation is reckoned through the mother and residence after marriage is matrilineal. This grouping forms the framework for economic, social and political relations within the district. The *suku* is generally associated with a single village or group of villages. It is ruled by a *lembaga*: (cf. Josselin de Jong, 1951: 145; 'lembaga ... can best be translated as, ... the chief who deals with Custom...'). For the purposes of this book the relevant *suku* are those given in Schedule B to Cap. 215 and in Schedule A of Act No. 4 of 1960. It may be noted that the *suku* has been treated in this book as a unit when considering the marriage, divorce and inheritance rules in respect of statutes and judicial decisions. There has been no attempt to discuss the internal structure of this grouping since this has not proved relevant in judicial and statutory proceedings under a formalised legal system. It obviously has relevance in respect of *adat* itself, however, and at present only Lewis has given any close analysis of this.

NEGRI SEMBILAN PRECEDENCE LIST

A

The Electing Undang

- Dato' Klana Putra, Undang Luak Sungai Ujong.
 Dato' Mendika Menteri Akhirulzaman, Undang Luak Jelebu.
 Dato' Johan Pahlawan Lela Perkasa Setiawan, Undang Luak Johol.
 Dato' Sedia Raja, Undang Luak Rembau.
 Dato' Shahbandar, Sungai Ujong.

B

The Penghulu Tanah Mengandong

- Dato' Setia Maharaja Lela Pahlawan—Pengkulu Luak Ulu Muar.
 Dato' Lela Pahlawan—Pengkulu Luak Jempol.
 Dato' Andeka Pahlawan—Pengkulu Luak Terachi.
 Dato' Setiawan—Pengkulu Luak Gunong Pasir.
 Dato' Johan Pahlawan Lela Perkasa Setiawan—Pengkulu Luak Inas.
 Dato' Setiawan—Pengkulu Luak Gemencheh.
 Dato' Penghulu Pesaka Ayer Kuning—Pengkulu Luak Ayer Kuning.
 Dato' Muda Linggi—Pengkulu Luak Linggi.

C

*The Lembaga and Waris**Lembaga Sungai Ujong*

- Dato' Mendika
 Dato' Sri Maharaja Di-Raja
 Dato' Akhirzaman
 Dato' Dagang Paroi

Lembaga Jelebu

- Dato' Menteri
 Dato' Mengiang
 Dato' Chinchang
 Dato' Senara

Lembaga Johol

- Dato' Raja Balang
 Dato' Mendika
 Dato' Raja Senara
 Dato' Baginda Raja

*Lembaga Rembau**Lembaga di-baroh:*

- Dato' Merbangsa
- Dato' Gempa Maharaja
- Dato' Bangsa Balang
- Dato' Samsura Pahlawan

Lembaga di-darat:

- Dato' Seri Maharaja
- Dato' Senda Maharaja
- Dato' Andika
- Dato' Mendika

Waris Sg. Ujong

- Dato' Laksamana
- Dato' Panglima Besar
- Dato' Johan
- Dato' Lela
- Dato' Muda Labu
- Dato' Paduka Di-Raja
- Dato' Senda Maharaja

Waris Jelebu

- Dato' Umbi (or Ombi)
- Dato' Raja Balang
- Dato' Paduka
- Dato' Majinda

Waris Johol

- Dato' Baginda Tan Emas (or Mas)

Waris Rembau

- Dato' Shahbandar
- Dato' Mangku Bumi
- Dato' Menteri Lela Perkasa
- Dato' Raja Di-Raja
- Dato' Perba

Reference should be made to Negri Sembilan Acts No. 2 of 1960 and No. 2 of 1964. The schedules to these acts contain the State Civil Lists and set out the allowances payable to *adat* officials.

THE NEGRI SEMBILAN STATE CONSTITUTION 1959.

The following extracts are those which have special applicability to the constitutional *adat* of the State.

Chapter 2—RELIGION OF THE STATE

V. The Religion of the State shall be Islam as heretofore professed and practised in the State; but all other religions may be practised in peace and harmony by the persons professing them in any part of the State.

VI. (1) There shall be established a Majlis Ugama Islam to be called in English 'Council of Muslim Religion' to aid and advise His Highness and the Ruling Chiefs in all matters relating to the religion of the State.

(2) In exercising the functions and powers of the Head of Muslim Religion in the State, His Highness shall obtain the concurrence of the Undangs.

Chapter 3—THE YANG DI-PERTUAN BESAR

VII. (1) There shall be a Yang di-Pertuan Besar of the State to exercise the functions and powers of a Ruler in accordance with this Constitution and who shall take precedence over all other persons in the State.

(2) The Yang di-Pertuan Besar shall be such person as shall be elected by the Undangs of the territories of Sungei Ujong, Jelebu, Johol and Rembau in the manner hereinafter provided and in accordance with the custom of the State.

(3) No person shall be elected as Yang di-Pertuan Besar of the State unless He shall be a male of the Malay race, of sound mind and professing the religion of the State, who is a lawfully-begotten descendant in the male line of Raja Radin ibni Raja Lenggang.

(4) Upon the death of a Yang di-Pertuan Besar, leaving male issue him surviving, the Undangs of the territories of Sungei Ujong, Jelebu, Johol and Rembau shall forthwith choose a successor from among the said male issue:

Provided that if, in the opinion of the said Undangs, there is no suitable and competent person among the said male issue, then a person shall be chosen from the first of the following classes or failing, in their opinion any suitable and competent person in that class, then from the second and subsequent classes in the order stated, that is to say—

- Firstly, the brothers of the deceased Yang di-Pertuan Besar;
 Secondly, the paternal uncles of the deceased Yang di-Pertuan Besar;
 Thirdly, the grandsons of the deceased Yang di-Pertuan Besar;
 Fourthly, the sons of the brothers of the deceased Yang di-Pertuan Besar;
 Fifthly, the sons of the paternal uncle of the deceased Yang di-Pertuan Besar.

X. (1) If it is considered and determined after full and complete enquiry by the Undangs that His Highness after His appointment as Yang di-Pertuan Besar has developed any great and serious defect derogatory to the qualities of a Yang di-Pertuan Besar such as insanity, blindness, dumbness or has become possessed of any base quality on account of which He would not be permitted by the Hukum Shara' to be Yang di-Pertuan Besar or that His Highness has done any overt act detrimental to the sanctity, honour and dignity of a Yang di-Pertuan Besar or has deliberately disregarded the provisions of this Constitution, the Undangs may call upon Him—

- (a) to withdraw from performing His duties for a period to be determined by the Undangs; or
- (b) to abdicate and relinquish His prerogatives, rights, powers and privileges.

(2) On being called upon to withdraw from performing his duties as aforesaid, His Highness shall cease to exercise the functions and powers of Ruler of the State for the period so determined and during such period a Regent or a Council of Regency appointed in the manner hereinafter provided shall exercise such functions or powers or on being called upon to abdicate He shall thereupon cease to be Yang di-Pertuan Besar.

Provided that as soon as possible thereafter a proclamation to that effect shall be issued under the hands of the Undangs and the Mentri Besar.

XI. In the event of His Highness ceasing to be a Yang di-Pertuan Besar by virtue of the provisions of Article IX [Abdication] or X (1) (b), it shall be the duty of the Undangs to choose and elect another Yang di-Pertuan Besar.

Chapter 5—A. THE RULING CHIEFS

XIV. (1) The Undangs of the territories of Sungei Ujong, Jelebu,

Johol and Rembau shall be persons lawfully elected in accordance with the custom of their respective luaks.

(2) The Office of Tengku Besar Tampin shall be hereditary by primogeniture amongst the male descendants lawfully-begotten in the male line of Tengku Syed Abdul Hamid bin Tengku Syed Shaban but if the heir is under the age of eighteen years according to the Gregorian calendar the office shall remain in abeyance until he shall have attained such age.

(3) On any of the Undangs vacating or on being removed from office in accordance with the custom of his luak, or in the event of the Tengku Besar, Tampin, vacating office there shall be paid to such Undang or Tengku Besar, as the case may be such monthly allowance for life, not exceeding one quarter of the monthly allowance paid to him while in office, which the Legislative Assembly shall by Resolution determine:

Provided that the Legislative Assembly may terminate or withhold such allowance if the recipient thereof does any act prejudicial to the interests of the State or if he instigates any person to commit any treasonable act against the reigning Yang di-Pertuan Besar or if he conspires with any person or foreign Government to do any act likely to cause injury to the State or its interests.

(4) The allowance payable under Clause (3) of this Article shall be a charge on the Consolidated Fund.

B. DATO' SHAHBANDAR OF SUNGEI UJONG

XV. (1) Dato' Shahbandar of Sungei Ujong shall be the person lawfully elected as head of the waris di-Ayer in accordance with the custom of the luak of Sungei Ujong.

(2) Without prejudice to the prerogatives, powers and jurisdiction of Dato' Klana as Undang, and subject to the provisions of this Constitution, there shall be consultation between him and Dato' Shahbandar in all matters affecting the affairs of the luak of Sungei Ujong.

Chapter 6—DEWAN KA'ADILAN DAN UNDANG

XVI. There shall be a Dewan Ka'adilan dan Undang to be called in English 'The Council of the Yang di-Pertuan Besar and the Ruling Chiefs' hereinafter referred to as the Dewan to advise on questions relating to Malay Custom in any part of the State or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs

and to exercise such functions as may be conferred upon it by this Constitution or any other written law.

XVII. The Dewan shall consist of His Highness, the Ruling Chiefs, the Tengku Besar of Sri Menanti, Dato' Shahbandar of Sungei Ujong and such other Malay member or members as may from time to time be appointed for such period as may be prescribed by His Highness and the Undangs provided that where the Dewan deliberates on State or National policy the Mentri Besar shall be invited to attend.

REFERENCES

- Ahmad Ibrahim, (1964/65?) 'Islam Customary Law/Malaysia'. *Intisari* 2 (No. 2): 47-74.
- Al Wahab bin Alwee. (1968). *Rembau: A Study in Integration and Conflict in a Village in Negri Sembilan, Malaya*. Nedlands (Perth).
- Anderson, J.N.D. (1959) *Islamic Law in the Modern World*. London.
- Burridge, K.O.L. (1956). 'The Malay Composition of a Village in Johore'. *JMBRAS* 29: Part III 60-77.
- (1957). 'Managerial Influences in a Johore Village'. *JMBRAS* 30: Part I, 93-114 (esp. at 108-113).
- Caldecott, A. 1918. Jelebu Customary Songs and Sayings. 78 *JSBRAS*: 3-41.
- Djamour, Judith. (1965). *Malay Kinship and Marriage in Singapore*. London.
- Firth Rosemary. *Housekeeping Among Malay Peasants* (2nd ed.). London 1966.
- Fyzee, Asaf A.A. (1964), *Outlines of Muhammadin Law* (3rd ed.). London.
- Gullick, J.M. (1949). 'Sungei Ujong'. *JMBRAS* 22: Part II, 1-69.
- Hervey, D.F.A. (1884). 'Rembau'. *JSBRAS* 13: 241-60.
- Hooker, M.B. (1967). *A Source Book of Adat, Chinese Law and the History of Common Law in the Malayan Peninsula*. Malaya Law Review Monograph No. 1. Singapore.
- Hooker, M.B. (1968a). 'The Interaction of Legislation and Customary Law in a Malay State'. *AJCL* 16: 415-30.
- Innes, J.R. (1913) *Registration of Titles: With Reports of Cases under Land and Mining Laws*. Kuala Lumpur.
- Josselin de Jong P.E. de. (1951). *Minangkabau and Negri Sembilan*. The Hague.
- (1960) 'Islam versus Adat in Negri Sembilan (Malaya)'. *Bijdragen Tot De Taal-, Land-en Volkenkunde* 116: 158-203.
- Judicial Decisions. A complete list of *adat* judicial decisions up to 31 December 1968 is given in the bibliography of cases at the end of this book.
- Lewis, Diane, K. (1962). *The Minangkabau Malay of Negri Sembilan—a study of socio-cultural change*. Ann Arbor, Michigan.

- Lokman Yusoff, 1962/63(?). 'As seen in Land Inheritance'. *Intisari 1* (No. 4): 11-19.
- Moubray, G.A. de C. de. (1931). *Matriarchy in the Malay Peninsula*. London.
- Nathan J.E. and Sir Richard Winstedt, (1920). 'Johol, Inas, Ulu Muar, Jempol, Gunong Pasir and Terachi'. *Papers on Malay Subjects*—second series. Calcutta.
- Newbold, T.J. (1839). *British Settlements in the Straits of Malacca*. 2 vols. London.
- Parr C.W.C. and Mackray W.H. (1910). 'Rembau, Its History, Constitution and Customs'. *JSBRAS* 56: 1-157.
- Perak State Council Minute (1937). *JMBRAS* 15: Part I, 70.
- Swift, M.G. (1965). *Malay Peasant Society in Jelebu*. London School of Economics and Political Science Monograph No. 29.
- Taylor, E.N. (1929). 'The Customary Law of Rembau'. *JMBRAS* 7: Part I, 1-289.
- (1937). 'Malay Family Law'. *JMBRAS* 15: Part I, 1-78.
- (1948). 'Mohammedan Divorce by Khula'. *JMBRAS* 21: Part II, 3-39.
- (1948a). 'Aspects of Customary Inheritance in Negri Sembilan'. *JMBRAS* 21: Part II, 41-130.
- Tyabji, F.B. *Muhammadin Law* (3rd ed.) Calcutta, (1940).
- Wilkinson, R.J. (1908). 'Law - Introductory Sketch' in *Papers on Malay Subjects*. Law Part I, 1-45. Kuala Lumpur.
- Wilson, R.K. *Anglo-Muhammadin Law* (6th ed.). London, 1930.
- Winstedt, Sir Richard. (1918). 'The Hindu Element in Malay Marriage Ceremony'. *JSBRAS* 79: 105.
- (1944). 'Indian Influence in the Malay World'. *JRAS* 186-96.
- Wong, S.Y. (1967). 'Equitable Interests and the Malaysian Torrens System.' *Malaya Law Review* 9: 20-37.