

IN THE PRIVY COUNCIL

No. 35 of 1980

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

PERDANA PROPERTIES BERHAD

Appellants
(Respondents)

- and -

UNITED ORIENT LEASING
COMPANY SDN BERHAD

Respondents
(Applicants)

RECORD

CASE FOR THE APPELLANTS

p.70 1. This is an appeal from the judgement dated the
2nd day of April 1980 of the Federal Court of Malaysia
(Wan Suleiman, Syed Othman and Ibrahim Manan F.JJ.)
allowing an appeal from the judgement dated the 15th day
p.60 of November 1979 of the High Court of Malaya (Anuar J)
dismissing an application by the Respondents herein for
the release of goods and chattels distrained by the
Appellants herein and which goods and chattels were at
the Appellants' tenant's premises of Emporium President
and Supermarket Sdn. Bhd. at Johor Tower, Johore Bahru.

2. The issue of this appeal depends upon the
provisions of Sections 10 and 12 of the Distress

Ordinance, 1951, No. 28 of 1951 and of Order 46^A(2) rule 2(3) of the Rules of the Supreme Court. A copy of the said Ordinance and Rules is annexed hereto.

3. Section 10 of the Distress Ordinance, 1951 permits the owner of movable property which has been distrained upon by a landlord in respect of unpaid rent to apply to a judge to discharge or suspend the distress warrant where such owner has no beneficial interest in the relevant tenancy, but by reason of Section 12 this right is excluded inter alia where the relevant goods were "goods in the possession, order, or disposition of the tenant by the consent and permission of the true owner under such circumstances that the tenant is the reputed owner thereof".

4. (a) The Appellants were the landlords of premises at Johor Tower, Johore Bahru, of which the tenants were Emporium President and Supermarket Sdn. Bhd. (hereafter referred to as "the tenants"). The tenants fell into arrears of rent. As a result the Appellants took out a warrant of distress on the 4th day of September 1979 and several articles on the premises were thus attached.

(b) These articles had before then been seized by the bailiff of the Court on 3rd September 1979 in

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respect of a separate execution order by other creditors by the Sessions Court (a court subordinate to the High Court).

(c) The Respondents, United Orient Leasing Company, claimed they were the owners of these articles seized and that the distress was wrongful. They applied to discharge the said warrant of distress.

(d) On 19th September 1979 the High Court discharged the said warrant on the ground that no order had been obtained for its issue.

(e) On the same day, (19th September 1979) the Appellants issued another warrant of distress and seized the same articles previously seized. That warrant of distress was served on the bailiff of the Sessions Court.

p.1-5

(f) The Respondents then applied to the High Court, again by originating motion, which began the present action, for an order that the said articles be released to them. On 22nd October 1979 the Sessions Court after hearing an objection by the Respondents against seizure of the equipments ordered that they should be released to the Respondents.

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p.3-5 5. In the present action the Respondents asked for an Order that the relevant goods and chattels which belonged to the Respondents and which were seized by the bailiff under a distress suit No. 12 of 1979 at the premises of the Appellants' tenants, namely, Emporium President and Supermarket Sdn. Bhd. in Johor Tower, Johore Bahru, be released forthwith to the Respondents.

6. The grounds upon which the Respondents based their claim (so far as material to this appeal) were;-

p.11 1: 33
p.12 1: 6 (a) The said goods distrained were leased by the Respondents to the lessees, who were the tenants of the Appellants under two equipment lease agreements dated 13th April 1979 and 2nd May 1979 (hereinafter "the lease agreements");

p.12 11.14-19 (b) The Respondents had by letter dated 3rd September 1979 terminated the said lease agreements;

p.12 1.20-27 (c) The subordinate court had ordered the goods released to the Respondents after their objections against another execution order were sustained;

RECORD

p.12 1.27-30 (d) The Solicitors for the Appellants were aware that the said goods had been ordered to be released to the Respondents;

(e) In the premises the goods were wrongfully distrained.

p.56 1. 7. The Appellants maintained that they were
34- p.57
1.8 entitled to distrain upon the goods of the Respondents as they were in the reputed ownership of the tenant within the meaning of the Distress Ordinance, 1951.

p.6-7 8. The originating motion came on before Anuar J. on the 13th day of November 1979 and the 15th day of November 1979. The Respondents relied upon the joint
p.11-12 affidavit of Tunku Naquiyuddin Ibni Tuanku Jaafar and Chan Kwok Chor, respectively a director and credit and marketing officer of the Respondents affirmed on the 23rd day of October 1979 and the affidavit of Ng Seng Huat the branch manager of the Respondents, affirmed on the 23rd day of October 1979.

p.60 9. (a) Anuar J. gave judgment on the 15th day of
p.60 November 1979. He described the nature of the claim, the
1.32
p.61 background to the present claim and set out certain of
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p.61 1. the facts. Turning to the allegation that the seizure
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p.62 1. was wrongful and bad in law, because at the time the
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property was distrained upon it had already been seized by the bailiff in respect of a separate execution order issued by the subordinate court, the learned Judge said that the serving of the warrant of distress on the Officer in possession of the property (i.e. the bailiff) has the effect of the property being attached or seized. There was therefore no necessity for the warrant of distress to be re-executed if the property was released from any prior attachment, and the Judge referred to Order 46^A(2) rule 2(3) of the Rules of the Supreme Court which provides that:-

p.62 1.
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1.42-43

"If the property is released from prior attachment, it shall be deemed to have been attached and seized under subsequent order or warrant".

p.63 1.3-4 (b) The learned Judge next considered the applicability of s.12(1) of the Distress Ordinance, 1951 to ascertain whether the goods distrained against were in such a situation as to convey to the minds of those who know their situation the reputation of ownership. The Judge concluded that the said goods were in the possession of the tenants at the time when they were seized by the Court, and the only legitimate inference that could be drawn from this fact in this particular

p.63 1.
29-33
& p.64
1.6-13

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p.64
1.14 case was that the tenant was the reputed owner of the said goods, so that the goods were excluded from being discharged from distress under s.10 of the Distress Ordinance, 1951 by section 12 of that Ordinance. The learned Judge dismissed the Respondents' application with costs.

p.66 10. By a notice of appeal dated the 15th day of November, 1979 the Respondents appealed to the Federal Court of Malaysia. The appeal came on before Wan Suleiman, Syed Othman and Ibrahim Manan F.JJ. on the 8th day of January 1980.

p.70-74 11. (a) The judgement of the Federal Court was
p.70. delivered by Syed Othman F.J. on the 2nd day of April
1.22
p.71 1. 1980. The learned Judges summarised the background to
24 the present claim and said that the case rested mainly on
p.71. the interpretation of the particular facts. The learned
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p.72. 1. Judges held that the material points to note were that
25
p.72. although the tenants were in possession of the goods on
1.32 the 3rd day of September 1979 when the goods on the
p.72 tenant's premises were distrained upon, on the same day
1.36-47 the Respondents had given notice of assumption of possession to the tenants.

(b) The learned Judges further held that in ordinary circumstances the fact that the Respondents gave

RECORD

notice of assumption of property without taking any positive steps to recover possession did not erase reputed ownership by the tenant at the time.

p.72 1. (c) The learned Judges however held that in
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p.72 1. the present case there were other circumstances which
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p.73 1. must be considered. They set out these circumstances as
52 follows:-

p.73 1.19-24 (i) when the Appellants took out their warrant of distress on 19th September 1979 they must have been aware that the Respondents had given notice of assumption of the equipments

p.73 1.24-26 (ii) the Respondents were in no position to assume possession of the equipments as they were then under attachment by the Subordinate (Sessions) Court

p.73 1.26-30 (iii) the notice indicated that the Respondents as true owners had withdrawn their consent and permission from the tenants being in possession of the equipments and were claiming them.

RECORD

p.73 1.26-30 (iv) the Appellants were, on the evidence, aware of this notice by the Respondents when they took out their warrant of distress

p.73 1.36-52 (v) when the present claim came up for hearing, the solicitors for the Respondents had already acknowledged that the equipments belonged to the Respondents and requested the Subordinate (Sessions) Court to release them to the Respondents. This was considered by the learned Judges to be crucial to their decision. The Appeal was allowed with costs.

p.73 1.53
p.74 1.1

12. The Appellants respectfully submit that the Federal Court erred in holding as crucial the admission by the Appellants' Solicitors that title in the equipment was in the Respondents, and failed to recognise that the question whether the doctrine of reputed ownership applies falls to be decided objectively by reference to the situation of the goods and the inference of ownership that may be legitimately drawn therefrom and as a result of which credit was (or may) have originally been given to the borrower or tenant, as opposed to subjectively, that is to say by reference to the actual knowledge of a particular person, the Applicant. In contrast to this

approach to the doctrine of reputed ownership (in respect of which the Appellants rely upon Official Assignee of Madras v. Mercantile Bank of India /1935/ A.C. 53 at p.68 and Ex parte Watkins in re Couston (1873) 7 Ch. Appl. 520, esp. at p.529) the learned Judge further erred in considering only actual knowledge of the Appellants as to the title on the goods when they should have considered the knowledge of a hypothetical individual who is assumed to know those facts which are capable of being generally known to those who chose to make enquiry upon the subject.

13. That title to the goods is not ipso facto conclusive, and that the objective impression created (or likely to be created) in the minds of those who advance credit to the relevant borrower or tenant, is what matters is further demonstrated by the fact that the said Ordinance excludes the rights of the person who has legal title to the goods inter alia where the goods are comprised in any bill of sale or hire purchase agreement or settlement made by the tenant.

14. (a) The Appellants respectfully submit that the Federal Court erred in holding that by the Respondents' notice on 3rd September 1979 their consent to the continued possession of the goods by the tenants was withdrawn so that no distress could be levied.

(b) It is the Appellants' contention that a mere notice of assumption of possession unaccompanied by a overt act evidencing to third parties the actual assumption of possession of the goods does not amount to termination of the lease agreement or to withdrawl of consent. The learned Judges did not have regard to the point that the Respondents could have caused the tenants to affix labels, plates or other markings on the equipment to indicate that it was owned by the Respondents (as provided for by Articles 7(1) of the Equipment Lease Agreement dated the 13th day of April 1979) and could, in any event have done so themselves. The learned Judges further failed to consider or neglected the significance of the fact that the notice of assumption which was given by the Respondents was given by the Respondents under Article 17(1)(b) of the said Equipment Lease Agreement, and that the Respondents at no time terminated the lease as they were entitled to under Article 17(1)(c) of the said agreement.

15. On the 4th day of August 1980 the Federal Court of Malaysia made an order granting the Appellants' final leave to appeal to the Judicial Committee of the Privy Council.

16. The Appellants respectfully submit that the judgement of the Federal Court of Malaysia was wrong and

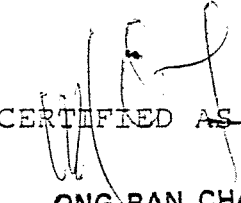
ought to be reversed, and this appeal ought to be allowed with costs, for the following (amongst other)

REASONS

- (1) BECAUSE at the time the distress was levied the goods were in the possession of the Appellants' tenant by the consent and permission of the true owner, the Respondents.
- (2) BECAUSE at the time the distress was levied the goods were in such circumstances as to suggest that the Appellants' tenant was the reputed owner of such goods.

JOHN STUART COLYER

G.S. NIJAR


CERTIFIED AS TRUE COPY

ONG BAN CHAI
ADVOCATE & SOLICITOR
JOHORE BAHRU

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Am L.N. 332/1952

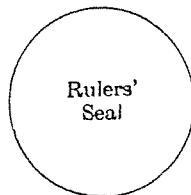
FEDERATION OF MALAYA.

No. 28 of 1951.

THE DISTRESS ORDINANCE, 1951.

Their Highnesses the Rulers of the
Malay States assent hereto

I assent



Witnesses to the affixing of the Rulers' Seal :

TENGKU ALAM SHAH *Sultan of Selangor.* HENRY GURNEY,
(IN MALAY) *High Commissioner.*

13th August, 1951.

RAJA YUSSUF *Sultan of Perak.*

9th August, 1951.

An Ordinance to amend and re-enact the law relating to Distress for Rent.

[]

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

Short title
and com-
mencement.

1. This Ordinance may be cited as the Distress Ordinance, 1951, and shall come into force on such date as the High Commissioner may, by notification in the *Gazette*, appoint.

Interpreta-
tion.

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

“bailiff” includes a Sheriff in the High Court in the Settlements and any person performing the duties of Sheriff under the Civil Procedure Code of Trengganu;

“Judge” means a Judge of the Supreme Court in all cases where proceedings are taken in the High Court, and means a President of a Sessions Court in all cases where proceedings are taken in a Sessions Court, and means a First Class Magistrate in all cases where proceedings are taken in a Magistrates’ Court;

“landlord” means the lessor or sub-lessor of any premises, under any lease, sub-lease, or agreement of tenancy, and includes any person claiming to be entitled in any capacity to receive rents due under any such lease or agreement;

“prescribed form” means the form prescribed by any rules of practice and procedure in force for the time being in the Court where the proceedings are taken;

“Registrar” means the Registrar or an Assistant Registrar of the Supreme Court in all cases where proceedings are taken in the High Court and means the Registrar of the Sessions Court in all cases where proceedings are taken in a Sessions Court, and means a Magistrate in all cases where proceedings are taken in a Magistrates’ Court;

"tenant" means any person from whom a landlord claims rent to be due under any lease, sub-lease or agreement.

3. This Ordinance shall not apply to rents due to the Crown or to the Federal or any State Government.

Not to apply to Crown or Government rents.

4. No landlord shall distrain for rent except in the manner provided by this Ordinance.

No distress otherwise than under this Ordinance.

5. (1) A landlord or his agent duly authorized in writing may apply *ex parte* to a Judge or Registrar for an order for the issue of a warrant, to be called a warrant of distress, for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding twelve completed months of the tenancy immediately preceding the date of the application and the Judge or Registrar may make such order accordingly.

Application for a warrant of distress.

(2) Such authority may be in the prescribed form, if any, with such variations as circumstances require, and shall be produced at the time of the application. A power of attorney may be accepted as such authority.

(3) Arrears of rent may be distrained for after the determination of the tenancy, provided that either the tenant is still in occupation of the premises in respect of which the rent is claimed to be due, or any goods of the tenant are still on the premises.

6. Where a right to a distraint accrues to persons jointly or together interested in any premises, such right may be exercised by any one of such persons in his own name and the names of those jointly or together interested with him, and the levy shall be a complete discharge to the defendant for the amount recovered; but the Judge or Registrar may in any case require the party so applying to produce a written authority to distrain, signed by the other persons jointly or together interested with him.

Provision for distress by one of joint owners.

7. A warrant of distress shall be addressed to the bailiff, directing him forthwith to distrain any moveable property found by him on the premises named therein, or such part of the property as may in his judgment be sufficient, when sold, to realise the amount

Warrant of distress.

of rent therein stated to be due to the applicant, together with such sum as may be due to the applicant by way of costs and to the bailiff for his fees and expenses :

Provided that before a warrant of distress is issued the Court may require the applicant to pay into Court in cash such sum as the Court considers necessary to cover the fees and expenses of the bailiff.

Property
exempted
from seizure.

8. Property seizable under a warrant of distress shall not include—

- (a) things in actual use in the hands of a person at the time of the seizure;
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs;
- (c) the tenant's necessary wearing apparel and necessary bedding for himself and his family;
- (d) goods in the possession of the tenant for the purpose of being carried, wrought, worked up, or otherwise dealt with in the course of his ordinary trade or business;
- (e) goods belonging to guests at an inn;
- (f) goods in the custody of the law;
- (g) property of any Government, property vested in any Municipal Commissioners for municipal purposes, and property vested for public purposes in any person or body of persons, whether incorporated or not, which the High Commissioner may by notification in the *Gazette* declare to be exempted from distress proceedings.

Inventory
and estimate
of property
seized, and
notice to
tenant of the
seizure.

9. (1) Immediately after seizing any property under a warrant of distress, the bailiff shall make an inventory and an approximate valuation thereof, and shall give to the tenant notice of the seizure with a copy of the inventory and valuation attached, informing him of the amount due under the warrant and that the property seized will be sold at a time and place to be named in the notice (not being less than six days from the date thereof), unless he pays the amount due within five days from the date thereof, or obtains an order restraining such sale.

(2) If the tenant is not on the premises, such notice may be given to any person appearing to be in occupation thereof, or, if there is no such person, by posting it in some conspicuous place thereon.

10. Where any moveable property of—

- (a) any under tenant, or
- (b) any lodger, or
- (c) any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

Application
by under
tenant,
lodger, etc.,
for
discharge,
suspension,
or release.

has been seized under a warrant of distress issued to recover arrears of rent due to a superior landlord by his immediate tenant, such under tenant, lodger, or other person aforesaid may apply to a Judge to discharge or suspend the warrant, or to release a distrained article :

Provided that no order shall be made unless such under tenant, lodger or other person aforesaid satisfies the Court that the immediate tenant has no right of property or beneficial interest in the Furniture, goods or chattels and that such furniture, goods or chattels are the property or in the lawful possession of such under tenant, lodger or other person aforesaid; and also in the case of an under tenant or lodger unless such under tenant or lodger pays to the landlord or into Court an amount equal to the arrears of rent in respect of which distress has been levied and also undertakes to pay to the landlord future rent, if any, due from him to the tenant :

Provided further that in no case shall such under tenant paying at least three-quarters of the full monthly letting value of the premises comprised in the under-tenancy or lodger be liable under this section to pay to the landlord or into Court a sum greater than the rent which he owes to his immediate landlord.

For the purposes of this section and of sections 11 and 14 a lodger's rent shall include such sum as he pays or owes to his immediate landlord for lodging, board, attendance and use of furniture.

11. For the purposes of the recovery of any sums payable by an under tenant or lodger to a superior landlord under the undertaking specified in section 10, or under a notice served in accordance with section 14, the under tenant or lodger shall be deemed to be

Payments by
under tenant
or lodger to
superior
landlord
to be deemed
rent.

the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but, where the under tenant or lodger has, in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorized to be levied) from whose rent a deduction has been made in respect of such a payment may make the like deductions from any rent due or which may become due from him to his immediate landlord.

Exclusion of
certain
goods.

12. The provisions of section 10 shall not apply—

- (1) to goods belonging to the husband or wife of the tenant whose rent is in arrear, or to goods comprised in any bill of sale, hire purchase agreement, or settlement made by such tenant, or to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof;
- (2) (a) to goods of a partner of the immediate tenant;
- (b) to goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under tenant have an interest;
- (c) to goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice (which shall be given in like manner as a notice to quit) to remove the goods and vacate the premises;
- (d) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment, of such company or corporation.

13. The provisions of section 10 shall not apply to any under tenant where the under tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant.

Exclusion of certain under tenants.

14. In cases where the rent of the immediate tenant of the superior landlord is in arrear, it shall be lawful for such superior landlord to serve upon any under tenant or lodger a notice (by registered post addressed to such under tenant or lodger upon the premises) stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued due or not, by such under tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent.

To avoid distress.

15. In and for the purposes of sections 10, 11, 12, 13 and 14 the words "superior landlord" shall be deemed to include a landlord in cases where the goods seized are not those of an under tenant or lodger; and the words "tenant" and "under tenant" do not include a lodger.

Interpretation of sections 10 to 14.

16. The tenant may apply to a Judge to discharge or suspend the execution of the warrant, or to release any part of the property seized.

Application by tenant.

17. The Judge may, on any such application, deal with the matter summarily and dismiss the application or discharge the warrant, or order the release unconditionally or on such terms as he thinks fit of any property seized, or may direct an issue to be tried, and, pending the determination of such issue, suspend the execution of the warrant, or may order the property to be sold and the proceeds of sale to be lodged in Court, or may make such other order on such terms as he considers fair as between the parties pending the final determination of the matter.

Powers of Court.

18. Any costs incurred in any such proceedings shall be in the discretion of the Judge and may in proper cases be added to the amount leviable under the warrant.

Costs.

Sale of
property
seized.

19. Subject to the provisions of this Ordinance, the property seized under a warrant of distress shall be sold at the time and place named in the notice required by section 9; and the net proceeds of sale shall be applied first in payment of the bailiff's fees and expenses and then in satisfaction of the rent and costs due by the tenant to the landlord. The balance, if any, remaining over after such payments shall be returned to the tenant or other person entitled thereto.

Procedure
where
property
seizable
under a
distress is
already
under
seizure by
way of
execution.

20. (1) Where any property liable to be seized under a warrant of distress has already been seized in execution by order of any Court, it shall not be seized under the warrant of distress so long as it remains under such seizure; but the officer in possession in execution shall be notified of the warrant of distress, and shall thereupon, subject to any prior claim by or on behalf of the Crown or the Federal or any State Government, be liable to pay out of the proceeds of sale of the goods seized by him, after payment thereof of the expenses of the execution and sale, but in priority to any other payment, the amount appearing to be due to the landlord :

Provided that such payment shall not in any case exceed the amount due for the last six months' rent.

Notices by
officer in
possession.

(2) The officer in possession under the warrant of execution shall, on being notified as provided in subsection (1) of this section, give notice in writing to the execution creditor and the execution debtor of the warrant of distress. Notice to the execution debtor may be given by affixing it to the premises on which the goods were seized.

(3) The execution creditor or the execution debtor may apply to the Court to discharge or suspend the warrant of distress, and the Court may then exercise all or any of such powers as are provided in sections 17 and 18 in the case of an application under section 16.

Removal of
goods to
avoid
distress.

21. (1) If any person removes or causes or permits to be removed from any premises property liable to be seized under a warrant of distress, with the intention of hindering or preventing the distraint thereof, a Judge may, on application by the landlord, authorise the bailiff, within thirty days of such

removal, to follow and seize such property in execution of the warrant, wherever it may be found, and to deal therewith as if it had been seized on the premises.

(2) The bailiff may, without an order to that effect, follow and seize any such property discovered by him while in process of removal.

22. (1) If any property so removed has been sold for fair value, whether before or after removal, to a *bona fide* purchaser not knowing or having the means of knowing that it was liable to distress for non-payment of rent or was removed in order to hinder or prevent the distraint thereof, it shall not be seized, or, if seized, shall be restored to the purchaser.

Where goods removed sold to *bona fide* purchaser.

(2) Any person claiming to be a *bona fide* purchaser for fair value of any property seized under section 21 may within four days of such seizure, or such further time as a Judge may allow, apply for an order that the property so seized may be restored to him, and a Judge may make such order accordingly.

23. (1) Where:

Deserted premises.

- (a) any premises are let at a rack rent or a rent not less than three-fourths of its annual value; and
- (b) rent is in arrears for not less than two months of the tenancy; and
- (c) the tenant has abandoned possession of the premises and left thereon no sufficient property out of which arrears of rent may be recovered by distress;

a Judge may, on the application of the landlord, authorize the bailiff to enter on the premises, using such force as may be necessary to effect an entry into any building thereon, and take possession thereof; and the bailiff shall in such case enter on the premises and affix in a conspicuous place thereon a notice that possession thereof will be delivered to the landlord, unless within ten days a Judge, on the application of any person interested, otherwise orders.

(2) If no such application is made within ten days, the bailiff shall put the landlord in possession of the premises, and the lease or agreement of tenancy shall therefrom be deemed to be determined.

Possession to be given to landlord.

Application
by person
interested.

(3) If any such application is made, the Judge may make such order for possession of the premises, and on such terms as to payment of rent due or otherwise as he deems fair as between the parties, and for that purpose may direct that any preliminary question be tried as an issue.

Discharge
of order.

(4) An order made under this section may be discharged for sufficient reason and on such terms as the Judge deems fair, on application by any person interested, notwithstanding that the period thereby prescribed has expired.

(5) An order made under this section shall be deemed to be a warrant of distress for the purposes of sections 72 and 93 (1) (c) of the Courts Ordinance, 1948.

Penalty.

24. Any person who sells or abets the sale of any property seized under a warrant of distress in contravention of the provisions of this Ordinance or of any rules of Court relating to the sale of property seized under a warrant of distress, shall be liable on conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months.

Notice to
quit.

25. Where rent due by any tenant, otherwise than for a term certain, of any house or premises to the landlord thereof has remained unpaid for not less than fourteen days after payment thereof became due and still remains unpaid, then, in the absence of an express agreement between the parties to the contrary, any notice to quit given by the landlord to the tenant shall, if the length thereof be otherwise sufficient, expire on such day as may by the terms of the notice be appointed for the expiration thereof, whether such day coincide with the termination of some period of the tenancy or not.

Repeal.

26. (1) The Ordinance and Enactment set out in the Schedule hereto are hereby repealed to the extent specified in the third column of such Schedule.

(2) Nothing in this Ordinance shall affect any proceedings pending at its commencement, unless the Court shall otherwise order.

(3) Notwithstanding such repeal, and subject to the provisions of this Ordinance, the practice and procedure relating to distress proceedings in the High

Court shall be deemed to continue in force until other provision is made therefor by rules made under the Rule Committee Ordinance, 1948, or other written law.

F. of M.
No. 35 of
1948.

SCHEDULE.

(Section 26.)

Ordinance and Enactment.	Short title.	Extent of repeal.
S.S. Cap. 49 ...	The Distress Ordinance ...	The whole
F.M.S., Cap. 7 ...	The Civil Procedure Code ...	Part VI

Passed in the Legislative Council on the twelfth day of July, 1951.

RAJA AYOUB,
Clerk of Council.

CERTIFIED AS TRUE COPY

ONG BAN CHAI
ADVOCATE & SOLICITOR
JOHORE BAHRU

LEGISLATIVE SUPPLEMENT

(SUBSIDIARY LEGISLATION)



FEDERATION OF MALAYA GOVERNMENT GAZETTE

Published by Authority

No. 19]

FEDERAL

[Vol. I

SUPP. TO GAZETTE No. 10

30TH DECEMBER, 1957

The following Notifications are, by command of His Majesty the Yang di-Pertuan Agong, published for general information.

ABDUL AZIZ BIN HAJI ABDUL MAJID,
Permanent Secretary, Prime Minister's Department

L.N. (N.S.) 120.

THE RULE COMMITTEE ORDINANCE, 1955
(No. 28 of 1955)

IN exercise of the powers conferred on us by section 4 of the Rule Committee Ordinance, 1955, we, the Rule Committee established under section 3 of the said Ordinance, hereby make the following rules:

1. These rules may be cited as the **Rules of the Supreme Court (Amendment) Rules, 1957**, and shall come into force on such date as the Chief Justice may, by notification in the *Gazette*, appoint.

2. The Rules of the Supreme Court, 1957, specified in the first column of the Schedule hereto are hereby amended in the manner specified in the corresponding part of the second column of the said Schedule.

L.N. 321/57.

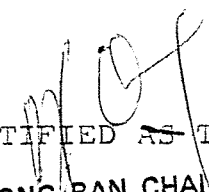
SCHEDULE

(Rule 2)

Order	Rule	Amendment
1A ...	1 ...	Substitute for the words "and include the Crown in right of Her Majesty's Government in the Settlements, and also the several Governments of the Malay States" the words "the Governments of the States".
2 ...	8 ...	Substitute for the words "in the names and on behalf of Her Majesty the Queen and Their Highnesses the Rulers of the Malay States" the words "in the name and on behalf of His Majesty The Yang di-Pertuan Agong".
9 ...	8A ...	(a) Delete the words "a British subject or" and the words "of the Malay States". (b) Substitute the words "citizen of the Federation" for the words "Federal citizen".
11 ...	4 ...	Substitute for paragraphs (a), (b) and (c) thereof the following new paragraphs: "(a) a citizen of the Federation, or (b) a subject of a Ruler,"

Order	Rule	Amendment
11 ...	6 ...	Substitute for paragraphs (a), (b), (c) and (d) thereof the following new paragraphs: “(a) a citizen of the Federation, or (b) a subject of a Ruler,”
8A ...	(a) In paragraphs (e):	(i) delete the words “a British subject, or” and the word “Malay”; (ii) substitute the words “citizen of the Federation” for the words “Federal citizen”.
	(b) In the second paragraph of the rule add the figure and comma “6 (2),” after the figure and comma “5,”.	
8B ...	Delete all words following the word “convention” and substitute therefor the following “(other than His Majesty or any of Their Highnesses the Rulers) shall be effected through the Minister for the time being charged with responsibility for external affairs and an official certificate transmitted by such Minister shall be sufficient proof of service”.	
9 ...	(a) Substitute for the words “Chief Secretary” appearing in the fifth line thereof the words “Minister for the time being charged with responsibility for external affairs (hereinafter called “the Minister”)”.	
	(b) Substitute for the words “Chief Secretary” wherever they occur (other than in line 5) the word “Minister”.	
31 ...	30 ...	Substitute for paragraphs 1, 2, 3 and 4 thereof the following new paragraphs: “1. The Government of the Federation The Prime Minister 2. The Government of any State The Chief Minister”.
36 ...	— ...	(a) Add the following new rule immediately after rule 29— “30*. The party entering the trial shall deliver to the Registrar a copy of the Writ of Summons and the pleadings, or of the issues or special case, for the use of the Judge at the trial.” (b) Delete the word and figure “or 30*” in the note immediately following rule 29.
37 ...	57 ...	Substitute for the words “Chief Secretary” the words “Minister for the time being charged with responsibility for external affairs (“hereinafter in this Order called “the Minister”)”.
59 ...	Substitute for the word “British” the word “Commonwealth”.	
59\ ...	Substitute for the words “Chief Secretary”	
60f ...	the word “Minister”.	

Order	Rule	Amendment
38	... 6 ...	Delete the whole of lines 4 to 13 (inclusive) thereof and substitute therefor the following: <p style="margin-left: 40px;">“enrolling any deed may be sworn and taken in any territory within the Commonwealth before any consular officer of the Federation or any Judge, Court, Notary Public or person lawfully authorised to administer oaths in such territory or, in any territory outside the Commonwealth, any consular officer of the Federation or, where there is no such officer, any of Her Britannic Majesty’s consuls or vice-consuls; and the Judges and other officers of the High Court shall make judicial notice of the seal or signature, as the case may be, of any such officer, Court, Judge, notary”.</p>
38B	... 2 and 3 (1)	Substitute the words “the Yang di-Pertuan Agong” for the words “Her Majesty in Council”.
41c	... 3 ...	Substitute for paragraphs 1, 2, 3 and 4 thereof the following new paragraphs: <p style="margin-left: 40px;">“1. The Government of the Federation The Minister of Finance 2. The Government of a State The State Secretary”.</p>
43	... 1 ...	(a) Substitute for the word “Settlement” in line 2 and in sub-rule (1) the words “States of Malacca and Penang”. <p style="margin-left: 40px;">(b) Substitute for the word “Settlement” wherever it occurs in sub-rule (4) the word “State”.</p>
	... 2 ...	Substitute for the words “Malay States” the words “States (other than the States of Malacca and Penang)”.
46A	... 1 ...	Substitute the word “Distribution” for the word “Execution” in the heading of the Order.
	... 2 ...	Add the following marginal note: <p style="margin-left: 40px;">“Method of subsequent attachment, etc.”.</p>
	... 3 ...	(a) Substitute the words “Orders or judgments” for the word “decrees” in the marginal note. <p style="margin-left: 40px;">(b) Substitute the words “order or judgment” for the word “decree” in the last line.</p>
50	... 10 ...	Delete marginal note and substitute therefor the following new marginal note: <p style="margin-left: 40px;">“Conduct of Sale of trust estates”.</p>
51	... 7 ...	Substitute for the word “Settlement” the words “States of Malacca and Penang”.
53	... 5 ...	Substitute for the word “Settlement” the words “States of Malacca and Penang”.


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ONG BAN CHAI
ADVOCATE & SOLICITOR

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JOHORE BAHRU

SUBSIDIARY LEGISLATION

FEDERAL

O. 45, rr. 5-9, O. 46, rr.

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1. 2.

Where several claimants.

5.* Where there are several claimants to any property, or to any interest therein, the Court or a Judge may summon all or any such claimants to appear, and may make such order or orders as are mentioned in rule 4 for the ascertainment of their respective rights, and for the custody of the property in the meanwhile, or, with the consent of the parties, may dispose of all questions in a summary manner.

Costs of issue, etc.

6.* After the determination of all questions between the parties, the Court or a Judge may order execution to issue to levy the amount due from the garnishee, together with costs of the garnishee proceedings or any issue or question tried or determined according to rules 4 and 5 of this Order, and may bar the claim of any claimant, or make such other order as is just, upon such terms in all cases in respect to the lien or charge (if any) of any such claimant, and to costs, as the Court or Judge shall think just and reasonable.

Debtor discharged by compliance with sheriff's demand.

7.* The payment of any debt or the delivery of any property by the garnishee under a notice from the sheriff, or on execution levied upon him in respect thereof, shall be a valid discharge, as against all claimants, of such debt or property, although the attachment may be set aside or the judgment reversed.

Cancellation of garnishee notice.

8.* (1) The sheriff may at any time, and shall, if so ordered by the Court or a Judge, by notice in writing to that effect to be served on the garnishee, cancel any notice of garnishment.

Constructive cancellation.

(2) If the sheriff does not, within four months from the date of service of a notice of garnishment, proceed under rule 2, the notice of garnishment shall be deemed to be cancelled, and no fresh notice of garnishment shall thereafter be served on the same garnishee in respect of the same matter, without the leave of the Court or a Judge.

Costs, etc., of garnishee.

9.* (1) The Court or a Judge may allow a reasonable sum to a garnishee or other claimant for costs and expenses, and for compensation for his attendance and loss of time, in any case in which it appears just to do so.

Payable by garnishee.

(2) The amount so allowed shall be paid by the person enforcing the attachment, and may be levied by process of execution against such person without any order to that effect.

And recoverable from judgment debtor.

(3) Any amount so paid or levied may be recovered as part of the costs of the attachment, by the person enforcing the attachment, unless the Court or Judge otherwise orders.

ORDER 46*

WRITS OF EXECUTION

Date of lodgment.

1.* Whenever any writ of execution is lodged with the sheriff he shall forthwith indorse thereon the day, hour and minute of such lodgment.

Time of execution.

2.* Writs of seizure and sale, possession, or delivery may be executed at any time after the hour of 6 a.m. and before the hour of 6 p.m.

3.* In order to execute any writ of execution the sheriff may make forcible entry into any building which he is unable to enter peacefully; provided that he shall not use force otherwise and to any greater extent than is reasonably necessary for the purpose:

Sheriff may use force.

4.* (1) The sheriff shall make a return to all writs lodged with him for execution as soon as he has completed the execution thereof.

Return to writ.

(2) He shall annex to his return particulars in detail of the property seized under it, and, where any property seized has been sold, particulars of the sale thereof, showing the price realised, his fees, commission and expenses, and the manner in which he has disposed of the balance in his hands.

Annexure to return.

5.* Where the sheriff is unable, or for any reason unwilling, to execute any writ of execution, in respect of any alleged property of the debtor, he shall give written notice to that effect to the party entitled to enforce the writ, stating therein his reasons for not doing so.

Sheriff to give reason for failure to execute.

6.* (1) On written application by the execution creditor, or the judgment debtor, or any claimant to property seized by him, the sheriff shall within two days furnish to such applicant a memorandum in writing stating (*inter alia*) the date on which the writ was lodged with him, the amount leviable under the writ, the particulars of property seized, the place of seizure, and particulars of any claim to such property of which he has received notice, and, in case where he has sold any property in execution of the writ, the gross proceeds of sale, the amount of his fees, commission and expenses and the balance remaining in his hands.

Sheriff to give information if required.

(2) The sheriff shall at all times permit the execution creditor, or judgment debtor, or any claimant to property seized by him to inspect a copy free of charge of any inventory of property seized, sale account, or note of his fees, commission and expenses together with all vouchers in support thereof.

7.* Subject to the provisions of Order 46A and of section 49 of the Bankruptcy Ordinance of the Straits Settlements and the corresponding provisions of any written law relating to Bankruptcy in force in the Federation the sheriff shall, at the expiration of fourteen days after the execution of sale of any writ of seizure and sale, pay to the execution creditor the balance of the proceeds of sale in his hands (after deduction of his fees, commission and expenses) or so much thereof as is necessary to satisfy the judgment in respect of which execution was issued.

Payment by sheriff to execution creditor.

8.* The sheriff or officer executing a writ of attachment shall indorse thereon the day and hour of the arrest.

Indorsement of writ of attachment.

9.* Any person aggrieved by any alleged non-observance by the sheriff of any duty imposed on him by law or by these rules, may apply by motion to the Court for an order that the sheriff show cause why he should not do the thing required and the sheriff may be required to show cause accordingly.

Sheriff may be required to show cause for neglect of duty.

10.* Written applications to the sheriff under these rules may be served on the sheriff by being left at the sheriff's office during office hours.

Application to sheriff.

ORDER 46A

RATEABLE ~~EXECUTION~~ DISTRIBUTION

Proceeds of
execution
sale to be
distributed
rateably among
judgment-
creditors.

1. (1) Where assets are realised by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realisation, attached the property from which such assets have been realised in execution of orders or judgments for the payment of money against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of the realisation, shall be distributed rateably among all such persons:

Provided as follows—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of an order or judgment is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of sale as he had against the property sold;
- (c) where any immovable property is sold in execution of an order or judgment ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied
 - first, in defraying the expenses of the sale;
 - secondly, in discharging the interest and principal money due on the incumbrance;
 - thirdly, in discharging the interest and principal money due on subsequent incumbrances (if any);
 - fourthly, rateably among the holders of orders or judgments for the payment of money against the judgment-debtor who have, prior to the sale of the said property, applied to the Court which passed the order or judgment ordering such sale for execution of such orders or judgments and have not obtained satisfaction thereof; and
- (d) where the property from which such assets have been realised has prior to realisation been attached by the Supreme Court and also by one or more of the Subordinate Courts, no holder of a decree passed by a Subordinate Court shall be entitled to share in the distribution of such assets unless he shall prior to realisation have given notice in writing to the Registrar of the attachment at his instance of such property by such Subordinate Court.

(2) Where all or any of the assets liable to be rateably distributed under this rule are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

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O. 46a, rr. 1-3, O. 47, rr.
1, 2

(3) Nothing in this rule shall operate to defeat or postpone any claim which under the provisions of any written law ought to be paid in priority.

2. (1) Any property attached by way of execution by any Court whether physically taken into the Court's custody or not, shall be deemed to have been seized by the Court and shall not thereafter be seized at the instance of any other person, but any subsequent order or warrant for the attachment or seizure of the same property by the same Court or any other Court, whether in the same or another place, or a certified copy thereof, may be delivered to the sheriff or the bailiff by whom the property was seized and shall thereupon operate and have effect as an attachment for the purpose of this Order.

Method of
subsequent
attachment, etc.

(2) In the case of any property which cannot be taken into the physical custody of the bailiff or other officer of the Court, any prohibitory order or similar document for the purpose of protecting the interests of a subsequent attaching creditor may be served or registered and shall have effect in accordance with the provisions of paragraph (1) of this rule.

(3) If the property is released from the prior attachment, it shall be deemed to have been attached and seized under the subsequent order or warrant.

(4) If the property remains under the prior attachment and no order for sale thereof has been made within two months after such attachment, the property shall be deemed to have been released from the prior attachment and the provisions of paragraph 3 of this rule shall apply.

3. Where property not in the custody of any Court is under attachment in execution of orders or judgments of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or where there is no difference in grade between such Courts, the Court under whose ~~order~~ the property was first attached.

Property
attached in
execution of
decree of
several Courts.

Order or judgment

ORDER 47

WRIT OF POSSESSION

1. (1) A judgment or order that a party do recover possession of any immovable property may by leave to be obtained on *ex parte* application to the Court or a Judge supported by affidavit, be enforced by writ of possession. Such writ shall be in accordance with Form 18.

Writ of
possession for
recovery of
land.

(2) Such leave shall not be given unless it is shown that all persons in actual possession of the whole or any part of the immovable property have received such notice of the proceedings as may be considered sufficient to enable them to apply to the Court for relief or otherwise.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any immovable property to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to

Writ obtained
on proof of
service of
judgment, or
default.

No. 35 of 1980

IN THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL COURT
OF MALAYSIA

BETWEEN:

PERDANA PROPERTIES BHD Appellants

- and -

UNITED ORIENT LEASING
COMPANY SDN. BHD. Respondents

CASE FOR THE APPELLANTS

NABARRO NATHANSON
76 Jermyn Street,
London, SW1Y 6NR.
Ref: 6/LAP/132606