

LAND REGISTRATION IN SINGAPORE AND THE FEDERATION OF MALAYA

The passing of the Land Titles Ordinance, 1956¹ (No. 21), on the 12th day of June, 1956 by the Singapore Legislative Assembly is a landmark in the history of land law and conveyancing in the State of Singapore. It introduced the Torrens system of registration of title to land to Singapore. It was the culmination of a series of efforts of the earlier Governors of the former Straits Settlements² (of which Singapore formed a part) to introduce order and consistency in land matters in these areas.

From the founding of Penang in 1786 up to 1886 there was utter confusion and chaos in the land system of the Straits Settlements. Title to land was derived originally from the English East India Company until it was abolished in 1858. After that date title to land was derived originally from the British Crown. From the earliest days of British occupation land was granted indiscriminately to anyone who would take it. Verbal licences to occupy land, documentary permits to clear and occupy land were freely issued. A few official grants in fee simple were made. Leases for a variety of terms ranging from 999 years, through 99 years and 60 years to 15 years were issued. These licences, permits and grants were often made without conditions of tenure and without the right of resumption of the land by the State. In leases a small quit-rent was reserved. Further, long occupancy of land without rent or title conferred rights of ownership on the occupiers. And in Malacca in addition to land held upon grants in fee simple the Malays retained their customary tenure of land. By this customary tenure a person was entitled to clear any piece of waste land and cultivate it. So long as he continued to cultivate the land and pay one-tenth of its produce to the State he was entitled to its use and occupation.

There was no proper system of registration, whether of the land or of its occupier, with the result that the State could not trace persons liable for the payment of rent and other dues. The State thus suffered a considerable loss of land revenue. There was also no proper survey of the lands granted or leased and discrepancies frequently occurred between the areas described in titles and those in the actual occupation of land holders. There was extensive encroachment on Crown Lands.

1. Part I of the Singapore Land Titles Ordinance, which deals with the establishment of the Land Titles Registry, came into force on 10th April 1959. The rest of the Ordinance has not yet come into operation.
2. The Straits Settlements ceased to exist in 1946 when Penang and Malacca became parts of the Malayan Union (from 1948, Federation of Malaya) and Singapore became a separate colony. In May this year Singapore became a self-governing State within the Commonwealth.

Matters were so bad that successive Governors of the Straits Settlements were unsuccessful in their attempts to solve the land problem. A Commissioner was appointed in 1837 to look into the matter and various Indian Acts³ were passed to clear away the difficulties — but all without avail. Finally in 1880 Sir F. A. Weld, the Governor of the Straits Settlements of that time, recommended the introduction of the Torrens system of land registration and that the system, if introduced into the Straits Settlements, should be compulsory. As a result Mr. W. E. Maxwell (as he then was) was sent to South Australia to study the working of the Torrens system of land registration there and to report as to what methods were advisable for the Straits Settlements. On his return he advised the Government to pass a group of Ordinances⁴ with the object of paving the way for the introduction of the Torrens system of land registration in the Straits Settlements.

After the passing of this group of Ordinances, there was a considerable improvement in land matters in the Straits Settlements. The substantive land law was, and still is, the law of real property and leaseholds as it existed in England in 1826⁵ except so far as it has been changed by a competent legislature having the power to legislate for the Straits Settlements. The system of conveyancing in Singapore is therefore similar to that obtaining in England, i.e. interests in land are transferred by the mere signing, sealing and delivery of a private deed except that in Singapore such a deed must be registered in the Registry of Deeds, Singapore, to be admissible in court as evidence of title to the land comprised therein.

It will be seen therefore that the system of conveyancing in Singapore is a combination of the English private conveyancing system and the

3. Singapore, Penang and Malacca were, until 1867, administered by the Presidency of Bengal in India. In 1833 a legislative body known as “The Governor-General of India in Council” was established in India. This body had the power to legislate for the whole of India and territories under India’s control, which included the Straits Settlements. From 1833 until 1867, when the administration of the Straits Settlements was transferred from India to the Colonial Office in London, Indian Acts passed by this legislative body became applicable to the Straits Settlements.
4. This group of ordinances consists of: The Boundaries Ordinance (No. VIII of 1884); The Crown Lands Ordinances (No. X of 1883 and No. II of 1886); The Conveyancing and Law of Property Ordinance (No. VI of 1886); The Resumption by Crown of certain Lands in Malacca Ordinance (No. VIII of 1886); The Malacca Lands Ordinance (No. IX of 1886); The Bills of Sale Ordinance (No. XII of 1886); and The Registration of Deeds Ordinance (No. XIII of 1886).
5. In 1826 the British Crown granted to the East India Company a Charter of Justice which established the “Court of Judicature of Prince of Wales’ Island Singapore and Malacca.” The judges in the Colony of the Straits Settlements and the Judicial Committee of the Privy Council have, in a series of cases, decided that the law of England as it existed in 1826 was introduced into the Colony by the Charter of 1826 so far as it is applicable to the circumstances of the colony and modified in its application by the circumstances.

registration of deeds system. This state of affairs is most unsatisfactory in a State which has no historical experience of the old forms of action and the highly technical rules of procedure which developed into the complicated system of land law and conveyancing in England. Further, the social development of England throughout the centuries led to the creation of large settlements of land with the consequent development of the law as to future interests, contingent remainders, perpetuities and the like. All these rules make the land law difficult to understand in the light of an agricultural and commercial small-holding set-up. The reforms introduced by the 1925 legislation into the English law were not introduced into Singapore, although some of the reforms have been introduced here by legislation in a haphazard fashion. Although the introduction of the Torrens system of registration of title to land will not effect a material change in the substantive land law applicable to Singapore, yet it is hoped that it may introduce a system of transfer of interests in land which is simple, cheap, expeditious and adaptable to the conditions of the State.

The Federation of Malaya is more fortunate in this respect. The States which form the Federation (with the exception of Penang and Malacca which were part of the former Straits Settlements) were never British territories and so there is no question of English law having been introduced there by Charter from the British Crown or by Acts of the English Parliament but only by the legislation of its own State or Federal Legislatures. Land in the Malay States was originally tribal land. According to Malay custom a man's right to land depended upon his ability to clear waste or forest land and cultivate it. So long as he cultivated the land, the land was his. He had, however, to pay one-tenth of the produce of the land to the State for his right to use and occupy it. Now, however, all land vests in the State and the payment of the tithes has been converted into the payment of quit-rent to the State.

In 1891 Sir William Maxwell introduced into the Malay States two forms of title to land, viz.: (1) a registered title of ownership applicable to European and commercial interests in land. This was based on the Torrens system of land registration and registration is automatic on alienation of land by the State. (2) A customary title of occupancy and use applicable to land held under the former customary tenure. The registration of such customary land conferred a permanent right of use and occupancy of the land by the proprietor, but land so held could not at first be leased or charged. However, when the Mukim (parish) register was introduced in 1897 a person who held land by entry in the Mukim register (E.M.R.) could charge or lease it so that there is now no essential difference between the two forms of title to land.

Registration of title to land is essentially a system of record and not a new substantive land law, although parts of the substantive land law have been changed to facilitate the smooth working of the system.

It is a new method of transfer of land and is akin to the method of transfer of ships or stocks and shares. It has as its main aim the provision of security to the purchaser, mortgagee or chargee. It provides for an "indefeasible" title guaranteed by the State. It is simple to operate. Simple forms are provided for the sale or charging of the land. The parcels of land in a registered title are accurately identified and demarcated to avoid disputes as to their boundaries. It is cheap in that it does away with the expensive, imperfect and repeated examination of the title of the same piece of land. It is an expeditious method of transfer of land in that the whole transaction can be completed in a matter of hours instead of months. And it is adaptable to suit all systems of land tenure.

Some of the salient features of land registration in Singapore and the Malay States of the Federation of Malaya are as follows.

(1) THE REGISTRAR OR THE REGISTRATION AUTHORITY

In all jurisdictions which have adopted the system of land registration it is the act of a government official in signing and sealing a page in a register that confers title on the transferee or the person named therein. In Singapore this government official is called the Registrar of Titles. In the Federation of Malaya he is the Registrar of Titles in respect of land which is comprised in any grant or lease of State land and certificate of title. In the case of land held by an entry in or extract from the mukim register he is the Collector of Land Revenue. In both these jurisdictions administrative and quasi-judicial powers are conferred upon him. He may, among other things, (i) correct any errors in the land-register; (ii) enter caveats for the prevention of fraud or improper dealing or for prohibiting dealings with land which has been erroneously described; (iii) summon witnesses, administer oaths and affirmations and take statutory declarations; (iv) compel the production of documents; (v) state a case to the court; and (vi) accept or refuse an application for initial registration.

(2) INITIAL REGISTRATION

(a) SINGAPORE

Initial registration is compulsory in the case of land alienated by the Crown to any person for an estate in fee simple or for an estate in perpetuity or for a leasehold term of not less than twenty-one years. However, until the final survey of the boundaries of the land has been completed, the Registrar is empowered to endorse a caution on the land-register warning persons of the inconclusiveness of its boundaries. As soon as the boundaries have been finally surveyed the caution is removed and the title of the proprietor becomes indefeasible.

As to all other lands initial registration is optional. Any person entitled, whether at law or in equity, to land for an estate in fee simple

or a leasehold or other estate in perpetuity or to a lease for a term of years having not less than twenty-one years unexpired at the date of lodgment of the application may apply to the Registrar to have his land registered under the Ordinance. Upon receipt of such a primary application the Registrar may refer the same to an examiner of titles or to a legally qualified person to make a final investigation of the title. If the report of the examiner of titles or of such other legally qualified person as to the title and the identity and location of the land is favourable then the land is registered and a certificate of title is issued to the applicant. This certificate will confer an indefeasible title on the proprietor. If, however, the report is unfavourable the Registrar may either reject the application or issue a qualified certificate of title to him. If an application is rejected the aggrieved applicant may summon the Registrar before the Court and require him to substantiate and uphold the grounds of his refusal to register the land.

The Singapore Ordinance gives power to a Registrar to bring, in his absolute discretion, land comprised in any conveyance which has been made for valuable consideration and which purports to convey an estate in fee simple or the tenure created by a statutory land grant or the interest held under a lease from the Crown having an unexpired term of not less than twenty-one years to run on to the land-register and to issue to the proprietor a qualified certificate of title. Such land must be land comprised in a conveyance which has been finally registered under the Registration of Deeds Ordinance (cap. 121). On the issue of such a qualified certificate of title a caution will be endorsed on the relevant folium of the land-register warning persons dealing with the proprietor that the land is subject to any interest which affected it at the date of issue of the certificate. This caution will remain on the land-register until a notification of its lapsing has been entered on it. In cases where the land has been transferred to a purchaser and five years have elapsed since it was brought on to the land-register, the purchaser may request the Registrar to enter on the folium of the land-register a notification of such lapsing. Further, the original proprietor of the qualified title can, at any time, i.e. before or after the expiration of the five-year period, apply to the Registrar for cancellation of the caution endorsed thereon, in which case he must satisfy the Registrar "that there are no outstanding interests which are not notified on the folium of the land-register." When the caution has so lapsed or been cancelled the title of the proprietor of the land becomes indefeasible.

(b) THE MALAY STATES

There are two types of register of land in the Federation of Malaya — the State Register and the Mukim Register. Land, as has been stated earlier, vests in the State and can be alienated by the State by grant or lease. Registration of State land is compulsory on alienation. Indeed the Land Codes provide that the date of alienation is the date of

registration of the document of title. Land in the Federation of Malaya can also be alienated by an entry in the mukim register. In the case of alienation by a grant or lease of State land registration is complete as soon as both duplicates of the document of title have been marked with the folio and volume of the register and signed by the Registrar. One copy of the duplicate is then delivered to the proprietor. This document is called the "issue document of title," which contains a plan of the land alienated as the law requires that all State land must be surveyed before alienation. In the case of land held by entry in the mukim register, registration is complete when the Collector certifies that the land has been duly entered in the mukim register and signs and dates the entry. When this has been done the Collector delivers to the proprietor an extract of the mukim register which is endorsed with a plan of the land marked and delineated to the satisfaction of the Collector.

(c) MALACCA

The Mutations in Titles to Land Ordinance (cap. 126 of the Laws of the Straits Settlements, 1936 edition) requires all mutations, whether by act of party or by succession, in titles to land to be registered by the Registrar of Deeds at Malacca. However, such registration does not convey or establish any legal title to land, nor does it corroborate, qualify or bar any rights. Such registration is purely evidentiary, as no deed whatsoever for the sale or transfer of land, and no probate or letters of administration, unless registered, can be received in evidence as a legal instrument by any court or admitted as valid by any government officer.

A different law applies to customary lands in Malacca. By the Malacca Lands Customary Rights Ordinance (cap. 125) only a Malay domiciled in Malacca and a person holding a certificate from the government of Malacca can be a customary land-holder. Transfers of customary land made to any other person are invalid. A customary land-holder has a permanent heritable and transferable right of use and occupancy in his customary land subject to the payment of rent and assessment; the reservation in favour of the State of all mines and mineral products and of all buried treasure and the State's right of making roads, drains, and sewers, and laying down water pipes, carrying electric and telegraph wires, and using, repairing and maintaining the same; the liability to give his labour free for the performance of such customary works and duties for the common benefit of himself and the other customary land-holders; the duty of preparing the "sawah" for planting and of planting the "padi" simultaneously with the other customary land-holders; the obligation to conform to directions by the State concerning the prohibition or regulation of the planting of certain crops. Failure to conform with such directions will entail the forfeiture of the land. Forfeiture of such customary land can also be enforced if it has

been out of cultivation for three consecutive years or the assessment thereon is in arrear for three consecutive years.

On death, if the customary land-holder is a Muslim, his customary land devolves upon persons who according to Muslim law as varied by local custom, if any, would be entitled to the same and not to his legal personal representatives. If the deceased is not a Muslim then the Collector may partition the customary land among the persons entitled or require them to apply to the court for the grant of probate or letters of administration.

A mukim register is provided for the registration of all mutations in titles to customary rights in land in Malacca whether by transfer, mortgage or transmission. Registration of these mutations will confer an indefeasible title to the registered holder of the land or the mortgagee thereof. Upon registration of a transfer the Collector will issue to the person entitled an extract from the register showing the transferee to be the registered holder of the land. On the notification of a transmission in the mukim register the Collector will issue an extract of the register to every person entitled thereto.

A customary land-holder may charge his holding by way of mortgage to secure the repayment of any principal sum of money with or without interest. Such a mortgage must be registered in a Register of Mortgages. In default of payment of the principal sum due under a registered mortgage the mortgagee may apply to the Collector for an order for the sale of the mortgaged property or any part thereof. Such a sale will be held under the supervision of the Collector.

(3) EFFECT OF REGISTRATION

(a) SINGAPORE

(i) *Indefeasibility*. In all jurisdictions the registration of land under a system of land registration confers on the proprietor an "indefeasible" title to the land. Except in the Federation of Malaya, this means that the title of the proprietor is conclusive and cannot be challenged. This is so even though the proprietor had acquired the land from a person who had no title to it, provided that he was a *bona fide* purchaser for value. This is the fundamental objective of the Torrens system of land registration. The Judicial Committee of the Privy Council⁶ has stated that the object of the land registration system was "to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value from a registered proprietor...shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title."

6. *Gibb v. Messer* [1891] A.C. 248, 254.

This indefeasibility, however, is subject to certain exceptions which may be expressly provided by the statutes establishing the land registration system or implied by law. In Singapore, nearly all the exceptions to the indefeasibility of the title of a proprietor are set out in section 28 of the Land Titles Ordinance. The estate of the proprietor is declared to be paramount but subject to, first, any subsisting exceptions, reservations, covenants, and conditions, contained or implied in the Crown grant or Crown lease thereof; the Crown Lands Ordinance (cap. 244) contains a list of covenants and conditions that are implied in every Crown grant or lease. Secondly, it is subject to any subsisting easement or public right of way which was in existence at the date of the registration of the land. After land has been brought on to the land-register no easement can be created by long-continued user, nor by prescription nor by presumption of a lost grant, nor by any implication of law. The only way that an easement can be created is by an express grant or express reservation. This exception applies only to easements which were subsisting before the land was registered. It is, in the words of the Land Registration Act, 1925, of England, an "overriding interest." Thirdly, it is subject to the Registrar's power to correct errors in the land-register. The Singapore Ordinance gives power to the Registrar to correct errors in the land-register arising from registration of land which has already been registered or from wrong description of parcels or boundaries. Although registration confers indefeasibility there cannot be two indefeasible titles to the same piece of land. Disputes must inevitably arise from such errors in the land-register and as one of the main aims of the system of land registration is to minimise the occasions for disputes between land owners the Registrar is given this power to correct the land-register either at his own motion or at the request of any aggrieved proprietor. Any such corrections must necessarily cause damage to the proprietor of one of the registered titles. However, such a proprietor can always claim compensation from the assurance fund. And in making corrections, the Registrar is directed to adopt as his criterion to make his corrections in such a way as to involve the least loss to the assurance fund. The fourth subjection is to the rights of a person in occupation of the land at the time of the registration of the land under a tenancy which when created, did not exceed the term of three years. The Singapore Ordinance provides for the registration of leases of registered land for any term of years exceeding three years. Leases of or under the term of three years are outside the provisions of the Ordinance and are not registrable. Thus, short tenancies are protected provided that the tenant was "in occupation" at the time when the land was brought on to the land-register.

There are other exceptions to the indefeasibility of the title of a registered proprietor, but these exceptions exist only so long as the land remains in the hands of the proprietor or of a volunteer claiming through him. They do not affect the title of a *bona fide* purchaser for value of the same land from the proprietor. These exceptions are, first, fraud or forgery on the part of the proprietor or in which he colluded. Any person

aggrieved by the fraud or forgery can defeat the title of such a proprietor but he cannot defeat the registered title of a *bona fide* purchaser for value from the proprietor. The second exception is contractual rights created by the proprietor of registered land. In such a case the proprietor cannot rely on the indefeasibility of his title to be rid of the obligations created by himself. He cannot, for example, repudiate the right of his transferee to have the land registered in the transferee's name on the ground that he is the proprietor as evidenced by the land-register. However, the transferee's claims against the land will be overreached if the proprietor should transfer the land to a *bona fide* purchaser for value and the land is subsequently registered. Thirdly, the right of the beneficiaries of a trust against a proprietor holding land under the terms of the trust prevails. The beneficiaries' right against the proprietor will become a personal one as soon as the land has been transferred to a *bona fide* purchaser for value and registered. The fourth exception is the right of a person to recover land from the proprietor where the land had been acquired from a person under a legal disability which was known to the proprietor at the time of the dealing. An infant in Singapore can hold land but such land becomes subject to a "settlement" under the Settle Estates Ordinance (cap. 20). Only the trustees of the settlement can dispose of the land. Finally, there is the right of an aggrieved person to recover land from a proprietor who had acquired it unlawfully in purported exercise of a statutory power or authority. Where a statutory authority becomes the proprietor of land acquired by it in excess of its powers of acquisition or not in accordance with the provisions of the statute authorising it to do so then an aggrieved person can recover such land from it.

(ii) *Priority.* Priority of interests affecting registered land is determined in accordance with the order of their registration or notification irrespective of the dates of the instruments by which such interests were created or evidenced. As between unregistered interests affecting registered land priority is determined by the date of entry of the caveats protecting the same. Where, however, the land is held by a proprietor under a qualified title any interest registered against such land may be postponed to other common law interests subsisting at the date of the registration.

(b) FEDERATION OF MALAYA

(i) *Indefeasibility.* The title of a proprietor, chargee or lessee of land registered in the State register or entered in the mukim register is expressed to be indefeasible but subject to fraud or misrepresentation to which the proprietor was a party, or where the land was registered by forgery or by means of an insufficient instrument or void instrument. These exceptions, however, do not affect the title of a *bona fide* purchaser for value of the land from the proprietor. Short tenancies too are protected. The title of a tenant who was in possession of the land under

an unregistered lease or agreement for a lease or for letting for a term not exceeding one year at the time of the registration of the land prevails over that of the proprietor. Further, the title of the proprietor may be defeated "by operation of law," and the court is given wide powers to "direct the proper registering authority to cancel, correct, substitute or issue any document of title, or to make any memorial, or otherwise to do such acts or make such memorials as may be necessary to give effect to the judgment or order of the Court." This, in effect, takes much out of the "indefeasibility" of the proprietor's title to the land.

(ii) *Priority.* Until registered no instrument is effectual to pass any land or any interest therein or render any land liable as security for the payment of money, and, as between instruments registered in respect of or affecting the same land, priority is determined according to the time and date of registration and not according to the date of each instrument itself.

(4) TRANSFERS, MORTGAGES AND CHARGES

(a) SINGAPORE.

Transfers, mortgages and charges of registered land are effected by statutorily prescribed instruments and not by the common law forms of conveyance or mortgage. The proprietor of registered freehold land, lease, mortgage or charge has only to fill up the relevant transfer form and have it registered to complete the transaction and this can be done in a matter of hours. No contract is necessary but where a contract exists in a sale of registered land then all the obligations created by the contract are deemed to have merged in the transfer unless a contrary intention is expressed therein. A proprietor of registered land may also create a settlement by transferring by an instrument in the prescribed form the land for an estate for life or lives or for an estate in remainder expectant upon the determination of a life or lives. On the registration of the transfer, the Registrar will issue a certificate of title to the transferee for his life estate and to the remainderman for his estate in remainder.

Similarly, a mortgage of registered land to secure payment of a debt, and a charge to secure payment of a rent-charge, or other periodical sum, or of any money other than a debt, may be created by completing the relevant prescribed instruments. Unlike common law conveyancing the legal estate in the land in such a mortgage does not pass from the mortgagor to the mortgagee. On registration, the mortgage has effect as a security only. Although the forms of the instruments are statutorily prescribed, yet the parties to the transactions may vary the same to conform to their intentions. A mortgagee of registered land has the same powers as any other mortgagees of land. He may transfer his interest in the mortgage to another person. If he is the first mortgagee,

he is entitled to the custody of the documents of title. He may exercise his power of sale, and, when he does so, the Registrar is bound to register the land in the name of the purchaser without concerning himself as to whether the power of sale was validly exercised. He may enter into possession of the mortgaged land, but here he is required to give one month's notice of his intention to do so to the mortgagor. Although he has not been invested with the legal estate in the mortgaged land, he has, nevertheless, the right to apply to the court for an order for foreclosure, and when an order for foreclosure is made and registered the estate and interest of the mortgagor will vest in him freed from all right and equity of redemption of the mortgagor. Further, he has the right to make further advances in priority over subsequent mortgages or charges if his mortgage expressly provides for the making of further advances or for the giving of credit to the mortgagor on a current or continuing account, or if the subsequent mortgagee or chargee agrees to such further advances being made or credit given. No other right to tack is given to a mortgagee or chargee of registered land. A discharge of the mortgage or charge may be effected by the mortgagee or chargee by executing the prescribed form endorsed on the instrument of mortgage or charge or on a separate document. Upon registration of the discharge the land will be freed from the mortgage or charge and from all rights and powers of the mortgagee or chargee. A Registrar may also, if he is satisfied that no money is payable under a charge, enter in the land-register a notification of satisfaction whereupon the land will be freed from the charge and from all rights and powers of the chargee.

(b) FEDERATION OF MALAYA

A proprietor of registered land has, in the absence of any restriction set forth in his document of title or imposed by law, the right to transfer and charge his land to persons authorised by law to hold land, i.e. to an individual not being a minor,⁷ or who is the personal representative of a deceased proprietor holding a certificate of representation, or a company or body corporate authorised by its constitution to hold land. If he holds an undivided share in the land he may likewise transfer or charge his share in the land provided that where a sub-division of the land is necessary the land has to be resurveyed before a fresh document of title can be registered in the name of the transferee. He may also deposit his document of title with another person to secure the payment of money and upon the registration of a caveat presented by such other person a lien over the registered land is created. If default is made in the repayment of the money the holder of such a lien may obtain an order of the Court for the sale of the land.

7. A minor is a person domiciled in any part of the continent of Asia who has not completed his eighteenth year, and any other person who has not attained the age of twenty-one years.

Transfers and charges may be effected by executing the prescribed memorandum of transfer or the memorandum of charge and having the same registered. Both parties to the transaction, however, are required to execute the relevant memorandum. When registered it has the effect of passing the interest of the proprietor in the registered land to the transferee in the one case and making the land liable as security for the payment of money in the other.

Where land subject to a charge is transferred there is an implied agreement that the transferee will pay the principal sum, interest and other moneys secured by the charge and will indemnify and keep harmless the transferor from and against the principal sum, interests and moneys so secured and from and against all liability in respect of any of the agreements contained in the charge and implied by law. Where a charge of registered land is transferred then upon the registration of the memorandum of transfer of charge all the rights, powers and privileges and all the liabilities of the transferor will pass to the transferee.

A discharge of a charge may be effected by the chargee signing a prescribed memorandum of discharge and presenting the same together with the issue document of title and the duplicate memorandum of charge to the Registrar for registration. Upon registration of the memorandum of discharge the land will cease to be charged. The Registrar may also, if he is satisfied that the moneys secured by the charge have ceased to be payable, make a memorial upon the register to the effect that such charge is satisfied and cancel the memorandum of charge.

In the case of default of the chargor in payment of moneys secured by the charge the chargee may enter into possession of the land, or apply to the Collector, where land is held under entry in the mukim register, or to the court in the case of all other lands for an order of sale. If such an order is granted the land must be sold by public auction subject to the supervision of the Collector or the court as the case may be.

(5) ASSURANCE FUND

(a) SINGAPORE.

In Singapore an assurance fund, built up by a proportion of the fees collected by the Registrar, is established to compensate persons who suffer deprivation of the land or loss through the working of the land registration system. A person who is barred by the Land Titles Ordinance from bringing an action of ejectment or other action for the recovery of land through (a) the bringing of such land on to the land-register; or (b) the registration of any wrongful or erroneous instrument; or (c) any omission, mistake or misfeasance of the Registrar or any member of his staff, may bring an action for the recovery of damages against the assurance fund. But in the above cases of (a) and (b) the

claimant must bring his action for damages against the person who was responsible for his loss and only after he has exhausted his remedies against him is he allowed to proceed against the assurance fund. In the case of (c) he may bring his action against the assurance fund in the first instance. In all cases his damages or compensation may, however, be withheld or abated by the court if the loss was due to his own neglect, default or incaution. Further, his right to recover damages or compensation will be barred if, the action is not commenced within twelve years from the date on which the deprivation of land occurred or the loss or damage sustained. Where, however, he has commenced an action against the person responsible for the deprivation, loss or damage within the period of twelve years then, if his action is discontinued, he may proceed against the assurance fund within one year of the discontinuance of the action even though the said period of twelve years has expired. If the assurance fund is insufficient to pay the amount of damages or compensation awarded by the court to the claimant then the deficit will be met by the State. The assurance fund, however, is not responsible for loss occasioned by a breach of trust. In such an event the beneficiaries will have to pursue their remedies against the trustee personally.

(b) FEDERATION OF MALAYA.

In the Federation of Malaya there is no assurance fund. Claims for damages through the working of the land registration system must be made against the State and are payable out of State funds.

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