

THE CUSTODIAN OF MOVABLE PROPERTY ACT.

[BURMA ACT X, 1945.] (1st November, 1945.)

WHEREAS it is expedient to make legislative provision for the recovery and return to the owners of movable property of which the owners have been deprived of possession by circumstances arising out of the war and for the appointment of Custodians of such property ;

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It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

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| Short title and commencement. | <p>1. (1) This Act may be called the Custodian of Movable Property Act, 1945.</p> <p>(2) It shall come into force on such date ¹ as the President of the Union may, by notification, appoint, and shall remain in force until the President of the Union, by notification, shall declare it to be no longer in force.</p> |
| Definitions. | <p>2. In this Act, unless there is anything repugnant in the subject or context,—</p> <p style="padding-left: 20px;">(i) “Custodian” means a Custodian of Movable Property appointed under this Act, and, except in Chapter II, includes an Assistant Custodian ;</p> <p style="padding-left: 20px;">(ii) “Owner” includes the legal representatives of a deceased owner ; and</p> <p style="padding-left: 20px;">(iii) “prescribed” means prescribed by rules made under this Act.</p> |
| No presumption of abandonment of movable property. | <p>3. Where owing to circumstances arising out of the war an owner of movable property relinquished possession thereof within the Union of Burma, it shall be presumed, until the contrary is proved, that he has continued to be the owner of such property and that he has had no intention of abandoning the same or any rights thereto.</p> |
| Protection to person making over possession of movable property to rightful owner or Custodian within stipulated time. | <p>4. No proceeding, civil or criminal, shall be instituted in respect of any movable property possession of which was relinquished by the owner thereof owing to circumstances arising out of the war against any person who has come into possession of that property if such person delivers up such property to the owner or to a Custodian within such period after the commencement of this Act as may be prescribed.</p> |

¹ 1st November 1945 see *Burma Gazette*, 1946, Part I, page 76.

CHAPTER II.

APPOINTMENT OF CUSTODIANS.

5. (1) The President of the Union may, either for the whole of the Union of Burma or for any particular area, appoint one or more Custodians and such number of Assistant Custodians as he thinks necessary or expedient for securing compliance with the provisions of this Act.

Appointment of Custodians and Assistant Custodians.

(2) Every Assistant Custodian shall act under the direction and control of the Custodian for the area in which he is appointed.

6. Subject to the control of the President of the Union, the Custodian for any area shall have authority to appoint such officers (other than Assistant Custodians) and servants as may be considered necessary or proper for the effective discharge in that area of the duties, powers and functions imposed upon him by this Act.

Appointment of other officers and servants.

CHAPTER III.

POWERS AND DUTIES OF CUSTODIANS.

7. (1) Any person who is in possession of movable property, the possession of which was relinquished by the owner thereof in the circumstances mentioned in section 3 may deliver the same to the nearest Custodian, who shall take all property so delivered to him into his custody.

Power to Custodian to take possession of movable property.

(2) If a Custodian has reasonable cause to believe that any movable property of which possession was relinquished in the circumstances mentioned in section 3 is in the possession of any person other than the owner thereof, he may, by day or by night, enter and search any premises for such property and take into his custody, or by order in writing authorise any police officer not below the rank of Sub-Inspector to do so :

¹ Provided that the provisions of this section shall cease to apply to mineral ores and metals other than gold and silver on the 1st November 1948, if they are not delivered to the Custodian or seized by him or by his order before the said date.

8. (1) The Custodian shall retain in his custody all property delivered to him or seized under section 7, and, in respect of each delivery under sub-section (1) of section 7, and of each seizure under sub-section (2) of section 7, shall issue a proclamation, containing a description of each article of which the property consists, and requiring any person who has any claim thereto to appear and establish his right to the same within such period from the date of the proclamation as may be reasonable having regard to the circumstances of each case. The proclamation shall be published in such manner and served on such persons as may be prescribed.

Disposal of property delivered or seized under section 7.

(2) On the expiry of the period mentioned in the proclamation, or of any further time which may be given, the Custodian shall peruse the

¹ This proviso was inserted by Act XLI, 1948.

statements (if any) put in by the claimants to the property, hear the claimants, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he considers necessary, and shall in a summary manner decide which, if any, of the claimants is entitled to the property, or any part thereof, under this Act.

(3) If the Custodian decides that one or more of the claimants is entitled to any part of the property, the Custodian shall deliver to each such claimant the property to which he is entitled under the order of the Custodian.

(4) If any property delivered or seized under section 7 is subject to speedy and natural decay, or if the Custodian is of opinion that its sale would be for the benefit of the owner thereof, or that its value is less than ten rupees, the Custodian may at any time direct it to be sold, and the net proceeds of such sale shall be held for the benefit of the person who may establish his title to the property.

(5) If no person establishes his claim to any property delivered or seized under section 7 within a period of three years from the date of the proclamation issued under sub-section (1), such property, or the sale proceeds thereof if sold, shall vest in the Government.

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Application
by owner
for restora-
tion of
movable
property.

9. (1) Any person who has relinquished possession of any movable property in the circumstances mentioned in section 3, and who knows or has reasons to believe that such property or any part thereof is in the possession of any other person, may apply to the Custodian to recover possession of such property from such person: provided that the property can be identified, either in whole or in part, and can be separated from any combination.

2 (1a) Notwithstanding anything contained in sub-section (1), no application made under the said sub-section shall be entertained by the Custodian after the 31st October 1948.

(2) On receipt of an application under sub-section (1), the Custodian shall cause a notice to be served on the party in whose possession the property is alleged to be, and on any other person who appears from the statement of the applicant to be interested in the property, requiring him or them to attend at the time and place fixed for hearing the application, for the purpose of determining the title to the said property under this Act.

(3) If, after receipt of a notice under sub-section (2), any party in whose possession the property is alleged to be disposes of such property in any manner with a view to defeating the objects of this Act he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(4) The Custodian may, if he thinks fit, at any time after the presentation of the application, exercise his powers under sub-section (2) of section 7 to search for and seize the property mentioned in the application, and may, pending the conclusion of the enquiry under sub-section (2), pass such orders for the proper custody of the property as he thinks fit.

¹ The proviso was deleted by Act XXX, 1949.

² Inserted by Act XLI, 1948.

(5) If the applicant or his agent fails to appear at the time and place fixed for hearing the application, or at any subsequent time or place to which the hearing may be adjourned, and there is no sufficient cause for his non-appearance, the Custodian may dismiss the application.

(6) If the opposite party or any other person interested in the property, after having been served with notice, does not attend at such time and place, or at any subsequent time or place to which the hearing may be adjourned, the application may be heard and determined in his absence.

(7) On the date fixed, or on any subsequent date to which the hearing may be adjourned, the Custodian shall peruse the statements (if any) put in, examine the parties, receive all such evidence as may be produced by them respectively and consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and shall in a summary manner decide whether the applicant or any other person is entitled to the property or any part thereof under this Act.

(8) If the Custodian decides that the applicant or any other person is entitled to the property or any part thereof, and the property or such part is in the custody of the Custodian he shall deliver the property or such part to the applicant or such person. If the property or such part is not in the custody of the Custodian, he shall proceed to enforce his order under section 10.

(9) The provisions of sub-section (4) of section 8 shall apply to any property in the custody of the Custodian under the provisions of this section.

(10) Any property in the custody of the Custodian under the provisions of this section to which no person establishes a claim within a period of three years from the date on which it came into the custody of the Custodian, or the sale proceeds thereof, if sold, shall vest in the Government.

10. (1) Any order passed by the Custodian under sub-section (2) of section 8 or sub-section (7) of section 9 may be enforced in the following manner, namely, by serving a notice on the person in possession of the property, or his agent, requiring him, within such time as the Custodian may deem reasonable after the receipt of the said notice, to make over possession of said property to the person entitled under the order thereto, and if such notice is not obeyed, by seizing, or authorizing by order in writing any police officer not below the rank of Sub-Inspector to seize, the said property from the possession of that person or his agent and delivering it to the person entitled thereto.

Restoration
of possession,
how to be
effected.

(2) If the officer shall be resisted or obstructed by any person in seizing any such property, the Custodian may issue a warrant for the arrest of such person, and on proof of the facts of such resistance or obstruction may sentence such person to imprisonment for any period not exceeding thirty days, or to fine which may extend to one hundred rupees, or to both :

Provided that no person sentenced under this sub-section shall be liable to be prosecuted under section 183, section 186 or section 188 of the Penal Code or under sub-section (1) of section 15 of this Act in respect of the same facts.

Costs of enquiry.

11. The Custodian may pass such orders as to the costs of any enquiry or proceeding under this Act, and the payment thereof as he may deem fit.

Power to summon and enforce attendance of witnesses and to compel production of documents.

12. For the purpose of any enquiry under this Act the Custodian shall have power to summon and enforce the attendance of persons, to receive and record evidence, and to compel the production of documents by the same means and so far as may be in the same manner as provided in the case of a civil Court by the Code of Civil Procedure.

CHAPTER IV.

GENERAL.

Finality of decision of custodian.

13. Except as provided by section 18, the decision of a Custodian under this Act as to the title to any movable property shall be final and shall be conclusive evidence thereof.

Bar to jurisdiction of civil Court.

14. Except as otherwise provided in this Act, no civil Court shall have jurisdiction in any matter which the Custodian is empowered or under this Act to determine or shall take cognizance of the manner in which the Custodian exercises any power vested in him by or under this Act.

Penalty for wrongful obstruction or disobedience of order.

15. (1) Whoever in any manner wilfully obstructs the Custodian or any officer authorized by the Custodian in the performance of his duties, or refuses to hand over any movable property when required so to do by the Custodian or any officer authorized by the Custodian shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, an offence under this section shall be cognizable and non-bailable.

Power to make rules.

16. (1) The President of the Union may make rules¹ to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a)** prescribe the period under section 4 ;
- (b)** prescribe the manner in which a proclamation issued under sub-section (1) of section 8 shall be published and the persons on whom a copy of such proclamation shall be served ;
- (c)** prescribe the form and contents of applications under section 9 ;
- (d)** prescribe the procedure to be adopted and the records to be maintained by Custodians in the conduct of enquiries and the enforcements of orders ;
- (e)** prescribe the fees to be paid to Custodians for the custody of any movable property and by whom such fees shall be paid ;

¹ For such rules, see *Burma Gazette*, 1945, Part I, page 74.

- (f) prescribe the forms of notices and the manner in which they shall be issued and served ;
- (g) provide for the rendering of aid by the police and other public authorities to Custodians in the conduct of enquiries and the enforcement of orders ;
- (h) prescribe the duties to be performed by village headmen, rural policemen and villagers in connection with the proceedings of Custodians.

17. No suit, prosecution or other legal proceeding shall lie against— Bar to suits.

- (i) any officer or authority vested with powers under this Act for anything in good faith done or intended to be done thereunder ; or
- (ii) any person for any injury or damage caused to any person or any movable property in consequence of any act in good faith done or intended to be done under this Act.

18. Nothing done under or in accordance with this Act shall be deemed Saving.
to preclude any person from instituting a suit or other proceeding in any competent Court under any law for the time being in force for possession of or for establishing any right in respect of any movable property to which such person may deem himself to be presently entitled.