



ANNO SEXTO

GEORGII V REGIS.

A.D. 1915.

No. 1211.

An Act to make provision for the Custody of Property of Alien Enemies during the present war, and for purposes incidental thereto and consequent thereon.

[Assented to, December 16th, 1915.]

WHEREAS it is expedient to make provision for preventing the payment of money, in contravention of the law relating to trading with the enemy, to persons and bodies of persons resident, or carrying on business, in any country with which His Majesty the King is for the time being at war, and for preserving, with a view to arrangements to be made at the conclusion of peace, such money and certain other property belonging to enemies : Preamble.

Be it therefore Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Enemy Property Act, 1915". Short title.

2. In this Act, except where some other meaning is clearly intended,— Interpretation.

"Court" means the Supreme Court or a Judge thereof :

"Enemy subject" means—

(a) any person, or any firm or company or body of persons, resident or carrying on business in any country with which the King is for the time being at war ; or

(b) any person who is an enemy within the meaning of any proclamation relating to trading with the enemy made by the King or the Governor-General and published in the *Commonwealth of Australia Gazette* ; or

(c) any

Enemy Property Act.—1915.

(c) any person, firm, or company, the business whereof is managed or controlled directly or indirectly by or under the influence of enemy subjects, or is carried on wholly or mainly for the benefit or on behalf of enemy subjects, notwithstanding that the firm or company may be registered or incorporated within the King's dominions:

“Minister” means the Minister of the Crown to whom the administration of this Act is, for the time being, committed by the Governor:

“Prescribed” means prescribed by this Act or by regulation:

“Regulation” means regulation made under this Act:

“The present war” means the war with Germany which commenced on the fourth day of August, nineteen hundred and fourteen, and with any of the allies of Germany in that war:

“This Act” includes regulations.

Payment of dividends, etc., payable to enemy subject.

Cf. U.K., 5 Geo. 5, c. 12, s. 2.

3. (1) Any sum of money which, had the present war not existed, would have been payable and paid to, or for the benefit of, an enemy subject by way of dividends, interest, or share of profits, shall be paid by the person by whom the same would have been so payable to the Public Trustee, to hold subject to the provisions of this Act.

Any sum of money required by this subsection to be paid to the Public Trustee shall be paid—

(a) within fourteen days after the passing of this Act if such sum, had the present war not existed, would have been paid before the passing of this Act; and

(b) in any other case, within fourteen days after such sum would have been paid.

Every person required by this subsection to pay any sum of money to the Public Trustee shall, at the time of paying such sum, to the best of his knowledge and belief, furnish to the Public Trustee the prescribed particulars with respect to such sum, and shall also, whenever required by the Public Trustee, to the best of his knowledge and belief, furnish to the Public Trustee such further particulars with respect to such sum as the Public Trustee requires.

(2) Where, before the passing of this Act, any such sum has been paid into any account with a bank or has been paid to any person in trust for an enemy subject, the person by whom the payment was made shall, within fourteen days after the passing of this Act—

(a) by notice in writing require such bank or person to pay such sum to the Public Trustee to hold as aforesaid, and

(b) furnish the Public Trustee with such particulars or such further particulars as to such sum as if in pursuance of subsection (1) hereof he were himself paying, or had paid, such sum to the Public Trustee.

The

Enemy Property Act.—1915.

The bank or person to whom such notice has been given shall, within one week after the receipt of the notice, comply with the requirement thereof, and shall be exempt from all liability to any person in consequence of so complying.

(3) Where it is made to appear to the Court—

- (a) in the case of a firm, that one of the partners in the firm was immediately before or at any time since the commencement of the present war an enemy subject; or
- (b) in the case of a company, that, immediately before or at any time since the commencement of the present war, one-third or more of the issued share capital was held by or on behalf of, or one-third or more of the directorate consisted of, persons who were enemy subjects; or
- (c) in the case of a person, firm, or company, that the person, firm, or company was or is acting as agent of an enemy subject;

and that it is open to question what amount would have been so payable and paid as aforesaid, the Court may appoint such person as it deems proper, to determine such question.

The person so appointed shall inspect the books and documents of such person, firm, or company, and his decision thereon shall be final, subject to appeal to the Court, whose decision on any such appeal shall be final.

If the person so appointed or, on appeal, the Court, determines that the person, firm, or company has not distributed as dividends, interest, or profits the whole of the amount properly available for that purpose, the person so appointed, or, on appeal, the Court, may ascertain what amount is so available, and require the whole of such amount to be so distributed; and in the case of a company, if such dividends have not been declared, the person so appointed, or the Court, as the case may be, may declare the appropriate dividends, and every such declaration shall be as effective as a declaration to the like effect duly made in accordance with the constitution of the company.

(4) For the purposes of this Act the expression “dividends, interest, or share of profits” means—

- (a) any dividends, bonus, or interest in respect of any shares, stock, debentures, debenture stock, or other obligations of any company, municipal corporation, district council, or other body corporate;
- (b) any interest in respect of any loan to any firm or person carrying on business for the purposes of that business; and
- (c) any profits or share of profits of a business;

and, where a person is carrying on any business on behalf of an enemy

Enemy Property Act.—1915.

enemy subject, any sum which, had the present war not existed, would have been transmissible to such enemy subject by way of profits from that business shall be deemed to be a sum which would have been payable and paid to such enemy subject.

Duty of trustees for
enemy subjects
to notify
Public Trustee.

Cf. *ibid.*, s. 3.

4. (1) Any person who holds or manages for, or on behalf of, an enemy subject any property real or personal (in which term is included any right, whether legal or equitable, in, or arising out of, property real or personal), shall, within one month after the passing of this Act, or, if such property comes into his possession or under his control after the passing of this Act, then within one month after the time when such property first comes into his possession or under his control, by notice in writing communicate the fact to the Public Trustee; and shall furnish the Public Trustee with such particulars in relation thereto as the Public Trustee requires.

For the purposes of this subsection—

- (a) any balance or deposit standing to the credit of an enemy subject at any bank, and
- (b) any debt to the amount of Fifty Pounds or upwards, which is due, or which, had the present war not existed, would have been due, to an enemy subject,

shall be deemed to be property held on behalf of an enemy subject.

- (2) (a) Every company incorporated in the said State and every company which, though not incorporated in the said State, has a share transfer or share registration office in the said State, shall, within one month after the passing of this Act, by notice in writing communicate to the Public Trustee full particulars of all shares, stock, debentures, and debenture stock, and other obligations of the company which are held by, or for the benefit of, an enemy subject.
- (b) Every partner of any firm, of which, since the commencement of the present war, any enemy subject is or has been a partner, or to which money has been lent for the purposes of the business of the firm by any enemy subject, shall, within one month after the passing of this Act, by notice in writing communicate to the Public Trustee full particulars as to any share of profits and interest due to such enemy subject.

(3) The Public Trustee shall keep a register of the property of enemy subjects, containing the particulars with respect thereto which have been furnished or communicated to him as required by this section; and such register may be inspected at all reasonable times, free of charge, by any person who appears to the Public Trustee to have any interest in such property, whether as a creditor or otherwise.

5. (1) The

Enemy Property Act.—1915.

5. (1) The Court may, on the application of any person who appears to the Court to be—

Power to vest enemy property in Public Trustee.

- (a) a creditor of an enemy subject ; or
- (b) entitled to recover damages against an enemy subject ; or
- (c) interested in any property, real or personal (in which term is included any rights, legal or equitable, in, or arising out of, property real or personal) belonging to, or held or managed for or on behalf of, an enemy subject,

Cf. *ibid.*, s. 4.

or on the application of the Public Trustee or of the Minister, by order, vest in the Public Trustee any such real or personal property as aforesaid, if the Court is satisfied that such vesting is expedient for the purposes of this Act ; and may, by the same or a subsequent order, confer on the Public Trustee such powers of selling, managing, or otherwise dealing with the property as to the Court seem proper.

(2) The Court, before making any order under this section, may direct that such notices (if any), whether by way of advertisement or otherwise, shall be given as the Court thinks fit.

(3) A vesting order under this section with respect to property of any description may be to the like purport, and shall have the same effect, as a vesting order under Part III. of the Trustee Act, 1893, with respect to property of the same description ; and where the property with respect to which any such order is made is not property of any of the descriptions mentioned in the said Part III., such order shall be to such purport, and shall have such effect, as the Court directs.

No. 586 of 1893.

6. (1) The Public Trustee shall, except so far as the Minister or the Court otherwise directs, and subject to anything prescribed, hold any money paid to and any property vested in him under this Act until the termination of the present war, and shall thereafter deal with the same in such manner as the Governor directs.

Holding and dealing with property by Public Trustee.

Cf. *ibid.*, s. 5.

(2) The Public Trustee shall have such powers and duties with respect to such money and property as are prescribed.

Ibid., s. 1 (3).

(3) The Public Trustee may place on deposit with any bank, or on loan to the Treasurer of the said State, or invest in any securities approved by the said Treasurer, any moneys paid to the Public Trustee under this Act or received by him from property vested in him under this Act, and any interest or dividends received on account of such deposits or investments shall be dealt with in such manner as the said Treasurer directs.

Ibid., s. 1 (4).

(4) The property held by the Public Trustee under this Act shall not be liable to be attached or otherwise taken in execution ; but the Public Trustee may, if so authorised by an order—

Ibid., s. 5 (2).

- (a) of the Supreme Court, or of the Judge by whose order the particular property was vested in the Public Trustee under this Act ; or
- (b) of

Enemy Property Act.—1915.

(b) of any court in which judgment has been recovered against an enemy subject—

pay out of the property paid to him in respect of such enemy subject the whole or any part of any debts due by such enemy subject and specified in the order: Provided that before paying any such debt the Public Trustee shall take into consideration the sufficiency of the property paid to or vested in him in respect of such enemy subject to satisfy that debt and any other claims against such enemy subject of which notice, verified by statutory declaration, has been served upon the Public Trustee.

Ibid., s. 5 (3).

(5) The receipt of the Public Trustee, or any person authorised by him in writing to sign receipts on his behalf, for any sum paid to the Public Trustee under this Act, shall be a good discharge to the person paying the same as against the person in respect of whom the sum was paid to the Public Trustee.

Ibid., s. 5 (4).

(6) The Public Trustee shall keep a register of all property held by him under this Act, which register shall be open to public inspection at all reasonable times free of charge.

Invalidity of assignment of debts, &c. by enemy subjects.
Cf. *ibid.*, s. 6.

7. (1) No person shall by virtue of—

- (a) any assignment of any debt or other chose in action; or
- (b) delivery of any coupon, or other security transferable by delivery; or
- (c) transfer of any other obligation—

made or to be made in his favor (whether for valuable consideration or otherwise) by, or on behalf of, any enemy subject, have any rights or remedies against the person liable to pay, discharge, or satisfy such debt, chose in action, security, or obligation, unless such first mentioned person proves that the assignment, delivery, or transfer was made by leave of the Minister, or was made before the commencement of the present war; and any person who knowingly pays, discharges, or satisfies any debt or chose in action to which this subsection applies shall be guilty of an offence against this Act:

Provided that this subsection shall not apply—

- I. where the person to whom the assignment, delivery, or transfer was made, or some person deriving title under him, proves that the assignment, delivery, or transfer, or some subsequent assignment, delivery, or transfer, was made before the sixteenth day of November, nineteen hundred and fifteen in good faith and for valuable consideration; nor
- II. to any bill of exchange or promissory note.

Enemy Property Act.—1915.

(2) No person shall, by virtue of any transfer of a bill of exchange or promissory note made or to be made in his favor (whether for valuable consideration or otherwise) by or on behalf of any enemy subject, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the present war, and any party to the instrument who knowingly discharges the instrument shall be guilty of an offence against this Act:

Provided that this subsection shall not apply where the transferee or some subsequent holder of the instrument proves that the transfer, or some subsequent transfer, of the instrument was made before the sixteenth day of November, nineteen hundred and fifteen in good faith and for valuable consideration.

(3) Nothing in this section shall be construed as validating any assignment, delivery, or transfer, which would be invalid apart from this section, or as applying to a security within the meaning of section 9 of this Act.

8. Where, during the continuance of the present war—

(a) any coupon or other security transferable by delivery is presented to any company, municipal corporation, district council, or other body corporate, or to any person, for payment, and

(b) such company, corporation, body corporate, or person has reason to suspect that such coupon or security is so presented on behalf of, or for the benefit of, an enemy subject, or that, since the commencement of the present war, the same has been held by, or for the benefit of, an enemy subject,

such company, corporation, body corporate, or person may pay the sum due in respect thereof into the Supreme Court; and such sum shall, subject to Rules of Court, be dealt with according to any orders of the Court, and such payment into Court shall, for all purposes and as against all persons, be a good discharge to the company, corporation, body corporate, or person making such payment.

9. (1) No transfer made after the passing of this Act by or on behalf of an enemy subject of any securities shall confer on the transferee any rights or remedies in respect thereof; and no company, municipal corporation, district council, or other body corporate, and no person, by whom the securities were issued or are managed shall, except as hereinafter appears, take any cognizance of or otherwise act upon any notice of such a transfer.

(2) No entry shall, during the continuance of the present war, be made in any register or branch register, or other book, kept in the said State, of any transfer of any securities therein registered, inscribed, or standing, in the name of an enemy subject, except by leave of the Court or of the Minister.

Right to pay into Court sums due on coupons suspected of being enemy property.

Cf. *ibid.*, s. 7.

Invalidity of transfers of shares in company, etc.

Cf. *ibid.*, s. 8.

(3) No

Enemy Property Act.—1915.

(3) No share warrants payable to bearer shall be issued during the continuance of the present war in respect of any shares or stock registered in the name of an enemy subject.

(4) If any company, or any municipal corporation, district council, or other body corporate, contravenes any provision of this section, every director, manager, secretary, or other officer of such company or body corporate who is knowingly a party to the contravention, as well as such company or body corporate, shall be guilty of an offence against this Act.

(5) For the purposes of this section the expression "securities" means any annuities, stock, shares, debentures, or debenture stock issued by or on behalf of the Government of any of His Majesty's Dominions, or by any municipal corporation, or district council, or by any company, or by any other body corporate, which is registered or inscribed in any register, branch register, or other book, kept in the said State.

Compliance with section 9 of Commonwealth Trading with the Enemy Act, 1914, sufficient compliance with this Act.

(Com.) No. 9 of 1914.

(Com.) No. 17 of 1914.

10. Notwithstanding the provisions of this Act, any person who has reasonable grounds for believing that any person, firm, or company to whom he owes money is an enemy subject may, instead of fulfilling any requirement of this Act with respect to such money, tender such money in accordance with section 9 of the Trading with the Enemy Act, 1914, of the Parliament of the Commonwealth (as enacted by the Trading with the Enemy Act (No. 2) 1914, of the said Parliament), together with such a statutory declaration as is referred to in the said section 9, and compliance by such person with the provisions of the said section 9, shall exempt him from compliance with such requirement as aforesaid of this Act with respect to such money; provided that he has given the Public Trustee notice in writing of the tender thereof as aforesaid, with such particulars as are prescribed, and any other particulars required by the Public Trustee.

Rules of Court. Ibid., s. 5 (7).

No. 116 of 1878.

11. The powers to make, alter, and annul rules conferred by Part V. of the Supreme Court Act, 1878, shall be read as including power to make such rules as may be necessary or convenient for regulating the practice and procedure of the Supreme Court to be adopted for the purposes of this Act and to alter or annul any such rules.

Regulations.

12. (1) The Governor may make regulations prescribing all such matters and things as this Act requires or permits to be prescribed, or contemplates shall be prescribed, or which it may be necessary or convenient to prescribe for giving effect to the provisions or carrying out the objects of this Act, and may, by any regulation, prescribe a penalty not exceeding Fifty Pounds for a breach of the same or any other regulation,

(2) Every

Enemy Property Act.—1915.

(2) Every such regulation—

- (a) shall be published in the *Government Gazette*.
- (b) shall, subject to subsection (3) hereof, take effect from the date of such publication, or from a later date fixed by the order making such regulation; and
- (c) shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is in Session, and if not, then within fourteen days after the commencement of the next Session.

(3) If either House of Parliament passes a resolution disallowing any such regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such regulation has been laid before it, such regulation shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done, or of the omission of anything, in the meantime.

This subsection shall apply notwithstanding that the said fourteen days, or some of them, do not occur in the same Session or Parliament as that in which the regulation is laid before such House.

(4) When a resolution has been passed, as mentioned in subsection (3) hereof, notice of such resolution shall be published in the *Government Gazette*.

13. (1) Any contravention of or failure to observe any provision of this Act, whether by act or omission, shall be an offence against this Act. General penalty.

(2) Any person guilty of an offence against this Act shall be liable—

- (a) if such offence is dealt with in a summary way, to a penalty not exceeding One Hundred Pounds, or to be imprisoned for any term not exceeding six months: Provided that if the offence is an offence against a regulation only he shall be liable to the penalty prescribed by regulation:
- (b) if such offence is dealt with as an indictable offence, to a penalty not exceeding One Thousand Pounds, or to be imprisoned for any term not exceeding two years.

(3) If any person fails to make or to require the making of any payment, or to give any notice, or to furnish any particulars, as required by this Act, he shall, whether the offence is dealt with in a summary way or as an indictable offence, be liable, in addition to any penalty hereinbefore provided, to a further penalty not exceeding Fifty Pounds for every day during which the default continues, and if such default is made by a company, every director, manager, secretary, and officer of such company, or, if such default

*Cf. U.K. 5 Geo. 5,
c. 12, s. 2 (3),
et passim.*

Enemy Property Act.—1915.

is made by a firm, every partner of such firm, who is knowingly a party to such default, shall be similarly liable.

Offences may be dealt with by indictment or summarily.

14. (1) Offences against this Act, other than offences against regulations only, may be dealt with as indictable offences, or in a summary way, as provided by section 15.

(2) Offences against regulations shall be dealt with in a summary way as aforesaid.

(3) No prosecution for an offence against this Act shall be instituted except by, or with the consent of, the Minister, who shall, subject to subsection (2) hereof, direct whether such offence shall be dealt with as an indictable offence or in a summary way.

Summary proceedings.

15. (1) The proceedings in respect of an offence against this Act, which is to be dealt with in a summary way, shall be heard and determined in a summary way by a Special Magistrate or any two Justices, and shall be regulated by the Ordinance No. 6 of 1850 and any amendment thereof, or any other Act or Acts regulating summary proceedings before Justices.

(2) All convictions and orders made by such Magistrate or Justices may be enforced as provided by the said Ordinance or any other such Acts as aforesaid.

Appeal to Local Court.

16. (1) There shall be an appeal from—

(a) any conviction by any Special Magistrate or Justices;

(b) any order of a Special Magistrate or Justices dismissing any information; or

(c) any other order made by a Special Magistrate or Justices, under this Act.

(2) Such appeal shall be to the Local Court of Adelaide in its Full Jurisdiction.

(3) The proceedings on such appeal shall be regulated by the said Ordinance No. 6 of 1850 and any amendments thereof, or any other Act or Acts in force regulating appeals to Local Courts: Provided that the Local Court may make such order as to costs as it thinks fit, and the amount of costs ordered may exceed Ten Pounds.

Local Court may state a case for opinion of Supreme Court.

17. (1) The Local Court on the hearing of any such appeal may state a special case or cases for the opinion of the Supreme Court.

(2) The Supreme Court shall hear and decide any such special case according to the practice of the Supreme Court on special cases, and may make such order as to the costs of such special case as to the said Court appears just.

(3) The Supreme Court may send the special case back for amendment, or may itself amend the same.

(4) The

Enemy Property Act.—1915.

(4) The Magistrate or Justices, or the Local Court, shall make an order in respect of the matters referred to the Supreme Court, in conformity with the certificate of the Supreme Court, or of a Judge thereof.

(5) Such order of the Magistrate or Justices, or Local Court, may be enforced in manner provided by section 15 or otherwise by law.

18. Where any act or omission which constitutes an offence against this Act is, independently of this Act, a common law or statutory offence, the punishment or procedure in respect thereof provided for by this Act shall not be deemed to be substituted for any other punishment or procedure; nor shall this Act be held to affect such common law or statutory offence in any way: Provided that no person shall be liable to be punished twice for the same offence.

Saving of common law and statutory liabilities.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.