

RESTRICTED
W/10
2 May 1949
Original: English

Emergency Regulations on
Property of Absentees
("Absentee Property Act")

(Working Paper prepared by the Secretariat)

On 2 December 1948 the Israel Minister of Finance issued the "Emergency Regulations on Property of Absentees" which generally has been referred to as the "Absentee Property Act". The purpose of the present paper is to give a brief and summary analysis of the most important aspects of this Act, the full text of which will be found in the Annex.*

I. To which part of Palestine does the Act apply?

In Section 1 (b) of the Act it is laid down that the area to which the Act applies, is the same area to which the law of the State of Israel applies.

II. How does the Act define "Absentees"?

According to Section 1 (a) "absentees" may be both physical persons and a "body of persons". In the first case "absentee" means:

/ (1) any person

*...The Act, which consists of 41 sections, was published in Hebrew in a Gazette Extraordinary on 12 December 1948. A summary in English was published in the "Palestine Post" on 19 December 1948 but at least up to 7 April 1949 no official translation into English or French was available. The present paper is based upon an unofficial translation into English.

(1) any person who is the owner, beneficiary or occupier of property situated within the area to which the Act applies and who on 29 November 1947

(i) was a citizen or subject of the Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq or Yemen, or

(ii) was in any of these countries or in any part of Palestine that is not Israel or Israel-held territory, or

(iii) was a Palestinian citizen and has left his normal place of residence and has not been given a certificate exempting him from the status of "absentee".

Section 1 (d) defines a "body of persons" as a body corporate or incorporate, whether registered or not registered, including a company, partnership, cooperative society, a society under the Ottoman Law of Societies and any other juristic body and any institution holding property. Such "body of persons", being owner, beneficiary or occupier of property within the area to which the Act applies, is to be considered as "absentee" if at least half its members are absentees or if at least half its capital belongs to absentees. (Section 1 (2)).

It is provided, however, in Section 28 of the Act, that the Custodian, in special circumstances, may issue a certificate confirming that a person who might be defined as "absentee" is not to be considered as such.

III. What does the Act understand by "property"?

Section 1 (f) provides that "property" includes movable and immovable property, money, rights in property, whether in possession or in action, and goodwill.

IV. What effect does the Act have upon property defined as "absentee property"?

By virtue of Section 5 (a) any property of an absentee is vested in the Custodian with effect from the date of publication of his appointment and any right possessed by the absentee will automatically devolve on the Custodian with effect from such vesting.

V. Which rights and duties does the Act confer upon the Custodian with respect to vested property?

The Custodian is entitled to treat the property in the same manner as the absentee was entitled to treat it prior to the vesting thereof (Section 5 (d) (3)). He may, either himself or through other persons acting with his written consent, incur any expenditure and make any investments required for the maintenance, repair, upkeep, etc. of the property (Section 8). When the property is a business, the Custodian may carry on such business on behalf of the absentee but he may always liquidate the business by order published by him in the Official Gazette (Section 9). With the approval of the Minister of Finance the Custodian may pay debt or tax due on absentee property or discharge any liability incurred by him (Section 20). For his handling of any absentee property the Custodian shall be entitled to a remuneration at the rate of five per cent of the value of the property (Section 34 (a)) and he shall furthermore be entitled to receive out of the property all expenses

/incurred by

incurred by him for maintenance, repair, upkeep, etc. of the property plus six per cent interest (Section 36 (d)).

On the other hand the Custodian shall preserve any occupied property and shall not relinquish it save under the provisions of the Act (Section 8). When the vested property is immovable property, the Custodian may not transfer the title of the ownership thereto and may not lease it for a period exceeding five years (Section 19 (b)). Where the property is agricultural land, or otherwise serves agricultural purposes, any agreement made by the Custodian in respect to such property shall be subject to the written consent of the Minister of Agriculture (Section 19 (e)).

VI. How can vested property cease to be vested?

In accordance with Sections 29 and 30, vested property may on certain conditions be either released or relinquished by the Custodian, who issues a special certificate to this effect. In both cases it is necessary for the Custodian to obtain a majority recommendation from a special inter-ministerial committee consisting of three members.

A N N E X

EMERGENCY REGULATIONS ON PROPERTY OF ABSENTEES

By virtue of the powers conferred on him by section 9(a) of the Law and Administration Ordinance, 5708-1948, the Minister of Finance hereby makes the following Emergency Regulations:

Interpre-
tation

In these Regulations -

(a) "absentee" means -

(1) any person who is the lawful owner of any property situated within the area of these regulations or is the beneficiary or occupier thereof, whether himself or through some other person, and who on the 16th of Kislev, 5708 (29th November, 1947 -

(i) was a citizen or subject of the Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq or the Yemen, or

(ii) has been in any of the above mentioned countries or in any part of Palestine which is outside the area of these regulations, or

(iii) was a Palestinian citizen and has left his habitual town or village of residence in Palestine and has not been issued with a certificate under regulation 28(a);

(2) a body of persons which is the lawful owner of any property situated within the area of these Regulations or is the beneficiary or occupier thereof, whether itself or through some other person, and which at least one half of its members, partners, share-holders, directors or managing-directors are absentees, or of which an absentee is otherwise dominant in the administration of its business or which at least one half of the capital is at the disposition of an absentee;

(b) "area of these regulations" means the area to which the law of the State of Israel applies;

(c) "bill" means any negotiable instrument and includes a bill of exchange, cheque and promissory note;

(d) "body of persons" means a body corporate or incorporate, whether registered or not registered, and includes a company, partnership, cooperative

society, a society under the Ottoman Law of Societies, and any other juristic body and any institution holding property;

- (e) "occupied property" means vested property which is in the actual occupation of the custodian, and includes a right in property which has been vested in the custodian and recognized by law;
- (f) "property" includes movable and immovable property, money, a right in property, whether in possession or in action, and a goodwill;
- (g) "property of an absentee" means any property of which an absentee is the lawful owner or beneficiary or occupier, whether himself or through some other person;
- (h) "released property" means Property which has ceased to be property of an absentee under regulation 29;
- (i) "relinquished property" means property of an absentee, the right of possession of which by the custodian has been relinquished under regulation 30;
- (j) "vested property" means property of an absentee which has been vested in the custodian under these regulations.

Appointment
of custodian

- 2. (a) The Minister of Finance may appoint a custodian of the properties of absentees (hereinafter referred to as "the custodian"). The appointment shall be made by an order published in the Official Gazette, and shall have effect from the date of its publication.
- (b) The custodian shall be a sole corporate body entitled the custodian of properties of absentees, and shall thus be named in any judicial process.
- (c) Where the custodian has ceased to function, the powers under these regulations shall automatically devolve on the Minister of Finance; where any other person has been appointed to act as custodian, such powers shall automatically devolve on such other person, and so on from custodian to custodian until the expiration of these regulations.

Appointment
of inspectors
and agents

3. (a) The custodian may, by approval in writing under the hand of the Minister of Finance, appoint inspectors of the property of absentees and may delegate to any such inspector any of his powers under these regulations, other than the power to appoint inspectors. The appointment of any such inspector shall be published in the Official Gazette and shall have effect from the date of its publication.
- (b) The custodian may authorize any person to be an agent for the administration of occupied property in the name of the custodian, and may determine and pay the fees of such agent.

Inter-
ministerial
committee

4. There shall be constituted an inter-ministerial committee (hereinafter referred to as "the committee") consisting of three members of whom one shall be appointed by the Minister of Finance, one by the Minister of Agriculture and one by the Minister of Minorities. The appointment of each member of the committee shall be by order signed by the Minister appointing him and shall be published in the Official Gazette and shall have effect from date of its publication.

Vesting of
properties
of absentees
in the
custodian

5. (a) Any property of an absentee is hereby vested in the custodian with effect from the date of publication of his appointment under these regulations, and any right possessed by the absentee in his property shall automatically devolve on the custodian with effect from such vesting.
- (b) A property which on the date of publication of the appointment of the custodian has not been a property of an absentee, but has become as such thereafter, shall be vested in the custodian with effect from the date on which such property has so become property of an absentee.
- (c) The proceeds of a duly vested property shall be treated in the same manner as the vested property yielding such proceeds.
- (d) The following rules shall apply to vested property:

- (1) It shall remain as such so long as it has not become relinquished property under regulation 30 or released property under regulation 29;
- (2) the custodian shall be entitled to receive it wherever he may find it;
- (3) the custodian shall be entitled to treat it in the same manner as the absentee was entitled to treat it prior to the vesting thereof and subject to the limitations imposed on the custodian by these regulations.

(e) Where the custodian has acquired any property, not being a property of an absentee at the time of such acquisition, in consideration of an occupied property or in consideration of a right in an occupied property, the property so acquired shall become occupied property and shall be treated in the same manner as the occupied property or the right in an occupied property for the consideration of which it has been acquired.

Knowledge of
identify of
absentee not
a condition

6. The property of an absentee shall not become property of an absentee, vested property, occupied property or relinquished property by reason only that the identity of the absentee is known.

Duty to
deliver
property of
absentee to
custodian

7. It shall be the duty of any person to deliver to the custodian any property of an absentee which is in his possession; where such property is in the form of a liability or obligation in relation to the absentee, such person shall pay such liability to, or comply with such obligation in relation to, the custodian.

Upkeep of
occupied
property

8. The custodian shall preserve any occupied property and shall not relinquish it save under the provisions of these regulations; and he may, either himself or through other persons, acting with his written consent, incur any expenditure and make any investment required for the maintenance, repair, upkeep, etc., of the property.

Administra-
tion and
liquidation
of property
of absentee

9. Where the property of an absentee is a business, the custodian may carry on such business on behalf of the absentee, whether or not the business has been declared by the custodian to be vested in him, but he may

always liquidate the business by order published by him in the Official Gazette. Where the custodian has liquidated the business, then if the absentee was a company or partnership, the liquidation shall proceed as though a winding-up order has been issued by the competent court, and the custodian appointed liquidator; and if the absentee was a cooperative society, the liquidation shall proceed as though the winding-up order has been issued by the Registrar of Co-operative Societies and the custodian appointed liquidator. In no case shall the custodian be replaced by another liquidator.

Payments to relatives of absentees

10. Where the custodian is of opinion that any person is a relative of an absentee and as such he was dependent on the absentee for his maintenance for a continuous period of one year, or more, prior to the 29th of November, 1947, the custodian may make to such person, out of the occupied property of such absentee, allowances at such rates as, in his opinion, are sufficient for the maintenance of such person: Provided that such allowances shall not exceed LI 50 a month.

Where the absentee had several such relatives and, in the opinion of the custodian, family relationship exists as between such relatives and themselves, the custodian may pay the allowance under this regulation to any one of them for the benefit of all of them.

Claims by or against custodian

11. The custodian may bring an action or institute legal proceedings against any person, and may sue or be sued or be a litigant in any case or legal proceedings. The custodian may carry on an action or legal proceedings in lieu of an absentee who had commenced such action or legal proceedings, but he shall not be bound to do so.

Special provisions regarding dis- possession

12. (a) Where any vested property, being immovable property, is occupied by any person who, in the opinion of the custodian, has no legal right thereto, the custodian may confirm such fact in a certificate signed by him, describing the property and specifying the name of the

occupier; where such property has been occupied by several such persons, the name of the head of the family (if the occupiers are members of a family) or the name of the person held by the custodian as the responsible one out of their number, shall be so specified in the certificate. Such certificate shall be deemed to be a judgment given exclusively in favour of the custodian for the dispossession of the occupiers from the vested property.

- (b) Where the certificate has been submitted to the Executive Office, a copy thereof shall be served by the Executive Office on the person whose name is specified in the certificate in the same manner as a copy of a judgment is served on a judgment debtor, and shall act in the execution thereof in the same manner as in the case of a judgment for dispossession. Where the occupiers plead a legal right to occupy the vested property and prove to the satisfaction of the Chief Execution Officer that they have a good cause, the Chief Execution Officer may stay the execution proceedings for such a time as may seem fit to him in order to enable the occupiers to appeal to the competent court and establish their right.
- (c) Where the occupiers have applied to the competent court and proved their legal right to occupy the vested property, the court shall quash the certificate and the execution proceedings taken thereunder.

Restriction
on the pro-
tection of
tenants and
cultivators

- 13. Any person holding vested property shall not be protected by the provisions of the Rent Restriction (Dwelling Houses) Ordinance, 1940, the Rent Restriction (Business Premises) Ordinance, 1941, or the Cultivators (Protection) Ordinance (cap.40), unless on the date the property has been vested in the custodian such person has been holding the said property by virtue of an agreement or by virtue of the protection afforded to him under the provisions of any of the said Ordinances.

Right of
cultivator
to crops

14. Where the vested property is agricultural land or a citrus grove which has been entrusted by the custodian to any person for cultivation, the cultivator shall be entitled to benefit from the crops according to the conditions agreed upon between the custodian and himself and such right of his shall have priority over any charge vested in any other person under any other law.

Mortgage and
attachment of
vested property

15. (a) The fact that any property has become property of an absentee or vested property shall not release it from any charge, mortgage or pledge lawfully created prior to its becoming such property.
- (b) No vested property shall be attached or be made the subject of execution proceedings save with the written consent of the custodian.
- (c) Where an attachment has been imposed on or after the 21st of Adar B, 5708 (1st April 1948) on any property which on the date of attachment has become property of an absentee, and has been vested in the custodian, such attachment shall be invalidated from the date of such vesting, unless the custodian has consented in writing to the continuation of its validity.

Scope of
responsi-
bility of
custodian

16. The custodian shall not be held responsible for any consequence resulting from the receiving of, and dealing with, any property by him, if he received it in good faith and in honest belief that the property was at that time property of an absentee.

Validity of
transactions

17. (a) Any transaction made between the custodian and any person with regard to any property which at the time of the transaction was considered by the custodian to be vested property, shall not be invalidated even if it is subsequently proved that the property was not actually vested property at that time.
- (b) Where a competent court has decided that any property considered by the custodian to be vested property is not vested property, the custodian shall deliver such property to the person directed by the court in its decision, and where no such direction has been made by the court, then to the person from whom he received the property, and where such person is not known to the custodian, he shall apply to a competent court for directions.
- (c) Where the custodian has found out that any property considered by him to be vested property is not vested property, he may deliver it to such person as in his opinion is entitled thereto.

Obedience to
custodian

18. Where the custodian has addressed any person with a demand or direction in respect of any property, and has confirmed therein that such property is property of an absentee, such person shall bear no responsibility for any act committed by him in pursuance of such demand or direction even if it is subsequently proved that the property in question was not property of an absentee.

Limitation of
powers of
custodian

19. (a) The Minister of Finance may from time to time order the limitation of the powers of the custodian, whether generally or in respect of a particular property of an absentee or class of property of absentees. The order shall be published in the Official Gazette and shall have effect from the date of its publication.
- (b) Where the vested property was immovable property, the custodian may not transfer the title of ownership thereto and may not lease it for a period exceeding five years. Where he has leased it for a period exceeding three years, the provisions of the Land Transfer Ordinance (cap. 81) shall not apply to such lease.
- (c) Where the vested property was a voidable charge, the custodian may not void such charge save for a consideration; and where it was a right subject to renunciation, the custodian may not renounce it save for a consideration.
- (d) Nothing contained in these regulations shall affect the powers of the Minister of Agriculture under the Emergency Regulations (Cultivation of Waste Land), 5708-1948.

(e) Where the vested property was agricultural land, not being waste land, or otherwise serving agricultural purposes, any agreement made by the custodian in respect of such property shall be subject to the written consent of the Minister of Agriculture. A recommendation in writing by the Minister of Agriculture to enter into such an agreement or a general direction in writing to that effect shall be deemed to be a written consent.

Debts due
by absentees

20.

The vesting of property of an absentee in the custodian shall not be a justification to a claim from the custodian to pay any debt or tax due from such absentee or discharge any liability incurred by him. But the custodian may, with the approval of the Minister of Finance, do so out of the property of the absentee on such terms as may seem to him fit.

Duty to
give notice
on property
of absentees

21.

(a) It shall be the duty of an absentee under regulation I(a)(i) to give the custodian, within 30 days from the date of the publication of his appointment, a notice containing details of all his property; where he obtained his title to the property as owner, beneficiary or occupier, whether himself or through some other person, after the date of such publication, he shall give notice as aforesaid within 30 days from the date of his obtaining such title; where he became an absentee after the date of publication - within 30 days from the date of his so becoming an absentee.

(b) Any person or body of persons occupying or managing any vested property shall give the custodian, within 30 days from the date of publication of

- his appointment, notice in writing containing particulars of the vested property; where the occupation or management took place after the date of publication, then within 30 days from the date on which such occupation or management took place; where the property became vested property after the date of publication - within 30 days from the date of such vesting.
- (c) Any company registered within the area of these regulations, or having therein an office for the transfer or registration of shares, shall give the custodian, within 30 days from the date of the publication of his appointment, a notice containing full particulars of all securities (including shares, stock of shares, debentures, stock of debentures and bonds) issued by such company and registered in the name or to the credit of an absentee, or held by him or in his respect; where such securities relate as aforesaid to a person who has become an absentee after the date of the publication of the appointment of the custodian, the company shall give the custodian the said notice within 30 days from the date of his so becoming an absentee.
- (d) Where a partnership has among its partners an absentee or absentees, the partnership and each partner severally shall give the custodian, within 30 days from the date of the publication of the appointment of the custodian, a notice in writing containing full particulars of the share of each absentee partner in the partnership and of any rights he or they may have

as against the partnership; where any partner has become an absentee after the date of the publication of the appointment of the custodian, the partnership and each of the partners severally shall give notice as aforesaid within 30 days from the date of such partner so becoming an absentee.

- (e) Any person who is bound under this regulation to give the custodian a notice in writing, shall also furnish him from time to time with statements, accounts and other documents and any information relating to the property in respect of which he is bound to give the notice, as may be required by the custodian from time to time.
- (f) Where the custodian has required from any person, by notice published in the Official Gazette or otherwise served on him, to furnish him, within the time prescribed in the notice, with statements, accounts, information or documents whatsoever, such person shall comply with all the requirements contained in the said notice, and no reason, including the reason that the compliance with such notice may entail the disclosure of a State secret, military secret or the implication of the person furnishing the same, shall exempt him from this duty, and any notice, statement, account, certificate or document given by him to the custodian under this regulation shall be admissible in evidence against him in any civil or criminal proceedings.

Dealing with
property of
absentees
prohibited

22. (a) No person shall -
- (1) occupy, manage or otherwise deal with any vested property, or dispose of it or transfer it to any person other than the custodian;
 - (2) pay any person other than the custodian any debt or liability being vested property, without the consent in writing of the custodian, whether before or after such payment; where the Minister of Finance has published an order in the Official Gazette requiring the obtainment of such consent before the payment, the consent of the custodian given after the payment shall thereafter be invalid.
- (b) Any act done in contravention of sub-regulation (a) shall be null and void.
- (c) The onus of proof that any act under these regulations has been done in respect of a person before he became an absentee shall be on the person making such a plea.
- (d) No transaction with respect to any vested property shall be entered in the Land Registers save with the prior consent in writing of the custodian. Where such entry has been made in contravention of this provision, the court shall, upon application by the custodian, order the entry to be struck off the Land Registers.

Transfer of
bills of
absentees
prohibited

23. No bill, being vested property, shall be transferred otherwise than by the custodian, and where it has been transferred in contravention of this provision such transfer and any subsequent transfer shall be null and void notwithstanding anything to the contrary in any other law.

Action on
authorisation
of absentee
prohibited

24. (a) No person shall act under a power of attorney or authorisation of an absentee principal, whether such principal was an absentee before the grant of the power of attorney or authorisation or has become an absentee thereafter.
- (b) The onus of proof that any action under a power of attorney or authorisation of an absentee has been lawfully done shall be on the person making such plea.

Annulment of
transfers

25. (a) Where the committee is of opinion that-
- (I) the transfer or delivery of any property to an absentee or to any other person in favour of an absentee, during the period between the 21st of Adar B, 5708 (1st April, 1948) and the date of the coming into force of these regulations, has been done with intent to smuggle the whole or part of such property or the whole or part of the consideration thereof to any part of Palestine which at the time of such transfer or delivery was outside the area of the law of Israel or to the Lebanon, Egypt, Syria, Saudi Arabia, Iraq or the Yemen; or
- (II) the transfer or delivery of any property by any absentee to any other person during the period between the 21st of Adar B, 5708 (1st April, 1948) and the date of the coming into force of these regulations, was effected for a fictitious or insufficient consideration or as result of undue pressure,
- the committee shall be competent to annul the transfer or delivery by a reasoned statement in writing.

- (b) Upon such statement as provided in sub-regulation (a) being given by the committee, the property being the subject of the statement shall be deemed to be vested property, and any person transferring, delivering or receiving such property shall be answerable to the custodian for the property or the value thereof, as the case may be.
- (c) The custodian shall give the District Court of Tel-Aviv notice in writing of such statement of the committee within 30 days from the date of the receipt by him of a notice of such statement.
- (d) The appeal shall be heard by motion and the custodian shall be summoned as a respondent in the appeal.
- (e) Where the court has found that the statement of the committee was unjustified by the facts or by law, it shall quash the statement and declare its effect to be null and void.
- (f) Any party to the appeal aggrieved by the decision of the District Court may appeal before the Supreme Court sitting as Court of Appeal, and the provisions of the Civil Procedure Rules, 1938, as amended, shall apply as though the decision of the District Court were a judgment of a Civil Court in which the appellant against the statement was the plaintiff and the custodian the defendant.

Partner-
ship having
an absentee
partner

26. (a) Where a notice has been given to the custodian under regulation 21(d) as to an absentee partner, and the custodian intends to take over the share of the absentee partner and his rights in the partnership, the custodian shall notify the remaining partners of his intention to do so within six months from the date of his receiving the said notice.
- (b) Upon the custodian having notified as provided in sub-regulation (a) - but not before - he may take part in the management of the business of the partnership and deal with the share and rights of the absentee partner.
- (c) From the date of the notice given to the custodian under regulation 21(d) to the date of the receipt of the notification of the custodian under sub-regulation (a) of this regulation, the partners who are not absentees may carry on the business of the partnership in the ordinary course but may not transfer to the partner or to any other person in his behalf any parts of his share or rights in the partnership, or artificially reduce the value thereof.
- (d) Where the custodian has not made the notification within the six months prescribed in sub-regulation(a) of this regulation, the share of the absentee partner in the partnership and his rights as against it shall be deemed to have never been property of an absentee.
- (e) Where no notice has been given to the custodian under regulation 21(d) as to an absentee partner, the custodian may at any time participate in the management of the business of the partnership and deal with the share and rights of the absentee partner in the partnership.

- (f) Upon the custodian being authorised to participate in the management of the business of the partnership of which an absentee is a partner, he may, notwithstanding the terms of the contract of partnership, dissolve the partnership by notice to the partners who are not absentees.

When property
of an absentee
is a bill

- 27. Where the property of an absentee is a bill-
 - (a) it shall be vested in the custodian even though it has not been delivered or otherwise passed to him.
 - (b) The custodian shall be exempt from presenting the bill for acceptance or payment, from giving notice of dishonour thereof or from protesting for non-acceptance or non-payment.
 - (c) Non-presentation or non-notice or non-protesting as a result of sub-regulation(b) shall not in themselves discharge any party to the bill from his obligations thereunder.

Certificate
of conforma-
tion to non-
absentee

- 28. (a) The custodian shall issue a certificate confirming that the person named therein is not an absentee, although he may be defined as such under regulation I (a) (I) (iii), if the custodian is of opinion that such person has left his town or village of residence -
 - (1) for fear that the enemies of Israel would cause him harm, or
 - (2) not because of military operations or for fear thereof.
- (b) The custodian may issue a certificate to the effect that the person named therein, who is for the time being within the area of these regulations, is not an absentee, although he may be defined as an absentee, if the custodian is of opinion that such person is in a position to administer his property efficiently and that by so doing

he will not be aiding the enemies of Israel.

- (c) Such certificate shall have effect from the date of its issue, unless it is expressly stated therein that its effect shall take place on an earlier or a later date.

Release of property of absentees

- 29. The custodian may release any property of an absentee by issuing a certificate under his hand, stating that the person in respect of whom the property became property of an absentee has ceased to be an absentee. Where the custodian has issued such a certificate, the title to the released property shall revert to such person.

Relinquishment of custodian's title

- 30. (a) The custodian may relinquish his title in the property of an absentee by issuing a certificate to this effect. Where such certificate has been issued by the custodian, the title in the relinquished property shall revert to the person who had title thereto prior to the appointment of the custodian.
- (b) The custodian may stipulate to a person requesting him to exercise his powers under sub-regulation (a), that on the issue of a certificate as aforesaid, some other property shall become occupied property. Where such person has concurred in such condition and the certificate has been issued accordingly, that other property shall become occupied property.
- (c) Where the custodian has sold vested property to another person, the sold property shall become relinquished property, while the consideration received therefor by the custodian shall become occupied property; where the vested property was a charge and the custodian has voided it against a consideration, such consideration shall become occupied property from the date the charge has been voided.

Recommendation
of Committee

31. The custodian shall not exercise his powers under regulations 28(b), 29 or 30 unless the recommendation of the committee passed by a majority of votes has been obtained in each case.

Onus of proof

32. (a) Where the custodian has confirmed in writing that any person or body of persons are absentees, such person or body of persons shall be deemed to be absentees, unless the contrary is proved.

(b) Where the custodian has confirmed in writing that a particular property is property of an absentee, such property shall be deemed to be property of an absentee unless the contrary is proved.

(c) The custodian may not be examined as to the source of information which led him to give a confirmation under these regulations.

The plea of
property being
property of an
absentee to be
reserved to
custodian

33. No plea in any civil proceedings that a certain property under litigation is property of an absentee shall be entertained by the court, unless the custodian is a party to such proceedings; where the custodian was not a party, and another person, being a party, has made such a plea, and the court considers the plea to be well-founded, it shall summon the custodian to join the proceedings as a party. If he joined, the court shall hear the plea; if not - the court shall rule the plea to be null and void.

Extracts from
Custodian's
books

(a) An extract certified by the custodian from any of his books or from any document in his possession or from any record in his official file, shall be admitted in any action or legal proceedings as prima facie evidence of the correctness of the contents thereof.

- (b) A confirmation in writing by the custodian as to any matters within the scope of his functions shall be admitted in any action or legal proceedings as prima facie evidence of the facts stated in such confirmation, unless the court has otherwise directed for any special reason.
- (c) The custodian or any officer of his staff shall not be bound to produce in any action or legal proceedings any book or document of his office the contents of which are provable under this regulation, and shall not be bound to give evidence as to any matters provable by the confirmation of the custodian as aforesaid, unless the court has otherwise directed for a special reason.

Custodian to be deemed a Government Department

- 35. (a) The custodian shall be deemed to be a Government Department with respect to exemption from taxes, rights under the Crown Actions Ordinance (cap.40) and the provisions of section 45 of the Interpretation Ordinance, 1945.
- (b) The custodian shall be entitled to be represented in all Courts by the Attorney General to the Government of Israel.

Remuneration and costs of custodian

- 36. (a) The custodian shall be entitled to receive for his dealing with any property, whether the property be actually property of an absentee or considered by the custodian to be property of an absentee, a remuneration at the rate of five per centum of the value of such property, and where the custodian has sold the property, then five per centum of the price only: Provided that the Minister of Finance may reduce or remit such remuneration.

(b) For the purpose of the determination of the custodian's remuneration, the price which, in the opinion of the custodian, could be obtained if the property were sold in the open market, shall be deemed to be the value of occupied property.

(c) Any person claiming to have been aggrieved by the determination of an excessive remuneration or by an excessive assessment of the value of the property, may submit his claim in writing to the Minister of Finance for his consideration. The Minister of Finance may decide himself on the matter or refer it to a committee to be appointed by him for this purpose. The decision of the Minister of Finance or of the committee appointed as aforesaid shall not be subject to appeal and shall not be brought before any court for hearing.

(d) The custodian shall be entitled to receive out of the occupied property all the expenses incurred by him, or with his consent, for the maintenance, repair, upkeep, etc., of the occupied property, plus interest at the rate of six per centum per annum from the date of such incurrence.

(e) Where the absentee owned two properties which became occupied property, both such properties shall, for the purpose of this regulation, be deemed to be one single occupied property.

(f) Payments which the custodian is entitled to receive in respect of any occupied property, whether as remuneration or as costs and interest or as a judgment debt against the absentee (who was the owner of the property prior to its becoming occupied property), shall be a charge on the occupied property with priority to any other charge. Moreover -

- (1) where the occupied property was, in whole or in part, money, the custodian may deduct from such money and retain the amount of such payments or any part thereof;
- (2) where the custodian has sold the occupied property, in whole or in part, he may deduct from the proceeds of the sale and retain the amount of such payments or any part thereof;
- (3) where the occupied property consisted in whole or in part of a right which has been annulled or renounced by the custodian against a consideration, then if the consideration was in form of cash the custodian may deduct from it and retain the amount of such payments or any part thereof.

(g) The custodian may withhold the issue of a certificate under regulations 28, 29, or 30 until all the amounts due to him under these regulations have been paid to him.

(h) All money received by the custodian under this regulation shall, after deducting therefrom all costs duly incurred by him, be paid by him into the Treasury.

Handling of
property of
absentees
prior to the
appointment
of custodian

37. (a) Where the Minister of Finance is of the opinion that any person who handled property of absentees during the period between the 16th of Kislev, 5708 (29th November, 1947) and the date of the appointment of the custodian, has done so to the best of his ability and in good faith and with the intention of handing over such property to reliable hands, and that such person has handed over to the custodian the property of absentees which was in his possession at or about the date of the appointment of the custodian, the Minister of Finance may confirm this fact by notice published in the Official Gazette.

- (b) The handling by any person in respect of whom a notice under sub-regulation (a) has been published by the Minister of Finance, shall be deemed to be lawful and justified for all purposes; any act forming part of such handling which was done by such person or another person on his instructions, shall not serve as ground of accusation or cause of action against such person or such other person, unless it has been proved beyond all reasonable doubt that the accused or defendant has done such act wilfully for his own benefit.

Offences

38. (a) Any person committing any of the following acts without permission from the custodian -
- (1) holds, administers, transfers or disposes of or otherwise deals with any vested property;
 - (2) pays a debt to an absentee or to his order, discharges a liability in relation to an absentee or to any other person in his behalf;
 - (3) acts under a power of attorney from an absentee;
 - (4) wilfully makes or gives to the custodian or any of his officers any declaration or information which is false in any material particular, is guilty of an offence and shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding £1 500 or to both such penalties.
- (b) Any person committing any of the following offences -
- (1) fails to furnish the custodian or any of his officers with any statement, account, notice or information which it is his duty to furnish under these regulations;

- (2) negligently makes or gives to the custodian or any of his officers any declaration or information which is false in any material particular;
 - (3) wilfully obstructs any person in the exercise of any of the powers vested in him under these regulations,
- is guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding £1,100 or to both such penalties.

Offences
committed
by a body
of persons

39. (a) Where a body of persons has committed an offence under these regulations and it has been proved that the commission of such offence was due to the negligence of a responsible officer of such body of persons, such body of persons and responsible officer shall jointly and severally be guilty of that offence and each of them severally shall be liable to the penalties prescribed in these regulations.
- (b) The chairman, presiding officer, secretary, trustee, director, managing-director and the chief accountant or accountant of any body of persons shall be deemed to be responsible officers of such body of persons.

Amendment of
Deserted Area
Ordinance,
5708 - 1948

40. The Deserted Area Ordinance, 5708-1948 shall be amended as follows:
- (a) The words "expropriation in respect of movable and immovable property", appearing in section 2(b) thereof, shall be deleted;
 - (b) the words "and make provisions in respect of any movable or immovable property within a deserted area", appearing in section 2(c) thereof, shall be deleted;
 - (c) the word "and" shall be inserted before the words "prescribe penalties", appearing in section 2(c) thereof.

Notices

41. (a) Any notice which the custodian shall or may give under these regulations, other than notices which are required to be published in the Official Gazette, may be sent by him by post to the person to whom it is directed, and if so sent shall be deemed to have been delivered to such person at the expiration of five days from the date at which it was delivered to the Post Office for dispatch, unless it is proved that the notice has reached him at an earlier date.
- (b) Any notice which may be delivered in the manner prescribed in sub-regulation (a), may be delivered by the custodian by publication in the Official Gazette, and it shall not be necessary to specify therein the name of the person to whom it is directed.
- (c) Any notice under these regulations published in the Official Gazette, shall be deemed to have been served on the person concerned on the date of publication.

Citation

42. These regulations may be cited as the Emergency Regulations on Property of Absentees, 5709-1948.

30th Heshwan, 5709
(2nd December, 1948)

Eliezer Kaplan,
Minister of Finance