

DISPOSAL OF UNCOLLECTED GOODS

Ordinances Nos. 19 of 1964, 34 of 1964, 54 of 1966.

AN ACT TO PROVIDE FOR THE DISPOSAL OF UNCOLLECTED GOODS.

[17th September, 1964.]

Short title

1. This Act may be cited as the Disposal of Uncollected Goods Act.

PART I—BAILMENT IN THE COURSE OF BUSINESS

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered

2.—(1) The provisions of this Part shall apply in relation to the bailment of any goods accepted (whether before or after the commencement of this Act) by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be re-delivered to the bailor or in accordance with the bailor's directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable. (*Amended by 54 of 1966, s. 3.*)

(2) Where goods accepted as aforesaid are ready for re-delivery but the bailor fails both—

- (a) to pay or tender to the bailee his charges in relation to the goods; and
- (b) to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,

the bailee shall, subject to the provisions of any agreement between him and the bailor and to the following provisions of this Act, be entitled, while the failure continues, to sell the goods.

(3) The bailee shall not be entitled by virtue of subsection (2) to sell goods accepted by him for repair or other treatment unless the following provisions are complied with:—

- (a) at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Act and that this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than six months from the date on which the goods are ready for re-delivery;
- (b) after the goods are ready for re-delivery, or after the commencement of this Act, whichever is the later, the bailee gives to the bailor a notice

that the goods are ready for re-delivery, being a notice complying with the requirements of subsection (7);

- (c) after the expiration of the period of six months beginning with the date of the giving of the notice that the goods are ready for re-delivery and not less than fourteen days before the sale of the goods, the bailee gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements of subsection (7),

and the bailee shall not be so entitled to sell the goods in a lot in which goods not accepted by him from the bailor are included or to sell them otherwise than by public auction:

Provided that paragraph (a) shall not apply in relation to any goods accepted before the commencement of this Act for repair or other treatment.

(4) Where, at any time before the giving of the notice of the bailee's intention to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods, or to take delivery thereof or give directions as to their delivery, on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the bailee's right to sell the goods shall be suspended until the dispute is determined.

(5) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Act as having been determined if the bailee, at any time after the dispute has arisen, gives to the bailor a notice (hereafter in this Act referred to as a "notice to treat the dispute as determined")—

- (a) stating that unless, within the period of one month beginning with the date of the giving of the notice, the bailor objects thereto, the dispute will be treated for the purposes of this Act as having been determined; and

(b) in other respects complying with the requirements of subsection (7), and within the said period of one month the bailor does not object to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined shall be the date of the giving of the notice.

(6) Where a dispute in relation to any goods is determined (whether by virtue of subsection (5) or otherwise), subsection (3) shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for re-delivery there were substituted a reference to the date on which the dispute is determined.

(7) A notice required or authorised by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with—

- (a) in the case of a notice that the goods are ready for re-delivery or a notice to treat the dispute as determined, a statement that if the bailor fails, within the period of six months beginning with the date of the giving of the notice, both to pay the said sum and to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Act;

- (b) in the case of a notice of the bailee's intention to sell the goods, a statement of the date of the giving of the notice that the goods are ready for re-delivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of fourteen days beginning with the date of the giving of the notice of the bailee's intention to sell the goods, both to pay the said sum and to take delivery of the goods or give directions as to their delivery, they are liable to be sold in accordance with the provisions of this Act.

Notices

3.—(1) In this Act, the expression "notice" means a notice in writing.

(2) A notice required or authorised by this Act to be given by a bailee to a bailor shall, where the bailor is a corporation, be duly given if it is given to the secretary of the corporation.

(3) A notice required or authorised by this Act to be given by a bailee to a bailor of the bailee's intention to sell the goods shall be given by sending it by post in a registered letter.

(4) A notice required or authorised by this Act to be given by a bailee to a bailor, other than a notice of the bailee's intention to sell the goods, may be given either—

- (a) by delivering it to the bailor; or
- (b) by leaving it at his proper address; or
- (c) by post.

(5) For the purposes of this section, the proper address of a person to whom a notice falling within the provisions of subsections (3) or (4) is required or authorised to be given shall, in the case of the secretary of a corporation, be that of the registered or principal office of the corporation, and, in any other case, be the last known address of the person to whom the notice is to be given.

Procedure after sale

4.—(1) Where goods are sold by virtue of the provisions of this Act, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee and any amount by which the said charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor.

(2) Where goods are so sold, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars:—

- (a) a sufficient description of the goods;
- (b) the date and place of the sale;
- (c) the name and principal place of business of the auctioneer, and where the gross proceeds of the sale thereof are not less than two dollars, the name and address of the buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates,

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with a copy of the notice of the bailee's intention to sell the goods and the certificate of posting of the letter in which the

notice was sent, and shall at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record, copy and certificate, or any of them, for inspection by the bailor or a person nominated in that behalf by him.

(3) A person who fails to comply with the provisions of subsection (2) or who produces a document kept for the purposes thereof which is to his knowledge false in a material particular shall be liable on conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Supplemental provisions

5.—(1) References in this Act to goods accepted by a bailee in the course of a business for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

(2) References in this Act to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold, the following additional amounts:—

(a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for re-delivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;

(b) any costs of or in connexion with the sale; and

(c) the cost, if any, of insuring the goods.

(3) References in this Act to a bailor or bailee of goods shall, as respects a period during which his rights and obligations in relation to the goods are vested in any other person, be construed as references to that other person.

(4) The powers conferred on a bailee by this Act shall be in addition to and not in derogation from any powers exercisable by him independently of this Act.

PART II—MISCELLANEOUS

Right of Crown to sell goods in certain circumstances

6.—(1) Where goods, other than goods the property of the Government of Fiji, have been deposited with any public officer in the course of his duties as such and have been in the possession of the said Government for at least three years, without any claim being made in respect thereof, an officer, specified by the Minister by notice in the Gazette, may authorise the sale of such goods by public auction.*

* Administrator-General authorised by Notification 6th November, 1967.

(2) At least three months before such public auction an advertisement containing—

- (a) a sufficient description of the goods intended to be sold thereat;
- (b) the name and address of the original depositor and the date of deposit (if these are known);
- (c) a statement that the goods will be sold by public auction unless they are claimed in writing from the Minister, within one month of the publication of the advertisement,

shall be published in the Gazette and in one copy of a newspaper published and circulating in Fiji.

(3) Where no claim (or no claim which satisfies the Minister that the goods shall be given to a claimant) is received, an advertisement containing—

- (a) the date, time and place of the public auction at which the goods are to be sold;
- (b) a sufficient description of the goods intended to be sold thereat;
- (c) the name and address of the original depositor and the date of deposit (if these are known),

shall be published in the Gazette and in one copy of a newspaper published and circulating in Fiji at least fourteen days before, and within twenty-eight days of, such public auction.

(4) The provisions of this section shall not prevent any goods so advertised being returned to the lawful owner thereof at any time prior to the day of sale.

(5) Where goods have been sold in accordance with the provisions of this section, the purchaser shall acquire a valid and indefeasible title thereto.

(6) The proceeds of such sale, less the auctioneer's fee, commission or expenses, shall be paid into the Consolidated Fund and may be claimed by and paid to the lawful owner of such goods within twelve months of such public auction.

(7) The provisions of this section shall be in addition to and not in derogation from the power of sale or disposal of goods specified in any other Act and shall apply to goods, other than goods the property of the Government of Fiji, deposited or possessed in accordance with the provisions of subsection (1) before or after the twenty-second day of December, 1966. (*Part inserted by 54 of 1966, s. 4.*)

Application

7. The provisions of this Act shall not apply to any goods which are the subject of a bill of sale.

Controlled by Ministry of the Attorney-General