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CHAPTER 33.

An Act to make emergency provision with respect to the government of India and Burma.

[27th June 1940.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Provisions as to India.

1.—(1) Any power of appointment to, or removal from, any office in India (including any power as to appointments to act temporarily in an office) being a power which, apart from the provisions of this section, would be exercisable by His Majesty, shall, during the period specified in section three of this Act, be exercisable also by the Governor-General :

Provided that the foregoing provisions of this subsection shall not apply in relation to the office of Governor-General or the office of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, but section ninety of the Government of India Act (which, as set out in the Ninth Schedule to the Government of India Act, 1935, provides for the temporary exercise of the powers of the Governor-General in the event of a vacancy in that office) shall apply in relation to any period during which the Governor-General is for any reason unable to perform the duties of his office as it applies in relation to the period mentioned in subsection (1) of the said section ninety.

26 Geo. 5. & 1 Edw. 8. c. 2.

(2) Any provision which, under the Government of India Act, 1935, could be made—

(*a*) by an Order in Council made in accordance with the provisions of subsection (1) of section three hundred and nine of that Act; or

(*b*) by rules made by, or with the sanction of, the Secretary of State,

may, during the period specified in section three of this Act, be made also by the Governor-General by notification in the Gazette of India; and any notification made under this subsection may be varied or revoked by a subsequent notification made thereunder or in any other manner in which such an Order in Council, or, as the case may be, such rules, could be varied or revoked.

(3) Section seventy-two of the Government of India Act (which, as set out in the Ninth Schedule to the Government of India Act, 1935, confers on the Governor-General power to make ordinances in cases of emergency) shall, as respects ordinances made during the period specified in section three of this Act, have effect as if the words "for the space of not more than six months from its promulgation" were omitted; and, notwithstanding the provision in the said section seventy-two that the power of making ordinances thereunder is subject to the like restrictions as the power of the Indian Legislature to make laws—

(*a*) ordinances may, during the said period, be made under that section affecting the Army Act, the Air Force Act, or the Naval Discipline Act; and

(*b*) section one hundred and eleven of the Government of India Act, 1935 (which exempts certain British subjects from certain Indian laws) shall not apply to any ordinance made under the said section seventy-two during that period.

(4) The functions of the Governor-General under this section shall be deemed for the purposes of the Government of India Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion, and so much of section eighteen A of the Interpretation Act, 1889, as provides that the expression "Governor-General," in relation to the period between the commencement of Part III of

52 & 53 Vict. c. 63.

the Government of India Act, 1935, and the establishment of the Federation of India, means the Governor-General in Council, shall not apply to this section.

Provisions as to Burma.

2.—(1) Any power of appointment to, or removal from, any office in Burma, which, apart from the provisions of this section, would be exercisable by His Majesty, shall, during the period specified in section three of this Act, be exercisable also by the Governor:

Provided that this subsection shall not apply in relation to the office of Governor.

26 Geo. 5. & 1 Edw. 8. c. 3.

(2) Any provision which, under the Government of Burma Act, 1935, could be made—

(*a*) by an Order in Council made in accordance with the provisions of subsection (1) of section one hundred and fifty-seven of that Act; or

(*b*) by rules made by the Secretary of State,

may, during the period specified in section three of this Act, be made also by the Governor by notification in the official Gazette of Burma; and any notification made under this subsection may be varied or revoked by a subsequent notification made thereunder, or in any other manner in which such an Order in Council, or, as the case may be, such rules, could be varied or revoked.

(3) Notwithstanding anything in Part IV of the Government of Burma Act, 1935, any ordinance promulgated under section forty-two of that Act during the period specified in section three of this Act and any Governor's Act made during that period may affect the Army Act, the Air Force Act or the Naval Discipline Act, or any similar law enacted by a competent authority in India; and section forty-four of the Government of Burma Act, 1935 (which exempts certain British subjects from certain Burma laws) shall not apply to any ordinance under the said section forty-two or Governor's Act promulgated or made during that period.

(4) The functions of the Governor under this section shall be deemed for the purposes of the Government of Burma Act, 1935, to be included among the functions which he is, by or under that Act, required to exercise in his discretion.

(5) The operation of subsection (1) of section nine of the Government of Burma Act, 1935 (which relates to

the procedure to be followed as to Instructions from His Majesty) is hereby suspended during the period specified in section three of this Act.

Period during which powers are exercisable.

3. The period referred to in the preceding sections is the period beginning with the date of the passing of this Act and ending with such date as His Majesty may by Order in Council declare to be the end of the emergency which was the occasion of the passing of this Act.

Reference to be made to Secretary of State.

4.—(1) Without prejudice to the provisions of section three hundred and fourteen of the Government of India Act, 1935, and section ten of the Government of Burma Act, 1935 (which provide for the control of the Secretary of State over the discretionary powers of the Governor-General of India and the Governor of Burma) the powers exercisable by virtue of this Act by the Governor-General of India and the Governor of Burma shall not be exercised except on the direction of the Secretary of State:

Provided that the Governor-General or the Governor, as the case may be, may exercise any such powers without any such direction if, and only if, it appears to him that it is essential that the powers should be exercised and that a previous reference to the Secretary of State is likely to cause undue delay in the exercise thereof.

(2) The validity of anything done by the Governor-General or the Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

Short title.

5. This Act may be cited as the India and Burma (Emergency Provisions) Act, 1940.

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