

TRINIDAD AND TOBAGO.

No. 15.—1898.

4th July.

AN ORDINANCE to authorize the acquisition of land for public purposes.

[L.S.]

C. C. KNOLLYS,

ACTING GOVERNOR.

15th July, 1898.

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as "The Land Acquisition Ordinance, 1898." Short title.

2. In this Ordinance the term—

Interpretation

"Person interested" includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Ordinance, but does not include a tenant by the month.

"Colony" means the Colony of Trinidad and Tobago.

“Land” includes easement and incorporeal hereditament, and includes chattel interests in land.

“Commissioner” means a Stipendiary Justice of the Peace acting under the provisions of Ordinance 16 of 1851, intituled “An Ordinance for the establishing of Petty Civil Courts.”

“District Court” means a Court held under the authority of “The District Courts Ordinances, 1888-1893.”

“Promoters” means any corporation, company or persons desirous of acquiring land under the provisions of Sections 61-64 hereof inclusive.

Where under this Ordinance any notice shall be required to be given to the owner of any land, or where any act shall be authorized or required to be done with the consent of any such owner, the term “owner” shall mean any person who under the provisions of this Ordinance would be enabled to sell and convey lands taken under this Ordinance.

Wherever the Director of Public Works is named herein the term shall be taken to include for the purposes of this Ordinance any other public officer in charge of any particular work and any surveyor officer workman or other person authorized by such Director or other officer.

Power to enter
land, etc.

3. Whenever the Legislative Council has appropriated any moneys towards any public works or

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purposes, it shall be lawful for the Director of Public Works to do all or any of the following things, that is to say:—

- (a.) To enter upon and survey and take levels of any land in any locality within which such public works are intended to be executed.
- (b.) To dig or bore into the sub-soil of such land.
- (c.) To do all other acts necessary to ascertain whether the land is adapted to such purpose.
- (d.) to set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon.
- (e.) To mark such levels, boundaries and lines by placing marks and cutting trenches.
- (f.) Where otherwise the survey cannot be completed, the levels taken or the boundaries or line of the work marked, to cut down and clear away any standing crop, fence, tree or bush.
- (g.) To set up and maintain gauges in any stream or watercourse and have access to the same from time to time for purposes of observation.
- (h.) To do all such other acts as may be incidental to or necessary for any of the purposes aforesaid.

Provided that the Director of Public Works shall not enter into any building or into or upon any enclosed yard, court or garden attached to a dwelling house unless with the consent of the occupier thereof, without previously giving such occupier at least seven days notice in writing of his intention to do so.

Director of
Public Works
to post notice.

4.—(1.) When the Director of Public Works shall have entered on any land under the powers in the last Section contained with the intention of appropriating and taking the same or any part thereof for the purposes of any public works he shall cause such lands to be marked out and a notice to be posted in some conspicuous part of such lands, and such notice shall state in respect of what public work such land has been entered and that claims for compensation for all interests therein may be made to the Director of Public Works and such notice shall be signed by the Director of Public Works or person authorized as aforesaid, and the marking out of such lands and the putting up of such notice shall be conclusive evidence of the said lands having been entered with the intention of appropriating the same for a public work.

(2.) Such notice shall also state the particulars of the land and of the part thereof intended to be taken (so far as may be) and shall require the owner and all persons interested therein to appear personally or by attorney or agent before the Director of Public Works or a person authorized by him in that behalf at a place and time in such notice mentioned (such time not being earlier than thirty days from the date of the publication of the notice) to state the nature of their respective interests in the lands and the amounts and particulars of their claims to compensation for such interests.

(3.) The Director of Public Works shall also serve notice to the same effect on the occupier of any such land and on all mortgagees and on all such other persons as are known to him to be interested therein or to be entitled to act for the persons so interested.

Provided that if such mortgagee or person so interested shall be absent from the Colony and has no attorney or agent within the Colony and his address be known, notice may be sent to him by post.

Any person removing any marks or defacing any notice placed or posted in accordance with the provisions of this Ordinance shall be guilty of an offence against this Ordinance, and on summary conviction before any Stipendiary Justice of the Peace shall forfeit and pay any sum not exceeding Twenty Pounds, and in default of payment thereof shall be imprisoned either with or without hard labour for any term not exceeding six months.

5. It shall be lawful for the Director of Public Works on behalf of the Crown to acquire the land necessary for such public works or purposes either by private agreement for purchase or exchange, or by arbitration, or by compulsory purchase in manner hereinafter provided, and either without entering into provisional occupation of the same as in the third Section hereof provided, or at any time after such entry; and he may proceed with the construction of the permanent works to be constructed or erected without waiting for the definite vesting of such land under Section 6 hereof; or at his discretion he may at any time before such definite vesting abandon the acquisition of any such land notwithstanding that the same may have been so entered upon as in the third Section mentioned, or that the construction of works thereon may have been proceeded with, unless the land has in the meantime been acquired by private agreement or arbitration or the compulsory purchase thereof has been completed by an award for compensation under this Ordinance.

Director of
Public Works
to acquire land.

Notice of appropriation in *Royal Gazette* to vest land in the Crown.

6. On the acquisition of land under this Ordinance for public purposes being decided on it shall be lawful for the Governor by notice in the *Royal Gazette* to declare the same to have been appropriated for the public purpose mentioned in such notice, and thereupon the soil of such land shall become vested in Her Majesty the Queen, and shall if the acquisition thereof be thereafter abandoned under any provision hereof thenceforth revert in the owner or person interested for his prior estate, on similar notice of such abandonment being published in like manner.

Owner may claim appropriation or abandonment.

7. If the Governor has not caused notification of the appropriation or abandonment of any lands entered on to be made in manner by the last Section hereof provided, it shall be lawful for the owner thereof at any time after the expiration of 42 days from the first entry on such land under Section 3, by notice in writing to the Colonial Secretary, to claim that such land be either appropriated or abandoned, and if the Governor shall not within one month from such notice abandon the same it shall be deemed to have been definitely appropriated without the power of subsequent abandonment, and compensation in respect thereof shall become due and be assessed as herein provided.

Director of Public Works may require information respecting land entered.

8.—(1.) The Director of Public Works may before or after entry under Section 3 hereof require the occupier and any other person known or believed to be interested in any land entered or intended to be entered to deliver to him within a time to be specified being not less than twenty-one days a statement in writing containing so far as may be within his own knowledge, the name of every other person possessing any

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interest in the land or any part thereof as co-partner, mortgagee, lessee, sub-lessee, tenant or otherwise and of the nature of such interest.

(2.) Every person required to make and deliver a statement under this Ordinance who shall wilfully make any false statement or refuse to make a statement shall be guilty of an offence punishable on Summary Conviction and on conviction thereof before a Stipendiary Justice of the Peace may be fined any sum not exceeding £20 or in default of payment may be imprisoned with or without hard labour for any term not exceeding six months.

9. It shall be lawful for all parties being seized or possessed of or entitled to any lands that may be required for any public work or any estate or interests therein to sell and convey or release the same to the Governor; and particularly it shall be lawful for all or any of the following parties so to sell, convey or release (that is to say) all corporations tenants in tail or for life, married women seized in their own right or entitled to dower, guardians, committees of lunatics or idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower or to any lease for life or for lives and years and for years or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties other than married women entitled to dower or lessees for life or for lives and years or for any less interest not only on behalf of themselves and their

Parties under disability enabled to sell and convey.

respective heirs executors, administrators, and successors, but also for and on behalf of every person entitled in reversion remainder or expectancy after them or in defeazance of the estates of such parties; and as to such married women whether they be of full age or not, as if they were sole and of full age; and as to such guardians on behalf of their wards and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this Ordinance if they had respectively been under no disability; and as to such trustees executors and administrators, on behalf of their *cestuis que trust* whether infants, issue unborn, lunatics, *femes covert* or other persons, and that to the same extent as such *cestuis que trust* respectively could have exercised the same power under the authority of this Ordinance if they had respectively been under no disability.

Provided that all moneys paid under this Section shall be paid into Court to the credit of whomsoever may be entitled thereto.

Other powers
of parties
under dis-
ability.

10. The power to release lands from any rent charge or incumbrance and to agree for the apportionment of any such rent charge or incumbrance may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands.

Owner may
claim compen-
sation for
entry on lands
abandoned.

11. If in respect of such notice in writing as in Section 7 hereof mentioned the Governor, or if the Director of Public Works after entry under Section 3 hereof, abandons such land, then and in either such case compensation shall be made to such owner in respect of any actual damage or injury resulting to him by

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reason of any act committed thereon under the powers in Section 3 contained, and the amount of such compensation in case of difference and in default of arbitration shall be assessed by the Judge of the District Court or Commissioner for the District in a summary manner, and shall (with such costs as may be awarded) be paid to such owner by the Receiver-General on the warrant of the Governor. But nothing shall in such case be awarded by way of compensation for loss of bargain or damages for breach of contract, nor in respect of any matter which under the provisions of Section 41 hereof shall not be legally the subject of compensation, nor in such case shall any additional compensation be awardable in respect of compulsory purchase.

12. The owner of any lands appropriated who shall refuse to accept such sum of money as may be offered for the purchase thereof may claim to have the amount of compensation referred to arbitration, and in the absence of any consent so to refer the same or as to the arbitrators to be appointed or otherwise as to the terms of submission to arbitration, then the compensation for such land shall subject as in Sections 21 22 and 24 hereof hereinafter provided be assessed by the Judge of the District Court or the Commissioner of the district in which such lands are situate as the case may be, if the compensation claimed shall not exceed Fifty Pounds; and in all other cases shall be assessed by the Court for assessment of compensation hereby constituted.

Land taken to be paid for by compensation.

13. The purchase-money or compensation to be paid for any lands to be purchased or taken by the Director of Public Works or person authorized as aforesaid from any party who by reason of absence from this Colony is prevented from treating or who cannot after diligent

Compensation to absent parties, etc., to be fixed by judge.

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inquiry be found or who shall not appear at the time appointed for the enquiry after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by a Judge of the Supreme Court, after valuation by one or more of the assessors appointed under Section 31 hereof as he shall nominate for that purpose as hereinafter mentioned.

Judge to
nominate
assessors.

14. Upon application by the Director of Public Works to a Judge and upon such proof as shall be satisfactory to him that any such party is by reason of absence from this Colony prevented from treating or cannot after diligent inquiry be found or that any such party failed to appear on such inquiry after due notice to him for that purpose, such Judge shall by writing under his hand nominate one or more of the assessors appointed under Section 31 hereof to make such valuation as aforesaid and the assessors so nominated shall thereupon proceed accordingly and shall annex to their valuation a declaration in writing subscribed by them of the correctness thereof.

Safe custody
and production
of valuation,
etc.

15. The valuation to be made by such assessor or assessors shall be delivered to the Director of Public Works and shall be by him preserved, and he shall at all times produce the said valuation and other documents on demand to the owner of the lands comprised in such valuation.

Expenses
how to be
borne.

16. All compensation under this Ordinance and all the expenses of and incidental to every valuation as in Sections 14 and 15 provided, and all expenses of acquisition, save as in pursuance of Section 45 hereof expressly otherwise ordered, shall be at the charge of the Colony

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and be paid by the Receiver-General on the warrant of the Governor, save and except as in Section 63 hereof provided in the cases therein mentioned.

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17. The compensation awarded by the Judge under Section 13 hereof shall be paid into the Colonial Treasury to the credit of the person or persons to whom such compensation shall have been awarded if such person or persons cannot be found or is or are absent from the Colony, and upon the application by petition to a Judge the moneys so deposited shall be paid to the persons entitled thereto in such proportions and according to such respective rights and interests and in such manner as the Supreme Court may direct and order.

Disposal of
compensation
money in case
of absent
owners.

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18. If the owner or person interested shall be dissatisfied with such valuation it shall be lawful for him at any time within twelve months after such payment as in the last Section mentioned and before he shall have applied to the Supreme Court for payment of the moneys so deposited, by notice in writing to the Director of Public Works to require the question of such compensation or purchase money to be submitted for assessment and thereupon the same shall be submitted accordingly in the same manner as in other cases of disputed compensation under this Ordinance.

Dispute as to
amount of
compensation
to absent
owners.

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19. Where any question shall arise touching the title of any person to any lands which may be taken or entered upon for the purposes of this Ordinance, or touching any estate or interest therein, the person having the ostensible possession or enjoyment of the rents and profits of such land shall be deemed the

Person in
possession to
be deemed
owner.

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owner of the same, for the purpose of determining the amount of compensation payable in respect of any such lands.

Compensation
to adjacent
proprietors.

20. Subject as is provided in and by the provisions of Sub-sections 6, 7 and 8 of Section 41 hereof the owner of any land which without any portion thereof having been actually acquired has been injured by the erection or construction upon lands acquired under this Ordinance of any public work shall be entitled to compensation in respect of any easement or right appurtenant to such land destroyed or interfered with or of any injury caused to such land by such erection or construction.

When compen-
sation claimed
does not exceed
£50, assess-
ment to be by
District Court,
&c.

21. In cases where it does not appear that the compensation claimed exceeds Fifty Pounds, a Judge of a District Court or Commissioner as aforesaid upon the application of either party may summon the other party to appear before him at a time and place to be named in the summons and upon the appearance of such parties, or in the absence of any of them, upon proof of the due service of the summons, it shall be lawful for him to hear and determine the question and amount of the compensation and for that purpose to examine such parties or any of them and their witnesses upon oath, and the costs of every such enquiry shall be in his discretion, and he shall settle the amount thereof.

Claim exceed-
ing £50 may on
affidavit of
assessor be
referred to
District Court,
&c.

22. Provided that in any case in which the compensation claimed exceeds Fifty Pounds it shall be competent to the Director of Public Works to apply to a Judge of the Supreme Court in Chambers on summons

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to be duly served on the claimant supported by the affidavit of an assessor appointed under Section 31 hereof that the market value of the land to be taken does not exceed Fifty Pounds for an order referring the question of compensation to a Judge of a District Court or Commissioner as aforesaid, and if such Judge of the Supreme Court is satisfied on evidence that the compensation will probably not exceed Fifty Pounds then the assessment of compensation shall be referred to such Judge of a District Court or Commissioner. But in such case the Judge of the District Court or Commissioner shall be at liberty to award a greater sum than Fifty Pounds if it shall so seem fit.

23. Nothing in this Ordinance contained shall be construed or deemed or taken to prevent or preclude the persons interested from submitting the difference between them as to compensation to the decision of an Arbitrator or Arbitrators in manner provided by the LIX Order of the Rules of Court in the Schedule to "The Judicature Ordinance, 1879" or as may be provided by any Law, Rule, or Regulation which hereafter may be passed with regard to arbitrations or awards. Arbitration.

24. In cases where the compensation claimed exceeds Fifty Pounds it shall subject as in Section 22 hereof provided and in default of arbitration under Section 23 hereof, be lawful for a Judge of the Supreme Court on summons by the owner entitled in the matter of the Land Acquisition Ordinance and of the compulsory purchase of such land (satisfactory proof of notice having first been given by such owner stating the sum Summons and order for assessment.

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which he is willing to accept as such compensation), to order that the value of such lands be assessed by a Judge of the Supreme Court with or without the assistance of assessors according to the provisions hereof, and such summons shall be returnable within seven days and shall be served on the Crown Solicitor and on all persons other than the applicant resident in the Colony and the attorney or agent of persons not resident in the Colony whose names shall have been mentioned by any such owner as being interested in such land. The summons and order in this Section mentioned are herein referred to as "summons for assessment" and "order for assessment" respectively.

Proceedings
on summons
for assessment

25. On the return of the summons for assessment the Judge shall satisfy himself as far as may be as to persons other than applicants interested in such land and may adjourn the further hearing of the summons to allow of their being served, and shall, subject to such adjournment if any, appoint a day for the assessment thereof by a Judge with or without assessors to be named as herein provided, and may direct the service on any person other than the applicant alleged to be interested in such land of a notice requiring him or them to state on or before a day to be therein named the nature of his alleged interest if any and the sum which he claims as compensation in respect thereof.

Assessors to be
nominated.

26. On the return of the summons for assessment the Judge shall also direct the Crown Solicitor and the persons alleged to be interested or such of them as he shall think fit, to appoint on or before a day to be mentioned in the order for assessment two qualified assessors from the list hereinafter mentioned, one to

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be nominated by the Crown Solicitor and the other by the persons interested, for the purpose of aiding the Judge in determining the amount of compensation in manner herein directed: Provided always that assessors shall not be appointed unless the Judge otherwise directs, in cases where the Judge is of opinion on satisfactory evidence that the amount of compensation will not exceed One Hundred Pounds, but in every such case the amount of such compensation, unless otherwise expressly directed by the Judge, shall be determined by a Judge alone without assessors. Provided also that if the claimant in any such case elect that the amount of compensation shall be determined and assessed by a Judge alone without assessors it shall be lawful for the Judge at his discretion irrespective of the amount claimed to make his order for assessment by a Judge alone.

27. A similar order for assessment may be made on summons issued by the Crown Solicitor and served upon the person or persons alleged to be interested in such land on proof that notice has been served on such person or persons as in the third part of Section 4 hereof provided, or in default of such persons on proof that there has been affixed on some conspicuous place on or near the land proposed to be acquired the notice in the said Section. But nothing herein contained shall be deemed to invalidate or render inapplicable or incomplete any procedure that may be taken under Sections 13-17 inclusive of this Ordinance.

28. The order for assessment shall in case no person appears to such summons on behalf of the persons interested or in case it shall appear to the Judge that no

Order for
assessment on
application of
Crown
Solicitor.

Power to name
assessors for
unascertained
owners.

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person so appearing is interested, name two assessors to attend the assessment on behalf of any person who may be interested in such land.

Power to name assessors for claimants disagreeing.

29. The order for assessment shall name the assessors (if any) selected by the respective parties, and in case the parties interested in such land if more than one fail to agree upon the assessors to represent them the Judge in the order for assessment shall appoint assessors on their behalf from among those named by such parties.

Jurisdiction of Judges as to application.

30. For the purpose of hearing and disposing of the summons for assessment and making the order for assessment the Judge in Chambers, and for the purpose of the assessment and for all purposes of dealing with applications which may lawfully be made between the order for assessment and the assessment, the Judge named to preside over the assessment shall exercise all such powers as by the rules of the Supreme Court for the time being in force may be lawfully exercised by a Judge in Chambers or by a Judge at the trial respectively in respect of any action or other proceeding at law, applicable to the trial of an action for damages.

List of assessors to be appointed by Governor.

31. The Governor shall appoint assessors not less than 20 in number, being persons willing to serve when required, and skilled in the valuation of property of the several descriptions of real property common in the Colony, and a list of such assessors shall be published in the *Royal Gazette* and kept in the Registry of the Supreme Court, and the Governor may from time to time add to such list and may substitute other names for those of persons dying, departing from the Colony, or desiring to discontinue serving; and each assessor whose name is on such list shall be compellable by writ

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of subpoena to serve on any such assessment unless he shall satisfy the Judge that he is for good cause unable to serve or ought for good cause to be excused from service, and in case of neglect or default to attend as required after having been duly summoned may be fined in such sum not exceeding Twenty Pounds as may be required by a Judge.

In case of any such assessor being excused from serving or not attending any particular case, a Judge may at any time before trial on the application of the party on whose behalf such assessor has been appointed proceed to appoint another assessor in his stead.

32. No assessor shall proceed to act in the matter of any valuation or assessment unless he shall have first made and signed before a Judge in an assessors declaration book to be kept by the Registrar of the Supreme Court the declaration following:—

Declaration by
assessors.

“I (A.B.) do solemnly and sincerely declare that in all matters and cases submitted to me or with which I may have to deal under the provisions of the Acquisition of Lands Ordinance, 1898, I will faithfully, honestly and impartially execute my duties to the best of my judgment, skill and ability.

33. So far as possible the Judge named in the order of assessment shall from the date of such order be deemed the Judge having seisin of the case, and the assessment and all proceedings between the order of assessment and the assessment shall be had and taken before such Judge; but nothing herein contained shall be deemed to invalidate any assessment or any order made in the

Judge
appointed to
assess to have
seisin of case
from time of
appointment.

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matter of such assessment by any Judge of the Supreme Court.

Trial.

34. The Judge and assessors (if any) shall on a day to be named in the order for assessment or in some subsequent order of a Judge proceed to assess the compensation to be awarded to the plaintiff in the prescribed manner. And such trial shall be had in such place and at such time and adjourned to such place and time as the Judge shall direct, and the trial shall be public. And the Registrar of the Supreme Court by himself or one of his clerks shall attend the Court in the same manner and perform the same duties with respect to such assessment as he would perform with respect to the trial of any action, and the procedure in the trial of a civil action shall be followed as far as the same shall be applicable, and the parties shall be entitled to the same right of retaining and being heard by counsel and solicitor as in an action at law.

On such enquiry the owner of the land shall be deemed the plaintiff, and the Director of Public Works shall be deemed the defendant, and the proceedings shall be deemed to be proceedings in the Supreme Court.

Either party shall have power to subpoena any person as a witness, and to enforce the attendance of such witness, and any witness failing to attend without sufficient cause, or who shall appear but refuse to be examined, or to give evidence touching the subject matter in question, shall be proceeded against in the same manner as any other person failing to attend or refusing to be examined or to give evidence as a witness before a Judge of the Supreme Court.

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35. It shall be competent for the Chief Justice Rules may be made. with the assent of the Puisne Judges or one of them to make such rules, forms, schedules of fees and scales of costs consistent with the provisions hereof as may from time to time appear necessary for regulating the procedure of the Supreme Court in respect of the summonses for assessment and assessments before such Supreme Court or any Judge thereof hereby directed, and from time to time in like manner to add to or amend such rules, and such rules, forms, schedules and scales shall be laid before the Legislative Council when made in the same manner as rules and orders under the Judicature Ordinance, 1879. And so far as by this act or by such rules is not otherwise provided the enquiry and the judgment thereon and all proceedings matters and things incident or ancillary thereto shall be had and taken in all respects in the same manner as in respect of the trial and judgment in an action for damages in the ordinary jurisdiction of such Court.

36. Subject as in Section 46 provided the opinion Opinions of assessors to be recorded. of such assessors as to the value of each alleged item of compensation shall be given orally and shall be recorded in writing by the Judge.

37. On all questions arising at the trial as to title Questions of law to be decided by Judge alone. or law or practice or usage having the force of law the opinion of the Judge shall prevail and there shall be no appeal therefrom save as in Section 46 hereof provided.

38. In case the Judge or one or both of the Judge to be umpire as to questions of amount as between assessors. assessors agree as to the amount of compensation or as to the amount of any item, or in case the Judge as to

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any such amount awards any sum greater than the lower and less than the greater of the amounts found by the assessors respectively, then the decision of the Judge shall be final.

Judgment,
subject to
appeal, where
Judge rules as
to amount
outside the
findings of
assessors.

39. In case the Judge as to the total amount of compensation or as to the amount of any item finds for a less sum than the smaller or a greater sum than the greater of the amounts found by the assessors respectively, then the decision of the Judge shall, subject to appeal as provided in Section 46 hereof, be entered as the judgment of the Court.

Assessors fees.

40. Every assessor shall receive such fee for his services as the Judge shall direct, provided that such fees shall not exceed Five Pounds for any day or Three Pounds for any day after the first. Such fee shall be paid in the first instance by the Director of Public Works out of moneys to be provided by the Receiver-General and shall be deemed to be costs in the proceedings.

Items of
assessment to
be taken into
consideration

41. In determining claims for compensation for lands acquired under this Ordinance, the assessors Judge or Commissioner may take into consideration

1. The market value of the land at the time of awarding compensation ;
2. Any damage sustained by the person interested at the time of awarding compensation by reason of severance ;
3. The damage (if any) sustained by the person interested at the time of awarding compen-

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sation, by reason of the acquisition injuriously affecting his other property or his earnings;

4. If in consequence of the acquisition he is compelled to change his residence, the reasonable expenses (if any) incidental to such change;

but shall not take into consideration the following:—

5. The degree of urgency or necessity which has led to the acquisition;
6. Any *pretium dilectionis* or disinclination of the person interested to part with the land acquired;
7. Any damage sustained by the person interested, which if caused by a private person, would not render such person liable to an action;
8. Any damage not being in the nature of deprivation of or interference with an easement or legal right which after the time of awarding compensation is likely to be caused by or in consequence of the use to which the land acquired will be put;
9. Any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;
10. Any outlay or improvements on such land which shall appear to have been made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor in the event or with the view of

such land being required for the public purpose for which the same has been required.

42. In determining claims for compensation the Court, Judge or Commissioner shall have power to consider and award to the claimant in respect of compensation for compulsory purchase, in addition to the matters herein specified such sum not exceeding 10 per cent. of the market value of the land at the time of awarding compensation as to the Court, Judge or Commissioner shall seem fit.

As to severance, the Court shall have power to assess compensation on the footing that any specified works crossings or access agreed to on behalf of the Director of Public Works shall be erected provided and allowed, and any such agreement shall be reduced into writing and be signed by the Judge and shall be valid and effectual and binding on the Director of Public Works and on the Plaintiff and his successors in title.

Award in writing.

43. Every award made under this Ordinance shall be in writing signed by the Judge and the assessors or assessor (if any) concurring therein, shall be published in the *Royal Gazette*, and shall specify the amount awarded under the several heads of claim, as hereinbefore provided.

Costs.

44. There shall also be signed by the Judge and filed with the proceedings an allocatur either after or without taxation, specifying the amount of costs incurred in the proceedings under this Ordinance and by what persons and in what proportions they are to be paid.

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45. The amount of costs and all questions relating thereto shall be determined by the Judge alone, but the claimant shall be held entitled to his costs of all proceedings reasonably and properly taken, unless it shall appear that his conduct has been unreasonable and vexatious or his claims grossly excessive, or that he has been party to some deceit or fraud in respect of his claim.

Costs to be allowed to claimant unless in case of misconduct.

46. In the event provided for by Section 39 hereof the Judge shall make and sign his judgment alone, giving the reasons for his decision, and each of the assessors shall in writing forward and give reasons for his conclusion. Either party may appeal therefrom to the Court of Appeal.

Appeals.

Every appeal under this Section shall be filed within thirty days of the publication of the judgment.

47. There shall be no appeal from an assessment except as in and by the last Section provided. But it shall be lawful for a Judge or Commissioner in any case, whether sitting with assessors or not, and whether on the application of either party to the assessment or not, to state for the opinion of the full Court any question of law or of principle of assessment or any question of title as to which the Judge is of opinion that the judgment of the Supreme Court should be obtained, for the opinion of the full Court, to be heard and determined as provided by the Rules of the Supreme Court in respect of the determination of any question of law or statement of a special case in any action.

Special case may be stated.

48. On the production of a copy of a judgment of the Supreme Court, certified by the Registrar, or on the

Payment of compensation recovered.

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production of a copy of a judgment, certified by a Judge of a District Court or a Commissioner, the amount for which judgment shall have been given shall be paid by the Receiver-General on the warrant of the Governor.

Costs of
Director of
Public Works.

49. All costs and expenses incurred by the Director of Public Works incident to such inquiry shall be paid by the Receiver-General on the warrant of the Governor.

Claims for
compensation
to be made
within a
limited time.

50. No claim for compensation in respect of any lands which may be entered upon, surveyed, set out, appropriated or taken under the authority of this Ordinance shall be admitted or entertained, unless the same shall be made within twelve months after the day on which such lands shall have been so entered upon, surveyed, set out, appropriated or taken, as the case may be.

No claim for compensation in respect of any lands which may be alleged to have been injuriously affected by the construction of any public work in respect of which the Legislative Council may have appropriated any money shall be admitted or entertained after the expiration of 12 months computed from the date of a notice published in the *Royal Gazette* by the Director of Public Works certifying the completion of such public work.

Resumption of
land under
Crown Grants
not to give
claim for
compensation.

51. Nothing in this Ordinance contained shall be construed or deemed to confer upon any person any right to compensation in respect of any land resumed in the name of Her Majesty, Her heirs or successors as required for Roads, Railways or other public works in pursuance

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of any condition, reservation or power of resumption contained in any grant of Crown or waste lands.

52. If in any case in which according to the provisions of this Ordinance the Director of Public Works or person authorized as aforesaid is authorized to enter upon any lands required for any public work, or in which notice of appropriation of any land has been given in accordance with the provisions of Section 6 or such land has been appropriated under Section 7 hereof the owner or occupier of or person interested in any such lands or any other person refuse to give up the possession thereof or hinder the Director of Public Works from entering upon or taking possession of the same or from doing or continuing any work thereon as the case may be, it shall be lawful for the Governor to issue his warrant to the Marshal to deliver possession of the same to the Director of Public Works or person authorized as aforesaid, and upon the receipt of such warrant the Marshal shall deliver possession of any such lands accordingly; and the costs accruing by reason of the execution of such warrant to be settled by the Marshal and allowed by the Governor, shall be paid by the person refusing to give possession, or hindering the Director of Public Works as aforesaid, and the amount of such costs shall be deducted and retained by the Governor from the compensation, if any, then or thereafter to become payable to such party, and if no compensation be payable to such party, or if the same be less than the amount of such costs, then such costs or the excess thereof beyond such compensation if not paid on demand shall be levied by distress, and upon application to any Justice of the Peace for that purpose he shall issue his warrant accordingly.

Case in which
owner, &c.,
of lands shall
refuse to per-
mit entry or
to give up
possession.

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In cases where notice is given that lands taken are mortgaged, amount of compensation to be deposited in Treasury.

53. If any person having a mortgage or charge on any lands set out, appropriated or taken for the purposes of this Ordinance, or the trustee for any such person, or the guardian of any infant, or committee of any lunatic having such mortgage or charge shall give notice in writing to the Director of Public Works or person authorised as aforesaid within the time specified in the notice after such lands shall have been so set out, appropriated or taken, of the amount due in respect of such mortgage or charge, and the nature and date of the instrument or security under which such mortgage or charge is claimed, it shall then be lawful for the Governor to order the compensation payable in respect of such lands, or so much thereof as shall be sufficient to pay off the amount due in respect of such mortgage or charge, to be deposited in the name and with the privity of the Registrar of the Supreme Court, with the Receiver-General, to be placed to the credit of the parties having such mortgage or charge in such lands, describing them so far as the Director of Public Works can, subject to the control and disposition of the Supreme Court.

Where title disputed compensation to be deposited in Treasury.

54. If any difficulty or question shall arise as to the title of any lands taken or used for the purposes of this Ordinance, or as to the person entitled to the compensation to be made in respect of such lands or any part thereof, it shall be lawful for the Governor to deposit the compensation payable in respect of such lands, in the name and with the privity of the Registrar of the Supreme Court, with the Receiver-General, to be placed to the credit of the persons interested in such lands, describing them so far as can be done, subject to the control and disposition of the Supreme Court.

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55. Upon the application by petition of any person making claim to any moneys deposited under any provision of this Ordinance the Supreme Court may, in a summary way, and after such notice as to the Court shall seem fit, and to such person or persons as the Court shall direct, order distribution and payment of such moneys according to the respective rights and interests of the persons making claim to such moneys or any part thereof, and may make such other order in the premises as to the Court shall seem fit.

Moneys so deposited to be paid on order of Supreme Court.

56. In all cases of moneys deposited under this Ordinance, it shall be lawful for the Supreme Court, if it shall see fit, to order all costs attending the depositing of such moneys, and the orders for the distribution and payment of such moneys and of all proceedings relating thereto except such as are occasioned by litigation between adverse claimants, to be paid by the Receiver-General on the warrant of the Governor.

Costs of payment out, &c., to be paid by Receiver-General.

57. All reasonable costs charges and expenses incurred by the owners of the land or parties therein interested for all conveyances and assurances of any lands purchased or acquired and of any outstanding terms of interest therein, and of deducing, evidencing, and producing title to such lands terms or interest, and of making out such abstracts and attested copies as the Director of Public Works may require, and all other reasonable expenses incident to the investigation deduction and verification of titles shall be paid by the Receiver-General on the warrant of the Governor.

Conveyancing costs to be paid by Receiver-General.

58. If any person shall assault or beat or obstruct or aid or abet any person to assault or beat or obstruct

Assaulting or obstructing Marshal or Director of Public Works.

- (a.) The Marshal or any of his assistants in the execution of his duty under this Ordinance; or
- (b.) The Director of Public Works or other person authorized as aforesaid, or his workmen, servants or agents in the execution of his or their duty under this Ordinance,

every such person shall be guilty of an offence against this Ordinance, and on summary conviction before a Stipendiary Justice of the Peace shall forfeit and pay any sum not exceeding Fifty Pounds, and in default of payment shall be imprisoned either with or without hard labour for any term not exceeding six months.

Protection of
persons acting
under Ordinance.

59. For the protection of persons acting in execution of this Ordinance, all actions and prosecutions to be commenced against the Director of Public Works or person authorized as aforesaid, or his workmen, servants or agents for anything done by him or them in pursuance of this Ordinance shall be commenced within six calendar months after the act committed and not otherwise.

Notice in writing of such action and of the cause or causes thereof shall be given to the defendant one calendar month at least before the commencement of the action.

In any such action the defendant may plead the general issue and give this Ordinance and the special matter in evidence in any trial to be had thereupon.

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought: or if a sufficient sum of money shall have been paid into Court by or on behalf of the defendant after such action brought, and notice of such payment has been given to the plaintiff or his solicitor.

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If a judgment shall pass for the defendant, or the plaintiff shall become nonsuit or discontinue any such action, the defendant shall be entitled to his full costs of suit to be taxed as between solicitor and client and have the like remedy for the same as any defendant hath by law in other cases.

60. A Local Road Board constituted under the provisions of the Roads Ordinances, 1894-5, may at any time by their proper officers exercise all the powers of this Ordinance in respect of the entry into and acquisition of lands required for the improvement of existing roads, and (subject as in 72 of Ordinance No. 10 of 1894 provided) in respect of the formation of new roads within its district, without any other further authorization or sanction than in such section provided, in the same manner in all respects as if the Road Officer of such Board were one of the persons included in the expression Director of Public Works in the interpretation section hereof, and in such case a resolution of the Board shall for the purpose of authorizing the entry into lands be deemed equivalent to the appropriation of monies by the Legislative Council in the third section hereof mentioned.

Applicability
of Ordinance
to acquisition
by Local Road
Boards.

61. Any municipal or other public corporation in the execution of its corporate duties, and any other corporation company or other persons who shall have obtained the sanction of the Governor and Legislative Council for the undertaking, erection or provision for the benefit of the inhabitants of any municipal or other district, or in the case of a company or other persons for the benefit of the shareholders of such company or of such persons respectively, of railways, tram-

Application of
Ordinance to
municipalities,
companies,
etc.

ways, the supply of lighting, electricity, water or power, or for other work of a public nature,] may from time to time by order of the Governor in Executive Council and on the conditions in the following Sections hereof mentioned, exercise the powers of this Ordinance for the acquisition of such land as the Governor in Executive Council may by order authorize to be acquired for such purposes or such undertaking, and in such case the powers of the Director of Public Works may be exercised in respect of the acquisition of land by or on behalf of such Corporation Company or other persons.

Conditions to be imposed on grant of authorization.

62. It shall be lawful for the Governor in Executive Council to stipulate with the promoters as a condition for the authorization of the acquisition of land under this Ordinance by or on behalf of such Corporation Company or other persons as may be deemed desirable in respect of the following matters, that is to say:—

Sufficient security for payment of the cost of the acquisition and other compensation; the terms on which the land shall be held; the time within which and the conditions under which the work shall be executed and maintained; and the terms on which the public shall be entitled to use the work and to deal with the promoters.

Such stipulations if accepted by the promoters shall be embodied in the order of the Governor in Executive Council in Section 61 hereof mentioned, and shall be binding upon such Corporation Company or other persons and upon the public, and in such case the publication thereof shall for the purposes of Section 3

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hereof be deemed equivalent to the appropriation of moneys by the Legislative Council towards any public work in such Section mentioned.

63. On the publication in the last Section provided for of such order, the promoters shall be entitled subject to any special directions as in Section 62 provided, to acquire lands compulsorily as in this Ordinance provided, and the lands when acquired shall vest in the promoters, and the promoters and their solicitor agents servants and workmen shall be empowered to do the several acts and things by this Ordinance made lawful for the Crown Solicitor and the Director of Public Works and other Government officers and servants, and all moneys payable to or by the Receiver-General in the case of acquisition by the Governor as in this Ordinance provided shall in such case be paid to or by the promoters, and all the provisions of this Ordinance shall apply, *mutatis mutandis*, as far as the same are applicable.

Effect of
legalization
and
authorization.

64. The consent of the Governor in Executive Council shall not be given unless and until he be satisfied by enquiry to be held by such officer and at such time and place as the Governor shall appoint, that such acquisition is needed for the construction of some work which is likely to prove useful to the public, and also as to the various matters and things provided for in Section 62 hereof.

Consent of
Governor.

65. There shall be repealed as from the commencement of this Ordinance :—

Repeal.

“The Land Acquisition Ordinance, 1896.”

“The Roads Ordinance, 1894,” Sections 7-18 inclusive.

Saving.

Provided that this repeal shall not affect :

- (i.) Anything duly done or suffered before the commencement of this Ordinance under any enactment hereby repealed ; or
- (ii.) Any right or privilege acquired, or any liability incurred before the commencement of this Ordinance under any enactment hereby repealed ; or
- (iii.) Any imprisonment, fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Ordinance under any enactment hereby repealed ; or
- (iv.) The institution or prosecution to its termination of any investigation or legal proceeding or any other remedy for prosecuting any such offence, or ascertaining, enforcing, or recovering any such liability, imprisonment, fine, forfeiture, or punishment as aforesaid, and any such investigation, legal proceeding and remedy may be carried on as if this repeal had not been enacted.

Passed in Council this Fourth day of July, in the year of Our Lord one thousand eight hundred and ninety-eight.

S. W. KNAGGS,
Clerk of the Council.