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CHAPTER 27. No. 10.

LAND ACQUISITION.

AN ORDINANCE TO AUTHORISE THE ACQUISITION OF LAND FOR PUBLIC PURPOSES.

Ordinance No. 40-1947.

[27th November, 1947.]

Commencement.

1. (1) This Ordinance may be cited as the Land Acquisition Ordinance.

Short title and construction.

(2) Where any action has been taken before the commencement of this Ordinance in relation to any land, and the acquisition of the land and the final determination and payment of any compensation in relation thereto have not been completed and made, or the acquisition has not been abandoned before the commencement of this Ordinance, this Ordinance shall apply as though such action had been taken under this Ordinance.

INTERPRETATION.

2. (1) In this Ordinance—

Interpretation.

“ compulsory acquisition ” means the acquisition of land by virtue of the powers conferred by subsections (1) and (2) of section 5 and “ compulsorily acquired ” shall be construed accordingly;

“ land ” shall extend to messuages, lands, tenements and hereditaments of any tenure;

“ person interested ” means every person claiming, or entitled to claim, compensation under this Ordinance: Provided that a tenant by the month or at will shall be deemed not to be a person interested for the purposes of this Ordinance;

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“ promoter ” means any corporation, company, or person desirous of acquiring land under the provisions of sections 52 to 54 both inclusive;

“ Registrar ” means the Registrar of the Supreme Court and includes the Deputy Registrar and a Sub-Registrar;

“ Sub-Intendant ” means the person appointed Sub-Intendant of Crown Lands under section 5 of the Crown Lands Ordinance.

(2) The Governor may direct that an officer other than the Sub-Intendant shall have charge of the acquisition of any specified land or of the work to be done on any specified land, and thereupon this Ordinance shall apply in relation to such acquisition or work as though the designation of such other officer was substituted for the words “ the Sub-Intendant ” in the appropriate sections of this Ordinance.

(3) The powers conferred upon the Sub-Intendant by sections 3, 4 and 6 may be exercised by any persons acting by the authority of the Sub-Intendant or of the other officer in charge of the acquisition or work, as the case may be.

(4) For the avoidance of doubt it is hereby declared that the expression “ public purposes ” in this Ordinance shall include the purpose of fulfilling any obligation of the Government, or of His Majesty’s Government in the United Kingdom, under any treaty or agreement made by the Government or by His Majesty’s Government, as the case may be, with the Government of any other country, territory or place, and any purpose pertaining or ancillary thereto.

(5) Any law in force in the Colony, relating to the powers of the Director of Works and Hydraulics in respect of the Acquisition of land, shall be construed as if for the words “ Director of Works and Hydraulics ” or “ Director ” there were substituted the words “ Sub-Intendant of Crown Lands ”.

ACQUISITION OF LAND AND ABANDONMENT OF ACQUISITION.

3. Whenever it appears to the Governor in Council that any land is likely to be needed for any purposes which, in

Power to
enter land,
etc.

the opinion of the Governor in Council, are public purposes, a notification to that effect may be published in the *Royal Gazette* under the hand of the Colonial Secretary and thereupon it shall be lawful for the Sub-Intendant 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 to which the public purposes relate;

(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 purposes;

(d) to set out the boundaries of the land intended to be taken, and the intended line of the work, if any, proposed to be done thereon;

(e) to mark, 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 Sub-Intendant 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 twenty-four hours notice in writing of his intention to do so:

Provided further that compensation shall be paid to the persons interested in the land so entered for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section and shall be assessed—

(i) in so far as it relates to land the acquisition of which is subsequently deemed to be abandoned under section 7 or abandoned under section 9, in manner provided by this Ordinance;

(ii) in so far as it relates to land the compulsory acquisition of which is subsequently completed under section 5, as though it were part of the compensation for the acquisition of the land.

Power to apply land to purpose for which it is to be acquired without waiting for formal vesting.

4. When the notification mentioned in section 3 has been published in relation to any land, it shall be lawful for the Governor to authorise the Sub-Intendant, without waiting for the formal vesting of the land in the Crown, to do any work on the land connected with the use to which land is intended to be put on acquisition, and thereupon the Sub-Intendant may proceed with such work accordingly: Provided that compensation shall be paid to the persons interested for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section and shall be determined in the same way as compensation for actual damage or injury resulting from the exercise of the powers conferred by section 3.

Acquisition of land.

5. (1) On the acquisition of land for public purposes being decided upon by the Governor with the approval of the Legislative Council, it shall be lawful, whether a notification in the *Royal Gazette* in relation to that land has been published under section 3 or not and, if a notification has been so published, whether all or any of the powers conferred by that section have been exercised or not, for the Governor, by notification published in the *Royal Gazette*, to declare the land to have been acquired for public purposes.

(2) A notification published in the *Royal Gazette* under the preceding subsection shall describe the land with precision, either in words or by reference to a map or plan which shall be kept at the office of the Director of Surveys and shall be open to inspection by the public, and shall be conclusive evidence that the land is required for public purposes and upon the publication of the notice as aforesaid, the land shall vest absolutely in the Crown free from all encumbrances.

(3) Brief and concise particulars of each acquisition which has been published in the *Royal Gazette*, shall be

advertised by the Sub-Intendant twice in two local daily newspapers circulating in the Colony.

(4) Nothing in this section shall be deemed to prevent the acquisition of land for public purposes by private treaty.

6. (1) As soon as may be after any land has been compulsorily acquired, the Sub-Intendant shall, if the land acquired has not been marked out, cause the same to be marked out, and shall also, cause a notice or notices in accordance with subsection (2) of this section to be served, either personally on, or by post addressed to the last known place of abode or business (if within a postal delivery district) of, every person who is known or believed by the Sub-Intendant to be entitled to compensation in respect of the acquisition and whose whereabouts are known to the Sub-Intendant: Provided that whenever the whereabouts of any person are not known, the Sub-Intendant shall cause such notice to be posted conspicuously on the said land.

Notice to
be given by
Sub-
Intendant.

(2) Every such notice shall be signed by the Sub-Intendant and shall—

(a) state the particulars (as far as may be) of the land acquired, and

(b) require all persons interested as soon as is reasonably practicable either—

(i) to appear personally or by attorney or agent before the Sub-Intendant to state the nature of their respective interests in the land and the amounts and full particulars of their claims to compensation in respect of those interests, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, or

(ii) to render to the Sub-Intendant a statement in writing, signed by them or by their attorneys or agents, setting forth the like matters, and

(c) state the date after which claims for compensation will not be admitted or entertained.

(3) Any person removing any marks, or defacing any notice, placed or posted in accordance with this section shall be liable, on summary conviction, to a fine of ninety-six dollars.

Claim of person interested to have land acquired or abandoned.

7. If, within three months after entry shall have been made on any land under the powers conferred by section 3 such land shall not have been acquired or abandoned, any person interested in the land or any part thereof, may serve a notice on the Colonial Secretary requiring that the acquisition of such land or part thereof be completed or abandoned, and, if within one month thereafter the acquisition of such land or part thereof be not completed or abandoned in accordance with the provisions of this Ordinance, the acquisition of such land or part thereof shall be deemed to have been abandoned.

Sub-Intendant may require information as to interests in land.

8. (1) The Sub-Intendant may, by notice served personally, or by post addressed to the last known place of abode or business of the person concerned, require any person interested in any land, or in any part thereof, in respect of which a notification in the *Royal Gazette* has been published under section 3 or which has been compulsorily acquired to deliver to him, within a time to be specified in the notice, being not less than twenty-one days after service of the notice, a statement in writing containing, so far as may be within his own knowledge, the name of every person possessing any interest in the land or any part thereof whether as partner, mortgagee, lessee, tenant, or otherwise and the nature of such interest.

(2) Every person required to make and deliver a statement under this section who shall refuse to make or deliver such statement, or shall wilfully make any such statement which is false or incomplete in any material particular, shall be liable, on summary conviction, to a fine of ninety-six dollars.

Abandonment of acquisition.

9. (1) The Governor, at any time before the vesting in the Crown under section 5 of land intended to be compulsorily acquired, may by notification published in the *Royal Gazette*, declare that the acquisition of such land is abandoned.

(2) No compensation shall be payable in any such case for loss of bargain or for damages for breach of contract.

PROVISIONS AS TO COMPENSATION,

10. (1) Compensation shall be payable in respect of the compulsory acquisition of any land in accordance with the provisions of this Ordinance. Compensation for compulsory acquisition.

(2) The tribunal determining the amount of any such compensation may, unless the compensation is determined under section 17, direct that there shall be included in the sum awarded interest at such rate as it shall think fit not exceeding six per centum per annum on the whole or any part of the compensation for the whole or any part of the period between the date of the acquisition and the date of the award and in the exercise of this discretion the tribunal shall have regard, *inter alia*, to—

(a) any delay on the part of the claimant in submitting a proper claim;

(b) any circumstances which would justify an order under subsection (4) of section 33 that the claimant should bear his own costs;

(c) the conduct of the claimant generally in relation to his claim and to the proceedings;

(d) whether the claimant continued in beneficial enjoyment of the land in whole or in part after the date of the acquisition:

Provided that interest shall not be allowed under this section for any period occupied in the disposal of any issue as to the existence of, or title to, any interest in the land in respect of which the compensation is payable, being an issue between adverse claimants to compensation:

And provided further that where an unconditional offer in writing of any sum as compensation to the claimant has been made by or on behalf of the Sub-Intendant and has been refused by the claimant, or has not been accepted by the claimant within thirty days after date of the offer, no interest shall be allowed for any period subsequent to the date of such refusal or to the expiry of such thirty days, whichever first happens, unless the compensation awarded exceeds the amount of the offer:

And provided lastly that where the tribunal is a Judge of the Supreme Court sitting with assessors, any decision as to the interest shall rest with the Judge alone.

Rules for
assessment.

11. Subject to the provisions of this Ordinance, the following rules shall apply to the determination of compensation for the compulsory acquisition of land:—

(1) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise at the date of publication in the *Royal Gazette* of the notice of appropriation under section 5:

Provided that the tribunal shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

Provided further that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land.

(2) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of the Government or the Government of the United Kingdom or any department of either of such Governments or any local or public authority.

(3) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

(4) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose

of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the assessors or Judge are satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.

(5) No allowance shall be made on account of—

(a) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;

(b) any disinclination of the person interested to part with the land acquired;

(c) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;

(d) 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;

(e) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;

(f) any outlay or improvement on such land which shall have been made, commenced, or effected, within two years before the publication of the notice of appropriation under section 5, with the intention of enhancing the compensation to be awarded therefor in the event or with the view of such land being required for public purposes.

For the purposes of this section the tribunal shall be entitled to be furnished with such returns and assessments as it may require.

12. As to severance, compensation may be assessed on the footing that any specified works, crossings, or access agreed to on behalf of the Sub-Intendant shall be erected, provided, and allowed, and any such agreement shall be reduced into writing and be signed by the presiding Judge

Special rule
as to
severance.

of the Supreme Court or Petty Civil Court, as the case may be, and shall be valid and effectual and binding on the Sub-Intendant and on the claimant and his successors in title.

Compensation to persons interested in adjacent land.

13. A person interested in any land which, without any portion thereof being compulsorily acquired, has been injuriously affected by the erection or construction on land compulsorily acquired of any works in respect of which the land was acquired, shall be entitled to compensation in respect of such injurious affection: Provided that compensation shall not be payable under this section in respect of any injurious affection—

(a) which, if caused by a private person would not render such person liable to an action, or

(b) which is caused by the user of land acquired.

Compensation where land acquired under special powers.

14. (1) In this section the expression "special powers" means any powers conferred by—

(a) regulations made as part of the law of the Colony under the Emergency Powers (Defence) Acts of 1939 and 1940 or by any subsequent enactment, and applied to the Colony by Orders of His Majesty in Council, or

(b) section 7 of the Air Navigation Act, 1920, as amended or replaced by any subsequent enactment and as applied to the Colony by Orders of His Majesty in Council, or

(c) section 4 of this Ordinance,

or any power exercisable by virtue of the prerogative of the Crown.

(2) For the avoidance of doubt, it is hereby declared that if—

(a) while possession of any land is retained, or any land is being used, in the exercise of special powers, such land shall be compulsorily acquired under this Ordinance, or any other law from time to time in force relating to the compulsory acquisition of land, and

(b) things have been done in relation to the land in

the exercise of the special powers during the period for which possession was retained or the land was used, no greater sum shall be payable to any claimant by way of compensation in respect of the acquisition than would have been payable if no such things had been done, and, in particular but without prejudice to the generality of the foregoing words, in assessing compensation in respect of the acquisition no increase in the value of the land, attributable to the things done in relation to the land or to the improvements made thereto in the exercise of special powers during such period, shall be taken into account.

(3) The provisions of this section shall apply whether the land was compulsorily acquired before the 27th of April, 1944, or is compulsorily acquired thereafter: Provided that these provisions shall not apply in cases in which land has been compulsorily acquired before the 27th of April, 1944, if and so far as compensation in respect of the acquisition has already been determined by agreement or otherwise.

DETERMINATION OF COMPENSATION PAYABLE.

15. Compensation payable under this Ordinance shall, in default of determination by agreement or arbitration, be assessed in the manner hereafter provided.

How compensation determined.

16. The provisions of the Arbitration Ordinance shall apply to the determination by arbitration of any compensation payable by virtue of this Ordinance.

Arbitration.

17. (1) Where, by reason of the disability or incapacity of any person, proceedings under the succeeding provisions of this Ordinance to determine the compensation payable to him cannot be taken by him or on his behalf the compensation to be paid to him shall be such as is determined under this section: Provided that, subject to the provisions of section 44, nothing in this section shall prejudice the right of such person to institute any such proceedings if his disability or incapacity shall cease or the right to institute any proceedings of any other person, who shall not be under any disability or incapacity.

Compensation in case person under disability or incapacity.

(2) A Judge of the Supreme Court, on the application of the Sub-Intendant and upon proof to the satisfaction of

the Judge that the compensation payable to any person falls to be determined under this section, may appoint, in accordance with the provisions of this Ordinance, one or more assessors to make an assessment of the compensation payable and shall determine the compensation payable in the light of the assessment or assessments so made.

(3) The costs of every such application, including the fees of the assessor or assessors, shall be borne by the Sub-Intendant.

(4) Any compensation awarded under this section shall be paid by the Sub-Intendant into the Supreme Court to the credit of the person entitled and may, on the subsequent application of any person claiming to be entitled to the compensation, be paid out to the person entitled on the order of a Judge of the Supreme Court.

Determina-
tion of com-
pensation in
Petty Civil
Court.

18. (1) Subject to the provisions of this Ordinance, the compensation payable to a person interested may be assessed in the Petty Civil Court having jurisdiction in the area, in which the land to which the claim relates is situated, on a summons taken out by the claimant or the Sub-Intendant, if—

(a) the amount of compensation claimed does not exceed four hundred and eighty dollars, or

(b) the amount of compensation claimed exceeds four hundred and eighty dollars but a Judge of the Supreme Court has referred the question of compensation to a Petty Civil Court in accordance with section 19.

(2) Every summons under this section shall contain a statement of the total amount of compensation claimed, and the amounts, distinguished under separate heads, which make up that total.

(3) The provisions of the Petty Civil Courts Ordinance as to the service of summonses under that Ordinance shall apply to the service of summonses under this section.

(4) The proceedings shall be conducted as nearly as may be in the same manner as an action under the Petty Civil Courts Ordinance and the Judge shall have the same powers in relation to the conduct of the proceedings, in-

cluding the powers to compel the attendance of witnesses, the production of documents, and the examination of witnesses on oath and the power to punish persons who refuse or neglect to attend or to produce documents or to be sworn and give evidence, as he has in relation to an action under that Ordinance: Provided that, in every proceeding under this section the claimant shall be deemed to be the plaintiff and the Sub-Intendant shall be deemed to be the defendant.

(5) If the Judge shall be of opinion that any person not served with the summons ought to be joined as a plaintiff, he may, on the application of such person or *ex proprio motu*, direct service of the summons on such person and join him as a plaintiff accordingly.

(6) The compensation may be assessed notwithstanding the absence of any party upon proof, unless the absent party is the party who applied for the summons, of the due service of the summons.

(7) Nothing in the Petty Civil Courts Ordinance shall operate to prejudice the powers of the Judge to determine all issues of law or fact which may be raised by the proceedings.

(8) The scale of fees and costs applicable to actions in a Petty Civil Court shall apply to proceedings under this section: Provided that, where the amount awarded exceeds one hundred and twenty dollars, the sum to be awarded for solicitor or counsel shall be in the discretion of the Judge.

(9) In any proceedings under this section it shall be competent for the Judge to award compensation exceeding four hundred and eighty dollars if he shall see fit.

19. In any case in which the compensation claimed exceeds four hundred and eighty dollars, it shall be competent for the Sub-Intendant to apply to a Judge of the Supreme Court in Chambers, by summons, to be served on the claimant, supported by evidence on affidavit that the compensation payable is not likely to exceed four hundred and eighty dollars, for an order referring the question of compensation to a Petty Civil Court for determination in accordance with the provisions of section 18 and if such Judge of the Supreme Court is so satisfied, he may refer the

Claim
exceeding
\$480 may
be referred
to Petty
Civil Court.

assessment of the compensation to a Petty Civil Court accordingly.

Claims
exceeding
\$480 and not
dealt with
under
section 19.

20. (1) If any claim to compensation under this Ordinance shall exceed four hundred and eighty dollars, it shall, subject as in section 19 provided, be determinable by a Judge of the Supreme Court, with or without the assistance of assessors, according to the provisions of this Ordinance.

(2) Proceedings under this section may be taken either by the claimant or by the Sub-Intendant and shall be instituted by summons, hereinafter referred to as the "summons for assessment," entitled in the matter of the Land Acquisition Ordinance and of the compulsory acquisition of the land.

(3) Every summons for assessment shall contain a statement of the total amount of the compensation claimed, and the amounts, distinguished under separate heads, which make up that total.

(4) Every such summons shall be returnable within fourteen days or such further period as the Judge may allow and shall be served on the Sub-Intendant or the claimant, as the case may be.

Order for
assessment.

21. (1) On the return of the summons, the Judge shall—

(a) fix a time and place for the assessment of the compensation, and

(b) appoint two assessors in accordance with the provisions of this Ordinance to assist the Judge in the determination of such compensation:

Provided that, if the claimant elects that the compensation shall be determined by a Judge alone without the assistance of assessors, the Judge may in his discretion direct that the compensation shall be assessed by a Judge alone and such compensation shall be assessed accordingly.

(2) The order of the Judge under this section is hereafter referred to as the "order for assessment."

Assessment
of com-
pensation.

22. (1) The Judge and the assessors (if any) shall, at the time and place fixed by the order for assessment or at such

other time and place as may be fixed by any subsequent order of the Judge, proceed to assess the compensation to be awarded.

(2) The Judge shall have power to adjourn the proceedings from time to time.

(3) The proceedings shall be deemed to be proceedings in the Supreme Court and shall be open to the public.

(4) The Registrar shall, by himself or one of his clerks, attend the proceedings and perform the same duties with respect to the proceedings as he would perform with respect to an action in the Supreme Court.

(5) The claimant shall be deemed to be the plaintiff in the proceedings and the Sub-Intendant shall be deemed to be the defendant.

(6) Either party shall have the right to adduce evidence on oath and to be heard by counsel.

(7) Subject to the provisions of this Ordinance and to any rules made by virtue of section 42, the proceedings and all matters and things incident and ancillary thereto shall be had and taken in the same manner as a trial in an action in the Supreme Court.

23. (1) The Judge, in Chambers and in open Court, and the Registrar, shall have all the powers in relation to the proceedings which they have respectively in relation to an action in the Supreme Court.

Powers of
Judge and
Registrar.

(2) In disposing of the order for assessment, the Judge shall have power to direct the trial of any preliminary issue as to title or otherwise and to make any order thereon, and to make all such interlocutory orders as may appear to him to be necessary for the convenient disposal of the matter.

24. If the Judge shall be of opinion that any person not served with the summons for assessment ought to be joined as a plaintiff, he may, on the application of such person or *ex proprio motu*, direct service of the summons on such person and join him as a plaintiff accordingly.

Power to
add parties.

Consolidation of proceedings.

25. (1) Whenever any proceedings have been instituted by a claimant in the Supreme Court under section 20, it shall be lawful, with the approval of a Judge thereof, for proceedings to be instituted in the Supreme Court under that section in relation to any other claim arising out of the acquisition of the same land, notwithstanding that the claim does not exceed four hundred and eighty dollars, and if any proceeding relating to any such other claim be pending in a Petty Civil Court, it shall be lawful for a Judge of the Supreme Court, on the application of the claimant or *ex proprio motu*, to direct that the proceedings be transferred to the Supreme Court and give all proper directions necessitated by such transfer.

(2) A Judge of the Supreme Court may, on the application of any party or *ex proprio motu*, order the consolidation of all or any proceedings in the Supreme Court in respect of compensation arising out of the acquisition of the same land and may give all proper directions necessitated by such consolidation.

Scales of fees and costs.

26. Subject to any rules made by virtue of section 42 the scales of fees and costs applicable to an action or proceeding in the Supreme Court shall apply *mutatis mutandis* to proceedings under this Ordinance in the Supreme Court.

Opinions of assessors to be recorded.

27. Subject as in section 35 provided, the opinion of the assessors as to the value of each alleged item of compensation shall be given orally, and shall be recorded in writing by the Judge.

Questions of law.

28. On all questions arising at the trial as to title, or law, or practice, or usage having the force of law, the opinion of the Judge shall prevail, subject to appeal as in this Ordinance provided.

Where award of Judge is between the amounts awarded by assessors.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, or as to the amount of any item, or in case the Judge, as to 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, subject to appeal as in this Ordinance provided, be final.

30. 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 in this Ordinance provided, be entered as the judgment of the Court.

Where award of Judge is not between amounts awarded by assessors.

31. Every award made by the Court shall be in writing signed by the Judge and the assessors (if any) concurring therein, and shall specify the amounts respectively awarded under rule (1) of section 11 together with the grounds of awarding each of the said amounts, and the Judge shall also, if requested to do so, state in writing the reasons for his decision on any points of law, or as to any principle of assessment or on any question of title on which the award is based.

Form of award.

32. The amount of costs to be awarded in proceedings in the Supreme Court and all questions relating thereto shall be determined by the Judge alone, and the Judge may award lump sum costs or may direct that they be taxed:

Costs in proceedings in the Supreme Court.

GENERAL PROVISIONS AS TO COSTS.

33. (1) Subject to the provisions of this Ordinance this section shall apply to proceedings, for the assessment of compensation under this Ordinance, whether in the Supreme Court or in a Petty Civil Court, and the expression "the Judge" means the Judge of the Supreme Court or of the Petty Civil Court, as the case may be, presiding in the proceedings.

Rules for awarding costs.

(2) The Sub-Intendant shall pay to the claimant the reasonable costs incurred by him in or about the preparation and submission of his claim unless he has failed to put forward a proper claim within a reasonable time after the service or posting, as the case may be, of the notice under section 6 or the claim put forward is grossly excessive or he has been a party to some deceit or fraud in respect of his claim.

(3) The costs of any issue as to the existence of, or title to, any interest in land acquired shall not form part

of the costs of proceedings taken for the determination of the compensation payable but shall be separately determined and shall be in the discretion of the Judge. No order for the payment of the whole or any part of such costs shall in any event be made by the Judge against the Sub-Intendant in any case where the issue is between adverse claimants to compensation.

(4) Subject to the provisions of subsections (2) and (3) of this section, where an unconditional offer in writing of any sum as compensation to any claimant has been made by or on behalf of the Sub-Intendant and the sum awarded as compensation does not exceed the sum offered, the Judge shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the Sub-Intendant so far as the costs of the Sub-Intendant were incurred after the offer was made; and where the claimant has failed to put forward a proper claim in sufficient time to enable the Sub-Intendant to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by or on behalf of the Sub-Intendant at the time when, in the opinion of the Court, a proper claim should have been put forward and the claimant had been awarded a sum not exceeding the amount of such offer.

(5) Subject to the provisions of subsection (2) of this section, where a claimant has made an unconditional offer in writing to accept any sum as compensation and has put forward a proper claim in sufficient time to enable the Sub-Intendant to make a proper offer, and the sum awarded is equal to or exceeds that sum, the Judge shall, unless for special reasons he thinks proper not to do so, order the Sub-Intendant to bear his own costs and to pay the costs of the claimant so far as the costs of the claimant were incurred after the offer was made.

(6) Subject to the preceding provisions of this section, the costs shall be in the discretion of the Judge who may direct to and by whom and in what manner those costs or any part thereof shall be paid.

(7) Where the Judge orders the claimant to pay the costs or any part of the costs of the Sub-Intendant, the Sub-Intendant may deduct the amount so payable by the claimant from the amount of compensation payable to him.

(8) Without prejudice to the preceding subsection, all costs shall be recoverable as though they were costs awarded in an action in the Supreme Court or Petty Civil Court, as the case may be.

(9) For the purpose of this section, costs includes fees, charges and expenses.

34. Where the amount of any compensation under this Ordinance has been settled as between the claimant and the Sub-Intendant but a difference arises as to the amount of any interest which might have been awarded by a tribunal under subsection (2) of section 10 if the compensation had fallen to be determined by that tribunal, or as to the amount of any costs which might have been payable under subsection (2) of section 33, the claimant or the Sub-Intendant may apply to have the matter in difference determined by summons in Chambers before a Judge of the Supreme Court. Where the difference relates to the amount of interest payable, the same shall be determined according to the principles set out in subsection (2) of section 10.

Provisions as to interest and costs when amount of compensation agreed.

PROVISIONS AS TO APPEAL.

35. In the event provided for in section 30 the Judge shall make and sign his judgment giving the reasons for his decision, and each of the assessors shall give his conclusions in writing with reasons therefor and any party to the proceedings may appeal therefrom.

Appeal where award of Judge is not between amounts awarded by assessors.

36. (1) If any party to the proceedings is dissatisfied with any award made under the provisions of this Ordinance he may appeal therefrom on any point of law, or on any principle of assessment, or on any question of title, if the award is made in a Petty Civil Court to the Full Court, and, if the award is made in the Supreme Court, when the amount of the claim exceeds the sum of nine hundred and sixty dollars to the West Indian Court of Appeal, but when the amount of the claim does not exceed the said sum then to the Full Court.

Appeal on any point of law, etc.

(2) Save as provided in the preceding subsection and in section 35, there shall be no appeal against an award

made under the provisions of this Ordinance: Provided that nothing herein shall affect any right of appeal to His Majesty in His Privy Council which may exist under any Order in Council from any judgment or order of the Supreme Court or of the Full Court or the West Indian Court of Appeal.

(3) The rules of practice and procedure relating to appeals from a Petty Civil Court to the Full Court and from the Supreme Court to the West Indian Court of Appeal shall, so far as the same may be applicable, apply respectively to appeals made under the provisions of this Ordinance.

ASSESSORS.

Appoint-
ment of
assessors.

37. A Judge may appoint any person to be an assessor for the purpose of any proceeding who, in the opinion of the Judge, is well qualified by reason of his knowledge and experience to assist in the determination of the compensation to be paid, and for the avoidance of doubt it is hereby declared that a person may be appointed an assessor notwithstanding that he is not a professional valuer and whether he is ordinarily resident in the Colony or not:

Provided that—

(a) in appointing an assessor, the Judge shall have regard to any suggestions or objections which may be put forward by any party or parties before him;

(b) no person shall be appointed to act, or shall act, as an assessor in any proceeding in which, if he were a Judge, he would not be entitled to act on the ground of interest.

Assessors
compellable
to act.

38. Any person in the Colony who is appointed an assessor shall be compellable by writ of subpoena to serve 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, if any person who has been duly summoned as an assessor and who has not so satisfied the Judge shall neglect or fail to attend as required and to act as an assessor he may be fined by the Judge a sum not exceeding ninety-six dollars.

39. If an assessor appointed under this Ordinance shall be excused from service in any proceeding, or shall neglect or fail to attend as required or shall die or become incapable of acting, the Judge may appoint another assessor in his stead.

Appoint-
ment of new
assessor in
place of an
assessor
excused
from
service.

40. No assessor shall proceed to act in the matter unless he shall have first made and signed before a Judge in an Assessors' Declaration Book to be kept by the Registrar 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 Land Acquisition Ordinance, I will faithfully, honestly, and impartially execute my duties to the best of my judgment, skill and ability.”

41. (1) Every assessor appointed under section 17 shall receive such fee for his services as the Judge shall direct and such fee shall be paid by the Sub-Intendant.

Assessors'
fees.

(2) Every assessor appointed under section 21 shall receive such fee for his services as the Judge shall direct. Every such fee shall be paid in the first instance by the Sub-Intendant and shall be deemed to be costs in the proceedings.

RULES.

42. (1) The Chief Justice, with the concurrence of a Puisne Judge, may make rules for regulating the practice and procedure to be adopted in proceedings in the Supreme Court, or before a Judge thereof, under this Ordinance and for prescribing the forms to be used and the scales of fees and costs to be applied.

Rules of
Court.

(2) No such rules shall have any force or effect unless and until they have been confirmed by resolution of the Legislative Council.

MISCELLANEOUS.

43. (1) All compensation awarded by a tribunal under this Ordinance, and all compensation agreed between the claimant and the Sub-Intendant, shall, unless the compensation is determined under section 17, bear interest at the

Payment of
compensa-
tion, etc.

rate of six per centum per annum from the date of the award or agreement, as the case may be, until payment to the claimant or payment into Court under the provisions of subsection (3) of this section.

(2) All compensation under this Ordinance and all costs, charges and expenses lawfully incurred or payable by the Sub-Intendant shall be paid out of the public moneys of the Colony.

(3) If there shall be no person able to give a good discharge for any compensation payable under this Ordinance, or if no person can be found to receive the same, after the amount of the compensation has been determined, the Sub-Intendant may pay the compensation into the Supreme Court to the credit of the person entitled. Any compensation so paid into Court may, on the subsequent application of any person claiming to be entitled thereto, be paid out to such person on the order of a Judge of the Supreme Court.

Limitation.

44. (1) No claim for compensation in respect of the compulsory acquisition of land shall be admitted or entertained unless the same shall have been made in writing to the Sub-Intendant within twelve months after the publication in the *Royal Gazette* under section 5 of the notice of appropriation of the land.

(2) No claim for compensation under section 9 shall be admitted or entertained unless the same shall have been made in writing to the Sub-Intendant within twelve months after the acquisition of the land was deemed to have been abandoned under section 7 or was abandoned under section 9.

(3) No claim for compensation under section 13 shall be admitted or entertained unless the same shall have been made in writing to the Sub-Intendant within twelve months after the publication by the Sub-Intendant in the *Royal Gazette* of a notification of the completion of the work in respect which the land was acquired.

(4) If any person fails to make his claim for compensation within twelve months as provided in the preceding subsections of this section, he may apply in writing to the Governor in Council to extend the time, and the Governor in Council may in his absolute discretion grant such

extension in respect of the whole claim or any part thereof and upon such terms and conditions as he thinks fit: Provided that such written application is made within six months from the time when the claim became barred.

45. If any person shall refuse to give up possession of any land, or hinder the Sub-Intendant or a person authorised by the Sub-Intendant in taking possession of any land, which has been acquired under the provisions of this Ordinance or on which the Sub-Intendant or such person is authorised by virtue of this Ordinance to do any work or thing, it shall be lawful for the Colonial Secretary to issue his warrant to the Marshal authorising him to enter upon the said land and to put the person so refusing or hindering out of possession of the said land and to deliver possession thereof to the Sub-Intendant or to such person, and upon receipt of the warrant, the Marshal shall execute the warrant accordingly; and the costs accruing by reason of the execution of the warrant, to be settled by the Marshal and allowed by the Colonial Secretary, shall be paid by the person refusing to give up possession or hindering the Sub-Intendant, or such person as aforesaid, and the amount of such costs shall be deducted and retained from the compensation, if any, payable to the person in default, and if no compensation be payable to the person in default, or if the same be less than the amount of such costs, then payment of such costs, or the excess thereof beyond the amount of the compensation, shall be enforced under the Summary Courts Ordinance as though it was the subject of an order to pay money contemplated by Part V of that Ordinance and made by a Magistrate having jurisdiction in the area in which the land is situated.

Persons
refusing to
give up
possession.

46. If any person shall assault or obstruct, or abet any person in assaulting or obstructing—

Assaulting
or obstruct-
ing officers.

(a) the Marshal or any of his assistants in the execution of his or their duties under this Ordinance,
or

(b) the Sub-Intendant or a person authorised by the Sub-Intendant in the exercise or performance of any power or duty conferred or imposed by this Ordinance.

he shall be guilty of an offence and shall be liable on summary conviction to a fine of two hundred and forty dollars.

Mortgaged
lands.

47. If any person interested in a mortgage or charge on any land acquired for the purposes of this Ordinance, shall give notice in writing to the Sub-Intendant or person authorised as aforesaid, within the time specified in the notice after such lands shall have been acquired, 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 Sub-Intendant to deposit the compensation payable in respect of such land, or so much thereof as shall be sufficient to pay off the amount due in respect of such mortgage or charge, in the name and with the privity of the Registrar, with the Accountant General, to be placed to the credit of the parties having such mortgage or charge on such land, describing them so far as the Sub-Intendant can, subject to the control and disposition of the Supreme Court.

Person
in possession
to be
deemed
owner.

48. Where any question shall arise touching the title of any person to any land 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, for the purposes of this Ordinance, be deemed the owner of the same until the contrary is proved.

Special
provision as
to leases.

49. If any land shall be comprised in a lease for a term of years unexpired and part only of such land shall be compulsorily acquired, the rent payable in respect of the land comprised in such lease may, on the application of the lessor or the lessee to a Judge of the Supreme Court, be apportioned between the land acquired and the residue of the land; and after such apportionment the lessee shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the residue of the land; and as to the residue of the land, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of the rent as

previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of the rent to be paid, shall remain in force with regard to the residue of the land in the same manner as they would have done in case the residue of the land only had been included in the lease.

ACQUISITION OF LAND BY LOCAL ROAD BOARDS,
MUNICIPALITIES AND STATUTORY CORPORATIONS.

50. (1) A Local Road Board constituted under the provisions of the Roads Ordinance may at any time exercise the powers conferred by this Ordinance for the entry into, acquisition and taking possession of land required for the improvement of existing roads, and the making of new roads, within the district.

Acquisition
of land by
Local Road
Boards.

(2) This Ordinance shall apply *mutatis mutandis* in relation to the exercise of the powers aforesaid but with the following specific modifications, namely—

(a) reference in this Ordinance to the Sub-Intendant shall be construed as references to the Road Officer of the Board;

(b) the references to the Colonial Secretary in section 7 and to the Governor in section 9 shall be construed as references to the Chairman of the Board;

(c) a resolution of the Board authorising entry shall, when published in the *Royal Gazette*, be equivalent for all purposes to the notification for which provision is made in section 3;

(d) a resolution of the Board authorising acquisition shall, when approved by the Governor in Council and published in the *Royal Gazette*, be equivalent for all purposes to the notification for which provision is made in section 5;

(e) all sums which under this Ordinance would be payable by the Sub-Intendant shall be paid by the Board out of its funds;

(f) all land acquired under this section shall vest absolutely in the Crown free from all encumbrances to the intent that the powers conferred and the duties

imposed by the Roads Ordinance may be duly exercised and performed in relation thereto.

Acquisition
of land by
Municipal
and other
statutory
corporations.

51. (1) Any Municipal or other statutory corporation authorised by any Ordinance to acquire land compulsorily in exercise of its statutory powers or the performance of its statutory duties may, without prejudice to any powers conferred by such Ordinance but subject to any restrictions contained therein, exercise the powers of entry into, acquisition and taking possession of land conferred by this Ordinance.

(2) This Ordinance shall apply *mutatis mutandis* in relation to the exercise of the powers aforesaid but with the following specific modifications, namely—

(a) references in this Ordinance to the Sub-Intendant and the references to the Colonial Secretary in section 7 and to the Governor in section 9 shall be construed as references to the corporation;

(b) a resolution of the corporation authorising entry or acquisition shall, when published in the *Royal Gazette*, be equivalent for all purposes to the notifications for which provision is made in sections 3 and 5 respectively;

(c) all sums which under this Ordinance are payable by the Sub-Intendant shall be paid by the corporation;

(d) all land acquired under this section shall vest absolutely in the corporation free from all encumbrances.

ACQUISITION OF LAND BY PROMOTERS.

Promoter
may be
authorised
to enter and
survey land.

52. The Governor in Council may, by notification in the *Royal Gazette*, authorise a promoter to exercise in relation to any land the powers conferred by section 3.

Acquisition
of land by
a promoter.

53. (1) It shall be lawful, subject to the provisions hereinafter contained, for a promoter to acquire land compulsorily under this Ordinance.

(2) Any promoter desiring to acquire land compulsorily under this Ordinance shall make application therefor in writing to the Colonial Secretary giving full

particulars of the land and the purpose for which it is required and such other particulars as the Colonial Secretary may require and, if the Colonial Secretary shall so require, shall make a deposit with the Accountant General of such sum as the Colonial Secretary may consider sufficient to cover the costs of the enquiry provided for in subsection (3) of this section.

(3) The Colonial Secretary shall thereupon appoint a fit and proper person to hold an enquiry as to the purpose for which the land is required by the promoter and as to whether such purpose is likely to prove useful to the public or to a substantial class or section of the public. Such person shall have the same power to compel the attendance of witnesses, the production of documents and the examination of witnesses on oath, and the same power to punish persons who refuse or neglect to attend or to produce documents or to be sworn and give evidence, as are possessed by a Judge of a Petty Civil Court in an action under the Petty Civil Courts Ordinance. The expenses of the enquiry (including a fee for the services of the person conducting the same) shall be determined and certified by the Colonial Secretary and shall be paid by the promoter and shall be a debt due by him to the Crown.

(4) The record of every such enquiry shall be laid on the table of the Legislative Council and thereupon it shall be lawful for the Legislative Council by resolution to approve or to decline to approve, the compulsory acquisition of the whole or any part of the land: Provided that the Legislative Council shall not approve the acquisition of the whole or any part of the land, unless it is satisfied as a result of the enquiry aforesaid that the purpose for which it is required by the promoter is likely to prove useful to the public or to a substantial class or section of the public.

(5) Upon the compulsory acquisition of land being approved by the Legislative Council, it shall be lawful for the Governor, by notification published in the *Royal Gazette*, to declare the land to have been acquired by the promoter for the purposes stated and thereupon the land shall vest absolutely in the promoter free from all encumbrances: Provided that the Governor shall not publish such notification as aforesaid unless and until the promoter shall have—

(a) given such security as the Governor may require

for the due payment of the costs of the acquisition and all compensation relating thereto; and

(b) entered into such agreement as the Governor may require as to all or any of the following matters namely—

(i) the terms on which the land is to be held by the promoter;

(ii) the time within which, and the conditions on which, the work shall be executed and maintained;

(iii) the terms on which the public shall be entitled to the use and benefit of the work.

(6) A memorandum of the terms of any agreement entered into in pursuance of paragraph (b) of subsection (5) of this section shall be reduced to writing and published in the *Royal Gazette* and the terms as so published shall be binding on the promoter. If the promoter shall make default in complying with the terms of any such agreement as so published the land shall be forfeited to His Majesty: Provided that land forfeited under this subsection shall not vest in His Majesty unless and until a judgment is obtained declaring the forfeiture, but, on such judgment being obtained, the title of His Majesty shall relate back to, and commence at, the time when the forfeiture took place.

Application
of Ordinance
to acquisition
of land
by promoters.

54. This Ordinance shall apply *mutatis mutandis* in relation to the exercise by promoters of the powers conferred by section 3 and in relation to the compulsory acquisition of land by promoters and to the taking of possession under section 45, but subject to the provisions of sections 52 and 53 and to the following specific modifications namely—

(a) references in this Ordinance to the Sub-Intendant, and the references in section 7 to the Colonial Secretary and in section 9 to the Governor, shall be construed as references to the promoter;

(b) all sums which under this Ordinance are payable by the Sub-Intendant shall be paid by the promoter.

Sec 5-60 - 48/55 (63), 154/55 (22), 169/55 (239), 24/56 (29), 25/56 (20)