

*Vol. 1/41
40/47.*

CHAPTER 27. No. 10. = *47/1945*

LAND ACQUISITION.

Ordinances AN ORDINANCE TO AUTHORISE THE ACQUISITION OF LAND FOR
Cap. 168— PUBLIC PURPOSES.
1925.
No. 32—1938.

Commencement. [15th July, 1898.]

Short title. 1. This Ordinance may be cited as the Land Acquisition Ordinance.

Interpreta- 2. (1) In this Ordinance—
tion. "land" includes easement and incorporeal heredita-
ment, and chattel interests in land;
"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;
"promoters" means any corporation, company, or
persons desirous of acquiring land under the provisions of
sections 59 to 62 inclusive.

(2) Where, under this Ordinance, any notice shall be required to be given to the owner of any land, or where any act shall be authorised 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.

(3) Wherever the Director of Works and Transport is named in this Ordinance, 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 authorised by such Director or other officer.

(4) vol 1/41

3. Whenever it appears to the Governor in Council that any land is likely to be needed for any public works or purposes, a notification to that effect shall be published in the *Royal Gazette* under the hand of the Colonial Secretary and thereupon it shall be lawful for the Director of Works and Transport to do all or any of the following things,—

Power to enter land, etc.
Ord. 32-1938,
s. 2 (1).

(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 Works and Transport 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:

Provided further that compensation shall be paid to the owner of land so entered for any actual damage or injury resulting to him by reason of such entry, such compensation in default of agreement or arbitration to be assessed in the manner provided by section 11.

Ord. 32-1938,
s. 2 (2).

4. (1) When the Director of Works and Transport shall have entered on any land under the powers in the last preceding section contained, with the intention of appropriating and

Director of Works and Transport to post notice.

Republished
See 3
9/1/41

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 works such land has been entered, and that claims for compensation for all interests therein may be made to the Director of Works and Transport, and such notice shall be signed by the Director of Works and Transport or person authorised 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 Works and Transport or a person authorised 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 Works and Transport 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.

(4) Any person removing any marks, or defacing any notice placed or posted in accordance with the provisions of this Ordinance, shall be liable to a fine of ninety-six dollars.

5. It shall be lawful for the Director of Works and Transport 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 section 3

Director of
Works and
Transport
may acquire
land.

W. S. S.
1/11/11.

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; 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 section 3 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.

Abandonment of acquisition.

Abandonment of acquisition.

6. On the acquisition of land under this Ordinance for public purposes being decided on by the Governor with the approval of the Legislative Council, it shall be lawful for the Governor by notice in the *Royal Gazette* to declare the same to have been appropriated for the public purposes mentioned in such notice, which declaration shall be conclusive that the land is needed for public purposes, and thereupon such land shall become vested in His Majesty the King; but if the acquisition thereof be abandoned under any provision of this Ordinance, the land shall thenceforth revert in the owner or person interested for his prior estate, on similar notice of such abandonment being published in like manner.

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

Ord. 32-1938, s. 3.

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 preceding section provided, it shall be lawful for the owner thereof, at any time after the expiration of three months 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 provided by this Ordinance.

Owner may claim appropriation or abandonment.

Ord. 32-1938, s. 4.

8. (1) The Director of Works and Transport may, before or after entry under section 3, 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

Director of Works and Transport may require information as to land entered.

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 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 liable to a fine of ninety-six dollars.

Parties under disability may sell and convey.

9. It shall be lawful for all parties being seised or possessed of or entitled to any lands that may be required for any public work, or any estate or interest 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 seised in their own right or entitled to dower, guardians, committees of insane persons, trustees 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 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 defeasance 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 insane persons of whom they are the committees respectively, and that to the same extent as such wives, wards, insane persons 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, insane persons, 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.

10. The power to release lands from any rentcharge or encumbrance, and to agree for the apportionment of any such rentcharge or encumbrance, may lawfully be exercised by every party by this Ordinance enabled to sell and convey or release lands. Other powers of parties under disability.

11. If, in respect of such notice in writing as in section 7 mentioned, the Governor, or the Director of Works and Transport after entry under section 3, 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 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 a Petty Civil Court in a summary manner, and shall (with such costs as may be awarded) be paid to such owner by the Treasurer 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, shall not be legally the subject of compensation, nor in such case shall any additional compensation be awardable in respect of compulsory purchase. Owner may claim compensation for entry on lands abandoned.

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 provided, be assessed by the Judge of a Petty Civil Court, if the compensation claimed shall not exceed two hundred and forty dollars; and in all other cases shall be assessed by the court for assessment of compensation hereby constituted. When owner refuses compensation offered.

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

Ord. 32-1938,
s. 5.

13. The purchase money or compensation to be paid for any lands to be purchased or taken by the Director of Works and Transport or person authorised as aforesaid from any party who, by reason of absence from the Colony, is prevented from treating, or who cannot, after diligent enquiry, be found, or 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 assessors appointed for that purpose under section 31.

Judge to
nominate
assessors.

Ord. 32-1938,
s. 6.

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

Safe custody
and produc-
tion of
valuation, etc.

15. The valuation to be made by such assessor or assessors shall be delivered to the Director of Works and Transport 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 expressly otherwise ordered, shall be at the charge of the Colony and be paid by the Treasurer on the warrant of the Governor, save and except as in section 61 provided in the cases therein mentioned.

Disposal of
compensation
money in case
of absent
owners.

17. The compensation awarded by the Judge under section 13 shall be paid into the 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, to 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.

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 preceding 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 Works and Transport, 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.

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

Person in possession to be deemed owner.

20. Subject as is provided in and by the provisions of paragraphs (5) (b), (c) and (d) of section 41, 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.

Compensation to adjacent proprietors. Ord. 31-1938, s. 7.

21. In cases where it does not appear that the compensation claimed exceeds two hundred and forty dollars, the Judge of a Petty Civil Court, 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

Claims not exceeding \$240 to be settled by Petty Civil Court, etc.

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 exceeding \$240 may on affidavit of assessor be referred to Petty Civil Court, etc.

22. In any case in which the compensation claimed exceeds two hundred and forty dollars, it shall be competent to the Director of Works and Transport to apply to a Judge of the Supreme Court in Chambers, on summons to be duly served on the claimant, supported by the affidavit of an assessor appointed under section 31, that the market value of the land to be taken does not exceed two hundred and forty dollars, for an order referring the question of compensation to a Judge of a Petty Civil Court, and if such Judge of the Supreme Court is satisfied on evidence that the compensation will probably not exceed two hundred and forty dollars, then the assessment of compensation shall be referred to such Judge of a Petty Civil Court, but in such case the Judge of the Petty Civil Court shall be at liberty to award a greater sum than two hundred and forty dollars if it shall so seem fit.

Arbitration.

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 Arbitration Ordinance.

Summons and order for assessment.

24. In cases where the compensation claimed exceeds two hundred and forty dollars, it shall, subject as in section 22 provided, and in default of arbitration under section 23, 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 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 of this Ordinance, 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 hereinafter referred to as "summons for assessment" and "order for assessment" respectively.

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 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.

Proceedings on summons for assessment.

26. On the return of the summons for assessment the Judge shall, on the application of the Crown Solicitor or the persons alleged to be interested, appoint two assessors, one to 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 in this Ordinance 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 four hundred and eighty dollars, 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 elects 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.

Assessors to be nominated
Ord. 32-1938,
s. 8.

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 subsection (3)

Order for assessment on application of Crown Solicitor.

of section 4 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 prescribed. But nothing herein contained shall be deemed to invalidate or render inapplicable or incomplete any procedure that may be taken under sections 13 to 17 inclusive.

Assessors for unascertained owners.

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

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. Ord. 32-1938, s. 9.

31. For the purposes of this Ordinance assessors shall be appointed by a Judge on the application of the Crown Solicitor or of any person interested; such assessors shall be persons willing to serve when required and skilled in the valuation of property of the several descriptions of real property common in the Colony; each assessor shall be compellable by writ 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 ninety-six dollars as may be ordered 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 Land Acquisition Ordinance, 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 matter of such assessment by any Judge of the Supreme Court.

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

34. (1) 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 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.

Trial.

Parties.

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

Witnesses.

(3) 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.

Rules.

35. It shall be competent for the Chief Justice, with the concurrence of a Puisne Judge, to make such rules, forms, schedules of fees, and scales of costs, consistent with the provisions of this Ordinance, 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. And so far as by this Ordinance 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 such court.

Opinions of assessors to be recorded.

36. Subject as in section 46 provided, the opinion 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.

Questions of law.

37. 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 and there shall be no appeal therefrom save as in this Ordinance provided.

Judge to be umpire as to questions of

38. In case the Judge or 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 be final.

amount as
between
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 in this Ordinance provided, be entered as the judgment of the court.

Appeal from
judgment in
certain cases.

40. Every assessor shall receive such fee for his services as the Judge shall direct: Provided that such fee shall not exceed twenty-four dollars for any day, or fourteen dollars and forty cents for any day after the first. Such fee shall be paid in the first instance by the Director of Works and Transport out of moneys to be provided by the Treasurer, and shall be deemed to be costs in the proceedings.

Assessors'
fees.

41. In assessing compensation for land acquired under this Ordinance the assessors or Judge shall act in accordance with the following rules:—

Rules for
assessment of
compensa-
tion.

(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 6 of this Ordinance:

Ord. 32-1938,
s. 10.

Provided 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 any Government Department 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 6, 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.

Severance.

Ord. 32-1938,
s. 10.

42. As to severance, the Judge shall have power to assess compensation on the footing that any specified works, crossings, or access agreed to on behalf of the Director of Works and Transport 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 Works and Transport and on the claimant and his successors in title.

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 in this Ordinance provided.

Award to be in writing and gazetted.

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.

Costs.

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, charges and expenses 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.

Claimants' costs.
Ord. 32-1938,
s. 11.

46. In the event provided for by section 39, 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 Full Court.

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 preceding section provided. But it shall be lawful for a Judge, either of the Supreme Court or of any Petty Civil Court, 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

Special case may be stated.

judgment of the Full Court should be obtained, 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.

Payment of compensation recovered.

48. On the production of a copy of a judgment of the Supreme Court, certified by the Registrar, or on the production of a copy of a judgment, certified by a Judge of a Petty Civil Court, the amount for which judgment shall have been given shall be paid by the Treasurer on the warrant of the Governor.

Costs of Director of Works and Transport.

49. All costs and expenses incurred by the Director of Works and Transport incident to such enquiry shall be paid by the Treasurer on the warrant of the Governor.

Limitation of time for making claims.

50. (1) 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.

Ord. 32-1938,
s. 12.

(2) 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 on land acquired under this Ordinance, shall be admitted or entertained after the expiration of twelve months computed from the date of a notice published in the *Royal Gazette* by the Director of Works and Transport certifying the completion of such public works.

Owner, etc., refusing to permit entry or give up possession.

51. If in any case in which according to the provisions of this Ordinance, the Director of Works and Transport or person authorised as aforesaid is authorised 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 this Ordinance, 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 Works and Transport 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 Works and Transport or person authorised 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 Works and Transport 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 for that purpose he shall issue his warrant accordingly.

52. 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 insane person having such mortgage or charge, shall give notice in writing to the Director of Works and Transport 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 Treasurer, to be placed to the credit of the parties having such mortgage or charge on such lands, describing them so far as the Director of Works and Transport can, subject to the control and disposition of the Supreme Court.

Mortgaged
lands.

53. 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

Where title
disputed,
compensation
to be
deposited in
Treasury.

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 Treasurer, 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.

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

54. 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.

Costs of payment out, etc., to be paid by Treasurer.

55. 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 Treasurer on the warrant of the Governor.

Conveyancing costs to be paid by Treasurer.

56. 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 Works and Transport may require, and all other reasonable expenses incident to the investigation, deduction, and verification of titles, shall be paid by the Treasurer on the warrant of the Governor.

Assaulting or obstructing officers.

57. If any person shall assault, or beat, or obstruct, or aid or abet any person to assault or beat or obstruct—

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

(b) the Director of Works and Transport or other person authorised as aforesaid, or his workmen, servants, or agents in the execution of his or their duty under this Ordinance,

every such person shall be liable to a fine of two hundred and forty dollars.

58. A Local Road Board constituted under the provisions of the Roads Ordinance 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 to the provisions of the said Ordinance) in respect of the formation of new roads within its district, without any other further authorisation or sanction than in such Ordinance 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 Works and Transport" in section 2 of this Ordinance; and in such case a resolution of the Board approved by the Governor in Council and published in the *Royal Gazette* shall, for the purposes of section 3 of this Ordinance, be deemed equivalent to the notification required by the said section.

Acquisition
by Local
Road Boards.

Ord. 32-1938,
s. 13.

59. (1) Any municipal or other public statutory Corporation authorised by the Ordinance creating such corporation to acquire land compulsorily for any of the works or purposes mentioned in subsection (3) hereof may at any time by their proper officers exercise all the powers of this Ordinance in respect of the entry into and acquisition of land required in the execution of their corporate or statutory duties without any other further authorisation or sanction than is provided in the Ordinance creating such Corporation, in the same manner in all respects as if such officers were included in the expression "Director of Works and Transport" in section 2 of this Ordinance, and unless otherwise specifically provided, a resolution of the Corporation authorising such entry or acquisition published in the *Royal Gazette* shall for the purposes of sections 3 and 6 of this Ordinance be deemed equivalent to the respective notifications required by the said sections.

Application of
Ordinance to
Municipalities and
Public
Statutory
Corporations.

Ord. 32-1938,
s. 14.

(2) Any promoter (other than a municipal or other public statutory Corporation) who shall have obtained the sanction of

To promoters.

the Governor and Legislative Council for the undertaking, erection, or provision of any of the works or purposes mentioned in subsection (3) hereof may from time to time by order of the Governor in Council, and on the conditions in the following sections of this Ordinance mentioned, exercise the powers of this Ordinance for the entry into and acquisition of such land as the Governor in Council may by order authorise to be acquired for such works or purposes.

Works and purposes for which land may be acquired.

(3) The works or purposes for which land may be acquired under this section, include railways, tramways, the supply of lighting, electricity, gas, water, or power, town and regional planning, slum clearance, erection of houses for the working classes, irrigation, drainage, sewerage and other works relating to public health, reclamation of swampy areas, land settlement, public transportation including provisions for passenger stations, garages and parking places, aerodromes, and for any other work of a public nature not hereinbefore mentioned.

Conditions to be imposed on grant of authorisation.

60. It shall be lawful for the Governor in Council to stipulate with the promoters, as a condition for the authorisation 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.

Ord. 32-1938,
s. 15.

Such stipulations, if accepted by the promoters, shall be embodied in the order of the Governor in Council in section 59 mentioned, and shall be binding upon such corporation, company, or other persons, and upon the public, and in such case the publication thereof in the *Royal Gazette* shall, for the purposes of section 3, be deemed equivalent to the notification required by the said section.

Effect of legalization and authorisation.

61. (1) On the publication of the order in the last preceding section provided for, the promoters shall be entitled, subject to any special directions as in the said section 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 Works and Transport and other Government Officers and servants, and all moneys payable to or by the Treasurer 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.

(2) On the acquisition of land under this Ordinance being decided on by the promoters, it shall be lawful for the Governor by notice in the *Royal Gazette* to declare the same to have been appropriated for the purpose mentioned in such notice, and thereupon such land shall become vested in the promoters.

Ord. 32-1938,
s. 16.

62. The consent of the Governor in 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 60.

Consent of
Governor.

63. All offences under this Ordinance may be prosecuted, and all penalties incurred may be imposed or recovered, in the manner provided by the Summary Courts Ordinance.

Recovery of
penalties.
Ord. 14-1939.
1st Schedule.