

CHAPTER 170.

ACQUISITION OF LANDS FOR PUBLIC PURPOSES.

[XXXI of 1914.]

[17th December, 1914.]

Short title.

1. This Ordinance may be cited as the Acquisition of Lands for Public Purposes Ordinance.

Interpretation.

2. In this Ordinance—

“land” includes all land whether covered with water or otherwise, together with any buildings and erections thereon, and, where that meaning may be inferred, any right therein;

“the Court” means the Supreme Court, and includes any judge thereof;

“the registrar” means the registrar of the Court.

Power to declare a work a public work.

3. The Governor in Council may, by order published in the Gazette, declare any railway, tramway, road, canal, dock, harbour work, polder, building, dam, sluice, or drain, or any work, measure or undertaking of whatsoever description whether *ejusdem generis* with any of the foregoing or not, and whether constructed or to be constructed out of public funds or otherwise or by the Government or otherwise, to be a public work and may alter or vary any order so made.

Authorisation to enter and examine land required.

4. The Governor in Council may by order published in the Gazette authorise the Commissioner of Lands and Mines or any other person, together with his agents, servants or workmen, to enter upon any land specified in the order for the purpose of surveying or otherwise examining it with a view to the acquisition of the whole or of part of it for the construction of a public work.)

Powers of Commissioner of Lands and Mines or other person authorised:

5.—(1) When any order aforesaid has been made the person authorised shall have power to do all or any of the following acts, namely,—

(a) to enter upon and survey and take levels of any land in any locality within which the public works are intended to be executed; or

- (b) to dig or bore into the sub-soil of that land;
- (c) to do all other acts necessary to ascertain whether the land is adapted to the purpose;

Provided that neither the person authorised, nor his agent, servants or workmen, shall enter into any building or into or upon any enclosed yard, court, or garden, attached to a dwelling-house, except with the consent of the occupier thereof, without previously giving the occupier at least seven days' notice in writing of his intention to do so.

6. The report of the person, together with a plan of the land, shall be laid before the Governor in Council, and after consideration thereof the Governor in Council may enter into negotiations for the purchase of the land, or, if for any reason he deems it advisable, may by order published in the Gazette declare that the land or any part thereof is required for a public work and may alter or annul any order so made.

Proviso.
Power to declare land to be required for public work.

7.—(1) At the expiration of one month from the date of the order mentioned in the last preceding section or of any longer period fixed by the order, the land specified therein shall vest in the colony as colony land, subject to the payment of the purchase money or of any compensation as hereinafter provided:

Vesting of land:

Provided that no land shall so vest unless and until the Legislative Council has voted or agreed to vote the sum estimated to be necessary for the public work for which the land is required.

Proviso.

(2) Land so acquired may be sold, leased, or otherwise dealt with in all respects in the same manner in which colony land is sold, leased, or otherwise dealt with from time to time by any law, practice, or procedure, notwithstanding that it has not been used or has ceased to be used for the purpose of the public work for which it was acquired.

8.—(1) When any order is made under section four or section six of this Ordinance, notice thereof shall be served personally on the proprietor or his attorney if either is resident in the colony, and, if he is not so resident or cannot be found, shall be considered duly served if it is published in the Gazette and in one local newspaper and a copy is also affixed upon a conspicuous part of the land.

Notification to owner and suspension of dealings with the land.

(2) From the date of that service no transport or mortgage shall be advertised, passed, or registered, and no contract relating to the land entered into, for the period of one month in the case of an order under section four, and until the date of the vesting of the land in the colony in the case of an order under section six hereof. Any transport, mortgage, or contract passed, registered or entered into contrary to this Ordinance shall be null and void.

Vesting of
land in the
colony.

9.—(1) When any order is made under section six hereof, the Colonial Secretary shall cause a certified copy of it, together with a plan of the land duly certified by a qualified surveyor, to be deposited in the deeds registry and may at the same or at any subsequent time deposit a certificate under his hand to the effect that the Legislative Council has voted the sum necessary for compensation; and from the expiration of the period prescribed by section seven hereof that certified copy shall be conclusive evidence that the land set out in the plan is vested in the colony, and the registrar of deeds shall register the title accordingly in the same manner as if transport had been advertised and passed notwithstanding any entry of opposition.

(2) (a) Anyone who would have a right to oppose if transport of the land were about to be passed by the owner thereof shall have the same right to enter opposition to the registration but that opposition shall be deemed to apply only to the payment of the compensation money to the parties interested.

(b) Where the matters alleged in the opposition are disputed by any of the persons claiming the compensation money or any part thereof, the person so claiming may enter a defence to the opposition and thereafter the proceedings shall continue as in ordinary opposition suits; and the Court shall have full power to make any order in relation to the opposition suit, both as to granting time or otherwise appearing to the Court to be necessary in order to have the questions at issue between the parties determined.

Powers of
Governor in
Council :

10. In case the public work which is the subject of an order under section six hereof is a railway, the Governor in Council, subject to any special Ordinance passed for the purposes of a public work under this Ordinance, may exercise any of the powers and shall be subject to all the

obligations, as regards construction of a railway and works connected therewith, as regards temporary occupation of lands near a railway during construction thereof, and as regards works for accommodation of lands adjoining a railway, and also may exercise all other powers and shall be subject to all other obligations, which a company may exercise or to which it is subjected under sections two hundred and forty-four to two hundred and fifty-four both inclusive, sections two hundred and fifty-six to two hundred and sixty both inclusive, and two hundred and eighty to two hundred and eighty-four both inclusive, of the Companies Clauses and Powers Consolidation Ordinance, 1846, and those sections shall for that purpose *mutatis mutandis* be read and construed as if the words "Governor in Council" were substituted for the words "company" or "railway company" and as if any reference in those sections to the Ordinance last aforesaid and to the special ordinance were only to this Ordinance and to any special ordinance passed for the purposes of any public work sanctioned by an order under this Ordinance:

No. I of
1846:
O.E.:

Provided that,—

Proviso.

(a) in cases where notices, summonses, or other legal process are to be given or served those sections shall be read and construed as if the words "Colonial Secretary," and where summonses or other legal process are to be served as if the words "the Attorney General," were substituted for the words "company" or "railway company"; and

(b) nothing in section two hundred and forty-nine of the Companies Clauses and Powers Consolidation Ordinance, 1846, shall be held to authorise any action for nuisance or other injury against the Governor in Council or against the general Government of the colony.

No. I of
1846:
O.E.

11. 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 a public work shall be entitled to compensation in the manner hereinafter provided for any servitude, easement, or right appurtenant to the land destroyed or interfered with or for any injury caused to the land by that erection or construction.

Compensation
to adjacent
proprietors.

Arbitration.

12. Nothing in this Ordinance contained shall be construed or deemed or taken to prevent or preclude the persons interested by mutual agreement submitting the difference between them as to compensation to the decision of an arbitrator or arbitrators in manner provided by the Companies Clauses and Powers Consolidation Ordinance, 1846.

No. 1 of
1846;
O.E.

Giving
directions on
publication
of order.

13.—(1) When any order has been published by the Governor in Council under section six hereof, the Court to which application may be made by motion *ex parte* by or on behalf of the Attorney General shall direct the value of the land described in the order to be ascertained and the amount of compensation which ought to be paid to the several persons interested therein to be determined.

(2) The Court shall further appoint the time and place at which it will sit to hear and determine the matter, and the registrar shall cause public notice of the time and place so appointed to be published in the Gazette and in one other newspaper published in the colony.

Notices to
persons
interested.

14. The Court shall direct what notices shall be given or served to enable all persons interested to protect their rights and the manner in which those notices shall be given or served.

Assessment
of compen-
sation.

15. The Court, after hearing evidence in that behalf, shall assess the amount of compensation to be paid to the owner of the land described in the order and to all others having any just right, title, or interest, to or in the land or any portion thereof, and the compensation may take into account and may include any amount the Court decides to be a proper compensation for disturbance to a lessee.

Evidence and
direction of
proceedings :

16.—(1) The Attorney General or anyone on his behalf and everyone interested in the land described in the order, may appear before the Court and tender any relevant evidence in support of their alleged rights and the value thereof, and may cross-examine any witness produced in an adverse interest and produce evidence to rebut any adverse testimony.

(2) The Attorney General or anyone on his behalf, or any interested person aforesaid, may summon any witnesses required.

(3) In all matters not herein expressly provided for the Court shall have full power to direct the proceedings as justice requires :

Provided that the Governor in Council may at any stage of the proceedings give notice of intention to discontinue them on paying compensation for any damage done, for any temporary occupation of the land, and for any costs incurred up to the date of withdrawal, but nothing shall in that case be awarded by way of compensation for loss of bargain or damages for breach of contract. Proviso.

(4) On the notice being given to discontinue the proceedings for the acquisition of land the soil of the land shall thenceforth revert in the owner or person interested for his prior estate.

17. If the Governor in Council has not, either before or within fourteen days of the award of the Court of the amount of compensation to be paid, caused notification of the abandonment of lands entered on, or as to which proceedings have been instituted under this Ordinance, to be made in manner hereby provided, the owner thereof may, by notice in writing to the Colonial Secretary, claim that land be appropriated, and the land shall then be deemed to have been definitely appropriated without the power of subsequent abandonment, and the assessed compensation therefor shall become due. Owner may claim appropriation.

18. In determining claims for compensation for lands acquired under this Ordinance, the Court may take into consideration— Items of assessment to be taken into consideration.

- (a) the market value of the land at the time of awarding compensation;
- (b) any damage sustained by the person interested at the time of awarding compensation by reason of severance;
- (c) the damage (if any) sustained by the person interested at the time of awarding compensation by reason of the acquisition injuriously affecting his other property or his earnings;
- (d) if in consequence of the acquisition he is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to the change;

but shall not take into consideration the following:—

- (i) the degree of urgency or necessity which has led to the acquisition;

- (ii) any *pretium dilectionis* or disinclination of the person interested to part with the land acquired;
- (iii) any damage sustained by the person interested which, if caused by a private person, would not render the private person liable to an action;
- (iv) any damage, not being in the nature of deprivation of, or interference with, any servitude, 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;
- (v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;
- (vi) any outlay or improvements on the land which appear to have been made, commenced, or effected, with the intention of enhancing the compensation to be awarded therefor in the event or with the view of its being required for the public purpose for which it has been acquired.

Additional
10 per cent.

19. In determining claims for compensation the Court shall have power to consider and award to the claimant in respect of compensation for compulsory purchase, in addition to the matters herein specified, any sum not exceeding ten per centum of the market value of the land at the time of awarding compensation to the Court seeming fit.

Resumption
under Crown
grant or
Crown Lands
Resumption
Ordinance.

Chapter 172.

20. Nothing in this Ordinance shall be construed or deemed to confer upon any person any right to compensation in respect of any land resumed in the name of His Majesty, his heirs or successors, in pursuance of any condition, reservation, or power of resumption contained in any grant of Crown land or under the Crown Lands Resumption Ordinance, or any Ordinance amending or replacing that Ordinance.

Severance.

21. As to severance, the Court shall have power to assess compensation on the footing that any specified works, crossings, or access, agreed on behalf of the Governor in Council, shall be erected, provided, and allowed, and the

agreement shall be reduced into writing and be signed by the judge and shall be valid and effectual and binding on the parties.

22. In any matter not above provided for the Court may award compensation in accordance with any law, rule, or procedure followed in like cases by courts of justice or by arbitrators in the United Kingdom.

As to procedure not specifically provided for.

23. The amount of the assessment, and those, if they are known, to whom it is payable, shall be forthwith published by the registrar in the Gazette and in one other newspaper published in the colony.

Publication of assessment.

24. The amount of the assessment shall, on the warrant of the Governor, be deposited by the Colonial Treasurer in the registry of the Court to abide the order of the court, and shall be distributed by the court free from all deductions for office and other costs, as justice may require.

Deposit and distribution of amount of assessment.

25. All proceedings by and before the Court under this Ordinance may be had and taken during any of its vacations.

Taking of proceedings in vacation.

26. When it does not appear to the Commissioner of Lands and Mines that the land claimed exceeds two hundred and forty dollars in value, the magistrate of the district in which the land is situate, upon the application of the Commissioner of Land and Mines, 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 that party, or in his absence upon proof of the due service of the summons, the magistrate may give all directions and exercise all or any of the powers in regard to the assessment and award which the Court may exercise under this Ordinance:

Claim under two hundred and forty dollars may be settled by magistrate:

Provided that—

Proviso.

(a) the party so summoned, at any time before the magistrate has given his decision, may apply to the court in chambers by motion to have the proceedings removed to the court and thereupon the Court may order them to be so removed, and the order shall be served upon the magistrate, who shall immediately transmit all documents of every description in his possession and custody to the registrar; and

Chapter 9.

(b) in that case the party having the proceedings so removed shall only be entitled to the costs as laid down by the Summary Jurisdiction (Magistrates) Ordinance, or any Ordinance amending it, or any Order in Council under it relating to fees, unless the compensation awarded by the Court exceeds two hundred and forty dollars.

Claim exceeding two hundred and forty dollars may be referred to magistrate.

27. In any case in which the compensation claimed exceeds two hundred and forty dollars, the Commissioner of Lands and Mines may apply to the Court in chambers, by motion, duly served on the claimant and supported by affidavit 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 the magistrate of the district in which the land is situate, and if the Court is satisfied on evidence that the compensation will probably not exceed two hundred and forty dollars, then the assessment of compensation may be referred to the magistrate, but in that case the magistrate shall be at liberty to award a greater sum than two hundred and forty dollars if he thinks fit.

Assaulting or obstructing officers.

28. Anyone who assaults or beats or obstructs,

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

(b) the Commissioner of Lands and Mines, or other person authorised as aforesaid, or his workmen, servants, or agents, in the execution of his or their duty under this Ordinance, or aids, or aids or abets any person in so doing,

shall be guilty of an offence against this Ordinance, and on summary conviction thereof shall forfeit and pay any sum not exceeding two hundred and fifty dollars, and in default of payment shall be imprisoned either with or without hard labour for any term not exceeding six months.

Penalty.

Protection of persons acting under Ordinance.

29.—(1) For the protection of persons acting in execution of this Ordinance, all actions and prosecutions to be commenced against the Commissioner of Lands and Mines, or person authorised as aforesaid, or his workmen, servants, or agents, for anything done by him or them in

pursuance of this Ordinance shall be commenced within six calendar months after the act was committed and not otherwise.

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

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

(4) No plaintiff shall recover in the action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into court by or on behalf of the defendant after action brought, and notice of that payment has been given to the plaintiff or his solicitor.

(5) If a judgement passes for the defendant, or the plaintiff becomes nonsuit or discontinues the action, the defendant shall be entitled to his full costs of suit to be taxed as between solicitor and client and shall have the same remedy therefor as any defendant has by law in other cases.
