

CHAPTER 169.

DISTRICT LANDS PARTITION AND
RE-ALLOTMENT.

[No. XVI of 1926.]

[19th June, 1926.]

1. This Ordinance may be cited as the District Lands Partition and Re-allotment Ordinance. Short title.

2. In this Ordinance, unless the context otherwise requires, Interpretation.

“ the Board ” means the Local Government Board constituted by the Local Government Ordinance; Chapter 84.

“ district ” means a village, country, or rural sanitary, district declared under the Local Government Ordinance, and includes two or more of any of those districts, but does not include an urban sanitary district;

“ owner ” means any person who by transport, letters of decree, inheritance, or devise, has acquired title to any share in any land not partitioned, or to any holding in any partitioned land, and includes any person who has purchased the share or holding but has not received transport or other title therefor;

“ the officer ” means the person appointed by the Governor in Council under the provisions of subsection (1) of section five of this Ordinance;

3.—(1) The owners of undivided shares in any land in a district who desire that it shall be partitioned, or the owners of the several holdings in any partitioned land in a district who desire that that land shall be re-allotted among them in some manner different from that in which it is occupied to ensure the more beneficial occupation thereof, or in order to have correct titles issued therefor where it is not being occupied in accordance with the division shown on the plan to which the existing titles relate, Petition for partition of land or re-allotment of holdings.

may present a petition to the Governor in Council praying that under the provisions of this Ordinance the area specified in the petition be partitioned or re-allotted, as the case may be, among the owners thereof.

(2) The petitioners must be the owners of shares or of holdings which in the aggregate constitute not less than fifty-one per centum in extent or in value of the area to which the petition relates.

(3) Every petition shall—

- (a) contain a full statement showing the reasons for the partition or re-allotment, and define clearly the land which is to be partitioned or re-allotted, and state its area and value;
- (b) state the extent or value of the shares or holdings of each of the petitioners;
- (c) be signed by every petitioner, who shall state his postal address.

Proceedings
on receipt of
petition.

4.—(1) The Governor in Council upon consideration of the petition may if he thinks fit make an order that the land specified in the petition shall be subject to the provisions of this Ordinance, and the order shall be published in the Gazette and one newspaper published in the colony.

(2) The Governor in Council may by order revoke or vary any order so made.

Appointment
of officer.

5. The Governor in Council may—

- (a) appoint a person to be the officer to partition and re-allot, or to re-allot, the land, and the officer shall have for that purpose all the powers conferred by this Ordinance; and
- (b) cancel any appointment so made and appoint any other person to be the officer.

Procedure
of officer.

6.—(1) The officer, as soon as practicable after his appointment, shall convene a meeting of all owners or mortgagees, and of all those who claim to be owners or mortgagees, of any part of or interest in the land, and the meeting shall be held on the land or at some convenient place in proximity thereto.

(2) The officer shall, not less than twenty-one days before the date of the meeting,—

- (a) publish a notice thereof in the Gazette and one newspaper published in the colony;

- (b) cause a copy of the notice to be posted at every post office, commissary's office, and police station in the fiscal district or districts in which the land is situate;
- (c) send by post a copy of the notice to every petitioning owner and to every other owner of whom he may have knowledge, and to every other person whose name is recorded in the books of any district in respect of the payment of rates or taxes for the land or any part thereof;
- (d) cause at least twenty copies of the notice to be posted in conspicuous places on the land.

(3) The officer, prior to the meeting, shall cause a copy of the notice of it to be re-published once at least in the Gazette and one newspaper, the second publication to be one week after the first.

(4) At the meeting the officer shall receive claims in writing from those who claim to be owners or mortgagees of any part of the land or of any interest therein.

(5) The officer may if necessary adjourn a meeting for a period of not more than one week.

7. The officer shall have the power to do any or all of the following things, that is to say, he may— Powers of officer :

- (a) enter on any part of the land at any time;
- (b) ascertain and determine the value and extent of every share or holding in the land;
- (c) ascertain the amount due on any mortgage, charge, or lien, on any share or holding;
- (d) inquire into and determine any claim made by anyone to be an owner or mortgagee of any part of the land, or into any dispute between any claimants with respect to any undivided part or the boundaries of any part of the land;
- (e) where undivided land is owned jointly, according as the petitioning owners desire, either partition the land in conformity with the manner in which it is being occupied in severalty by the joint owners, or partition it in any other manner he considers expedient to ensure the more beneficial occupation thereof :

Provided that the portion allotted to the several owners shall be proportionate to their respective shares. Proviso :

- (f) where the land has been previously partitioned and allotted, according as the petitioning owners desire, either re-partition and re-allot it in the manner he considers expedient to ensure the more beneficial occupation thereof, or, in cases where it is not being occupied in conformity with the sub-divisions shown on the plan to which the existing titles for the several holdings relate, re-partition and re-allot it in conformity with the manner in which it is being occupied, so that new titles for the existing holdings may be issued;
- (g) make the reservations within the land he considers necessary for the purpose of laying out roads or paths, or for the better drainage thereof, or for any other purpose connected with the improvement thereof;
- (h) to ensure the more beneficial occupation thereof, sub-divide the land into sections and lay out those sections in the manner and in the lots he thinks fit :

Proviso.

Provided that the area of any lot or lots allotted to the owner of any share or holding shall be in the aggregate in the same proportion to the aggregate area available for allotment after the reservations (if any) have been made as hereinbefore provided, as the area of the share or holding previously occupied by that owner was to the aggregate area of the shares or holdings of all the owners before the land became subject to this Ordinance;

- (i) do any other thing in his opinion reasonably necessary to carry out the purpose of the partition or allotment.

Evidence.

8. The officer may require in writing the claimant to any share or holding in land the subject of this Ordinance to produce for his inspection all or any documents in the claimant's possession or power relating to the claimant's title or to any matter in connection with his duties under this Ordinance.

Plan of survey.

9.—(1) The officer may employ a land surveyor approved by the Commissioner of Lands and Mines to survey the land and prepare a plan to show the boundaries and extent

thereof and the existing sub-divisions (if any) therein, where no plan of the land is available, or to lay out the land into the lots to which, after inquiry as hereinbefore provided, he determines each owner or person interested to be entitled; or to divide and lay out the land in the manner he may after inquiry determine in order to ensure the more advantageous enjoyment and beneficial occupation thereof, or to permit new titles to be issued.

(2) The Commissioner of Lands and Mines may approve of the officer himself, if a sworn land surveyor, to be the surveyor for the purposes of the preceding subsection.

10. The officer may employ others to assist him in the performance of his duties under this Ordinance.

Officer may employ assistants.

11.—(1) Where the owner of any share or holding in land which is the subject of this Ordinance cannot be ascertained the officer may order the share or holding to be sold.

Sale of land of which owner cannot be ascertained.

(2) The share or holding shall be sold by public auction by the officer or an auctioneer, and the proceeds thereof shall be paid to the officer, who, after deducting the expenses of the sale, shall pay the balance to the Colonial Treasurer.

(3) If within six years of the sale anyone satisfies the Governor in Council that he was the owner of that share or holding, and that he was unable for good and sufficient reason to prove his claim before the officer, the Governor in Council may direct that the balance shall be paid to the claimant, and that payment shall be in full satisfaction of his claim, but if no one makes that claim the balance shall be carried to general revenue.

12.—(1) Wherever, from the number of those entitled to any share or holding in any land, or for any other good and sufficient reason, the officer is of opinion that it would be more convenient to sell that share or holding and divide the proceeds amongst the persons entitled, he may, instead of allotting that share or holding among those entitled thereto order it to be sold.

Additional powers of officer.

(2) The share or holding shall be sold by public auction by the officer or an auctioneer, and the proceeds of the sale shall be paid to the officer, who, after deducting the expenses of the sale, shall divide the proceeds amongst those entitled thereto in proportion to the interest to which each was entitled in the share or holding.

(3) The officer shall give title to the purchaser in the same manner as if the purchaser were an owner to whom the share or holding was allotted by him.

Compensation
for
permanent
crops :

13.—(1) The owner of any coconut, cacao, coffee, fruit, or other economic trees, or permanent cultivation of a similar nature, who is deprived thereof by reason of partition or re-allotment made under this Ordinance, shall be entitled to the compensation therefor determined by the officer :

Proviso.

Provided that where the owner is dissatisfied with the amount of compensation assessed by the officer, he may, within one month of the publication of the list required to be published under section sixteen of this Ordinance, apply to the magistrate of the district within which the land is situate to have the amount of his claim ascertained and certified, and the magistrate shall inquire what is the value of the trees or cultivation aforesaid, and shall have the same power to inquire into the claim as if it were a complaint of petty debt and the officer were the defendant, and shall after investigation certify under his hand the amount of compensation to which the owner is entitled.

(2) The amount of compensation assessed or certified under the preceding sub-section shall be deemed to form part of the expenses of the partition or re-allotment and shall be recoverable accordingly.

Compensation
for other
crops or
building :

14.—(1) The officer may direct what compensation shall be paid to any person entitled to any growing crops, or to any building, by anyone obtaining them or it through partition or re-allotment of any land under this Ordinance, and may either prescribe the amount of that compensation or postpone the date of the coming into effect of the partition or re-allotment to allow the crops to be reaped or the building to be removed :

Proviso.

Provided that the cost assessed by the officer for removing a building shall be deemed to form part of the expenses of the partition or re-allotment and shall be recoverable accordingly.

(2) Where the date of coming into effect of a re-allotment is postponed, the officer may direct that any current rates or taxes due in respect of the land whereon the growing crops or building are situate shall be paid in the manuer prescribed by him.

(3) The officer may direct by whom and in what manner any rates due at the time of the partition or re-allotment are to be paid.

15.—(1) As soon as practicable after the officer has done all in his opinion necessary to effect a partition or re-allotment of the land, he shall transmit a report to the Board, setting out briefly the claims made in respect of the land and his decision upon each, together with a plan of the land showing the proposed partition or re-allotment, as the case may be, with the names of those entitled to the lots and the names of those entitled as mortgagees, specifying the lots affected by the mortgage, and upon the receipt of that report the Board may either approve it or send it back to the officer for further consideration.

Report of officer ;

(2) When the report has been approved by the Board the officer shall cause a list to be published in the Gazette and one newspaper published in the colony, giving the sections and numbers of the lots into which the land has been partitioned or re-allotted, and the names of those entitled to each lot, together with the name of any mortgagee and the amount of his mortgage.

publication of list of owners.

(3) One copy of the list shall be posted in every post office, commissary's office, and police station within the fiscal district, and copies shall be posted upon the land.

16. The claimant to, or any mortgagee of, any share or holding who is dissatisfied with a decision of the officer may, within one month from the publication of the list in the Gazette appeal to the Board therefrom, and the Board shall have power to hear and determine the appeal, and, in pursuance of that purpose, to depute any one of its officers to take in its behalf any evidence necessary in connection with the appeal :

Appeal from decision of officer :

Provided that the claimant or mortgagee may apply to the magistrate's court or to the Supreme Court in any manner and for any remedy now provided by law, but if that application is not made within two months after the decision of the officer, or in case of appeal to the Board within two months after the determination of the appeal, the decision of the officer or of the Board, as the case may be, shall be final.

Proviso.

17.—(1) After consideration of the report by the Board, the officer, as soon as practicable after the expiration of the period specified in the last preceding section, shall

Issue of title.

proceed to give title for the lots in respect of which there has been no appeal in the manner now provided by law, or may give title and have it recorded or registered in any manner hereafter provided by law for the transfer or registration of title to immovable property.

(2) On the final determination of an appeal the officer shall in like manner give title to the person declared to be entitled thereto.

(3) The officer may also in like manner give a mortgage of any lot to anyone found entitled thereto.

Fees and charges.

18. For a transport or mortgage, including the grosse copy thereof, advertisement in the Gazette, and all other expenses, the registrar of deeds shall charge the sum of one dollar and fifty cents and no more, and that sum shall be paid by the person receiving the transport.

Expenses of allotment.

19. All costs, charges, and expenses directed by the officer to be paid, the amount of any compensation assessed or certified under sections thirteen and fourteen of this Ordinance and the expenses of the removal of every building under section fourteen, and the cost of surveys and the remuneration of the officer, if any, incurred in carrying out the provisions of this Ordinance, unless the officer for any reason otherwise directs, shall be charged proportionately on all the lots into which the land has been partitioned or re-allotted, and for that purpose the officer shall value each of the lots independently of the buildings and cultivation thereon and assess the rate or portion to be paid in respect of each lot.

Recovery of expenses.

20.—(1) The amount charged on each lot under the last preceding section shall be paid to the officer by the person to whom the lot is allotted within thirty days after a demand for payment in writing is served on him or the demand is posted on any principal building, conspicuous tree, stake, or paling, on the lot; and, in default of payment, the officer, either himself or by someone authorised in writing by him, may proceed for the recovery of the amount by summary or parate execution according to law.

(2) Where more lots than one are allotted to anyone and one of the lots is a township or residential lot, the service of summation or other legal process for the recovery

of an assessment in respect of all or any of those lots upon the township or residential lot shall be deemed to be valid and sufficient service.

(3) In that process and in any other legal process it shall be sufficient to describe the officer as "The Officer for the allotment of," without specifying his name or proving his authority.

21.—(1) All lots as aforesaid shall be, and are hereby declared to be liable and leviable for the amount assessed thereon as aforesaid, and the amount due by or claimable against any lot aforesaid shall be and is hereby declared to be preferent over and above all claims of whatever nature, kind, or description (except only debts due to the Crown or colony) whether any of those claims are against the lot or lots and buildings or against the owner thereof, anything in this or any law or Ordinance notwithstanding, and over any claims against the owners of the lots or against the lots in the land.

Liability for amount assessed.

(2) Any sums assessed and owing under this Ordinance may be recovered by summary or parate execution.

22. The Governor in Council may make regulations for carrying out the provisions of this Ordinance.

Power to make regulations.

23. Anyone disobeying an order in writing of the officer to produce documents, and anyone obstructing the officer, or any surveyor, or other person appointed or employed by him under the provisions of this Ordinance, shall be guilty of an offence, and on conviction by a court of summary jurisdiction shall be liable to a penalty not exceeding twenty-five dollars or to imprisonment not exceeding one month.

Obstruction of officer.

Penalty.

24. The repeal of the District Lands Partition Ordinances, 1914 and 1920, shall not in any way affect any proceedings taken or commenced but not yet completed, but in all cases those proceedings shall continue in all respects as if those Ordinances had not been repealed.

Saving of proceedings under repealed Ordinances.