

LANDS ACQUISITION ORDINANCE, 1914. ⁽¹⁾

No. 7 of 1914.

An Ordinance relating to the Acquisition of Land required for Public Purposes and for Dealing with Land so acquired and for other purposes connected therewith.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Lands Acquisition Ordinance, 1914.* ⁽¹⁾ Short title.

2. This Ordinance shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation published in the *Gazette.* ⁽¹⁾ Commencement.

3. This Ordinance shall not apply to land occupied by or the property of native Papuans and which has never been acquired by the Crown. Not to apply to certain lands.

4. This Ordinance is divided into Parts as follows:—
 - Part I.—Preliminary. Division.
 - Part II.—Acquisition of Land:
 - Division 1.—Modes of Acquisition.
 - Division 2.—Acquisition by Agreement.
 - Division 3.—Acquisition by Compulsory Process.Cf. Cwlth. No. 13 of 1906, s. 4.
 - Part III.—Powers in Relation to Lands.
 - Part IV.—Compensation:
 - Division 1.—Right to Compensation.
 - Division 2.—Claims for Compensation.
 - Division 3.—Determination of Disputed Claims for Compensation.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
19. 8. 1914	7. 4. 1915	4. 11. 1914 (Papua Govt. Gaz. of 4. 11. 1914)

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Division 4.—Determination of Compensation Where No Claim Made.

Division 5.—Payment of Compensation.

Part V.—Mortgages Encumbrances and Leases.

Part VI.—Miscellaneous.

Interpretation.

5. In this Ordinance unless the contrary intention appears—
- “Acquire” means acquire take or resume;
 - “Convey” means convey transfer or lease;
 - “Court” or “Central Court” means the Central Court⁽²⁾ or a judge thereof;
 - “Crown Land” means any land the property of the Crown whether reserved or dedicated or granted or placed under the control of trustees in trust for any public purpose or not but does not include any estate or interest granted by the Crown to any person;
 - “Crown Lease” means leases granted under any Ordinance regulating the dealing with land in the Territory;
 - “Encumbrance” includes any rent-service rent-charge chief or other rent or other charge or encumbrance upon land other than a mortgage;
 - “Land” includes any estate or interest in land (legal or equitable) and any easement right power or privilege over in or in connection with land;
 - “Lease” includes an agreement for a lease;
 - “Owner” includes with respect to land any person who under this Ordinance is enabled to sell or convey the land to His Majesty;
 - “Special Ordinance” means any Ordinance authorizing the carrying out of any public work in connection with any public purpose;
 - “Public Purpose” means—
 - (a) any purpose of public health defence safety utility necessity or convenience; and
 - (b) any purpose declared⁽³⁾ by the Lieutenant-Governor⁽²⁾ by notification in the *Gazette* to be a public purpose.

6. Any person seised or possessed or entitled to any land particularly any—

- (a) corporation;
- (b) tenant in tail or for life;

Persons under disability may sell land.
Cf. Cwith. No. 13 of 1906, s. 8.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(3) No notification specifying other public purposes has been published in *Papua Govt. Gaz.* For particulars of notices declaring land acquired for the public purposes therein specified, see the Table printed on p. 2581. The notices are printed immediately after the Table.

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- (c) married woman seised in her own right;
- (d) guardian;
- (e) committee of a lunatic or idiot;
- (f) trustee or feoffee in trust;
- (g) executor or administrator;
- (h) persons for the time being entitled to the receipt of the rents and profits of any land in possession; or
- (i) lessee for life or for life and years or for years or for any less interest;

may (by force of this Ordinance and notwithstanding anything to the contrary in any law proclamation deed of settlement memorandum or articles of association deed or instrument) sell and convey the land to His Majesty and may enter into any agreement for that purpose with the Lieutenant-Governor⁽²⁾ or any person appointed by him.

7. The power to sell and convey land may be exercised—

- (a) by any person (other than a lessee for life or for life and years or for years or for any less interest) not only on behalf of himself and his heirs executors administrators and successors but also on behalf of every person entitled in reversion remainder or expectancy after him and in defeasance of the estate of every person so entitled; and
- (b) in the case of a married woman whether she is of full age or not as if she were of full age and a *feme sole*; and
- (c) in the case of a guardian on behalf of his ward and to the same extent as the ward could have done if he were not under a disability; and
- (d) in the case of a committee of a lunatic or idiot on behalf of the lunatic or idiot and to the same extent as the lunatic or idiot could have done if he were not under a disability; and
- (e) in the case of trustees executors or administrators on behalf of their *cestui que* trusts (whether persons under a disability or not) to the same extent as the *cestui que* trusts could have done if they were not under a disability.

Extent of power to sell.
Cf. Cwith. No. 13 of 1906, s. 9.

8.—(1.) Where any land is sold or conveyed to His Majesty by or acquired from any person who was not entitled to sell or convey the land to His Majesty except under this Ordinance the purchase money or compensation may be applied as follows:—

Application of purchase money or compensation where parties not entitled to sell.
Cf. Cwith. *ib. s.* 10.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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- (a) With the consent of all parties interested the purchase money or compensation may be paid to a trustee subject to such trusts as are declared by a deed of trust approved by a judge of the Central Court;⁽²⁾ or
- (b) The purchase money or compensation may be paid the Registrar of the Central Court⁽²⁾ to be applied in accordance with any order of the court.

(2.) The Central Court⁽²⁾ may on the application of any person interested order any purchase money or compensation to be applied as follows:—

- (a) in the discharge of any debt or encumbrance affecting the land or affecting other land settled therewith to the same or the like uses trusts and purposes; or
- (b) in the purchase of other land or of Government securities of the Commonwealth of Australia or of any State thereof to be conveyed limited and settled upon the like uses trusts and purposes and in the same manner as the land in respect of which the purchase money or compensation money was paid; or
- (c) if the purchase money or compensation has been paid in respect of any buildings acquired under the authority of this Ordinance—in removing or replacing the buildings or substituting others in their stead; or
- (d) in such manner as the Central Court⁽²⁾ directs; or
- (e) in payment to any person becoming absolutely entitled to the purchase money or compensation.

(3.) Provided that where the purchase money or compensation does not exceed Fifty pounds it may be paid to the persons who would for the time being have been entitled to the rents and profits of the land.

(4.) Where any infant lunatic or idiot is interested in or entitled to receive any purchase money or compensation his consent to any application or disposition of the purchase money or compensation may be given by a committee or guardian on his behalf or the purchase money or compensation may be paid to his committee or guardian.

9.—(1.) The Central Court⁽²⁾ may on the application of any person interested order that any purchase money or compensation paid or deposited in respect of any land acquired under this Ordinance shall be invested or applied in such manner as the court considers will give to the parties interested therein as nearly as

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

Power of court to make orders as to purchase money. Cf. Cwith. No. 13 of 1906, s. 11.

may be the same benefit as they would have had from the land if it had not been acquired under this Ordinance.

(2.) The costs of and incident to any application under this section or to any investment ordered under this section shall be in the discretion of the court.

10. If any question arises respecting the title to any land in respect whereof any purchase money or compensation is payable under this Ordinance the person in possession of the land as being the owner thereof or in receipt of the rents of the land as being entitled thereto at the time of the land being acquired by His Majesty shall be deemed to have been entitled to the land until the contrary is shown; and unless the contrary is so shown the person so in possession and all persons claiming under him or consistently with his possession shall be deemed entitled to the purchase money or compensation and it shall be paid and applied accordingly.

Person in possession to be deemed the owner.
Cf. Cwlth. No. 13 of 1906, s. 12.

PART II.—ACQUISITION OF LAND.

Division 1.—Modes of Acquisition.

11. The Lieutenant-Governor⁽²⁾ or any person authorized by him may acquire any land in the name of His Majesty for public purposes—

Modes of acquisition.
Cf. Cwlth. *Ib.* s. 13.

(a) by agreement with the owner; or

(b) by compulsory process.

Division 2.—Acquisition by Agreement.

12.—(1.) The Lieutenant-Governor⁽²⁾ may approve of the acquisition of any land by agreement with the owner.

Acquisition by agreement.
Cf. Cwlth. *Ib.* s. 14.

(2.) The Commissioner of Lands may thereupon for and on behalf of His Majesty execute or accept any conveyance or document or enter into any covenant or agreement and do anything necessary for the purpose of effecting the acquisition of the land.

Division 3.—Acquisition by Compulsory Process.

13.—(1.) The Lieutenant-Governor⁽²⁾ may direct that any land may be acquired by His Majesty from the owner by compulsory process.

Approval of acquisition.
Cf. Cwlth. *Ib.* s. 15.

(2.) The Lieutenant-Governor⁽²⁾ may thereupon by notification published in the *Gazette*⁽⁴⁾ declare that the land has been acquired under this Ordinance for the public purpose therein expressed.

Notification of acquisition.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(4) A Table, containing particulars of notices notifying and declaring the acquisition of specific land for the public purposes therein expressed, including a notice setting apart Crown land for Defence purposes, is printed on p. 2581, and the notices are printed immediately after the Table.

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Crown land may be set apart.
Cf. W.A. 2 Ed. VII. No. 47, s. 12.

(3.) The Lieutenant-Governor⁽²⁾ may by the same notification⁽⁴⁾ declare that any Crown land shall be set apart for such purpose.

Notification to be laid before Legislative Council.

(4.) A copy of the notification shall be laid before the Legislative Council within fourteen days after its publication in the *Gazette* if the Council is then sitting and if not then within fourteen days after the next meeting of the Council.

Effect of notification to vest land in His Majesty.
Cf. Cwlth. No. 13 of 1906, s. 16.

14.—(1.) Upon the publication of the notification in the *Gazette* the land described therein shall by force of this Ordinance—

(a) be vested in His Majesty; and

(b) be freed and discharged from all trusts obligations estates interests contracts licences charges rates and easements

to the intent that the legal estate therein together with all rights and powers incident thereto or conferred by this Ordinance shall be vested in His Majesty.

Effect of notification in case of dedicated land.

(2.) Where the land described in the notification is Crown land the notification shall also have the effect of cancelling any dedication reservation or trust to which the land was subject at the date of the publication of the notification.

Conversion of estates and interests into claim for compensation.
Cf. Cwlth. *Id.* s. 17.

15. Upon the publication of the notification in the *Gazette* the estate and interest of every person entitled to the land (except Crown land) specified in the notification shall be taken to have been converted into a claim for compensation.

Notice to owner.
Cf. Cwlth. *Id.* s. 18.

16.—(1.) Forthwith after the publication of the notification in the *Gazette* the Commissioner for Lands shall cause a copy of the notification together with a plan of the land to be served upon the owners of the land or such of them as can with reasonable diligence be ascertained either personally or by registered letter posted to their last known places of abode or business.

(2.) If the owner cannot after diligent inquiry be found a copy of the notification together with a plan of the land shall be left with the occupier of the land or if there is no occupier shall be affixed upon some conspicuous part of the land.

Notice taking land may be annulled or amended.
Cf. W.A. *Id.* s. 21.

17.—(1.) Any notification whereby land is declared to be acquired under this Ordinance may at any time within ninety days of the first publication thereof be annulled or amended by a subsequent notification in the *Gazette* and if annulled and so far as amended shall as from the publication thereof be absolutely void and of no effect.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) See footnote (4) printed on p. 2563.

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(2.) No person shall be prejudiced in respect of any mortgage encumbrance estate or interest existing in respect of such land by reason of his having in consequence of the earlier notice done or omitted any act or thing or failed to enforce or act upon any right or comply with any obligation in respect of such mortgage encumbrance estate or interest.

(3.) Except as provided in the next following section no person shall have any right of action or claim against the Crown for anything *bonâ fide* done under such notice before the annulment or amendment thereof.

(4.) Nothing herein contained shall limit the power of the Lieutenant-Governor⁽²⁾ to acquire by any subsequent notice the whole or any part of the land mentioned or described in any notification so annulled in whole or in part.

18. When a notification is annulled any owner of land who would otherwise have been entitled to compensation shall be paid compensation for any actual damage done to the land and such reasonable costs incurred to the date of the notification whereby the notification taking the land was annulled to be agreed upon or determined by the Central Court.⁽²⁾

Compensation on notice taking land being annulled.
Cf. W.A. 2 Ed. VII. No. 47, s. 22.

19.—(1.) Where the land is under the provisions of the *Real Property Ordinance, 1913*,⁽⁵⁾ the Commissioner for Lands shall after the publication of the notification in the *Gazette* deliver a copy of the notification together with a description and plan to the Registrar of Titles who shall thereupon register such land in the name of His Majesty by memorial upon the Crown grant certificate of title Crown lease or other instrument of title comprising the land out of which the land has been acquired.

Registration of notification comprising land under "Real Property Ordinance."
Cf. Cwith. No. 13 of 1906, s. 20.
Cf. W.A. *Id.* s. 23 (2).

(2.) Any person in possession of any deed grant certificate of title Crown lease or other instrument evidencing title to such land shall upon receiving notice from the Registrar of Titles deliver up to him such instrument to be in the case of a grant or certificate of title wholly or partially cancelled as the case may require and in the case of a Crown lease or other instrument evidencing title to have recorded thereon a memorial of the said copy of notification in the *Gazette* description and plan and any person refusing or neglecting so to deliver up any such instrument shall be liable to a penalty not exceeding One hundred pounds.

(3.) The Registrar of Titles shall retain every Crown grant and certificate of title to such lands which shall have been granted in fee simple and shall issue free of charge a certificate of title for the land if any included in such Crown grant or certificate and not included in the notification in the *Gazette*.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

(5) Now the *Real Property Ordinance, 1913-1939*.

No compensation in certain cases.

Cf. W.A. 2 Ed. VII. No. 47, s. 23 (5).

(4.) No person having in his possession any such Crown grant certificate of title Crown lease or other instrument shall be entitled to receive compensation under this Ordinance until such instrument is delivered to the Registrar of Titles.

Crown lands taken to be shown on the maps and records in the Lands Office.

Cf. W.A. 1b. s. 24.

20. Where the notification published in the *Gazette* sets apart any Crown land the Commissioner for Lands shall cause a copy of the notification to be lodged in his office and shall cause the land included in the notification to be shown upon the proper maps and records of the lands affected thereby so as to prevent such land being disposed of contrary to such notification.

PART III.—POWERS IN RELATION TO LANDS.

Power to examine lands.

Cf. Cwlth. No. 13 of 1906, s. 21.

21. All persons authorized by the Lieutenant-Governor⁽²⁾ may—

- (a) enter upon any land and
- (b) make surveys take levels sink pits and examine the soil and
- (c) do any thing necessary for ascertaining the suitability of the land for any public purpose.

Power to occupy lands temporarily.

Cf. Cwlth. 1b. s. 22.

22. Where any land has been purchased or acquired under this Ordinance for any public purpose the Director of Works and all persons authorized by him may enter any land—

- (a) being within a distance of two hundred yards from the nearest boundary of the land so purchased or taken; and
- (b) not being a garden orchard or plantation attached or belonging to a house or a park planted walk avenue or ground ornamentally planted; and
- (c) not being nearer to the dwelling house of the owner of the land than a distance of five hundred yards;

and may occupy the land so entered so long as may be necessary for the purposes of any works connected with the carrying out of the public purpose.

Power to take materials make roads etc. on adjacent lands.

Cf. Cwlth. 1b. s. 23.

23. The Director of Works and all persons authorized by him may subject to the approval of the Lieutenant-Governor⁽²⁾ in connection with the carrying out of any public purpose exercise on or in relation to any land occupied by him under this part of this Ordinance all or any of the following powers:—

- (a) to take clay stone gravel earth timber wood or material or things required for carrying out the public purpose;
- (b) to make cuttings or excavations;
- (c) to deposit clay stone gravel earth timber wood or material;

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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- (d) to manufacture goods or articles required for carrying out the public purpose;
- (e) to erect workshops sheds and buildings of a temporary character;
- (f) to make roads.

(2.) The power to take clay stone or earth shall not be exercised in respect of any stone or slate quarry brickfield or other like place commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same.

24.—(1.) Where the Director of Works or any person authorized under this Ordinance enters any land and temporarily occupies it under the powers conferred by this Ordinance the Treasurer shall pay out of monies legally available for that purpose to the owner or occupier of the land as the case requires a rent for the occupation of the land.

Rent for temporary occupation.
Cf. Cwlth. No. 13 of 1906, s. 24.

(2.) The amount of rent and times of payment shall be settled by agreement between the Director of Works and the owner or occupier or if they cannot agree then on the application of the Director of Works by the Central Court.⁽²⁾

(3.) Nothing in this section shall take away the right of any person to compensation for damage sustained by reason of the exercise of any power under this Part of this Ordinance.

25. The Director of Works shall if required by the owner or occupier of the land so to do separate any land occupied in pursuance of this Part of this Ordinance from any adjoining land by a sufficient fence with such gates as may be necessary for the convenient occupation of the land.

Fencing of lands.
Cf. Cwlth. *Ib.* s. 25.

PART IV.—COMPENSATION.

Division 1.—Right to Compensation.

26. Where any land (other than Crown land) is acquired by compulsory process the owner of the land shall if deprived of the land in whole or in part be entitled to compensation under this Ordinance.⁽⁶⁾

Right to compensation.
Cf. Cwlth. *Ib.* s. 26.

27. Where compensation is claimed by a person whose estate or interest in the land taken is not duly registered or notified in the Department of the Registrar of Titles and any other person has applied for and obtained compensation in respect of the same land and without giving written notice with his claim of such unregis-

No compensation to unregistered owner in certain cases.
Cf. W.A. 2 Ed. VII. No. 47, s. 34 (2).

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(6) As to the principles upon which compensation under this Ordinance is assessed, see *Geita Sebca v The Territory of Papua* (1941) 67 C.L.R. 544; 15 A.L.J. 357. See also footnote (5) printed on page 2585.

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tered estate or interest such first-mentioned person shall not be entitled to claim or receive payment of any compensation whatever in respect of such estate or interest.

Compensation
how estimated.
Cf. Cwlth.
No. 13 of 1906,
s. 28.

28.—(1.) In determining the compensation⁽⁶⁾ under this Ordinance regard shall be had (subject to this Ordinance) to the following matters:—

- (a) The value of the land acquired;
- (b) the damage caused by the severance of the land acquired from other land of the person entitled to compensation; and
- (c) the enhancement or depreciation in value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out of the public purpose for which the acquired land was acquired.

(2.) The enhancement or depreciation in value shall be set off against or added to the amount of the value and damage specified in paragraphs (a) and (b) of Subsection (1.) of this section.

Value of land
how assessed.
Cf. Cwlth. *Ib.*
s. 28.

29. The value of any land acquired by compulsory process shall be assessed as follows:—

- (a) in the case of land acquired for a public purpose not authorized by a Special Ordinance according to the value of the land on the first day of January last preceding the date of acquisition; and
- (b) in the case of land acquired for a public purpose authorized by a Special Ordinance according to the value of the land on the first day of January last preceding the first day of the meeting of the Legislative Council in which the Special Ordinance was passed.⁽⁷⁾

(2.) The value of the land shall be assessed without reference to any increase in value arising from the proposal to carry out the public purpose.

Production of
lease where
lessee claims
greater interest
than as tenant
at will.
Cf. Cwlth. *Ib.*
s. 30.

30. If any person having a greater interest than as a tenant at will of any land acquired by compulsory process makes a claim for compensation in respect of any unexpired term or interest under any lease the Treasurer may by demand in writing require him

(6) As to the principles upon which compensation under this Ordinance is assessed, see *Geita Sebea v The Territory of Papua* (1941) 67 C.L.R. 544; 15 A.L.J. 357. See also footnote (5) printed on page 2585.

(7) The *Lands (Kila Kila Aerodrome) Acquisition Ordinance, 1939*, does not specifically authorize a public purpose but the preamble states that the lands described in the schedules thereto are required immediately for the purposes of or connected with the Kila Kila Aerodrome. *Held*, by the High Court, that the value of lands acquired under that Ordinance should be assessed as at a date determined in accordance with sub-section (b) of Section 29 of the *Lands Acquisition Ordinance, 1914: Geita Sebea v. The Territory of Papua* (1941) 67 C.L.R. 544; 15 A.L.J. 357.

to produce the lease in respect of which the claim is made or the best evidence thereof in his power.

If the demand is not complied with within twenty-one days after service thereof on the claimant he shall be deemed to be a tenant holding from year to year and shall not be entitled to further compensation than as such a tenant.

31.—(1.) Where by reason of the execution of any powers under Part III. of this Ordinance the owner or occupier of any land suffers damage he shall be entitled to compensation under this Ordinance.

Compensation for entry on and occupation of land.
Cf. Cwlt. No. 13 of 1906, s. 31.

(2.) Where the Director of Works or any person authorized by him enters into the temporary occupation of any land the compensation shall include—

- (a) damage of a temporary as well as of a permanent character; and
- (b) the value of all clay stone gravel earth timber wood materials or things taken for carrying out the public purpose.

32. Where any land acquired shall be held under lease granted under any Ordinance relating to the granting of leases or licences to hold land for mining purposes the lessee or licensee of such land shall only be entitled to claim compensation for actual loss sustained through damage to his mine or the works connected therewith by reason of such acquisition.

As to mineral leaseholds.
Cf. W.A. 2 Ed. VII. No. 47, s. 17.

Division 2.—Claims for Compensation.

33.—(1.) Any person claiming to be entitled to compensation under this Ordinance may make a claim for compensation.

Claim for compensation.
Cf. Cwlt. *Ib.* s. 32.

(2.) A claim for compensation shall be in writing and shall be served on the Treasurer and shall set forth the prescribed particulars and shall be in accordance with such of the prescribed forms as is applicable to the case.

(3.) A claim for compensation shall be deemed to be made when it has been served on the Treasurer.

34.—(1.) Except as allowed in Subsection (2.) of this section a claim for compensation shall be made within the following times:—

Time for making claim for compensation.
Cf. Cwlt. *Ib.* s. 33.

- (a) Where the claim is for land acquired within one hundred and twenty days after the publication of the notification of acquisition.

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- (b) Where the claim is for damage suffered by reason of the exercise of any powers under Part III. within one hundred and twenty days after the completion of the acts in respect of which compensation is claimed.

(2.) The Treasurer if he is satisfied that any claim for compensation is *bonâ fide* may allow such further time for making it (whether the time for making it has expired or not) as he thinks just and it may be made accordingly.

Procedure on claim for compensation being received.
Cf. Cwlth. No. 13 of 1906, s. 34.

35.—(1.) Within one hundred and twenty days after a claim for compensation has been made the Treasurer shall examine the claim and report thereon to the Lieutenant-Governor⁽²⁾ for his decision as to the value of the land of the claimant and the amount of damage to which the claimant is entitled.

(2.) After the receipt of the decision of the Lieutenant-Governor⁽²⁾ upon the report the Treasurer shall in accordance with such decision—

- (a) notify the claimant that he admits the claim for compensation and that the compensation claimed will be paid to the claimant on compliance with this Ordinance; or
- (b) offer the claimant such amount as the Treasurer with the approval of the Lieutenant-Governor⁽²⁾ thinks reasonable in satisfaction of the claim for compensation and notify the claimant that the amount offered will be paid to him on compliance with this Ordinance if he accepts the offer; or
- (c) notify the claimant that he disputes the claim for compensation.

(3.) The claimant shall within sixty days after the receipt of the offer of the Treasurer by notice in writing notify the Treasurer whether he does or does not accept the offer.

36. If—

When claim becomes a disputed claim for compensation.
Cf. Cwlth. Ib. s. 35.

- (a) the Treasurer offers the claimant an amount in satisfaction of the claim for compensation and the claimant does not within sixty days after the receipt of the offer accept it; or
- (b) the Treasurer notifies the claimant that he disputes the claim for compensation,
- the claim for compensation shall be a disputed claim for compensation.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

Division 3.—Determination of Disputed Claims for Compensation.

37. Subject to this Ordinance a disputed claim for compensation may be determined as follows:—

Methods of determining disputed claims.
Cf. Cwlt. No. 13 of 1906, s. 36.

- (a) by agreement between the Treasurer and the claimant; or
- (b) by an action for compensation by the claimant against the Territory; or
- (c) by a proceeding in the Central Court⁽²⁾ on the application of the Treasurer.

38. An action for compensation may be instituted by the claimant against the Territory in the Central Court⁽²⁾ and subject to the following provisions the action shall be heard and determined in the same manner as ordinary actions.

Action for compensation.
Cf. Cwlt. *Ib.* s. 37.

- (a) The court shall have no power to direct a reference to arbitration unless by consent of parties.
- (b) The costs shall be in the discretion of the court.

39.—(1.) If within six months after a claim for compensation became a disputed claim for compensation—

Determination of compensation on application of the Treasurer.
Cf. Cwlt. *Ib.* s. 38.

- (a) it has not been determined by agreement between the Treasurer and the claimant; or
- (b) it has not been referred to arbitration; or
- (c) no process in an action for compensation by the claimant against the Territory to determine the claim has been served on the Treasurer

the Treasurer may apply to the Central Court⁽²⁾ to determine the claim.

(2.) The court shall after such notice to such persons as it directs hear the application and determine the claim.

(3.) The court may make such order as to costs as it thinks just.

(4.) The determination of the court shall be binding on the claimant whether he was represented before the court on the hearing of the application or not.

Division 4.—Determination of Compensation Where No Claim Made.

40.—(1.) Where any land has been acquired by compulsory process and no claim for compensation has been made within six months after the right to make the claim arose and no application to the Treasurer for further time to make a claim has been granted or is pending or if such an application having been granted no claim has been made within the time limited by the Treasurer the

Procedure to determine compensation where no claim made.
Cf. Cwlt. *Ib.* s. 39.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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Treasurer may apply to the Central Court⁽²⁾ to determine the amount of compensation payable.

(2.) The court shall after such notice to such persons as it directs hear the application and determine the amount of compensation payable.

(3.) The determination of the court shall be binding on all persons having any right to compensation in respect of the acquisition of the land whether represented before the court on the hearing of the application or not.

Division 5.—Payment of Compensation.

41. Compensation shall bear interest at the rate of three per centum per annum from the date of the acquisition of the land or the time when the right to compensation arose until payment thereof is made to the claimant or until the expiration of a period of three months after the compensation has been awarded or determined whichever event shall first happen.

Provided that where the compensation awarded in an action for compensation or determined in a judicial proceeding is not more than the amount offered by the Treasurer in satisfaction of the claim for compensation the compensation shall only bear interest to the date when the offer of the Treasurer is communicated to the claimant.

42. Any claimant or person entitled to compensation shall upon application to the Treasurer and upon making out to the satisfaction of the Treasurer a title to the land in respect of which the compensation is payable and upon delivering up to the Registrar of Titles all instruments evidencing such title to be dealt with as hereinbefore mentioned be entitled to receive payment of the compensation.

43. Moneys payable as compensation or as costs under this Ordinance shall be paid by the Treasurer out of moneys lawfully available for that purpose.

44. All payments made on behalf of the Territory by virtue of this Ordinance shall be good and valid discharges to the Territory which shall not be bound to see to the application of any money so paid or deposited or to see to the performance of any trusts.

PART V.—MORTGAGES ENCUMBRANCES AND LEASES.

45. If the land in respect of which compensation is awarded is subject to a mortgage such compensation or so much thereof as is

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

Interest on compensation.
Cf. Cwth. No. 13 of 1906, s. 40.

Payment of compensation to claimant.
Cf. Cwth. *Ib.* s. 42.

Moneys how payable.

Payments good discharges.
Cf. Cwth. *Ib.* s. 47.

Case of mortgaged lands taken.
Cf. W.A. 2 Ed. VII. No. 47, s. 75.

required for the purpose shall upon the application of the mortgagee and upon his executing and registering a proper discharge therefor be paid in discharge of the mortgage debt or of part thereof so far as the compensation will go.

“Mortgage debt” includes the interest payable on such mortgage up to six months beyond the day when the lands affected were acquired under this Ordinance.

46. If the said land is subject to any encumbrance the Central Court⁽²⁾ shall determine what part of such compensation shall be paid to the party entitled thereto in discharge thereof and if the land is part of land subject to any encumbrance the court shall determine what part of such encumbrance shall be discharged and what part of such compensation shall be paid in the discharge thereof so that the remaining part of the lands subject to such encumbrance shall be as good security as theretofore for the part thereof remaining undischarged. The party entitled to the encumbrance shall execute and register a discharge thereof wholly or in part.

Case of land subject to encumbrance. Cf. Cwilt. No. 13 of 1906, s. 76.

47. If a part of any land comprised in a Crown lease is acquired whether by agreement or by compulsory process under this Ordinance so much of the rent reserved thereunder shall cease to be payable as bears the same proportion to the whole rent reserved as the area of the land acquired bears to the area of the whole of the land comprised in the Crown lease.

Rent when land part of land in Crown lease.

48.—(1.) If a part of any land comprised in a lease other than a Crown lease for a term of years unexpired is acquired under this Ordinance the rent payable in respect of the land comprised in the lease shall be apportioned between the part so acquired and the part not acquired.

Apportionment of rent where part of leased land acquired. Cf. Cwilt. *Ib.* s. 56.

(2.) The apportionment shall be settled by agreement between the lessor the lessee and the Treasurer or by the Central Court.⁽²⁾

(3.) After the apportionment has been settled—

- (a) the lessee shall as to all future accruing rent be liable only to the rent apportioned in respect of the part not acquired; and
- (b) the lessor shall as against the part not acquired and as against the lessee have the same rights and remedies for the rent so apportioned as he had previously to the apportionment for the whole rent; and

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

LAND--

- (c) all covenants conditions and agreements in the lease (except as to the amount of rent) shall remain in force with regard to the part not acquired.

PART VI.—MISCELLANEOUS.

49. If—

- (a) any person in possession of any land acquired under this Ordinance refuses to give up possession of the land or hinders any person authorized by this Ordinance or by the Lieutenant-Governor⁽²⁾ from taking possession of the land; or

(b) any person in occupation of any land refuses to permit any person authorized by this Ordinance or by the Lieutenant-Governor⁽²⁾ to enter upon the land a judge of the Central Court⁽²⁾ may on the application of the Treasurer grant a warrant authorizing the Sheriff or a bailiff of the Central Court⁽²⁾ to deliver the possession of the land or to enforce the entry on the land.

Warrant to enforce possession of land.
Cf. Cwith. No. 13 of 1906, s. 59.

Claimants to produce title.
Cf. Cwith. *Ib.* s. 60.

50. All persons claiming any purchase money or compensation shall at their own expense when required produce to the Treasurer all deeds and documents relating to or evidencing their title to the land in respect of which such purchase money or compensation is payable and particulars of any damage claimed by them.

Service by post.
Cf. Cwith. *Ib.* s. 65.

51. Any notice claim or document required by this Ordinance to be served on any person may be served by post.

Regulations.
Cf. Cwith. *Ib.* s. 67.

52. The Lieutenant-Governor⁽²⁾ may make Regulations⁽⁸⁾ not inconsistent with this Ordinance prescribing all matters and things which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to or carrying out this Ordinance.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(8) See the *Lands Acquisition Regulations*, printed on p. 2575.