

No. 1 of 1897.

An Ordinance relating to Claims to Forest, Chena, Waste, and Unoccupied Lands.

(As amended by No. 1 of 1899, No. 5 of 1900, and No. 4 of 1903.)
(See No. 5 of 1900 and No. 16 of 1907.)

Preamble.

WHEREAS it is expedient to make special provision for the speedy adjudication of claims to forest, chena, waste, and unoccupied lands: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Government Agent to publish notice calling for claims.

[§ 3, 5 of 1900.]

1 (1) Whenever it shall appear to the Government Agent of a province or to the Assistant Government Agent of a district that any land or lands situated within his province or district is or are forest, chena, waste, or unoccupied, it shall be lawful for such Government Agent or Assistant Government Agent to declare by a notice that such land or lands, or any of such lands, in respect of which no claim is made to him within the period of three months from the date specified in such notice shall be deemed the property of the Crown and may be dealt with on account of the Crown. Provided, however, that the date specified in such notice shall not be earlier than the date of the first publication of such notice in the "Government Gazette," and that two or more lands shall not be included in one notice unless such lands are situated in the same village.

[*...*Repealed by § 2, 4 of 1903.]

(2) Every notice shall be published in the English, Sinhalese, and Tamil languages *...* in the "Government Gazette," and copies of such notices shall be posted on and near the land or lands appearing in such notice, and shall also be affixed to the walls of the several Kachcheries and the several courts of the province, including Gansabhawa Courts, within which such land or lands is or are situated, and in such other localities as may secure the greatest possible publicity thereto, and the said notice shall likewise be advertised by beat of tom-tom at such places on or near such land or lands and at such times as the Government Agent or Assistant Government Agent may direct and order.

(3) Whenever such land or lands is or are more than ten acres in extent, such notice shall be further published once at least in any two of the newspapers published in the Island in the language in which such newspapers are published.

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(4) If the Government Agent or Assistant Government Agent shall have reason to think that any person is interested in such land or lands, or in any of such lands, he shall cause notice to be given to such person, not only by general notice as aforesaid, but also by causing to be served upon him or by posting a copy of such notice addressed to such person at his last known place of abode.

(5) Every such notice shall be as near as is material in the forms in the schedule hereto, and the production of a copy of the "Government Gazette" purporting to contain such notice shall be received in all courts of law in this Island as *prima facie* evidence that such notice has been duly made, dated, published, posted, affixed, and advertised as hereinbefore required.

2 (1) If no claim shall be made within the period of three months from the date specified in such notice, the Government Agent or Assistant Government Agent shall make an order declaring such land or lands or any of such lands to which no claim has been made to be the property of the Crown.

Where no claim is made land to be declared property of the Crown.

[§ 2, 1 of 1899.]

(2) Every such order shall be published in the "Government Gazette" and shall be final and conclusive, subject to the provisions contained in sections 20, 21, and 26 hereof, and the "Government Gazette" containing such order shall be, subject as aforesaid, received in all courts of law in this Island as conclusive proof that the land or lands mentioned in the order was or were at the date of such order the property of the Crown.

(3) Provided always that whenever within the said period of three months it shall be brought to the knowledge of the Government Agent or Assistant Government Agent that some person is interested in any land which is the subject of a notice under section 1, and that such person is then absent from the Island and was so at the date of the first publication of such notice in the "Government Gazette," then and in every such case the Government Agent or Assistant Government Agent shall not make his order declaring such land to be the property of the Crown until the expiration of a further period of six months, commencing on the expiry of the said period of three months.

3 (1) If in pursuance of the notice published under the provision of section 1 (a) claim shall be made to any land specified in any notice or to any interest in such land within the period of three months, or in any case in which such period has been extended under the provisions of sub-section (3) of the preceding section within such extended period, the Government Agent of the province or Assistant Government Agent of the district in which such land is situated shall *.....* proceed to make inquiry into such claim.

Inquiry into claims.

[§ 3, 1 of 1899.]

(2) For the purpose of such inquiry the Government Agent or Assistant Government Agent may exercise the powers conferred on Commissioners appointed under the provisions of Ordinance No. 9 of 1872 for compelling the attendance of witnesses and the production of documents and for administering

..... Repealed by § 2, 5 of 1900.]

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oaths to all persons who shall be examined before them, provided that the requirements of the proviso to section 2 of that Ordinance shall not be necessary for the purposes of this Ordinance.

*Procedure in
such cases.
[§ 4, 5 of 1900.]*

4 (1) *The Government Agent or Assistant Government Agent shall call upon the claimant, by notice in writing served upon him or left at his last known place of abode, to produce before such Government Agent or Assistant Government Agent the evidence and documents upon which he may rely in proof of his claim ; if when so called upon the claimant does not appear, or does not produce such evidence and documents, or withdraws his claim, the Government Agent or Assistant Government Agent may then make an order declaring such land to be the property of the Crown, and the provisions of sub-section (2) of section 2 shall apply to such order. If the claimant appears and produces such evidence and documents, the Government Agent or Assistant Government Agent, after considering the same and making any further inquiry that may appear proper, may either admit the whole or part of such claim or enter into an agreement in writing, which shall be signed by the Government Agent or Assistant Government Agent and the claimant, for the admission or rejection of the whole or any portion of such claim, or for the purchase of the whole or any portion of the land which is the subject of such claim, and shall embody such admission or agreement in an order.*

(2) *Every such order shall be published in the " Government Gazette " and shall be final and conclusive, and the " Government Gazette " containing such order shall be received in all courts of law in this Island as conclusive proof of the admission or agreement entered into under sub-section (1). Provided that in any case in which the land or portion of land which is the subject of such admission or agreement is more than ten acres in extent, such order shall not be published in the " Government Gazette," nor be final or conclusive unless the consent of the Governor has been obtained to the publication of such order, nor shall such admission, agreement, or order be of any effect until such consent has been given.*

*Disputed claims
to be referred to
Commissioner
or District
Judge.*

5 *If and whenever the Government Agent or Assistant Government Agent does not admit such claim either as to the whole or as to part, and fails to enter into any agreement with the claimant in respect thereof, then and in every such case the Government Agent or Assistant Government Agent shall refer such claim, or so much thereof as is in dispute between the Government Agent or Assistant Government Agent and the claimant, to the Commissioner to be appointed as hereinafter provided, or, in the event of no Commissioner being appointed, to the District Judge of the district within which such land is situated.*

Provided that whenever the Government Agent or Assistant Government Agent and claimant agree to refer such claim to the Commissioner of Requests of the division within which

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such land is situated, the Government Agent or Assistant Government Agent shall refer such claim to such Commissioner, who shall have and exercise in respect of such claim all the powers and duties vested by this Ordinance in the District Judge; and any decision or order of such Commissioner shall be subject to appeal to the Supreme Court, and the provisions of section 18 shall apply to all such appeals.

6 In making a reference under section 5 the Government Agent or Assistant Government Agent shall state, for the information of the Commissioner or District Judge in writing under his hand—

Form of reference to Commissioner or District Judge.

- (a) The situation, name (if any), boundaries, and extent of the land in dispute;
- (b) The names of the claimants or claimant and of any other person whom he has reason to think interested in such land.

7 (1) The Commissioner or District Judge shall thereupon cause to be served on each of the persons so named as aforesaid a notice requiring him to make a written statement to such Commissioner or Judge on or before a date to be mentioned in such notice setting out the nature and extent of his claim, and in every such statement of claim the Government Agent or Assistant Government Agent shall be named as the party defendant on behalf of the Crown.

Proceedings of Court on reference.

(2) Any two or more persons claiming under the same right or title may join and embody their claims in one statement of claim.

8 (1) If no statement of claim is made to the Commissioner or District Judge pursuant to the notice mentioned in section 7, the Commissioner or Judge shall cause to be affixed on some conspicuous place on or near such land a notice to the effect that if the persons interested in such land do not, on or before a day to be therein mentioned, appear before such Commissioner or District Judge and state the nature of their respective interests in the land and the particulars of their claims, the Commissioner or District Judge will proceed to adjudicate such land to be the property of the Crown.

Proceeding when no claim has been made.

(2) If on the day named no such person appears in pursuance of such notice, the Commissioner or District Judge shall adjudicate such land to be the property of the Crown, and from such adjudication there shall be no appeal.

9 It shall be lawful for the Governor, as occasion may require, from time to time to appoint a proper person for any province or district to be Commissioner for the investigation and trial of references under this Ordinance.

Special Commissioner for trying claims.

10 Whenever any Commissioner is appointed under this Ordinance for any province or district, notice thereof shall be given by Proclamation in the *Government Gazette*, copies

Notice of appointment of Commissioners.

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Claims not
cognizable in
other courts.

of which shall be affixed in the several courts of the Island ; and from the date of the issue of such Proclamation no other court shall be competent to entertain any references for the investigation and trial of which such Commissioner is appointed.

Special courts
where to be
held.

11 (1) Every Commissioner appointed under this Ordinance shall hold his court at such place or places within the limits of his jurisdiction as shall be by him considered most convenient, and for the purpose of every investigation and trial under this Ordinance may administer oaths, and shall have and exercise within his province all and every the powers and jurisdiction of a District Judge.

(2) In case of the death, sickness, resignation, removal from office, absence from the Island, or other disability of any such Commissioner before whom any inquiry upon a reference made under this Ordinance is pending, such inquiry may be continued by the successor of such Commissioner, who shall have power to act on the evidence already recorded by such first named Commissioner, or partly recorded by such first named Commissioner and partly recorded by himself or, if he think fit, to re-summon the witnesses and commence afresh.

Parties may
appear by
pleader.
[§ 5, 1 of 1899.]

12 *At the hearing of every reference under this Ordinance the claimant shall appear personally or by pleader as plaintiff, and the Government Agent or Assistant Government Agent shall appear personally or by pleader as defendant on behalf of the Crown.*

Proceedings
regulated by Civil
Procedure Code.

13 In references instituted under this Ordinance, except as in this Ordinance provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.

Cases to have
precedence.

14 All proceedings in any District Court had under this Ordinance shall be taken up before any other business of the said court, unless special circumstances of urgency in any particular case call, in the opinion of the Judge, for a relaxation of this rule.

Procedure
before hearing
of reference.

15 The Commissioner or District Judge, as the case may be, shall, as soon as the written statement is presented under section 7, or the persons interested appear in pursuance of the notice issued under section 8, fix a day for the appearance of the parties and for the hearing of the reference, of which due notice shall be given to the parties, their pleaders, or agents ; and on the day so fixed the parties or their agents shall bring their witnesses into court, together with any documents on which they intend to rely. If either party require the assistance of such Commissioner or Judge to procure the attendance of a witness or the production of any document on such day, he shall apply to such Commissioner or Judge in sufficient time before the day fixed for the hearing of the reference, and such Commissioner or Judge

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shall issue a summons for such purpose. It shall be competent to such Commissioner or Judge to require the personal attendance of a claimant on the day fixed for the hearing or at any subsequent stage of the proceedings.

15 A After a reference has been made to court under section 5 it shall not be competent to any claimant who has appeared and made a claim before the Government Agent or Assistant Government Agent under sub-section (1) of section 3, or has appeared before the Commissioner or Judge in pursuance of the notice issued to him under section 7, or of the notice issued by the court under sub-section (1) of section 8, to plead that the notice issued under section 1 of the said Ordinance, as herein amended, was not in fact duly made, dated, published, posted, affixed, and advertised as hereinbefore required.

*Irregularities
in notices
served after
appearance of
claimant.*

[§ 5, 5 of 1900.]

16 On the day fixed for the hearing of the reference, or as soon after as may be practicable, the Commissioner or District Judge, as the case may be, shall proceed to examine the claimant or his agent (when his personal attendance is not required) and the witnesses of the parties, and upon such examination, and after inspecting the documents of the parties and making any further inquiry that may appear necessary, shall proceed to pass such order in the case as he may consider just and proper.

*Procedure on
hearing.*

17 Whenever the Commissioner or District Judge is of opinion that a fresh survey is necessary for the purposes of the investigation and trial of any claim under this Ordinance, he may cause the land, the subject of the claim, to be surveyed, and the costs of such survey shall be costs in the cause.

*Commissioner
or Judge may
order a survey.*

18 (1) Any party to the reference who is dissatisfied with the decision or order of the Commissioner or District Judge, as the case may be, may appeal to the Supreme Court against such order or decision, by lodging within thirty days from the date of such order or decision with such Commissioner or District Judge a petition of appeal addressed to the Supreme Court, together with an affidavit setting out the value of the land and with regard to which the order or decision has been given against him.

Appeals.

(2) Such Commissioner or Judge on receiving such affidavit and petition of appeal shall transmit the same together with all proceedings taken by him to the Registrar of the Supreme Court, and such appeal shall have precedence of all other appeals, and the said court shall make such order as the justice of the case may require, and such order shall be duly carried into effect.

[§ 6, 1 of 1899.]

(3) Stamp duty shall be charged upon every such petition of appeal and upon every such affidavit at the rates specified in part II. of the schedule B to "The Stamp Ordinance, 1890,"* for similar instruments in the District Courts, and

* Repealed by No. 22 of 1909.—*Edl.*

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upon subsequent proceedings at the rates specified in the said schedule for appeals from the District Courts; and every such appeal shall be dealt with and disposed of in the same manner and subject to the same rules as appeals from District Courts are dealt with and disposed of.

Records of cases where to be deposited.

19 The records of cases disposed of by Commissioners appointed under this Ordinance or by District Judges shall be deposited amongst the records of the District Court of the district in which the land, the subject of the claim, is situated.

Limitation as to claims.

20 No claim to any land or to compensation or damages in respect of any land declared to be the property of the Crown under the provisions of this Ordinance shall be received after the expiration of one year from the date on which such declaration shall have been made. If within such year any claimant shall prefer a claim to such land or to compensation or damages in respect thereof before the Commissioner appointed under this Ordinance for the province in which such land is situated, or in the event of no Commissioner being appointed, before the District Judge of the district in which such land is situated, and shall show good and sufficient reason for not having preferred his claim to the Government Agent or Assistant Government Agent as aforesaid within the period limited under section 1 of this Ordinance, such Commissioner or Judge shall file the claim, making the claimant plaintiff and the Government Agent or Assistant Government Agent as aforesaid defendant on behalf of the Crown in the action, and the foregoing provisions of this Ordinance shall be applicable to the investigation and trial thereof.

Provision for such claim if preferred within time.

If claim established and land sold possession not to be given, but compensation.

21 (1) In any case in which the land has been sold, if such Commissioner or Judge shall be of opinion that the claim of the claimant is established, such Commissioner or Judge shall not award the claimant possession of the land in dispute, but shall order him to receive from the Crown, by way of compensation, a sum equal to the price at which the land was sold by public auction or otherwise.

[§ 7, 1 of 1899.]

If claim established and land not sold, claimant to be placed in possession.

(2) In any case in which the land shall not have been sold, but shall have been otherwise dealt with on account of the Crown, and such Commissioner or Judge shall be of opinion that the claim to such land is established, such Commissioner or Judge shall order that the claimant be placed in possession of the said land.

Award to be in full satisfaction.

(3) The amount awarded under sub-section (1) shall be in full satisfaction of the claim of the claimant, and shall bar any future claim on his part in respect of the land claimed.

Prohibition of building, clearing, &c., pending investigation.

[§ 8, 1 of 1899.]

22 (1) After the date of the "Government Gazette" containing the first publication of the notice prescribed in section 1 it shall not be lawful for any person, without the written consent of the Government Agent or Assistant Government Agent, to enter on any land specified in such notice with intent to establish a right of possession or occupation of such land or to exercise rights

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of ownership, or to build any house or hut or to form a plantation thereon, or to make clearings, for the purpose of cultivating such land or for any other purpose, or to cut or fell any trees upon such land, or to open, work, or to use any mine thereon, until such land has been declared not to be the property of the Crown.

(2) It shall be lawful for the District Court upon the complaint of the Government Agent or Assistant Government Agent, supported by a copy of the "Government Gazette" containing the notice prescribed by section 1 and by affidavit charging any person or persons with having acted in contravention of this section, to issue its summons for the appearance before it of such person or persons and of any other person or persons whom it may be necessary or proper to examine as a witness or witnesses on the hearing of any such complaint, and the said District Court shall proceed in a summary way in the presence of such person or persons, or in case of wilful absence of any person against whom any such complaint shall have been laid, then in his absence, to hear and determine such complaint; and in case on the hearing thereof it shall appear by the examination of the complainant or of such person or persons, or other sufficient evidence to the satisfaction of such District Court, that such person or persons against whom such complaint shall have been laid hath or have, after the date of first publication in the "Government Gazette" of the notice prescribed in section 1, without the written consent of the Government Agent or Assistant Government Agent, entered upon or taken possession of the land mentioned or referred to in such complaint, with intent to establish a right of possession or occupation of such land, or to exercise rights of ownership, or to build any house or hut, or to form a plantation thereon, or to make clearings for the purpose of cultivating such land, or for any other purpose, or to cut or fell any trees upon such land, or to open, work, or use any mine thereon, then such District Court shall make an order directing such person or persons to deliver up possession of such land together with everything thereon, including all crops whether growing or severed, all minerals, and all buildings and other immovable property upon and affixed to the said land, to some person to be named by the said court; and in case the person or persons against whom any such order shall have been made shall not within seven days after service thereof deliver up possession of the said land and premises pursuant to the said order, or shall afterwards enter upon the said land or premises personally or by his or their assigns, agents, or servants, contrary to such order, or in evasion thereof, then and in such case it shall be lawful for such District Court to sentence such person or persons to simple or rigorous imprisonment not exceeding six months, or to a fine not exceeding one thousand rupees, and to make a further order for the immediate delivery over of the possession of such land and premises to the person named by the said court, and the said court shall thereupon cause possession of such land and premises to be delivered to such person accordingly.

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It shall further be lawful for the said District Court at the time of passing sentence on such person or persons to order such person or persons to execute a bond, with or without sureties, to abstain from entering upon such land and premises personally or by his or their assigns, agents, or servants, for such period as the said court thinks fit to fix.

(3) *The prohibition imposed by sub-section (1) of this section shall cease in any case in which a reference under section 5 has not been made within six months from the date of a claimant having preferred his claim.*

Governor in Executive Council may award damages.

23 Whenever the claim of any person to a land, in respect of which a notice under section 1 of this Ordinance has issued, is upheld by the Commissioner or District Judge or by the Supreme Court in appeal, and the claimant to such land satisfies the Governor in Executive Council that he has suffered pecuniary loss by reason of the prohibition in the preceding section contained, it shall be lawful for the Governor in Executive Council to ascertain and determine the amount of compensation that should be allowed in respect of such loss, and to cause the amount so determined to be paid to such claimant.

Presumption as to forest and waste land.

24 For the purposes of this Ordinance :

(a) All forest, waste, unoccupied, or uncultivated lands and all chenas and other lands which can be only cultivated after intervals of several years, shall be presumed to be the property of the Crown, until the contrary thereof be proved.

Occupation of a small portion of land not to create presumption of ownership of a large tract of land.

(b) The occupation by any person of one or more portions or parcels of land shall not be taken as creating a presumption of ownership against the Crown in his favour for any greater extent of land than that actually occupied by him.

Definition of "unoccupied land."

(c) The term "unoccupied land" includes uncultivated land and all land which at the time of the passing of this Ordinance was not in the actual occupation of any person or persons, and also all lands which shall not have been in the uninterrupted occupation of some person or persons for a period exceeding five years next before notice given by the Government Agent or Assistant Government Agent under section 1 in respect of the same.

Application for appointment of guardian or curator.

25 In any case in which the claimant is a minor or person of unsound mind, or in which any person shall claim for and on behalf of a minor or a person of unsound mind, the Government Agent or Assistant Government Agent shall apply to the District Judge of the district in which such land is situated, to appoint a fit person in manner provided by the Civil Procedure Code to represent such minor or person of unsound mind for the purpose of the claim and the investigation and trial thereof.

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26 Nothing in this Ordinance shall be held to prevent the Governor from awarding to any claimant of land which has been dealt with under this Ordinance, on proof to his satisfaction of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Government Agent or Assistant Government Agent as aforesaid within the period prescribed by this Ordinance, or has not made any statement of claim to the Commissioner or District Judge as required by section 7 of this Ordinance), such amount of compensation as to the Governor may seem proper.

Government not barred from awarding compensation for land.

27 Whoever at any time shall obstruct or molest any surveyor, headman, or officer of the Crown, or any person acting under the immediate orders of any such surveyor, headman, or officer of the Crown, from carrying out or performing any survey or other act or thing which he may be directed, empowered, or required to do by any Government Agent, Assistant Government Agent, Commissioner, District Judge, or Special Officer acting under the authority of this Ordinance, shall be guilty of an offence, and liable on conviction to rigorous or simple imprisonment for a term which may extend to three months, or to a fine not exceeding fifty rupees.

Penalty for obstructing surveyor, &c.

28 It shall be lawful for the Governor to appoint one or more Special Officers for the whole Island, who may for the purposes of this Ordinance perform, do, and exercise in any province or district all or any of the powers, duties, and functions vested in the Government Agent or Assistant Government Agent under this Ordinance.

Governor may appoint one or more special officers to carry out Ordinance.

29 Nothing in this Ordinance contained shall preclude or prevent the Crown in any case in which no notice has been issued under section 1 in respect of any land from selling, leasing, reserving, or otherwise dealing with the same, or from instituting in any court an action to recover such land.

Crown rights of disposition of land reserved.

30 For the purpose of this Ordinance "land" shall mean an allotment of land the boundaries of which have been defined and delineated by survey.

"Land" defined. [§ 9, 1 of 1899.]

SCHEDULE.

Form of Notice.

(Where more than one Land.)

Take notice, that unless within three months from the ——— day of ———, the persons, if any, who claim any interest in the lands hereinafter mentioned, or in any one or more of such lands, appear before the Government Agent of the ——— Province (or Assistant Government Agent of ———) at ———, and make claim to the said lands or any of them or to some interest therein :

[§ 3, 5 of 1900.]

Such Government Agent (or Assistant Government Agent), in pursuance of the powers vested in him by Ordinance No. 1 of 1897, will declare by writing under his hand that the said lands, or such of them as to which no claim has been made, are the property of the Crown.

Ord. 5 of 1900.

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Form of Notice.

(Where only one Land.)

Take notice, that unless within three months from the ——— day of ———, the persons, if any, who claim any interest in the land hereinafter mentioned, appear before the Government Agent of the ——— Province (or Assistant Government Agent of ———) at ———, and make claim to the said land or to some interest therein:

Such Government Agent (or Assistant Government Agent), in pursuance of the powers in him vested by Ordinance No. 1 of 1897, will declare by writing under his hand that the said land, to which no claim has been made, is the property of the Crown.

9th February, 1897.