

## **No. 3 of 1876.**

**An Ordinance to provide for the Acquisition of Land for  
Public Purposes.**

*(See No. 6 of 1877.)*

**W**HEREAS it is expedient to amend the law relating to the acquisition of land for public purposes, and for determining the amount of compensation to be made on account of such acquisition : It is enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows :

Preamble.

*Land Acquisition.**I.—Preliminary.*

Short title.	<b>1</b> This Ordinance may be cited for all purposes as "The Land Acquisition Ordinance, 1876."
Repeal of Ordinance No. 2 of 1863.	<b>2</b> The Ordinance No. 2 of 1863, intituled "An Ordinance to enable the Crown to take possession of private lands for public uses, and to survey and assess lands wanted by private proprietors to secure access to their properties through the lands of others," is hereby repealed, except so far as relates to any proceedings or matters which shall have taken place thereunder before this Ordinance shall come into force. All reference made to the said Ordinance No. 2 of 1863 in subsequent Ordinances, orders, or contracts, shall be read as if made to this Ordinance.
Reference to repealed Ordinance to apply to this Ordinance.	
Interpretation clause : " Land."	<b>3</b> In this Ordinance— The expression "land" includes any interest in or benefits to arise out of land, and also things attached to the earth or permanently fastened to anything attached to the earth.
" Person interested."	The expression "person interested" includes all persons, corporations, and companies claiming an interest in compensation to be made on account of the acquisition of land under this Ordinance, whether beneficially or in trust for other persons, corporations, or companies, or for charitable, religious, or other purposes.
" Government agent."	The expression "government agent" means the government agent of the province or the assistant agent of the district wherein the land proposed to be taken is situated.
" District judge " and " district court."	The expressions "district judge" and "district court" mean respectively the district judge and district court of the district within which such land is situated.

*II.—Acquisition.*

Survey of land to be made.	<b>4</b> Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct the Surveyor-General or other officer generally or specially authorized by the Governor in this behalf, to examine such land and report whether the same is fitted for such purpose. And it shall thereupon be lawful for the Surveyor-General or such officer and for his servants and workmen—
Power of surveyor.	<p>(a) To enter upon and survey and take levels of any land in such locality ;</p> <p>(b) To dig or bore into the sub-soil ;</p> <p>(c) To do all other acts necessary to ascertain whether the land is adapted for such purpose ;</p> <p>(d) To set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;</p> <p>(e) To mark such levels, boundaries, and line by placing marks and cutting trenches ;</p>

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(5) And, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence, or jungle.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier or leaving on the premises at least seven days' notice in writing of his intention to do so.

Proviso.

5 The Surveyor-General or other officer so authorized as aforesaid shall pay for all necessary damage to be done as aforesaid, and in case of any dispute as to the sufficiency of the amount to be paid he shall at once refer the dispute to the decision of the government agent, and such decision shall be final.

Compensation to be made for damage done by surveyor.

6 The Surveyor-General or other officer so authorized as aforesaid shall then make his report to the Governor, whether the possession of the land is needed for the purposes for which it appeared likely to be needed as aforesaid. And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the government agent to take order for the acquisition of the land.

Surveyor's report ; proceedings thereupon.

7 The government agent shall thereupon cause public notice to be published in the *Government Gazette*, and to be posted at convenient places on the land to be taken, or as near thereto as practicable, stating that the Government proposes to take possession of the land, and that claims to compensation for all interests in such land may be made to him. Such notice shall be published in the English, Sinhalese, and Tamil languages respectively, and shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the government agent at a time and place therein mentioned (such time not being earlier than twenty-one days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Notice to be given in *Gazette* of intention to take possession and hear claims for compensation.

8 On the day so fixed the government agent shall proceed to inquire summarily into the value of the land, and to determine the amount of compensation which, in his opinion, should be allowed therefor, and shall tender such amount to the persons interested, who have attended in pursuance of the notice. For the purpose of such inquiry the government agent shall have power to summon any witnesses he may think fit ; and any witness disobeying such summons without sufficient cause shall be guilty of an offence and liable to a fine not exceeding fifty rupees. Provided always that the government agent may for any cause he thinks fit from time to time postpone the inquiry to a day to be fixed by him.

Summary inquiry as to value of land and amount of compensation to be made. Tender of compensation.

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Matters to be taken into consideration in determining compensation.

Award of government agent where parties agree.

Reference to the district court in what cases.

9 In determining the amount of compensation the government agent shall take into consideration the matters mentioned in section 21, and shall not take into consideration any of the matters mentioned in section 22.

10 If the government agent and the persons interested agree as to the amount of compensation to be allowed, such agreement shall be recorded in writing and signed by the government agent and the persons interested, and the government agent shall make his award in pursuance thereof. Such award shall be filed in the government agent's office, and shall be conclusive evidence, as between the Government and the persons interested, of the value of the land and the amount of compensation allowed for the same.

11 When the government agent proceeds to make the inquiry as aforesaid, whether on the day originally fixed for the inquiry or on the day to which it may have been postponed—

If no claimant attends ;

Or, if the government agent considers that further inquiry as to the nature of the claim ought to be made by the district court ;

Or, if any person whom the government agent has reason to think interested does not attend ;

Or, if the government agent is unable to agree with the persons interested, or any of them, who have attended in pursuance of the notice, as to the amount of compensation to be allowed ;

Or, if upon the said inquiry any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons;

the government agent shall refer the matter to the determination of the district court in manner hereinafter appearing.

After award or reference to court, Government to take possession of the land.

12 At any time after the government agent has made an award under section 10, or a reference to the court under section 11, and has notified the same to the Governor, it shall be lawful for the Governor, with the advice of the Executive Council, to direct that the land be taken possession of by some officer of the Crown for and on behalf of Her Majesty. And the said officer shall sign a certificate substantially in the form A in the schedule hereto, and the said land shall thereupon vest absolutely in her said Majesty free from all encumbrances.

III.—*Reference to Court and Procedure thereon.*

Form of reference to the district court.

13 In making a reference under section 11 the government agent shall state for the information of the district court in writing under his hand—

(a) The situation and extent of the land needed ;

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- (b) The names of the claimants or of any other persons whom he has reason to think interested in such land ;
- (c) The amount awarded for damages under section 5, the amount of compensation tendered for the land under section 8, or, if no claimant has attended pursuant to the notice mentioned, or if any claimant has failed to satisfy the government agent that he is entitled to receive the compensation, then the government agent shall state the amount which he is willing to give to the persons interested.

14 The district court shall thereupon cause to be served on each of the persons so named as aforesaid a notice requiring him (if he has not made a claim under section 8) to state to the court on or before a day to be therein mentioned the sum which he claims as compensation for his interest in the land so needed. The court shall also cause a notice to be served on the government agent and each of such persons, requiring them to appoint on or before a day to be therein mentioned two qualified assessors (one to be nominated by the government agent and the other by the persons interested, or, if they cannot agree, by a majority of such persons) for the purpose of aiding the district judge in determining the amount of compensation. Such notice shall be served at least seven days before the day mentioned therein for claims to be made or assessors to be appointed. All persons of respectability who have attained the age of twenty-one years, and are not pecuniarily interested in determining the amount of compensation, are qualified to act as assessors.

Proceedings of court on reference. Notices.

Notice to appoint assessors.

15 If no claimant has attended pursuant to the notice mentioned in section 7, the district court shall cause to be affixed on some conspicuous place on or near the land needed 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 in court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate an assessor, the court will proceed to determine such amount. Such notice shall be affixed at least seven days before the day mentioned therein for such appearance in court.

Proceeding when no claimant has appeared.

16 In case either party fail to nominate any assessor within the time so specified, the district judge shall himself appoint an assessor in his stead.

Power of judge to appoint an assessor in default of appointment by either party.

17 As soon as the assessors have been appointed the district judge and assessors shall proceed to determine the amount of compensation, having been first duly sworn or affirmed. And 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.

Determination of amount of compensation.

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Appointment of  
new assessor  
in event of  
death, &c.

**18** If before such amount is determined any assessor dies, or desires to be discharged, or refuses, or neglects, or becomes incapable to act, the party by whom he was appointed may appoint some other qualified person to act in his place. If the assessor so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable, were appointed by the judge, or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the court for that purpose the party who appointed such assessor fails to appoint another, the judge shall appoint some other qualified person as assessor. Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying, or desiring to be discharged, or refusing, or neglecting, or becoming incapable.

Proceedings  
to be in open  
court.

**19** Every proceeding under section 17 shall take place in open court, and any advocate or proctor entitled to practice in such district court shall be entitled to appear, plead, and act in such proceeding.

Proceedings  
may be  
consolidated in  
certain cases.

**20** Where the lands of several different persons are proposed to be taken for the same public purpose, and two or more of such persons agree upon appointing the same assessor, the proceedings in the district court for determining the amount of compensation for the lands of the persons so agreeing may be consolidated and form the subject of one and the same inquiry, where the judge thinks that such a course will simplify or expedite the inquiry.

Matters to be  
considered in  
determining  
compensation.

**21** In determining the amount of compensation to be awarded for land acquired under this Ordinance, the district judge and assessors shall take into consideration—

First, the market value at the time of awarding compensation of such land ;

Secondly, the damage (if any) sustained by the person interested at the time of awarding compensation, by reason of severing such land from his own land ;

Thirdly, 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, whether movable or immovable, in any other manner, or his earnings ; and

Fourthly, if in consequence of the acquisition he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Matters to be  
neglected in  
determining  
compensation.

**22** But the judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition ;

Secondly, any disinclination of the person interested to part with the land acquired ;

Thirdly, any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit ;

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Fourthly, any damage 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 ;

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

Sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

Seventhly, any outlay or improvements on such land made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Ordinance.

**23** When the person interested has made a claim to compensation pursuant to any notice mentioned in section 7 or in section 14, the amount awarded to him shall not exceed the amount so claimed or be less than the amount tendered by the government agent under section 8, or the amount which the government agent shall have offered to give under section 13. When the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the judge) to make such claim, the amount awarded to him may be less than, and shall in no case exceed, the amount so tendered or so offered as aforesaid. When the person interested has omitted for a sufficient reason (to be allowed by the judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered or offered as aforesaid.

Rules as to amount of compensation.

**24** The opinion of each assessor shall be given orally and shall be recorded in writing by the district judge.

Record of assessors' opinions.

**25** In case of any difference of opinion between the judge and assessors, or any of them, upon any question of law or practice or usage having the force of law, or as to the amount of compensation to be awarded, the opinion of the judge shall prevail, subject to the appeal to the Supreme Court hereinafter provided. Provided, however, that if the two assessors agree together as to the amount of compensation, their opinion as to such amount shall be taken as the decision of the court, subject to appeal as hereinafter provided.

When judge and assessors differ, opinion of judge to prevail, subject to appeal.

[§ 2, 6 of 1877]

**28** Every assessor appointed under this Ordinance shall receive such fee for his services as the judge shall direct : Provided that such fee shall not exceed two hundred rupees, and such fee shall be deemed to be costs in the proceeding.

Payment of assessors.

**29** The costs of all legal proceedings, when there has been a reference to the court, shall be taxed by the court. When the amount awarded does not exceed the sum tendered by the government agent or the sum which the government agent shall have offered to give under section 13, such costs shall be paid by the person or persons who shall have contested the amount. When the amount awarded exceeds the sum so tendered or offered as aforesaid, such costs shall

Costs.

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be paid by the government agent. As between several persons interested, the court shall award the costs in such manner as shall appear just.

Form of award.

30 Every award made by the court shall be in writing, signed by the district judge and assessors or assessor concurring therein, and shall specify the amount awarded under the first clause of section 21, and also the amounts (if any) respectively awarded under the second, third, and fourth clauses of the same section, together with the grounds of awarding each of the said amounts. It shall also state the amount of costs incurred in the proceedings, and by what person and in what proportions they are to be paid. All costs (not deducted as hereinafter provided by section 38) may be recovered as if they were costs incurred in an ordinary suit, and as if the award were the decree therein.

Appeal against award.

[§ 3, 6 of 1877]

31 If the government agent or any person interested is dissatisfied with any award made by the court under the provisions of this Ordinance, he may appeal therefrom to the Supreme Court. Every such appeal shall be presented within the time and in the manner and subject to the rules and practice provided for and observed in appeals from interlocutory orders of district courts. Provided, however, that no stamp duties shall be required in any proceedings before the Supreme Court relative to such appeal.

Proviso: no stamps required.

Proceedings in district court analogous to those in ordinary civil suits.

32 The proceedings in any district court taken under this Ordinance shall be subject, so far as the same can be made applicable, to the rules, practice, and procedure provided for or observed at the time of such proceedings in ordinary civil suits, save and except that no stamp duties provided for law proceedings shall be required in proceedings taken under this Ordinance.

*IV.—Apportionment of Compensation.*

Particulars of apportionment to be specified.

33 When there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Dispute as to apportionment when parties agree as to amount of compensation.

34 When the amount of compensation has been settled under section 10, if any dispute arises as to the apportionment of the same or any part thereof, the government agent shall refer such dispute to the decision of the district court.

Dispute as to apportionment when compensation settled by court.

35 When the amount of compensation has been settled by the court, and there is any dispute as to the apportionment thereof, or when a reference to the court has been made under section 34, the district judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount. And such decision shall be subject to appeal to the Supreme Court; and such appeal shall be prosecuted within the time and in the manner and subject to the rules and practice provided for or observed in appeals from interlocutory orders of district courts.

Appeal.



*Land Acquisition.**V.—Payment.*

**36** Payment of the compensation shall be made by the government agent according to the award to the persons named therein or, in the case of an appeal, according to the decision on such appeal, and after such payment has been made according to such award or such decision no further claim against the Government in respect of compensation for the land so taken shall be allowed at the instance of any person whomsoever. Provided that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Ordinance, to pay the same to the person lawfully entitled thereto.

Payment of compensation to whom made.

**37** When the land taken is subject to any entail, settlement, or *fidei commissum*, the compensation payable in respect thereof shall be subject to the same entail, settlement, or *fidei commissum*, so far as the different nature of the property will admit; and such compensation shall be paid into court to abide its further orders as to the disposal or investment thereof. It shall also be lawful for the district judge in any case to require the compensation payable in respect of any land to be paid into court to abide its further orders, if the court shall think such course just or expedient.

**38** In addition to the amount of compensation finally awarded, the government agent may, in consideration of the compulsory nature of the acquisition, pay ten per centum on the market value mentioned in section 21. When the amount of such compensation is not paid either to the persons interested or into court on taking possession, the government agent shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession. Provided, however, that the costs (if any) payable to the government agent by the person interested shall be deducted from such amount and percentage. Provided also that in cases where the decision of the district court is liable to appeal, the government agent shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

Percentage on market value to be allowed.

Interest when payment delayed.

Costs to be deducted.

*VI.—Miscellaneous.*

**39** In any district in which the government agent or the assistant government agent may also be district judge, such government agent or assistant government agent shall not act as district judge in any proceedings had under this Ordinance.

**40** Whenever it may be practicable, service of any notice under this Ordinance shall be made on the person therein named, or, in the case of his absence from the island, upon his duly constituted attorney or agent. When any person upon whom any such notice has to be served cannot be found, the service may be made on any adult member of his family residing with him; and if no such adult member can

Service of notices.

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be found, the notice may be served by fixing the copy on the outer door of his present or last known place of dwelling or business within this island. When any person interested is out of the island, and the government agent has not, after reasonable inquiry, been able to ascertain whether such person has left any power of attorney or agent duly constituted, personal service of notice shall not be necessary for any of the purposes of this Ordinance.

Penalty for obstructing persons acting under powers given by this Ordinance.

41 Whoever wilfully obstructs any person in the performance of any duty imposed upon him or in the exercise of any power vested in him by, under, or by virtue of any of the provisions of this Ordinance, shall be guilty of an offence, and liable on conviction to imprisonment, with or without hard labour, for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

42 If the surveyor or any of his assistants or any person acting under his or their orders shall, under the pretence of performing any duty or exercising any privilege imposed on or vested in him by or under this Ordinance, use unnecessary violence, or wantonly do any injury or give uncalled-for and vexatious annoyance, every such officer or person shall be guilty of an offence, and be liable on conviction thereof to any fine not exceeding fifty rupees.

Government not compellable to complete acquisition.

43 It shall not be compulsory on the Government to complete the acquisition of any land, for the acquisition of which any steps have been taken under the provisions of this Ordinance, unless the land has been taken possession of by the Government under section 12. But whenever the Government shall decline to complete such acquisition after any costs have been incurred by any person interested in the land by reason of any proceedings taken under the provisions of this Ordinance, the Government shall pay such costs, after taxation by the district court, to the person so interested.

Part of house or building not to be taken.

44 The provisions of this Ordinance shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired.

45 No informality or irregularity occurring in any proceedings taken under this Ordinance shall be held to invalidate or affect the title of the Government to any land taken under this Ordinance.

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SCHEDULE.

Form A.

I hereby certify that I have this day taken possession, for and on behalf of Her Majesty, under and by virtue of the provisions of the Ordinance No. — of —, entitled —, of the land and premises situated at —, and bounded on the —, and more particularly described in the annexed survey thereof.

Date: —.

(Signed) C. D.

23rd June, 1876.