



THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

An Ordinance to provide for the Registration of Instruments affecting Land which were executed prior to the year 1864 and to restrict the Reception in Evidence of Unregistered Instruments in proof of Trusts or *Fidei Commissa*.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

1. This Ordinance may be cited as the Registration of Old Deeds and Instruments Ordinance; No. of 1946. Short title.

2. (1) On and after the first day of January, 1948, no instrument affecting any land, which was executed or made at any time prior to the first day of January, 1864, shall unless—

- (a) it was, at the date of the commencement of this Ordinance, duly registered under any of the Ordinances specified in sub-section (3); or
- (b) it is referred to in any other instrument which was, at the date of the commencement of this Ordinance, registered under any of the Ordinances specified in sub-section (3) as an instrument affecting that land; or
- (c) it is registered in accordance with the provisions of this Ordinance,

Inadmissibility
in evidence of
unregistered
instrument to
prove trust or
fideicommissum.

be of any force or avail or be received in evidence in any Court as against any person claiming any interest in such land upon valuable consideration or any other person claiming under any such person, for the purpose of proving the land to be subject to a trust or *fideicommissum*.

In this sub-section "interest" means an interest created or arising whether before or after the date of the commencement of this Ordinance.

(2) The provisions of sub-section (1) shall apply to any instrument executed or made prior to the second day of February, 1840, notwithstanding that such instrument may have been registered under the Sannases and Old Deeds Ordinance.

(3) The Ordinances referred to in paragraphs (a) and (b) of sub-section (1) are—

The Registration of Documents Ordinance (Cap. 101).
The Land Registration Ordinance, No. 14 of 1891.
The Land Registration Ordinance, No. 5 of 1877.
The Land Registration Ordinance, No. 8 of 1863.

3. (1) An instrument affecting land which was executed or made prior to the first day of January, 1864, may be presented for registration in accordance with the provisions of this Ordinance at any time before the first day of January, 1948:

Cap 102.

Conditions as
to presentation
and registration
of instruments.

Provided, however, that if an application is, prior to the first day of January, 1948, made under section 4 or section 5 for an order authorising or directing the presentation of any instrument for registration, and an order is made under either of those sections, such instrument may be presented for registration within two months of the date of such order.

(2) No instrument shall be registered as provided by this Ordinance unless it is duly presented for registration within the time prescribed in that behalf by sub-section (1):

Provided, however, that no such instrument shall be registered as provided by this Ordinance at any time after the thirty-first day of December, 1953.

(3) No will executed or made prior to the first day of January, 1864, shall be registered in accordance with the provisions of this Ordinance unless the probate of such will is also presented for such registration.

Order authorising presentation for registration of instruments executed before February 2, 1840.

4. (1) No instrument affecting land, executed or made prior to the second day of February, 1840, which was not registered under the Sannases and Old Deeds Ordinance, may be presented for registration in accordance with the provisions of this Ordinance or accepted for the purposes of registration, unless application is, prior to the first day of January, 1948, made to a District Court as hereinafter provided for an order authorising the presentation of that instrument for registration, and an order in that behalf has been made by the Court.

(2) Such application shall be made by way of petition to the District Court having jurisdiction in the place where the land or any of the lands to which the instrument relates is situated.

(3) No order authorising the presentation of any instrument for registration shall be made under this section, unless it is proved to the satisfaction of the Court that the instrument was not registered under the Sannases and Old Deeds Ordinance owing to the absence from the Island, or the minority or unsoundness of mind of any person who was required by section 2 of that Ordinance to produce the instrument for the purposes of registration.

(4) Any person who is aggrieved by the refusal of the District Court to make an order under this section authorising the presentation of any instrument for registration may, before the expiry of a period of fourteen days from the date of such refusal, make application to the Supreme Court for the revision of the decision of the District Court, and the Supreme Court may, if it thinks fit, make order authorising the presentation of the instrument for registration. The decision of the Supreme Court shall be final. The Supreme Court may, generally or in any particular case, prescribe the procedure to be followed in the case of any application to the Court under this sub-section.

(5) Every application made under this section to a District Court or to the Supreme Court shall bear a stamp of ten rupees. No further stamp duty shall be payable in respect of any proceedings upon any such application.

(6) Notwithstanding anything in sub-section (1), no order under the preceding provisions of this section shall be required to authorise the presentation for registration of any instrument affecting land (executed or made prior to the second day of February, 1840) in any case where such instrument is a will, or a grant of administration to the estate of any person, or a judgment or order of any Court.

Power of Court to order production of instruments.

5. (1) Where any person, at any time prior to the first day of January, 1948, makes application in that behalf, supported by an affidavit declaring that he is entitled to any interest in any land under or by virtue of any instrument affecting the land (executed or made prior to the first day of January, 1864) and that such instrument is in the possession of any other specified person, the District Court having jurisdiction in the place in which the land is situated, may, in its discretion after such inquiry, if any, as it may consider necessary, issue a summons directing such other person to produce the instrument to the Court on or before a specified date.

(2) Where any person on whom a summons under sub-section (1) has been served fails to comply with the summons the Court may order him to be arrested and brought before the Court.

(3) Where any person on whom a summons under sub-section (1) has been served, or who is arrested and brought before the Court as provided in sub-section (2), fails to produce the instrument referred to in the summons, the Court may require him on oath or affirmation to answer any question which the Court may put or allow respecting the instrument alleged to be in his possession, and the refusal to take such oath or make such affirmation or to answer such question shall be punishable in the same manner as the like refusal by a witness in a civil case is punishable by that Court under the Civil Procedure Code.

Where such person, by affidavit or in evidence given upon oath or affirmation, denies that the instrument is in his possession or control, the proceedings commenced upon the application under sub-section (1) shall terminate.

(4) Where any person on whom a summons under sub-section (1) has been served produces the instrument to the Court, the Court shall hold an inquiry for the purpose of determining whether the instrument should be presented for registration under this Ordinance, and where it so determines shall, subject as hereinafter provided, make an order directing that the instrument shall be retained in the Court for the purpose of being so presented:

Provided that where the instrument is one to which the provisions of section 4 (1) apply, no order shall be made under this sub-section unless the Court is satisfied that the case is one in which an order may be made under the aforesaid section 4 authorising the presentation of the instrument for registration; and in any such case no further order under that section shall be required in relation to that instrument.

(5) The Court shall not, except with the consent of the person producing the instrument, permit such instrument to be inspected by or on behalf of the applicant for the summons, unless the Court is satisfied, after examination of the instrument and consideration of such evidence as the Court may deem necessary, that the applicant has reasonable grounds for alleging that he is entitled to any interest in the land under or by virtue of the instrument.

(6) Where an order is made under sub-section (4), the person producing the instrument may appeal to the Supreme Court against such order, and where the Court refuses to make such an order the applicant for the summons may appeal to the Supreme Court against such refusal. Such appeal shall be preferred before the expiry of a period of fourteen days from the date of the order or refusal.

The provisions of the Civil Procedure Code and of any other written law relating to appeals to the Supreme Court against orders or decrees of District Courts in civil actions shall *mutatis mutandis* apply in the case of any appeal under this sub-section.

(7) Where an order directing the presentation of any instrument for registration is made under this section by the District Court or by the Supreme Court upon appeal, the instrument shall forthwith be presented for registration by the Secretary of the District Court, and shall thereafter be returned to the Secretary for the purpose of being delivered to the person by whom it was produced to the Court.

(8) Where a summons is issued by the Court as provided in sub-section (1) or an order for the arrest of any person is made as provided in sub-section (2), the provisions of Chapter XVII of the Civil Procedure Code shall apply in like manner as though the summons or order were issued or made under that chapter in civil proceedings before the Court in the exercise of its ordinary jurisdiction.

6. (1) The provisions of the Registration of Documents Ordinance and of the Regulations made thereunder shall, where not inconsistent with the provisions of this Ordinance, apply in relation to the presentation of instruments for registration as provided by this Ordinance and to the registration of such instruments, and the provisions of sections 36 to 39 of the Registration of Documents Ordinance shall apply in the case of instruments presented for registration or registered as provided by this Ordinance.

Chapter 101
to apply for
purposes of
registration, &c.

(2) A fee of ten rupees shall be payable upon the presentation of any instrument for registration as provided by this Ordinance.

7. (1) Nothing in section 14 of the Registration of Documents Ordinance shall apply where any instrument is presented for registration as provided by this Ordinance.

Description of
land affected by
instrument and
order by Court
for registration.

(2) Every instrument presented for registration as provided by this Ordinance shall be accompanied (a) by a certified copy of such instrument, and (b) by a written description of the land claimed to be affected thereby, its boundaries, extent and situation, the district and village, pattu, korale or other division of the district in which the land is situated and, where the land is situated in a town, the name if any of the street in which it is situated.

If the land consists of a divided portion of any land or allotment, such portion shall be clearly and accurately defined by its particular boundaries and extent.

If the land consists of an undivided share in a land, the proportion which the share bears to the entire land shall be stated and a written description of the entire land shall be given as required by the preceding provisions of this sub-section.

(3) Where the land claimed to be affected by any instrument presented for registration as provided by this Ordinance is, to the knowledge of the person presenting the instrument for registration, affected by any other instrument registered under any of the Ordinances mentioned in sub-section (3) of section 2 of this Ordinance, the instrument presented for registration shall be accompanied by a reference to the volume and folio in which such other instrument is registered if such reference is known to the person presenting the instrument.

(4) Where the Registrar of Lands is not satisfied that the land claimed to be affected by such instrument is affected thereby, the Registrar may, with the prior approval of the Registrar-General, refuse to register the instrument.

Notice of such refusal shall be sent by registered post to the person presenting the instrument for registration.

(5) The person presenting any instrument for registration, if aggrieved by the refusal of the Registrar to register the instrument, may within one month, from the date of the communication of such refusal to him, make an application to the District Court for an order directing the Registrar to register the instrument. The Registrar-General shall be named respondent to such application.

Upon such application being made, the District Court may, after such inquiry as the Court may consider necessary and after notice to such persons as may appear to the Court to be interested, make order directing the Registrar to register the instrument as an instrument affecting the land claimed by the applicant to be affected thereby or may refuse to make such order.

No appeal shall lie against any order made by the District Court under this sub-section or against the refusal of the District Court, to make any such order.

(6) Every application to the District Court under this section, shall bear a stamp of ten rupees. No further stamp duty shall be payable in respect of any proceedings upon such application.

(7) Where the Secretary of a District Court is required by section 5 to present an instrument for registration, the copy, statements and particulars referred to in sub-sections (2) and (3) of this section shall be furnished to the Secretary by the person at whose instance the instrument was produced to the Court, and such copy, statements and particulars shall be transmitted by the Secretary to the Registrar together with the instrument presented for registration.

In any such case notice of the refusal to register the instrument shall be given under sub-section (4) to the person at whose instance the instrument was produced to the Court, and an application under sub-section (5) may be made by that person.

(8) The making of an order under this section by a District Court directing the registration of any instrument as an instrument affecting any land shall not be taken or construed in any way to be *res adjudicata* upon any question arising in any other proceedings.

Return of registered instruments and custody of certified copies.

8. (1) Upon the registration of any instrument as provided by this Ordinance, the Registrar shall—

- (a) return such instrument to the person by whom it was presented for registration; and
- (b) retain and preserve in his custody the certified copy thereof which accompanied the application for registration.

(2) No certified copy retained and preserved by the Registrar under sub-section (1) shall be delivered out of the custody of the Registrar, except upon an order made by any Court in that behalf in any proceedings in which the Court requires the production of the instrument.

Effect of registration as provided by this Ordinance.

9. (1) The registration as provided by this Ordinance of any instrument affecting land shall not cure any defect in the instrument or confer upon it any effect or validity which it would not otherwise have.

(2) Notwithstanding anything in section 7 of the Registration of Documents Ordinance—

- (a) no instrument registered under any of the Ordinances mentioned in sub-section (3) of section 2 of this Ordinance shall gain any priority by reason of prior registration as against any instrument executed or made before the first day of January, 1864, which is duly registered in accordance with the provisions of this Ordinance;

(b) no instrument executed or made before the first day of January, 1864, which is duly registered in accordance with the provisions of this Ordinance shall gain any priority by reason of prior registration, as against any other such instrument duly registered in accordance with the provisions of this Ordinance.

10. Nothing in section 7 of the Sannases and Old Deeds Ordinance shall apply to any instrument which is registered as provided by this Ordinance.

Application
of section 7
of Chapter 102
modified.

11. In this Ordinance "instrument affecting land" means any instrument referred to in paragraph (a) of section 8 of the Registration of Documents Ordinance, and includes any sannas or ola.

Meaning of
"instrument
affecting land".

12. (1) During the period commencing on the first day of January, 1948, and ending on the thirty-first day of December, 1953, nothing in section 2 of this Ordinance shall apply in the case of any instrument affecting land which was executed or made at any time prior to the first day of January, 1864, if the Court before which that instrument is sought to be produced in evidence is satisfied—

Transitory
provisions.

(a) that—

- (i.) such instrument had been presented for registration in accordance with the provisions of this Ordinance before the first day of January, 1946, and proceedings under this Ordinance for the registration thereof are pending whether before the Registrar or any Court; or
- (ii.) an application for an order authorising the presentation of such instrument had been made under section 4 before the first day of January, 1946, and proceedings upon such application or any subsequent proceedings under this Ordinance for the registration of such instrument are pending before the Registrar or any Court; or
- (iii.) an application for an order under section 5 in respect of that instrument had been made before the first day of January, 1946, and proceedings upon such application or any subsequent proceedings under this Ordinance for the registration of such instrument are pending before the Registrar or any Court; and

(b) that notice of the presentation of such instrument for registration or of the application under section 4 or section 5, as the case may be, has been duly registered under sub-section (2) as a notice affecting the land in which an interest is claimed under the instrument.

(2) Any person presenting an instrument for registration as provided by this Ordinance or making any application under section 4 or section 5 in respect of any instrument, may at any time before the first day of January, 1948, make application to the Registrar to enter notice of such presentation or application as a notice affecting the land claimed to be affected by such instrument. The Registrar shall thereupon register such notice under the Registration of Documents Ordinance as though it were an instrument affecting the land claimed by the applicant to be affected thereby.

(3) No fee shall be payable for the registration of any notice under sub-section (2).

Objects and Reasons.

This Bill was recommended for enactment by the Mortgage Commission in its First Interim Report (Sessional Paper XIII. of 1944). Generally speaking, the purpose of the Bill is to provide for the registration of instruments executed prior to the first day of 1864 and to declare that any such instrument shall, unless registered, be of no force or avail as against persons claiming interests upon valuable consideration to prove land to be subject to a trust of *fidei commissum*. The necessity for an enactment of this nature is explained in paragraphs 2 to 14 of the Report.

2. The objects and reasons are set out in paragraphs 15 and 16 of the Report which are reproduced below. The references to the years 1946 and 1948 have been replaced, respectively, by references to the years 1948 and 1953 referred to in the Bill as published.

"15. We will now proceed to deal clause by clause with the draft Ordinance annexed which embodies our recommendations.

Clause 1 is the Citation Clause and needs no comment.

Clause 2 provides in effect that after January 1, 1948, no instrument executed before 1864 can be used to establish a trust or *fidei commissum* unless it is registered. An exception is made for a case where the instrument is referred to in another instrument which has itself been registered. The effect of this clause is also modified by the transitory provisions in clause 12 which are referred to later.

Clause 3 provides that no instrument shall be registered unless it is presented for registration before January 1, 1948, or unless application for the authority prescribed in clause 4 or clause 5 has been made before that date. This clause also prevents the registration of any instrument at any time after the end of the year 1953. It will be seen that a period of six years has been allowed for settling questions which may arise after presentation. The scope and nature of these questions appear in our comments on the succeeding clauses.

We have considered the question whether a date should be finally fixed for registration after allowing a reasonable period for all the formalities that may arise, or whether once an instrument is presented for registration no date should be fixed after which it may not be registered. We think that on balance the advantage of fixing a definite date heavily outweighs the consideration that the formalities of any individual case may not have been completed by the end of 1953. We therefore recommend that no instrument be registered after 1953. We do not think it at all probable that in any individual case the period of six years allowed by us will be found insufficient for necessary formalities.

This clause also provides that a will executed before the first day of January, 1864, shall not be registered unless probate thereof is also presented for registration. It has been thought that if a will has not been proved within the long period which has elapsed between execution and the commencement of the proposed Ordinance it should be precluded from competing with other instruments affecting title.

Clause 4 deals specially with instruments executed prior to February 2, 1840. If such an instrument was not registered under the Ordinance of 1866 (Chapter 102), this clause will impose conditions for its registration similar to the conditions which have now to be fulfilled before it can be produced. The exact scope of these conditions has been the subject of controversy and disagreement even in the course of judicial decision. We have not suggested conditions identical with those found in the Ordinance of 1866 but have attempted to carry out in large measure the spirit of that Ordinance freed from the difficulties which have given rise to controversy.

A Court has now to be satisfied that certain conditions are fulfilled before a pre-1840 instrument can be produced and we have provided that a Court must be satisfied that similar conditions are fulfilled before such an instrument can be registered. An appeal to the Supreme Court from an order of the District Court which deals with an application in the first instance is also provided.

We have had some doubt whether any useful purpose is served by providing in this clause that where persons specified in the Ordinance of 1866 have failed to register instruments under that Ordinance, they can now be produced for registration on proof before a Court of the minority or unsoundness of mind or absence beyond the seas of such persons. The right of production on satisfying the conditions just stated is an existing right even though there can be only few if any persons who can avail themselves of it. As the existing rights should not be disturbed, we think the provision should be made.

Sub-clause (6) of this clause makes it possible to register without an order of Court a will, grant of administration or a judgment or order made before February 2, 1840. These instruments can now be produced unconditionally in a Court of law and we have provided that registration should follow on similar lines.

Clause 5 is designed to give relief to a person who is entitled to property in virtue of an instrument not in his possession. Provision is made for an order by Court for its production. As the document will be one of title, inspection will not be permitted to the applicant until the Court itself after examination is satisfied that inspection can properly be given. Provision is made that where a person directed by the Court to produce an instrument states on oath that the instrument is not in his possession or control, proceedings for production shall terminate. In the matter of a sanction this follows the general lines of Section 714 of the Civil Procedure Code, and it has been thought that the fear of a prosecution for making a false statement is a sufficient and appropriate safeguard in the circumstances. In a proper case the Court will direct that the instrument be presented for registration.

Clause 6 makes the provisions of the existing Registration of Documents Ordinance and the Regulations made thereunder generally applicable in the matter of formalities that have to be complied with in presenting instruments for registration and in relation to the mode of registration of instruments.

Clause 7 is designed to meet a difficulty which is likely to arise in the matter of the identification of a land described in an instrument executed before 1864. The applicant for registration will be required to furnish to the Registrar a full description of the land claimed by him to be affected by the instrument, and the Registrar will be empowered to refuse registration if he is not satisfied that the land claimed is in fact so affected. Where the Registrar refuses registration, the District Court will have the power to decide the question and to direct the instrument to be registered as affecting a particular land.

Clause 8 provides that the original of an instrument which has been registered shall be retained by the Registrar and a copy issued to the person tendering it. We think this provision is necessary because it is of importance for the decision of issues that may arise later that the original itself should be available to a Court requiring it. Old deeds when disputed can raise questions which do not ordinarily arise with regard to more recent ones. It may be difficult to decide these questions without examining the originals. Where, however, an instrument in the possession of a person is registered at the instance of another, we consider it desirable that the original should be left where it was. It may be an important link in a chain of title in which the latter is interested.

Clause 9 (1) corresponds to section 7 (4) of the Registration of Documents Ordinance, and is necessary to preclude the argument that registration cures existing defects. The proposed Ordinance will impose a disability on unregistered instruments and is not intended to do anything more.

Clause 9 (2) is necessary to prevent doubts arising on questions of priority. Statutory provision with regard to priority was first made in the Ordinance of 1863 and similar provision has been included in all later Registration Ordinances. Instruments executed before 1864, if and when they are produced in evidence today, rank in priority in order of their dates independent of any question of registration. This clause ensures that in any competition between instruments executed prior to 1864 among themselves, or against instruments executed subsequent to 1864, registration does not in the matter of priority alter the existing law.

Clause 10.—Section 7 of the Sannases and Old Deeds Ordinance prohibits the reception in evidence of pre-1840 instruments which were not registered under that Ordinance. The Proviso to that section makes an exception in the case of an instrument if the failure to register it was due to circumstances mentioned in that Proviso. A pre-1840 instrument can be registered under the draft Ordinance proposed by us if it was registered under the Sannases and Old Deeds Ordinance or if conditions similar to those mentioned in the Proviso to section 7 are satisfied. Accordingly, once such an instrument is registered under the proposed Ordinance, it is not necessary that section 7 of that Ordinance shall apply to it. Provision to this effect is made in clause 10.

Clause 11 contains a necessary definition.

Clause 12 will make provision for cases where instruments which are presented for registration or in relation to which applications are made for orders under clause 4 or clause 5 do not come on the register before January 1, 1948, owing to the pendency of proceedings prior to registration. A person presenting an instrument for registration or making such an application will be able before January 1, 1948, to register a notice against the land which he claims to be affected by the instrument. If such a notice is duly registered, the provisions of clause 2 of the draft Ordinance will not prevent the production of the instrument so long as proceedings for registration of the instrument are pending.

16. As stated earlier the unrevealed instruments which can have a disturbing effect upon title are, as far as we are able to estimate, few in number. Consequently the number of registrations under the proposed Ordinance should also be few. We should not be surprised if there are none at all. There may at any rate be no recourse to all or some of the detailed provisions we have made in clauses 4 and 5. We think it necessary however that provision should be made for all possible cases.”.

RAJAH HEWAVITARNE,

Minister for Labour, Industry and Commerce.

Colombo, December 18, 1946.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L.D.—O. 48/46.

Cap. 148
Vol. IV.,
page 3.

An Ordinance to amend the Thoroughfares Ordinance.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title.

Amendment of
section 62A
of Chapter
148.

1. This Ordinance may be cited as the Thoroughfares (Amendment) Ordinance, No. of 1946.

2. Section 62A of the Thoroughfares Ordinance (hereinafter referred to as the "principal Ordinance"), is hereby amended as follows :—

(1) in sub-section (1) thereof by the substitution, for the words "to erect any building", of the words "except under the authority of a licence granted by the District Committee of the district, to erect any building";

(2) in sub-section (2) thereof—

(a) by the re-lettering of paragraph (a) as paragraph (aa) and by the substitution therein, for the words "No licence", of the words "No licence for the re-erection of, or for any addition to, any building, boundary wall or gateway";

(b) by the insertion, immediately before the re-lettered paragraph (aa), of the following new paragraph :—

"(a) No licence for the erection of any building, boundary wall or gateway shall be granted under sub-section (1) by the Chairman of any District Committee unless he is satisfied that the foregoing prohibition against the erection of any building, wall or gateway within the building limit will cause serious hardship to the owner of the land on which such building, wall or gateway is to be erected, and unless the written consent of the Director of Public Works to the grant of the licence is obtained. The Director shall not give such consent unless he is satisfied, having regard to the width of the road, the visibility available for traffic and the proper upkeep of the road, that the enforcement of the aforesaid prohibition is not for the time being essential.";

(c) by the re-lettering of paragraph (b) as paragraph (bb) and by the substitution therein, for all the words from "shall be the value thereof" to the end of the paragraph, of the words "shall be determined in accordance with the provisions of section 62D";

(d) by the insertion, immediately before the re-lettered paragraph (bb) of the following new paragraph :—

"(b) It shall be a condition of any licence granted by the Chairman of a District Committee under sub-section (1) for the erection of any building, boundary wall or gateway within the building limit, that no compensation shall be payable—

(i) in respect of such building, wall or gateway or part thereof within such limit if possession for the public use is taken at any time under section 7 of this Ordinance of the land on which such building, wall or gateway is situated, or if such land is acquired under the Land Acquisition Ordinance, or

(ii) after the severance or removal of such building, wall or gateway or part thereof within such limit, in respect of any improvement or adaptation of the remaining part of such building, wall or gateway for any purpose whatsoever. ”;

(3) in sub-section (3) thereof by the substitution, in paragraph (a), for the words “ shall be entered ”, of the words “ and the value thereof shall be entered ”.

3. Section 62C of the principal Ordinance is hereby amended as follows :—

(1) by the renumbering of that section as sub-section (1) of section 62C ; and

(2) by the addition, immediately after the re-numbered sub-section (1), of the following new sub-section :—

“ (2) Without prejudice to the provisions of sub-section (1), the Chairman of the District Committee may by order in writing served on any person who has contravened any of the provisions of section 62A, require such person to demolish or remove or as the case may be, to restore to its original condition, the building, boundary wall or gateway in respect of which the contravention was committed, within such time as may be specified in the order, and if such person fails to comply with the requirements of the order within the time specified therein, he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty rupees and to a further fine not exceeding fifty rupees for each day during which he suffers or allows such building, wall or gateway to remain in contravention of such order. No order shall be made under this sub-section except with the written consent of the Director of Public Works. ”.

4. Section 62D of the principal Ordinance is hereby repealed and the following new section is substituted therefor :—

62D. Where any building, boundary wall or gateway which has been re-erected or added to under the authority of a licence under section 62A is situated on any portion of land of which possession for the public use is taken under section 7 of this Ordinance, or which is acquired under the Land Acquisition Ordinance, the determination of the compensation payable in such case shall, notwithstanding anything to the contrary in that Ordinance, be subject to the following provisions :—

(a) Where the whole of the building or of any boundary wall or gateway is situated within the building limit, the value assigned to the building, boundary wall or gateway as distinct from the land acquired shall be the value entered in the register under section 62A (3) or the market value of the building, boundary wall or gateway at the time of the acquisition, whichever is the less, and for the purpose aforesaid, such market value shall be the difference between the market value of the building, boundary wall or gateway together with the land attached thereto, at the time of the acquisition, and the market value at that time of the land so attached as distinct from the building, boundary wall or gateway ;

(b) where only a part of the building or of any boundary wall or gateway is situated within the building limit and the value entered in the register under section 62A (3) is the value of the entire building, boundary wall or gateway in accordance with sub-section (2) (a) of section 62E, the value assigned to that part of the building, boundary wall or gateway, as distinct from the land acquired, shall be the value so entered or the market value of the entire building, boundary wall or gateway at the time of the acquisition, whichever is the less, and for the purpose aforesaid, such market value shall be the difference between the market value of the entire building, boundary wall, or gateway together with the land attached thereto, at the time of the acquisition, and the market value at that time of the land so attached as distinct from the entire building, boundary wall or gateway ;

Amendment of
section 62C
of the
principal
Ordinance.

Replacement
of section 62D
of the
principal
Ordinance.

Compensation
in respect
of land
developed by
buildings.

Cap. 203.

- (c) where only a part of the building or of any boundary wall or gateway is situated within the building limit and the value entered under section 62A (3) is the value of that part in accordance with sub-section (2) (b) of section 62E, the value assigned to that part of the building, boundary wall or gateway, as distinct from the land acquired, shall be the value so entered in the register or the value of the part of the building, boundary wall or gateway within the building limit at the time of the acquisition, whichever is the less, and for the purpose aforesaid, such value shall be the aggregate of—
 - (i) the estimated cost of the severance and removal of that part of the building, boundary wall or gateway at that time; and
 - (ii) the estimated cost, in the case of a building, of adapting at that time the part of the building which will then remain to the purpose for which the building is used at that time, and in the case of a boundary wall or gateway, of completing at that time such additions or repairs as may be necessary;
- (d) no compensation shall be allowed in respect of any building, wall or gateway erected, after the fifteenth day of February, 1943, within the building limit whether or not such erection was made under the authority of a licence under section 62A, or in respect of any re-erection or addition made or effected thereto in contravention of that section;
- (e) the value assigned to the land as distinct from the buildings thereon shall be the market value of the land at the time of the acquisition.

**Amendment
of section
62E of the
principal
Ordinance.**

5. Section 62E of the principal Ordinance is hereby amended as follows:—

- (1) in sub-sections (1) and (2) thereof, by the substitution, for the word and figures “section 62A (2)” of the words and figures “sub-sections (2) and (3) of section 62A”;
- (2) by the addition, immediately after sub-section (2), of the following new sub-section:—

“(3) Every award or agreement made or entered into, as the case may be, under sub-section (1) in respect of the value of any building, boundary wall or gateway or part thereof, shall specify the particular paragraph or paragraphs of sub-section (2) in accordance with which the value aforesaid was fixed or determined.”

Objects and Reasons.

Section 62A of the Thoroughfares Ordinance prohibits absolutely the erection of any building, boundary wall or gateway within a limit of twenty-five feet from the centre of any road in the charge of the Public Works Department. This prohibition has been found to operate harshly on owners of land abutting on roads which may not be widened for many years to come. It is therefore proposed to make provision enabling the Chairman of a District Committee, acting with the consent of the Director of Public Works, to grant licences, which will be subject to certain conditions, for the erection of buildings, boundary walls and gateways within such limit. (Clause 2).

2. Section 62C of the principal Ordinance empowers a District Committee to demolish or remove any structure erected within the building limit in contravention of the provisions of section 62A. District Committees are not, however, bound to exercise this power and they have, in the past, been reluctant to order the demolition of such structures. It is accordingly proposed, by Clause 3, to take power to order the person contravening section 62A to remove the structure in question on pain of a penalty similar to that payable under section 61.

3. By Clauses 4 and 5 it is proposed to insert in the principal Ordinance provisions laying down the principles on which compensation is to be assessed in the event of the acquisition for public purposes of land situated within the building limit. These provisions are similar to those inserted in the Urban Councils Ordinance by sections 3 and 5 of the Urban Councils (Amendment) Ordinance, No. 31 of 1946.

J. L. KOTELAWALA,
Minister for Communications and Works.
Colombo, December 20, 1946.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—O. 50/46.

An Ordinance to provide for the levy by way of export duty of a cess on cinnamon exported from Ceylon in order to defray certain losses incurred in the purchase of cinnamon by the Commissioner of Commodity Purchase.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1. (1) This Ordinance may be cited as the Cinnamon Exports (Levy of Cess) Ordinance, No. of 1946.

Short title
and operation.

(2) This Ordinance shall cease to be in force on such date as may be appointed by the Governor by Proclamation published in the *Gazette*.

2. (1) The Financial Secretary is hereby authorised, upon the recommendation of the Minister for Labour, Industry and Commerce, by Order published in the *Gazette* to impose an export duty on cinnamon exported from Ceylon at such rate not exceeding twenty cents per pound as may be specified in the Order.

Power to make
Orders imposing
export duty
on cinnamon.

Different rates of duty may be so imposed in respect of cinnamon of different grades.

(2) Every Order under sub-section (1) shall come into force on the date of its publication in the *Gazette* or on such later date as may be specified in the Order, and shall, subject to such amendments if any as may be made therein by any subsequent Order under that sub-section and save as otherwise provided in sub-section (3), continue in force until it is revoked by the Financial Secretary upon the recommendation of the Minister for Labour, Industry and Commerce.

(3) Every Order under sub-section (1) for the imposition of export duty shall, as soon as convenient after the publication thereof in the *Gazette*, be laid before the State Council; and any such Order shall cease to be in force on the expiration of a period of forty days from the date of such publication, unless at some time before the expiration of that period it has been approved by resolution of the State Council, but without prejudice to anything previously done or to any liability previously incurred thereunder or to the making of a new Order :

Provided, however, that nothing in the preceding provisions of this sub-section shall apply in the case of any Order reducing the rate of duty imposed by any previous Order.

Charge and
levy of
export duty.

3. (1) So long as an Order under section 2 is in force in respect of cinnamon of any grade, there shall be charged, levied and paid on all cinnamon of that grade exported from Ceylon an export duty at the appropriate rate specified in such Order.

Cap. 185.

(2) Sub-section (1) of this section shall have effect as though it formed part of the Customs Ordinance, and the provisions of that Ordinance shall apply accordingly.

(3) Notwithstanding anything in sub-section (2) of this section, the proceeds of the export duty imposed under this Ordinance shall be paid over monthly by the Principal Collector of Customs to the Commissioner of Commodity Purchase into a special account maintained by the Commissioner for the purpose.

Objects and Reasons.

During the recent war a control scheme was in operation fixing the prices of various grades of cinnamon both for the producer in Ceylon and for the buyer overseas. It is now proposed that the market for cinnamon should once again be free but certain difficulties will have to be removed before the control is terminated. The rates payable to the producer under the control scheme for cinnamon chips and featherings are much higher than the rates which they now command in the overseas market. In order to alleviate the consequent hardship to the producers, a guarantee was given by the Government that featherings and chips delivered to shippers before specified dates would be taken over at the higher rates by the Commissioner of Commodity Purchase. In consequence of this guarantee the Commissioner has now to take over large quantities of featherings and chips for sale at a loss overseas.

2. It is expected that so soon as there is a free market for cinnamon, producers will be in a position to obtain a better price for quills in certain overseas countries than the corresponding price prevailing under the control scheme. The

Executive Committee has accordingly decided that it would be equitable to impose an export cess on certain grades of cinnamon in order to defray the amount of the loss incurred in taking over the featherings and chips at uneconomic prices.

3. This Bill will make the necessary legal provision for the imposition of the cess. It is considered impracticable to adopt in this case the ordinary procedure of resolutions under the Customs Ordinance for the imposition of export duty, since it is anticipated that the rates of duty may have to be varied at short notice with fluctuations in the world market and since circumstances may justify the withdrawal of the cess also at short notice.

The Bill accordingly provides that subject to a maximum of twenty cents per pound, the rate of duty will be determined by an Order to be made by the Financial Secretary upon the recommendation of the Minister.

4. Since the procedure which is outlined above for the imposition of the export duty is of an unusual nature, provision is made in the Bill that Orders prescribing the rates of duty should be laid before the State Council and will cease to be in force unless they are approved by the State Council within forty days of the date of their publication in the *Gazette*.

5. The Bill includes provision for the payment of the proceeds of the duty by the Principal Collector of Customs to the Commissioner of Commodity Purchase.

RAJAH HEWAVITARNE,
Minister for Labour, Industry and Commerce.
Colombo, December 20, 1946.