



THE CEYLON GOVERNMENT GAZETTE

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PART II.—LEGAL.

(Separate paging is given to each Part in order that it may be filed separately)

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NOTIFICATIONS OF CRIMINAL SESSIONS.

BY virtue of a mandate to me directed by the Hon. the Supreme Court of the Island of Ceylon, I do hereby proclaim that a Criminal session of the said Court for the Western Circuit will be holden at the Court-house at Hulftsdorp, Colombo, on Tuesday, October 13, 1942, at 11 o'clock of the morning of the said day.

And I do hereby require and inform all persons concerned therein to attend at the time and place above mentioned, and not to depart without leave asked and granted

Fiscal's Office,
Colombo, September 15, 1942.

H. C. WIJESINHA,
for Fiscal.

NOTICES OF INSOLVENCY.

In the District Court of Colombo.

No. 5,654. In the matter of the insolvency of Daniel Henry Peiris Insolvency. of 23/1, Pelawatta road, Nugegoda

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on October 9, 1942, for the examination of the above-named insolvent.

September 14, 1942.

By order of court, C. EMMANUEL,
Secretary.

NOTICES OF FISCALS' SALES.

Western Province.

In the Court of Requests of Colombo

R M A N Mamekam Chettiar of 293, Sea street, Colombo Plaintiff.

No. 83,117.

Vs

(1) D J B. Gomes of Kandana, and another Defendants.

NOTICE is hereby given that on Tuesday, October 13, 1942, at 3 30 p.m., will be sold by public auction at the premises the right, title, and interest of the said 1st defendant in the following property for the recovery of the sum of Rs. 252 50, with interest on Rs 250 at 9 per cent per annum from June 5, 1942, till payment in full and costs of suit, to wit.—Rs. 25 25 being incurred costs and Rs 11 50 being prospective costs, viz. —

All that allotment of land marked lot No 5 in plan No 2085 dated April 25, 1935, made by H. D. David, Licensed Surveyor (being part of premises called "Hill Castle") formerly bearing assessment No. 45 and presently bearing assessment No 1. Hill Castle place, situated at Silversmith street, within the Municipality and District of Colombo, Western Province, with the buildings, trees and plantations standing thereon, and bounded on the north by part of the same property marked lot 8, on the east by reservation for road thirty feet wide, on the south by part of the same property marked lots 1 and 2, and on the west by premises bearing assessment No. 43, Hulftsdorp street, and No. 39, Hulftsdorp street; and containing in extent 13 28 perches, together with the right to the use of the road reservation thirty feet wide marked lot No 13 running from Silversmith street across to entirety of Hill Castle. Prior registration Colombo A 276/115.

Fiscal's Office,
Colombo, September 15, 1942.

H. C. WIJESINHA,
Deputy Fiscal.

659—J. N. A 16740-778 (9/42)

B 1

In the District Court of Kalutara.

Mampage Harmanis Perera of Gammanpila Plaintiff.

No. 22,059.

Vs.

S E. C. Salgado of Weodagama Defendant.

NOTICE is hereby given that on Saturday, October 10, 1942, at 2 o'clock in the afternoon, will be sold by public auction at the premises the right, title, and interest of the said defendant for the recovery of the sum of Rs 174 costs of the above case, in the following property, viz. —

An undivided one-fifth share of all that land called Kudabodagodahena and of the trees and buildings standing thereon, situated at Serukana alias Weodagama in Adikari pattu of Raigam korale, in the District of Kalutara, Western Province; and bounded on the north by Galwaladenyekumbura and land claimed by M. Harmanis and others, east by Balaketayawatta, land claimed by M. A. Perera and others, lands in T. P. Nos. 125244 and 120894, south Kudagahalandia alias Kudabodagodahena claimed by P Andris Perera, west by Bolabotiwewewa, Galwaladenyekumbura and land belonging to P. P. Dines Perera and others; containing in extent 8 acres 3 rods and 21 perches, subject to the life interest of Dona Justina Lissie Salgado

Deputy Fiscal's Office,
Kalutara, September 10, 1942.

P. D. WEERAMAN,
Deputy Fiscal.

Southern Province.

In the District Court of Matara.

David Welabodaheewa Kulasuriya of Totamune, Matara .. Plaintiff.

No. 14,149

Vs.

(1) Martin Thevonis Bandara of Totamune, Matara, and another Defendants.

NOTICE is hereby given that on Friday, October 23, 1942, commencing at 3 o'clock in the afternoon, will be sold by public auction at the respective premises the right, title, and interest of the said defendants in the following mortgaged property, for the recovery of a sum of Rs 2,000, with further interest on the principal at the rate of 12 per cent. per annum from October 1, 1938, till May 6, 1942, and thereafter on the aggregate amount at the rate of 9 per cent per annum till payment in full and costs of this action Rs. 226 72, viz. —

1 All that undivided 4/7 share of the soil and fruit trees and the entirety of the masonry tiled house wherein the 1st defendant resides, together with the kitchen adjoining thereto (save and except the planter's one-third share of the third plantation) of the land called Kasturuyawatta, situated at Bandaramulla in Welgam korale of Matara District, Southern Province; and bounded on the north by the high road, east by Rendaralage Pmawatta, south by Sahabanduawatta and Naduwatta, and west by the seashore; and containing in extent two and half acres

2 All that the soil and fruit trees together with all the buildings standing thereon of the defined lot D of the land called Nugagahahena, situated at Bandaramulla aforesaid; and bounded on the north by Kumgemahawatta and Aluthmaddumagewattekoratuwa, east by the defined lot C of the same land, south by the high road, and west by the defined lot E of the same land; and containing in extent about three acres.

Deputy Fiscal's Office,
Matara, September 15, 1942.

H. V. F. ABAYAKOON,
Additional Deputy Fiscal

In the District Court of Tangalla.

(1A) Hewapannilage Dugihamy of Pattiyawela, and others Substituted Plaintiffs.
No. 3,746.

(1) Hewamestrige Sinachcho of Pattiyawela and Gunaratnaweha-edrappulige Nandiyas of Tissa and others Substituted Defendants.

NOTICE is hereby given that on Tuesday, October 13, 1942, commencing at 3 o'clock in the afternoon, will be sold by public auction at the premises the right, title, and interest of the said substituted defendants in the following property for the recovery of Rs. 1,877.66, with interest on Rs. 924.25 at the rate of 9 per cent. per annum from May 2, 1942, till payment in full and costs, viz. :—

At Pattiyawela.

(1) The entire fruit trees and soil of the land called Gallegewatta, containing in extent about four seers of kurakkan, situated at Pattiyawela in West Giruwa pattu of the Hambantota District; and bounded on the north by Malana, east by Landewatta, south by Geeganagewatta, and west by Geeganagewatta.

(2) Undivided 95/126 share of all the remaining fruit trees and of the soil exclusive of the planter's ¼ share of the fruit trees of the second plantation of the land called Landewatta *alias* Kotakalalahawatta; containing in extent about six kurumes of kurakkan or four sowing situated at Pattiyawela aforesaid; and bounded on the north by Arewatta and Malana, east by Eramudugahawatta and Bogahahena, south by the village limit of Walawela, and west by Gallewatteweta-agala.

Deputy Fiscal's Office,
Tangalla, September 7, 1942

N. C. DE SILVA,
Additional Deputy Fiscal.

NOTICES OF TESTAMENTARY ACTIONS.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of Pallewala Jurisdiction. Lokuganage Gardas Ekanayaka of Matara, No. 10,075. deceased.

Ethel Grace Ekanayaka of Mission road, Kotte. Petitioner

(1) Indram Ekanayaka, (2) Jayanti Chandrawathe Ekanayaka, (3) Patrick Nihal Ekanayaka, all of Mission road, Kotte, (4) Dr. W. A. Karunaratne, Medical Officer of Health, Padukka, (5) Henry Bernard Perera Ekanayaka of Prince of Wales avenue, Colombo Respondents.

THIS matter coming on for disposal before V. L. St. Clair Swan, Esq., District Judge, of Colombo, on August 14, 1942, in the presence of Mr. D. E. Wanigesooria, Proctor, on the part of the petitioner above named; and the affidavit of the petitioner dated May 6, 1942, having been read.

It is ordered that the 4th respondent be and he is hereby appointed guardian *ad litem* of the minors, the 1st and 2nd respondents, and that the 5th respondent above named be and he is hereby appointed guardian *ad litem* of the minor, the 3rd respondent, to represent him for the purposes of this action and that the petitioner above named be and she is hereby declared entitled, as the widow of the deceased above named, to have letters of administration to the above estate issued to her accordingly, unless the respondents above named or some other person or persons interested shall, on or before September 24, 1942, show sufficient cause to the satisfaction of this court to the contrary.

August 24, 1942.

S. C. SWAN,
Additional District Judge.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late Jurisdiction. Paranauidanelage Aron Boteju *alias* Thomas No. 10,130. Botejue, deceased, of Battaramulla.

Paranauidanelage Nelson Botejue of Battaramulla. Petitioner
Vs.

(1) Hollupathrage Charlotte Caldera, (2) Paranauidanelage Lucas Botejue, (3) Paranauidanelage Caroline Botejue, wife of N. John Silva, (4) Paranauidanelage Turin Botejue, all of Battaramulla Respondents.

THIS matter coming on for disposal before V. L. St. Clair Swan, Esq., Additional District Judge, Colombo, on August 13, 1942, in the presence of Mr. J. A. Wijekoon, Proctor, on the part of the petitioner; and the affidavit of the above-mentioned petitioner dated August 6, 1942, having been read.

It is ordered that the above-named petitioner be and he is hereby declared entitled, as a son of the above-named deceased, to have letters of administration to the above estate issued to him accordingly, unless the respondents or any other person or persons interested shall, on or before September 24, 1942, show sufficient cause to the satisfaction of this court to the contrary.

August 14, 1942

V. L. ST. CLAIR SWAN,
Additional District Judge.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Last Will and Testament Jurisdiction. of Winifred Sophia Assauw of Ridgeway place, No. 10,144. Bambalapitiya, deceased.

Winifred Muriel Barbut of Ridgeway place, Bambalapitiya Petitioner.

THIS matter coming on for disposal before V. L. St. Clair Swan, Esq., Additional District Judge of Colombo, on August 20, 1942, in the presence of Mr. T. H. Jansz, Proctor, on the part of the peti-

tioner above named; and the affidavit of (1) the petitioner dated August 1, 1942, (2) the attesting notary dated August 13, 1942, and (3) the witness dated August 1, 1942, having been read:

It is ordered that the last will and testament of Winifred Sophia Assauw, deceased, the original of which has been produced and is now deposited in this court, be and the same is hereby declared proved and that the petitioner above named is the executrix named in the said last will and she is hereby declared entitled to have probate thereof issued to her accordingly, unless any person or persons interested shall, on or before September 24, 1942, show sufficient cause to the satisfaction of this court to the contrary.

August 26, 1942.

S. C. SWAN,
Additional District Judge.

In the District Court of Colombo.

Order Absolute in the First Instance.

Testamentary In the Matter of the Last Will and Testament of Jurisdiction. the late Michael Sebastian Fernando, deceased, No. 10,146. of Credon, in Castle street, Colombo.

THIS matter coming on for final determination before V. L. St. Clair Swan, Esq., Additional District Judge of Colombo, on August 24, 1942, in the presence of Mr. J. P. Rodrigo, Proctor, on the part of the petitioner, Charlotte Mary Clara Fernando *nee* de Silva Wijeyaratne of Credon in Castle street, Colombo; and the affidavits (a) of the said petitioner and (b) of the attesting notary and the witnesses both dated July 22, 1942, having been read:

It is ordered that the joint last will made by the deceased above named and the said petitioner bearing No. 2,067 dated February 28, 1942, and now deposited in this court be declared proved and probate hereof be issued to the said petitioner, as the executrix mentioned in the said will on the publication of this order in the *Government Gazette* and twice in the "Ceylon Observer" and on her taking the usual oath of office and tendering the security bond

August 31, 1942.

V. L. ST. CLAIR SWAN,
District Judge.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of Winifred Jurisdiction. Alice Deas, late of Rothesay place, Edinburgh and Coxtown Tower, Elgin, Morayshire, Scotland, spuster, deceased. No. 10,164

THIS matter coming on for disposal before V. L. St. Clair Swan, Esq., Additional District Judge of Colombo, on September 3, 1942, in the presence of Beram Kakkushroo Billmorra of Colombo, Proctor, on the part of the petitioner, Oscar Percy Mount of Colombo; and the affidavit of the said petitioner dated August 29, 1942, a certified copy of confirmation in respect of the intestate estate of the above-named deceased, power of attorney in favour of the petitioner, and Supreme Court's order dated August 21, 1942, having been read. It is ordered and declared that the said petitioner is one of the attorneys of Georgina Christie, the executrix-*ad litem* qua next of kin of the said deceased, and that he is entitled to have letters of administration to the intestate estate of the said deceased issued to him accordingly, unless any person or persons interested shall, on or before September 24, 1942, show sufficient cause to the satisfaction of this court to the contrary.

September 4, 1942

ST. C. SWAN,
Additional District Judge.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of Intestate Estate of Mihindukula- Jurisdiction. suriya Guruge Anthony Richard de Livera of No. 10,167. Negombo, deceased.

Vivienne Lena de Livera *nee* Fernando of Dayani, Baillie road, Kurunegala, also of 10, Dillena road, Borella, in Colombo Petitioner.

(1) Antornette Regina Vivienne de Livera of 10, Dillena road, Borella, in Colombo, (2) Joseph Michael de Livera of Negombo Respondents.

THIS matter coming on for disposal before V. L. St. Clair Swan, Esq., Additional District Judge of Colombo, on September 4, 1942, in the presence of Mr. N. J. S. Cooray, Proctor, on the part of the petitioner above named; and the affidavit of the petitioner dated September 2, 1942, having been read.

It is ordered that the 2nd respondent above named be and he is hereby appointed guardian *ad litem* of the minor, the 1st respondent, to represent her for all the purposes of this action and that the petitioner above named be and she is hereby declared entitled, as the widow of the deceased above named, to have letters of administration to the above estate issued to her accordingly, unless the respondents above named or some other person or persons interested shall, on or before October 15, 1942, show sufficient cause to the satisfaction of this court to the contrary.

September 9, 1942

V. L. ST. CLAIR SWAN,
Additional District Judge.

In the District Court of Colombo.

Order Nisi declaring Will proved.

Testamentary In the Matter of the Last Will and Testament of Jurisdiction. Eden Gawne of Old Chumneys Leigh in the No. 10,169. County of Kent, England, deceased.

THIS matter coming on for disposal before V. L. St. Clair Swan, Esq., Additional District Judge of Colombo, on September 8, 1942, in the presence of Messrs. F. J. & G. de Saran, Proctors, on the part

of the petitioner, James Robert Thorburn of Colombo; and (1) the affidavit of the said petitioner dated September 1, 1942, (2) the power of attorney dated April 21, 1942, and (3) the order of the Supreme Court dated August 24, 1942, having been read. It is ordered that the will of the said Eden Gawne, deceased, dated February 4, 1941, a certified copy of which under the seal of His Majesty's High Court of Justice in England has been produced and is now deposited in this court, be and the same is hereby declared proved; and it is further declared that the said James Robert Thorburn is the attorney in Ceylon of the executors named in the said will, and that he is entitled to have letters of administration (with will annexed) issued to him accordingly, unless any person or persons interested shall, on or before September 24, 1942, show sufficient cause to the satisfaction of this court to the contrary.

September 8, 1942. V. L. ST. CLAIR SWAN,
Additional District Judge.

In the District Court of Negombo.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of Mallunge
Jurisdiction. Emalano Aponso of Tudella, deceased
No. 3,180.

Between

Mallunge Aloysius Aponso of the Retreat, Tudella . . . Petitioner.

And

Mallunge Walter Aponso of Forbes road, Colombo . . . Respondent.

THIS matter coming on for disposal before A. S. Wanigasoorier, Esq., District Judge of Negombo, on May 23, 1942, in the presence of Mr. D. I. Paul Perera, Proctor, on the part of the petitioner; and the petition and the affidavit of the said petitioner dated May 22, 1942, and October 3, 1941, respectively, having been read:

It is ordered that the said petitioner be and he is hereby declared entitled, as eldest son and heir of the above-named deceased, to have letters of administration to his estate issued to him accordingly, unless the respondent above named or any other person or persons interested shall, on or before June 10, 1942, show sufficient cause to the satisfaction of this court to the contrary.

S. RAJARATNAM,
District Judge.

May 23, 1942

Date for showing cause against the Order Nisi is hereby extended to September 24, 1942.

September 3, 1942.

S. RAJARATNAM,
District Judge.

In the District Court of Kandy.

No T 296 In the Intestate Estate and Effects of Alfred
Mediwako of Mediwake, deceased.

Mrs Alfred Mediwake *alias* Tikiri Kumarihamy of Abeykoon
Walauwa in Rambukwella . . . Petitioner.

And

(1) Heen Banda Mediwako, (2) Seneviratne Mediwake, (3)
Abeykoon Walauwe Rambukwelle Tikiri Banda Rambuk-
wella, all of Rambukwella . . . Respondents.

THIS matter coming on for disposal before Arthur A. Perera, Esq., Acting District Judge, Kandy, on August 7, 1942, in the presence of Mr. B. H. Dunuwille, Proctor, S. C., on the part of the petitioner, Mrs. Alfred Mediwake *alias* Tikiri Kumarihamy; and the affidavit of the said petitioner dated July 30, 1942, having been read. It is ordered that the 3rd respondent be appointed guardian *ad litem* over the 1st and 2nd respondents, that the petitioner be and she is hereby declared entitled, as the widow of the above-named deceased, to have letters of administration to the estate of the deceased issued to her, unless the respondents or any other person or persons interested shall, on or before September 28, 1942, show sufficient cause to the satisfaction of this court to the contrary.

August 7, 1942.

ARTHUR A. PERERA,
District Judge.

In the District Court of Kandy.

Order Nisi declaring Will proved, &c.

Testamentary In the Matter of the Last Will and Testament of
Jurisdiction. Miss Jenny Hermon, deceased, of Ambanpitiya
No. T 302. estate, Kegalla.

THIS matter coming on for disposal before Chellappah Nagalingam, Esq., District Judge, Kandy, on August 27, 1942, in the presence of Mr. M. J. Taylor, Proctor, on the part of the petitioners, (1) William Hermon, and (2) Arthur Hermon; and the affidavit of the said petitioners dated July 30, 1942, and of the attesting notary dated July 22, 1942, having been read:

It is ordered that the last will of the above-named deceased dated August 23, 1940, and now deposited in this court be and the same is hereby declared proved, unless any other person or persons interested shall, on or before October 15, 1942, show sufficient cause to the satisfaction of this court to the contrary.

It is further declared that the said petitioners are the executors named in the said will, and that they are entitled to have probate of the same issued to them accordingly, unless any other person or persons interested shall, on or before the said date, show sufficient cause to the satisfaction of this court to the contrary.

August 31, 1942.

C. NAGALINGAM,
District Judge.

In the District Court of Galle, sitting at Balapitiya.

Order Nisi.

No. B 49. In the Matter of the Intestate Estate of the late
Testy Alisanduge Podithan Appuhamy of Kaikawala
in Induruwa of Bentota-Walallawiti korale,
deceased.

Alisanduge Deonis Appuhamy of Kaikawala in Indu-
ruwa Petitioner.

Vs.

(1) Alisanduge Nonohamy of Kaikawala, (2) ditto Lucy Nona
alias Magunona of Pitaramba in Bentota, (3) ditto Aron
Singho of Kaikawala in Induruwa Respondents.

THIS matter coming on for disposal before A. S. Wanigasooriyar, Esq., Additional District Judge of Galle, sitting at Balapitiya, on August 21, 1942, in the presence of Mr. W. A. C. Srisena, Proctor, on the part of the petitioner aforesaid, and the affidavit of the petitioner dated August 21, 1942, having been read:

It is ordered that the petitioner be and he is hereby declared entitled, as son of the above-named deceased, to have letters of administration to his estate issued to him accordingly for the purpose of these proceedings, unless the respondents above named or any other person or persons shall, on or before September 24, 1942, show sufficient cause to the satisfaction of this court to the contrary.

August 21, 1942. N. DE ALWIS,
Additional District Judge.

In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Intestate estate of the late
Jurisdiction. Theivanappillai, wife of Kandiah Sivagnana-
sundram of Kaithady in Jaffna, deceased.
No. 17.

Mailvaganam Sinnathamby of Kaithady in Jaffna . . . Petitioner.

Vs.

(1) Kandiah Sivagnanasundram of Karanavai South in Jaffna,
(2) Mailvaganam Sundrampillai of Kaithady in Jaffna, (3)
Valliammappillai, widow of Aiyaththurai Chellappa of
ditto Respondents.

THIS matter coming on for disposal before G. C. Thambyah Esq., District Judge of Jaffna, on August 24, 1942, in the presence of Mr. V. S. Nadarajah, Proctor, on the part of the petitioner, and the affidavit and petition of the petitioner having been read:

It is ordered that letters of administration to the estate of the above-named deceased be issued to the petitioner, unless the respondents or any other persons shall appear before this court on September 25, 1942, and show sufficient cause to the satisfaction of this court to the contrary.

August 24, 1942. G. C. THAMBYAH,
District Judge.

In the District Court of Jaffna

Testamentary In the Matter of the Estate of the late Kanapathip-
Jurisdiction. pillai Ponniah of Tellippalai East, Jaffna,
No. 29T. deceased.

Sinnathangachy, widow of Ponniah of Tellippalai East . . . Petitioner.

Vs.

(1) Ponniah Nagaratham, minor, (2) Arunasalam Seenivasagam,
both of Tellippalai East, (3) Thangamuttu, widow of Kana-
pathipillai of Mallakam Respondents.

THIS matter coming on for disposal before G. C. Thambyah, Esq., District Judge, Jaffna, on August 25, 1942, in the presence of Mr. P. Nagalingam, Proctor, on the part of the petitioner, and on reading the affidavit and petition of the petitioner:

It is ordered that the above named 2nd respondent be appointed guardian *ad litem* over the 1st respondent for the purpose of representing him in this case and that the petitioner be declared entitled to letters of administration to the estate of the above-named deceased, and that the same be issued to her accordingly, unless the above-named respondents shall, on or before September 25, 1942, appear before this court and show sufficient cause to the satisfaction of this court to the contrary.

September 10, 1942. G. C. THAMBYAH,
District Judge.

In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Estate of the late Kanapathi-
Jurisdiction. pillai Arulampalam of Suthumalai, deceased.
No. 21.

Manonmanyammal, widow of Kanapathipillai Arulampalam of
Suthumalai, presently of Valvettythurai . . . Petitioner.

Vs.

(1) Ledchumyammal, daughter of Arulampalam of Valvetty-
thurai (minor), (2) Baby in the womb of the petitioner (*a
ventrasamere*) and (3) Kulanthavelu Selvanayagam of ditto,
(4) Arulampalam Kanapathipillai of Suthumalai (minor),
and (5) Rasammah widow of Nagar Tambo of ditto; (the 1st
and 2nd respondents are minors of the ages of 5 years and
6 months in the womb, respectively, and over whom the 3rd
respondent is appointed guardian *ad litem* and the 4th re-
spondent is also a minor of the age of 14 years and
over whom the 5th respondent is appointed guardian
ad litem Respondents.

THIS matter coming on for disposal before G. C. Thambyah, Esq., District Judge of Jaffna, on August 15, 1942, in the presence of

Mr. K. V. Sinnathurai, Proctor, on the part of the petitioner; and the affidavit of the petitioner dated August 14, 1942, having been read:

It is ordered that the petitioner above named be and she is hereby declared entitled, as the widow of the deceased above named, to have the letters of administration issued to her, unless the respondents above named or any other person interested in the estate shall, on or before September 28, 1942, appear before this court and show sufficient cause to the satisfaction of this court to the contrary.

It is further declared that the above-named 3rd and 5th respondents above named be appointed guardians *ad litem* over the 1st, 2nd, and 4th respondents above named, who are minors, unless the respondents or any others interested in the estate shall, on or before September 28, 1942, show sufficient cause to the satisfaction of this court to the contrary.

It is further ordered that the minor respondents above named should be produced personally into court on the said date.

September 15, 1942.

G. C. THAMBYAH,
District Judge.

In the District Court of Kegalla.

Order Nisi.

Testamentary Jurisdiction: In the Matter of the Intestate Estate of Dona Cicilia Wickramasingha of Kegalla, deceased
No. 1,655.

Don Simon Wickramasingha of Kegalla Petitioner.

Dona Caroline Wickramasingha of Kegalla Respondent.

THIS matter coming on for disposal before R. R. Selvadurai, Esq., District Judge, Kegalla, on August 2, 1942, in the presence of Mr. A. I. Abeyawickrama, Proctor; and the petition of the petitioner dated August 22, 1942, and the affidavit of the petitioner dated January 28, 1942, having been read:

It is ordered that the petitioner be and he is hereby declared entitled, as brother of the above-named deceased, to have letters of administration to her estate issued to him, unless the above-named respondent or any person or persons interested shall, on or before September 30, 1942, show sufficient cause to the satisfaction of this court to the contrary.

August 22, 1942.

R. R. SELVADURAI,
District Judge.

DRAFT ORDINANCES.

MINUTE.

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

L. D.—CF. 10/42.

An Ordinance to authorise payments in respect of war damage to immovable property and the collection of contributions towards the cost of such payments; and to make provision for matters connected therewith or incidental thereto.

TABLE OF SECTIONS.

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An Ordinance to authorise payments in respect of war damage to immovable property and the collection of contributions towards the cost of such payments: and to make provision for matters connected therewith or incidental thereto.

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 War Damage (Immovable Property) Ordinance, No. of 1942.

Short title.

PART I.

Payments under the Ordinance and provisions for securing the public interest.

2. (1) Payments shall be made by the Commissioner, subject to and in accordance with the provisions of this Ordinance, in respect of war damage occurring during the risk period to immovable property in respect of which the contributions hereinafter specified have been received or collected by or on behalf of the Commissioner.

Payments under the Ordinance and holdings that are to be units for purposes thereof.

(2) For the purposes of the provisions of this Ordinance relating to such payments, immovable property sustaining war damage as aforesaid shall, subject to the provisions of sub-section (3), be dealt with in such units as the Commissioner may determine, and immovable property which is to constitute a unit for those purposes is in this Ordinance referred to as a "holding".

(3) Holdings shall be of two kinds consisting respectively of—

- (a) buildings (excluding buildings the use of which is accessory to the use of other land and which would not be readily marketable apart from that other land) or parts of such buildings, and the sites of such buildings or of parts thereof; and
- (b) land other than as aforesaid:

Provided that there shall be included in a holding that comprises a building falling within paragraph (a) of this sub-section, or a part of such a building, any land (including a building) which, though not falling within that paragraph, might be expected ordinarily to be occupied with the first-mentioned building or part and is so situated that war damage thereto, if not made good, would be likely to affect substantially the value of the first-mentioned building or part.

A holding that comprises a building falling within paragraph (a) of this sub-section, or a part of such a building, is in this Ordinance referred to as a "developed holding".

3. (1) Subject to the provisions of this Ordinance, a payment to be made thereunder shall be of one or other of two kinds, in this Ordinance referred to respectively as a "payment of cost of works" and a "value payment".

Nature and amount of payments.

(2) The amount of a payment of cost of works shall be computed as follows:—

- (a) If the war damage is made good by reinstating the holding in the form in which it existed immediately before the occurrence of the damage, the amount

of the payment shall be an amount equal to the proper cost of the works executed for the making good thereof :

Provided that if the reinstatement of any part of the holding could have been omitted without detracting from its value, or the omission thereof would have increased the value of the holding, the amount of the payment shall be reduced to what it would have been if that part had not been reinstated.

In this Ordinance the expression " the permissible amount " means, in relation to a payment of cost of works, the amount that is payable by virtue of this paragraph or that would have been payable if this paragraph had had effect in relation to the payment.

(b) If the war damage is made good by works which include alterations or additions to the holding, the amount of the payment shall be an amount equal to so much of the proper cost of the works executed for the making good of the damage as falls within the permissible amount.

(3) In this Ordinance the expression " proper cost " means, in relation to any works, such cost as is reasonable, having regard to the prices of materials and rates of remuneration for services current when the works are executed and to all other relevant circumstances, and in computing the proper cost of any works the cost of the necessary employment of an architect, engineer, surveyor, land agent, or other person in an advisory or supervisory capacity, in connection with the execution of the works, shall be treated as part of the cost of the works.

(4) The amount of a value payment shall be an amount equal to the amount of the depreciation in the value of the holding caused by the war damage, that is to say, the amount by which the value of the holding in the state in which it was immediately after the occurrence of the damage is less than its value in the state in which it was immediately before the occurrence of the damage.

(5) For the purposes of the last preceding sub-section, the value of a holding in the state in which it was at any time shall be ascertained by reference to prices current at the thirty-first day of March, nineteen hundred and thirty-nine, and shall be taken to be the amount which the holding in that state might have been expected to realise on a sale thereof made in the open market on the said day with vacant possession, subject to any restrictive covenant, servitude, or other right inuring for the benefit of other land, any public right of way, or other right inuring for the benefit of the public or of any section thereof, and any restriction or liability imposed by or under any enactment, to which the holding was subject at that time, but free from any other incumbrance :

Provided that provision may be made by regulations for the valuation, by reference to such matters as may be therein specified, of holdings consisting of or comprising premises of a kind not normally the subject of sales in the open market, or having a value which could not be fully realised on such a sale.

(6) The amount of a payment of cost of works shall be reduced by an amount equal to the value, ascertained in accordance with regulations, of any articles which formed part of the holding and become available as materials in consequence, whether directly or indirectly, of the war damage, and in computing the amount of a value payment the value, ascertained as aforesaid, of any such articles shall be included in the value of the holding in the state in which it was immediately after the occurrence of the war damage :

Provided that—

(a) where any such articles are removed in exercise of emergency powers, otherwise than pursuant to a requisition, the amount of the payment shall be computed as if they had been wholly destroyed on the occurrence of the damage ; and

(b) where any such articles are requisitioned, the amount of the payment shall be computed as mentioned in the preceding paragraph of this proviso and then reduced by the amount of the sum payable under the Defence (Compensation) Regulations, 1941, or under any such agreement as is mentioned in Regulation 15 of those Regulations, in respect of the requisition or which would have been so payable if a claim therefor had been duly made under those Regulations.

4. (1) Subject as provided by sub-section (2) of this section, the question whether a payment under this Ordinance is to be a payment of cost of works or a value payment shall be determined as follows, that is to say—

- (a) in the case of a developed holding, the payment shall be a payment of cost of works unless the damage involves total loss, that is to say, is such that the making good thereof would be likely to require works costing more than the difference between the value which the holding would have after the execution of the works and the value which the holding, with the damage not made good, would have as a site ;
- (b) in the case of a holding not being a developed holding, the payment shall be a payment of cost of works in a case only in which the permissible amount of that payment would be likely to be less than the amount of a value payment in respect of the damage.

Cases in which payments of cost of works and value payments respectively are to be made.

(2) The preceding sub-section shall have effect subject to the provisions of section 7 (which relate to the securing of the public interest in the making of payments under this Ordinance) and subject also to the following provisions, that is to say—

- (a) in a case in which the appropriate payment would, apart from this provision, be a payment of cost of works, if the Commissioner is satisfied that it is the wish of the owner or owners of the holding or of any tenant whose wish ought in the opinion of the Commissioner to prevail, that the damage should not be made good, or if the Commissioner is satisfied that the circumstances are such that the damage will not in fact be made good, he may, if he thinks fit, make a value payment in respect of the damage, so however that the amount of a payment made by virtue of this paragraph shall be such amount as the Commissioner thinks proper, not exceeding either the amount that would have been permissible for the payment of cost of works or the amount that would have been payable if a value payment had been the appropriate payment ; and
- (b) in a case in which the appropriate payment would, apart from this provision, be a value payment, the Commissioner may make a payment of cost of works in respect of the damage if it appears to him to be expedient so to do having regard to the effect that the making good of the damage would have in relation to the value of another holding.

5. Where a payment of cost of works or a value payment is made in respect of war damage to a holding there shall be made, in addition to that payment, a payment (in this Ordinance referred to as a "temporary works payment") of an amount equal to the proper cost of any works reasonably executed for temporarily meeting the circumstances created by the damage, being—

- (a) where a payment of cost of works is made, works, other than those taken into account in computing the amount of that payment, executed between the occurrence of the damage and the time when it is made good ;
- (b) where a value payment is made, works executed between the occurrence of the damage and the time when the Commissioner's determination to make that payment, and not a payment of cost of works, has been notified to the owner or to any tenant of the holding who has made a request in writing to the Commissioner to be notified thereof, or, if no such request has been made, the time of such determination.

Additional payments in respect of temporary works.

6. (1) Subject to the provisions of sub-sections (2) and (3) of this section, any question arising in giving effect to the provisions of sections 3, 4 and 5 shall be determined by the Commissioner.

Determination of questions as to works and value.

(2) An appeal shall lie from a determination of the Commissioner—

- (a) as to the value of a holding in respect of which a value payment is to be made ; or
- (b) as to the value which a holding would have in the circumstances specified in paragraph (a) of sub-section (1) of section 4 at the instance of the owner of the holding, to the Board of Appeal constituted for the purposes of this Ordinance.

(3) (a) If any person is aggrieved by a determination of the Commissioner of any question which is under this section to be determined by the Commissioner, other than a determination from which an appeal lies under sub-section (2) of this section, such person may appeal therefrom on any question of law to the Supreme Court.

(b) Provision may be made by rules of court under the provisions of the Courts Ordinance for regulating appeals under this sub-section, and those rules shall provide for limiting the time within which such an appeal may be brought, for the determination thereof in a summary manner, and for requiring notice thereof to be given to the Commissioner, and may provide for the hearing and determination of any such appeal by a single judge.

(c) The Commissioner shall be entitled to appear and be heard on any such appeal.

Cap. 6

Provisions for securing the public interest in the making of payments.

7. (1) The Governor shall give directions to be observed by the Commissioner for securing that the provisions of this Ordinance relating to the making of payments in respect of war damage shall be executed in conformity with the public interest, as respects such matters as may appear to the Governor to be relevant, including town and country planning, the provision of housing accommodation, the development of industries and services and of agriculture, the preservation of amenities, the consumption of supplies of building materials for the time being available, and the building requirements of persons engaged in work of public importance.

(2) For the purpose of giving effect to any directions given under sub-section (1), the Commissioner may, by notice published in the *Gazette* and in at least one English, one Sinhalese, and one Tamil newspaper circulating in Ceylon, and in such other manner as he may think best for informing persons likely to be affected, specify any particular area or class of holdings or of works, and impose on any person who proposes to execute works (other than temporary works) for making good war damage to holdings in the specified area or to holdings of the specified class, or who proposes to execute for making good war damage any works of the specified class, an obligation to inform the Commissioner of the proposal and to furnish such particulars of the proposed works as he may require. Where such a notice has been published the Commissioner shall have power—

- (a) to impose, as a condition of the right to receive so much of any payment of cost of works as would be payable in respect of any such works executed after the publication of the notice, requirements as to the nature of the works, the materials to be used therefor or the time for the execution thereof, or any other requirements relating thereto; or
- (b) if the Commissioner is satisfied that the directions given under sub-section (1) require that the damage should not be made good, to make a value payment in respect thereof in lieu of any payment of cost of works that would otherwise have been appropriate.

(3) For the purpose of giving effect to any directions given under sub-section (1), the Commissioner shall have power, whether such a notice as aforesaid has been published or not,—

- (a) to require the person, to whom a value payment in respect of war damage to a developed holding or any share of such a payment is to be made, to enter into an undertaking with the Commissioner to observe conditions as to the application of the payment or share, or of any part thereof, to the construction, alteration or acquisition of a building to be used in substitution for the building comprised in the damaged holding;
- (b) where war damage in respect of which a value payment would otherwise be appropriate is made good in the public interest, to make a payment of cost of works in respect thereof; or
- (c) to make an addition to a payment of cost of works in consideration of the omission, by agreement between the Commissioner and the owner or tenant of the holding, of any works for the making good of the damage the cost of which would otherwise have been payable, so however that the amount of the payment with the addition thereto shall not exceed the amount permissible by virtue of sub-section (2) of section 3:

Provided that the power conferred by paragraph (a) of this sub-section shall not, except in relation to a sum paid during the period whilst the Emergency Powers (Colonial

Defence) Order in Council, 1939, continues in force, extend to the imposition of any condition as to the location of any substituted building.

(4) Where a value payment is made by virtue of paragraph (b) of sub-section (2) of this section, the provisions of section 5 shall have effect in relation to any works appearing to the Commissioner to have been reasonably executed before the publication of the notice referred to in that sub-section, notwithstanding that they may not have been of a temporary character.

(5) If default is made in the observance of an undertaking entered into for the purposes of paragraph (a) of sub-section (3) of this section, the sum paid shall be recoverable as a debt due to the Crown, and the right to receive the value payment or share thereof, or, if the condition related to a part only thereof, the right to receive that part, shall be forfeited.

(6) In determining whether, and the manner in which, any of the powers conferred upon the Commissioner by this section is to be exercised in cases in which it appears to him that an exercise of the power would be likely to affect the exercise by a local authority of any of their functions, the Commissioner shall afford to the authority, or, where the matter in question is one in which two or more of such authorities are concerned, to each such authority, an opportunity of making representations to him, and the Commissioner shall consider any representation made to him by any such authority with respect to the exercise by the Commissioner of any of the said powers; and any such authority shall at the request of the Commissioner furnish him with any information in the possession of the authority which the Commissioner may reasonably require in connection with the exercise by him of any of the said powers.

Provisions as to rights to receive payments.

8. (1) The times when payments may be made under this Ordinance shall, except in such cases as may be determined by the Commissioner in accordance with directions given by the Governor under section 7, be the following, that is to say—

Time when
payments
may be made.

(a) in the case of payments of cost of works, and in the case of temporary works payments, the time of the completion of the works, or, where payment is to be made by instalments, of the relevant parts thereof, or the expiration of such period thereafter as may be reasonably requisite for enabling the Commissioner to ascertain whether they have been duly completed and what was the proper cost thereof;

(b) in the case of value payments, such time or times as may be prescribed by regulations either generally or as respects payments to be made in different circumstances.

(2) Interest at the rate of two and a half per cent. per annum shall accrue on a value payment from the time of the occurrence of the war damage, and shall be payable when that payment is discharged.

(3) Notwithstanding anything in sub-section (1) of this section, where the Commissioner is satisfied that a person who will in due course become entitled to receive a value payment or a payment of cost of works or a share of such a payment is at a time before the payment can be made in need of funds required—

(a) where he or his family was maintaining a residence in the damaged holding immediately before the damage occurred, in order to secure housing accommodation for himself or his family, or

(b) where he was then carrying on a trade or business therein, in order to secure premises for the carrying on of the trade or business,

the Commissioner may pay to him, on account and in part satisfaction of the payment or share, any sum or sums not together exceeding such amount as will, in the opinion of the Commissioner, fall within the amount of that payment or share and not together exceeding ten thousand rupees, or, in the case of a person as to whom the requirements both of paragraph (a) and of paragraph (b) of this sub-section are satisfied, ten thousand rupees for each of the purposes therein mentioned.

(4) Any sum or sums to be paid under sub-section (3) may be paid subject to any conditions which the Commissioner may think requisite for the purposes aforesaid, and, if after any such sum is paid, any conditions imposed under this sub-section are not complied with, the sum in question shall be recoverable as a debt due to the Crown.

(5) When any sum is paid on account of a value payment or of a share of such a payment, interest on the amount of the sum paid shall cease to accrue.

Destination
and
apportionment
of payments.

9. (1) A payment of cost of works, and a temporary works payment, shall be made to the person by whom the cost of executing the works is incurred or, if such cost is incurred partly by one person and partly by another, shall be divided amongst them in such manner as may be determined by agreement between them, or, in default of agreement, in such manner as may be determined by the Commissioner.

(2) Subject as hereinafter provided, a value payment and the interest thereon shall be paid to the person who was the owner of the damaged holding at the time of the occurrence of the war damage or where two or more persons owned shares or had interests at that time in the holding or in any part thereof, to such persons in proportion to the amount of the depreciation in value which they respectively suffer by reason thereof, that is to say, the amount by which the value of their respective shares or interests immediately after the occurrence of the damage is less than the value thereof immediately before the occurrence of the damage.

(3) For the purposes of sub-section (2), the value of any share or interest in a holding immediately before the occurrence of war damage and the value thereof immediately thereafter shall be taken respectively to be the amount that the share or interest might have been expected to realise on a sale thereof in the open market on the thirty-first day of March, nineteen hundred and thirty-nine, if it had been subsisting on that day with the like incidents in all respects as it had (other than its being subject to any charge or lien for securing money or money's worth) and the holding had been on that day in the state in which it was, immediately before the occurrence of the damage, or immediately thereafter, as the case may be.

(4) The value which a share or interest in a holding is to be taken by virtue of sub-section (3) to have had immediately before the occurrence of war damage, or immediately thereafter, shall be such as may be determined by agreement between the owners of the several shares or interests in the holding. In default of such agreement, such value may be determined by the Commissioner, but a determination of the Commissioner under this sub-section shall be subject to an appeal to the Board of Appeal.

(5) Where any sum has been paid under section 8 on any date on account of a share of a value payment, there shall, on the discharge of the payment, be brought into hotchpot and accounted for accordingly, in addition to that sum, an amount equal to any interest which would have accrued thereon after that date if it had not been so paid.

(6) The right to receive a payment under this Ordinance in respect of war damage or a share of such a payment shall be transmissible by assignment or by operation of law, but an assignment in whole or in part of any such payment or share, made either before or after the commencement of this Ordinance, whether absolutely or by way of charge, other than an assignment which does not affect any beneficial interest in the payment or share or in any part thereof, shall be of no effect until it has been approved in writing by the Commissioner.

Notification
of damage
and claims
for payments.

10. (1) Regulations may be made—

- (a) as to the notification of the occurrence of war damage to holdings, and of particulars of such damage and of the holdings affected thereby; and
- (b) as to the making of claims for payments under this Ordinance, and the information to be furnished for the purpose of the investigation thereof and of the determination and ascertainment of the kind and the amount of the payment to be made in respect of any war damage and of the person entitled to receive the payment or any share thereof, and as to the manner in which such information is to be verified.

(2) Regulations made under this section may specify limits of time for the giving of such notification as aforesaid, for the making of such claims as aforesaid, or for the observance of the requirements of the regulations as to any other matter:

Provided that the Commissioner shall have power in his discretion to extend any limit of time so specified in particular cases.

(3) Regulations made under this section may provide for rendering the right to receive a payment under this Ordinance, or a share of such a payment, conditional on the requirements of the regulations having been duly observed:

Provided that the Commissioner shall have power to waive any of the said requirements in particular cases, and to make payments under this Ordinance notwithstanding that any of them have not been observed.

(4) The power to make regulations as to the matters specified in the preceding provisions of this section shall include power to make regulations as to any of those matters in relation to war damage sustained before the coming into force of the regulations, and provisions shall be made by the regulations for securing, so far as may be, that action taken before the coming into force of the regulations in relation to any of those matters shall not be required to be repeated after the coming into force thereof.

11. (1) Notwithstanding anything in the preceding provisions of this Ordinance, the Commissioner shall not be required to entertain a claim by any person for a payment in respect of war damage to a holding, being damage in respect of which a payment of cost of works is the appropriate payment, if the total cost of executing works on the holding in relation to such war damage which was incurred by him and which would apart from this provision be the subject either of a payment of cost of works or of a temporary works payment is less than fifty rupees :

Commissioner not to be required to entertain claims for payments of under fifty rupees.

Provided that, in the case of a person who has incurred such cost as aforesaid in relation to war damage sustained by the same holding on two or more occasions, or in executing works on two or more developed holdings in the same area, the whole of such cost shall be taken into account together for the purposes of this sub-section.

In this sub-section the expression "area" in relation to any holding means the area within the administrative limits of the local authority by which any rate or land tax is levied in respect of that holding.

(2) Notwithstanding anything in the preceding provisions of this Ordinance, the Commissioner shall not be required to entertain a claim for a payment in respect of war damage to a holding other than a developed holding, being damage in respect of which the appropriate payment is a value payment, if the total amount of the depreciation in the value of the holding caused by the war damage, and of the cost of executing works on the holding in relation to such war damage which apart from this provision would be the subject of a temporary works payment, is less than fifty rupees :

Provided that, where any such holding sustains war damage on two or more occasions, the said depreciation and cost attributable to the war damage occurring on each of those occasions shall be taken into account together for the purposes of this sub-section, and, if the holding also sustains war damage in respect of which a payment of cost of works is the appropriate payment, the amount of that payment shall be included in the said total for those purposes.

12. (1) If war damage to a holding is increased by any default or failure on the part of the owner or of the usufructuary mortgagee of the holding or any part thereof to take any steps for preserving the holding or part thereof which he might reasonably have been expected to take after the happening of the event from which the damage results, the following provisions of this section shall have effect.

Provision for deduction from payment, &c., for failure to minimise damage.

(2) Where a value payment is to be made in respect of the war damage, both the actual depreciation in the value of the holding caused thereby and the depreciation that would have been caused if the damage had not been increased as aforesaid shall be determined in accordance with the provisions of sections 3 and 6 and the difference shall be deducted from the payment, or, if it is payable in two or more shares, from the share apportioned to the person whose failure or default increased the war damage as aforesaid :

Provided that where the person in default was a usufructuary mortgagee of the holding or any part thereof, if the mortgage is subsisting when the payment is discharged, the mortgagee shall be liable to account as if the payment or share proportionate to that part had been paid to him in full, and, if the mortgage is not then subsisting, the payment or share shall be paid in full to the owner and an amount equal to the aforesaid difference shall be recoverable as a debt due to the Crown from the mortgagee in default.

(3) Where a payment of cost of works is to be made in respect of the war damage the amount by which the proper cost of the works executed for making it good is increased by reason of the failure or default shall be determined by the Commissioner and that amount shall be deducted from so much (if any) of the payment as would otherwise have been payable to the person in default, and, so far as not so deducted, shall be recoverable as a debt due from him to the Crown.

13. (1) The Commissioner may specify requirements as to contracts for the execution of works, the cost of which may be the subject of a payment of cost of works or the execution of, which may be the subject of an undertaking required in relation to the receipt of a value payment by virtue of section 7, and requirements as to the engagement of employees by

Wages and conditions of employment for works the subject of payments under this Ordinance.

persons undertaking directly the execution of such works, for, securing that the wages and conditions of employment of persons employed in the execution thereof are regulated in like manner as those of persons employed in the execution of works under contracts made by Government departments.

(3) Such requirements as aforesaid shall be observed, as a condition of the right to receive the payment of cost of works or as a term of the undertaking, as the case may be, in such cases as the Commissioner may specify generally by notice published in such manner as he thinks best for informing persons likely to be affected and in any other cases in which the Commissioner may require observance thereof by notice given or sent to the claimant for the payment in question.

Additional provisions as to payments in certain cases.

Power to increase amount of value payments on Commissioner's report as to altered circumstances.

14. (1) If, when the discharge of value payments generally or in substantial volume has become permissible, the Commissioner is of opinion that, having regard to any circumstances arising since the commencement of this Ordinance, the amounts of any such payments computed as provided by section 3 are inadequate, the Commissioner shall make a report to the Financial Secretary stating such opinion, the circumstances to which he has had regard in forming it, and the deductions which he has drawn therefrom.

(2) On receipt from the Commissioner of any such report the Financial Secretary shall consider the report, and shall have power by his written order to direct that the amounts of value payments which would otherwise be computed as provided by section 3 shall, either in all cases or in such classes of cases as may be specified in the order, be increased by a sum equal to such proportion of the amount computed as aforesaid as may be specified in the order.

(3) An order under this section as to any value payments shall have effect in relation to any such payment whether made before or after the coming into force of the order.

(4) The Financial Secretary shall publish in such manner as he may think fit any report made to him under sub-section (1) as soon as may be after he has made an order in pursuance thereof or has determined to make no order thereon.

(5) An order under this section may be varied or revoked by any subsequent order made thereunder by the Financial Secretary:

Provided that no person shall be liable in consequence of an order made by virtue of this sub-section to repay any sum paid to him before the coming into force thereof.

(6) An order made under this section shall not have effect until it has been approved by the State Council and ratified by the Governor.

Payments in respect of tenancies in holdings of exceptional site value.

15. (1) Where a developed holding sustains war damage in respect of which the appropriate payment would be a value payment, but, owing to the value as a vacant site of land comprised in the holding, the value of the holding in the state in which it was immediately after the occurrence of the damage is no less than its value in the state in which it was immediately before the occurrence of the damage, if a tenancy was then subsisting in the holding and the Commissioner is satisfied that the time which it then had to run and the purpose for which the holding was used by the tenant was such as to render it probable that the holding would have remained in its existing form during that time apart from war damage, the Commissioner may, if he thinks fit, make in respect of the tenancy a payment of such kind and amount as appears to him to be reasonable in view of the value of such tenancy.

(2) Paragraph (a) of sub-section (3) of section 7, section 8, and sub-section (4) of section 9 shall have effect in relation to a payment to be made under this section as they have effect in relation to a value payment, and a payment to be so made shall, subject to the provisions of sub-section (4) of section 9, be made to the person who was, immediately before the occurrence of the damage, the tenant of the holding.

Payments in respect of holding or part compulsorily acquired whilst in a damaged condition.

16. (1) If any land constituting or forming part of a holding which has sustained war damage in respect of which a payment of cost of works would be the appropriate payment, but which has not been fully made good, is acquired compulsorily by virtue of any written law in force at the time of the commencement of this Ordinance, and compensation for the acquisition falls to be determined by reference to the value of the land in its damaged state (without regard to the prospective right of a purchaser to payment of the cost of making the damage good), the payment to be made under this Ordinance in respect of the damage to the land acquired shall be of an amount equal to what would have

been permissible for the payment of cost of works (so far as attributable to the land acquired if it is part only of the holding), and shall be made in the form of—

- (a) a payment of cost of works in respect of any works for making good the damage executed before the date of the notice of intention to take possession required by the law in force in that behalf or other date on which the acquisition became obligatory, in so far as the proper cost thereof falls within the said permissible amount; and
- (b) a value payment of an amount equal to the residue of the said permissible amount, or, if no such works were so executed, to the whole thereof.

(2) In a case in which the preceding sub-section has effect, section 5 shall have effect in relation to works reasonably executed for temporarily meeting the circumstances created by the damage to the land acquired, being works, other than those taken into account under paragraph (a) of the preceding sub-section, executed between the occurrence of the damage and the date mentioned in that paragraph, and in relation to such works only.

(3) Any question arising in giving effect to this section shall be determined by the Commissioner.

17. (1) The preceding provisions of this Ordinance shall have effect, in relation to war damage occurring on two or more occasions during the risk period and affecting the same holding, subject to and in accordance with the provisions of this section.

Payments in respect of land sustaining repeated damage.

(2) The references in sections 3 and 4 to war damage shall be construed as references to war damage occurring on a single occasion, and accordingly the nature and amount of the payment to be made in respect of war damage occurring on each of two or more occasions shall be determined separately.

(3) Where a developed holding, being or including a developed holding which has already sustained (whether on a single occasion or on two or more occasions) war damage not being such that a value payment is to be made in respect thereof, sustains on a subsequent occasion war damage such that the making good thereof, and of the damage sustained earlier so far as not already made good, would be likely, in the opinion of the Commissioner, to require works costing more than the difference between the value which the holding would have after the execution of the works and the value which the holding, with the damage not made good, would have as a site, the Commissioner may determine that a single value payment shall be made in respect of all the war damage as if it had occurred on the earliest occasion, to the exclusion of any other payment in respect of any of it:

Provided that—

- (a) section 5 shall have effect both in relation to such temporary works as are therein mentioned, and also in relation to any works appearing to the Commissioner to have been reasonably executed for making good any of the damage occurring on an occasion earlier than the latest notwithstanding that they may not have been of a temporary character;
- (b) any payment of cost of works, or any part of any such payment, made in respect of any of the damage shall not be recoverable, but shall be taken into account in determining the amount, if any, to be paid under paragraph (a) of this proviso;
- (c) if the value of the holding in the state in which it was immediately after the damage occurring on the subsequent occasion is less by any amount than it would otherwise have been by reason of any physical change therein not directly attributable to war damage (other than ordinary wear and tear) occurring between the earliest occasion and the subsequent occasion, the amount of the single value payment shall be reduced by that amount;
- (d) if the title to the holding has altered between the earliest occasion and the subsequent occasion, the provisions of this Ordinance shall have effect as if the damage had occurred on the subsequent occasion; and
- (e) the interest on the single value payment shall run from the subsequent occasion.

(4) Where a value payment is to be made in respect of war damage sustained (whether on a single occasion or on two or more occasions) by a developed holding, any war damage sustained by the holding on a subsequent occasion shall be taken into account in determining the amount of

that payment as if that damage had occurred on the earliest occasion, and no separate payment shall be made in respect thereof.

(5) The Commissioner may determine that war damage sustained by a holding other than a developed holding on any two or more occasions shall be taken into account together for the purposes of this Ordinance as if it had all occurred on the earliest occasion, and shall be the subject of a single value payment or payment of cost of works accordingly:

Provided that, where the single payment in respect of that damage is a value payment, the proviso to sub-section (3) shall have effect in relation thereto as it has effect in relation to a single value payment to be made under that sub-section, with the substitution, for each reference to the subsequent occasion mentioned in that proviso, of a reference to such one of the occasions of damage taken into account under this sub-section as the Commissioner may determine.

(6) In determining the amount of separate payments of cost of works to be made in respect of war damage occurring on two or more occasions, the cost of any works which contribute to the making good both of damage occurring on one of those occasions and of damage occurring on another of them shall not be taken into account more than once.

(7) The amount of a payment of cost of works shall be reduced by any amount by which the proper cost of the works executed for making good the war damage is increased by reason of any such physical change in the holding as is mentioned in paragraph (c) of the proviso to sub-section (3) occurring between the time of the occurrence of the war damage and the time when it is made good.

(8) In this section references to war damage occurring, or sustained, on any occasion shall be construed as including references to war damage that results subsequently from the taking on that occasion of such action or measures as are specified in sub-section (1) of section 53.

PART II.

Contribution towards expense of making payments.

Contribution to be made towards expense of making payments.

18. (1) Contributions towards the expense of making payments under this Ordinance—

- (a) shall be compulsory in respect of all immovable property which is situated in a scheduled area and is of the description set out in sub-section (1) of section 19;
- (b) shall be voluntary in respect of any immovable property which is situated in any area other than a scheduled area and is of the aforesaid description; and
- (c) shall, whether compulsory or voluntary, be made at such rates, at such times, and in such manner, as are specified in the provisions of this Part of this Ordinance or any regulations made in that behalf

(2) For the purposes of this Ordinance, "scheduled area" means an area included in the Schedule to this Ordinance.

Contributory property and contributory value.

19. (1) Save as otherwise provided in this Ordinance, the compulsory contribution referred to in paragraph (a) of section 18 shall, and the voluntary contribution referred to in paragraph (b) of that section may, be made in respect of each immovable property of which the full annual value has been or is ascertained for the purposes of any rates leviable by a local authority at any time during the risk period or would have been so ascertained if such property or property of any class to which such property belongs had not been excluded or exempted from liability for the payment of such rates by the law relating to the imposition and levy of such rates.

Such property is hereinafter referred to as "contributory property".

(2) (a) The amount on which the contribution is to be calculated in respect of each contributory property (hereinafter referred to as "the contributory value") shall be the annual value of that property at the date of the commencement of the risk period.

(b) Where any immovable property is first assessed for the purposes of rates at any time after the commencement of the risk period, the contributory value of that property shall be the annual value ascertained at such first assessment.

(c) In the case of each immovable property—

- (i) exempted by any law relating to the rates levied in the area in which such property is situated from liability for the payment of such rates; or
- (ii) containing any machinery or plant which is affixed to any building or land comprised in that property as to form part thereof within the meaning of sub-

section (2) of section 53, and which is excluded or is not taken into consideration in the assessment of the annual value of the property under any such law as aforesaid,

the annual value of such property or of such property together with such machinery or plant, as the case may be, shall be specially determined by the Commissioner for the purposes of this Ordinance, and the value so determined shall be the contributory value of such property.

(3) Where a property which was throughout the risk period, used mainly or exclusively for the purpose of open air games, open air racing or open air recreation, comprised, at the beginning of that period, buildings or works the cost of which amounted to fifty thousand rupees or more, the buildings or works and the site thereof on the one hand, and the remainder of the property on the other hand, shall be treated as separate properties and the contributory value of each ascertained by apportioning what would have been the contributory value of the whole property.

Such apportionment shall be made by the Commissioner.

(4) any person who is aggrieved by any determination or apportionment made by the Commissioner under this section may appeal to the Board of Appeal.

20. (1) The contribution in respect of any contributory property shall be payable by instalments, becoming due at such intervals and in respect of such number of years, as may be prescribed.

Amount of contribution and time for payment thereof.

(2) The amount of each instalment shall be an amount equal to two and one half per centum of the contributory value of the contributory property :

Provided that in the case of a contributory property—

(a) which consisted throughout the risk period of agricultural land or agricultural buildings not containing any machinery or plant affixed thereto ; or

(b) which consisted throughout the risk period of land used mainly or exclusively for the purpose of open air games, open air racing or open air recreation ; or

(c) which falls as to part thereof within either of the preceding paragraphs and as to the remainder thereof within the other of those paragraphs,

the amount of each instalment shall be an amount equal to five-eighths per centum of the contributory value.

The reference in this sub-section to land used mainly or exclusively for the purpose of open air games, open air racing or open air recreation does not include any buildings, works or sites which are by virtue of section 19 to be treated as a separate property as being comprised in a property used mainly or exclusively for the purpose mentioned in sub-section (3) of that section.

21. Where the normal use or occupation of any land is such that it would fall within paragraph (a) or paragraph (b) of the proviso to sub-section (2) of section 20, then if and so long as it is temporarily diverted from such use or occupation by reason of circumstances arising from war, the land shall be deemed for the purposes of sections 19 and 20 to be used or occupied as it is normally used or occupied.

Temporary use or occupation of land to be disregarded.

22. (1) The Financial Secretary may from time to time (whether during, or after the expiration of, the risk period) make estimates of the expected net receipts of the Commissioner under this Ordinance on the one hand and the expected payments under this Ordinance on the other hand.

Increase or reduction of contribution.

(2) If on any such estimate it appears that the said expected net receipts fall short of half of the said expected payments, the State Council may by resolution ratified by the Governor (whether or not any resolution in that behalf has already been passed and ratified under this section) increase—

(a) the number of instalments ; or

(b) the proportion which each remaining instalment is to bear to the contributory value.; or

(c) both that number and that proportion, to such extent as may be necessary to make good the deficiency :

Provided that any resolution increasing the said proportion shall be so made as to secure that the proportion in the case of properties to which the proviso to sub-section (2) of section 20 applies is always one-quarter of the proportion in the case of other properties.

(3) If on such an estimate as aforesaid the said expected net receipts exceed the said expected payments, such provision shall be made for the reduction of the receipts as may be determined by resolution of the State Council ratified by the Governor.

(4) In estimating net receipts and payments under this section—

- (a) there shall be left out of account contributions and payments made in accordance with any of the provisions of sections 31, 32 and 33 ;
- (b) where a value payment is reduced by any amount in respect of instalments of contribution, the net receipts shall be calculated as if that amount had been actually received, and the payments shall be computed as if the reduction in the value payment had not been made.

Persons who may make contributions.

Persons who may make contributions in respect of contributory property.

23. The contribution for the purposes of this Ordinance in respect of any contributory property may be made by the owner of the property or in the prescribed circumstances by a lessee or a usufructuary mortgagee of the property or by any other person having any of the prescribed interests in the property.

Miscellaneous provisions as to contribution.

Properties in divided ownership at date when instalment is due.

24. (1) If, in the case of any contributory property comprising land, there are two or more persons entitled to shares or interests in that property at the date at which that instalment where the contribution is compulsory, shall and where the contribution is voluntary may be apportioned among such persons in proportion to their respective shares or interests, or, where that proportion cannot be ascertained, in such proportion as the Commissioner may determine, and the provisions of this Ordinance relating to the recovery and the incidence of instalments of contributions shall apply in relation to the shares or interests of those persons and of the instalment apportioned thereto, as if the share or interest of each of those persons were a separate contributory property and as if the apportioned part of the instalment were an instalment in respect thereof.

(2) Any person who is aggrieved by any apportionment made by the Commissioner under this section may appeal therefrom to the Board of Appeal.

Alteration during risk period in extent or condition of properties.

25. (1) Where, by reason of an alteration in the extent of any holding of land of which the annual value is ascertained for the purposes of any rates, any assessment of that holding for those purposes which has been in force at any time during the risk period ceases to be in force and is replaced by any other assessment for those purposes in force at any such time as aforesaid, the replaced assessment shall be disregarded for the purposes of this Ordinance.

(2) Where by reason of any alteration in the condition of any holding of land the annual value of which is ascertained for the purposes of any rates, any assessment of that holding for those purposes which has been in force at any time during the risk period ceases to be in force and is replaced by a new assessment for those purposes in force at any such time as aforesaid, then—

(a) if the amount of the new assessment is less than the amount of the replaced assessment, the new assessment ; and

(b) in any other case, the replaced assessment, shall be disregarded for the purposes of this Ordinance.

Power to pay contribution in advance.

26. (1) Any person liable or entitled to pay contribution in respect of any property may pay in advance to the Commissioner any sum on account of so much of the contribution as is still outstanding in respect of that property, and the sum paid, together with the proper interest thereon, shall be applied in or towards the discharge of the instalment next falling due after the payment, and, in so far as the said sum and interest exceed the amount of that instalment, the balance, together with the proper interest thereon, shall be applied in or towards the discharge of the next instalment, and so on ; and where the amount of any instalment is reduced by reason of any payment in advance under this section the provisions of this Ordinance shall apply in relation thereto as if the reduced amount were the whole of the instalment.

(2) For the purposes of this section—

(a) the proper interest on any sum paid under this section is an amount calculated at the rate of two and a half per centum per annum on that sum for each complete month in the period beginning with the date of the payment and ending with the day before the date on which the next succeeding instalment falls due ;

(b) the proper interest on the balance remaining after the discharge of any instalment is an amount calculated on that balance at the rate set out in paragraph (a) for each complete month of the period beginning with the date on which that instalment fell due and ending with the day before the date on which the next succeeding instalment falls due.

(3) Notwithstanding anything in any other written law, the full amount of any interest authorised by this section shall be allowed without deduction of income tax; but the person to whom the interest is allowed shall be assessed and charged to income tax on the full amount of the interest.

27. (1) Where a value payment is made in respect of any holding, the amount of the payment shall be reduced by so much of any contribution in respect of any property comprised wholly within that holding as has not been paid (which, in so far as it consists of instalments which have not become due at the time when the value payment is made, shall be treated for the purpose of section 26 as one instalment then becoming due), and no person shall be under any liability to the Commissioner in respect of so much of the contribution as has not been paid, or to give any indemnity in respect thereof.

Provisions as to recovery of contribution on properties rendered unfit.

(2) The Commissioner shall not take steps to recover the whole or any part of any instalment of contribution falling due in respect of any property comprised wholly within any holding in respect of which it is likely that a value payment will fall to be made, unless and until he is satisfied that a value payment will not be made in respect of the holding.

(3) Where the Commissioner is satisfied that a property is unfit by reason of war damage, he shall not take steps to recover the whole or any part of any instalment of contribution falling due in respect thereof (notwithstanding that he knows that a value payment will not be made in respect of any holding comprising that property) unless and until he is satisfied that the property has been rendered fit.

In this sub-section the expression "unfit"—

- (a) in relation to buildings or works or to land of which three-quarters or more of the value is attributable to buildings or works, means unsuitable for the purpose for which those buildings or works were used or adapted for use immediately before the occurrence of the war damage in question, having regard to the class of person likely to occupy similar buildings or works which are not unsuitable for that purpose, to the standard of accommodation available at the material time, and to all other circumstances; and
- (b) in relation to other land, means unsuitable for any purpose for which a person can be reasonably expected to use the land, having regard in the case of a tenant to the terms of the lease or contract under which it is held;

and the expression "fit" shall be construed accordingly.

28. Where by the provisions of this Ordinance a right is conferred against or on any person on or against the Commissioner or any other person, and is so conferred by virtue of the first mentioned person being at any date the owner, tenant or usufructuary or other mortgagee of any property, the right shall be enforceable notwithstanding that the first mentioned person has, since that date, died or otherwise ceased to be the owner, tenant or mortgagee of the property in question.

Rights enforceable notwithstanding transmission of interest.

29. (1) Every instalment of contribution under this Ordinance shall be determined and collected by the Commissioner or on his behalf by any officer or local authority specified for that purpose by regulations made under sub-section (2).

Collection of contributions.

(2) The Executive Committee may make regulations with respect to the determination and collection of instalments and any such regulations may in particular apply with modifications any of the provisions of any law relating to the assessment and collection of rates by any local authority and provide for the determination and the collection or recovery of instalments by officers appointed for that purpose or by all or any of the local authorities on behalf of the Commissioner, in accordance with the provisions of this Ordinance and the regulations made thereunder and subject to his supervision and control.

(3) Where any regulations are made under sub-section (2) providing for the determination and collection of instalments by any local authority, it shall be the duty of that local authority to determine and collect such instalments in accordance with the provisions of this Ordinance and the regulations made thereunder and subject to the supervision and control of the Commissioner.

Every local authority performing any duty imposed by or under this section shall be entitled to such remuneration as may be prescribed.

(4) Any officer or local authority authorised in that behalf by or under the regulations may, for the purposes of assessing or collecting contributions under this Ordinance, give notice to

any person who is entitled to any rent or other periodical payment in respect of any land, or is in receipt of any rent or other periodical payment belonging to any other person, or is in possession of, or entitled to the possession of, any land, requiring him to deliver within the time limited by the notice, and in such form as may be provided by the Commissioner, such particulars relating to the land and to the interests of persons therein, as may be required by the Commissioner.

(5) Any person who fails to comply with the requirements of a notice given under this section shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees.

(6) Any person who, being required under this section to furnish any information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months, or to both such fine and such imprisonment.

PART III.

Special provisions as to certain classes of land.

Crown land.

30. No payment shall be made under this Ordinance in respect of war damage occurring to any land which, at the time of the occurrence of the damage, belonged to the Crown or was vested in a Government department and no contribution shall be payable in respect of any such land.

Land held for charitable purposes.

31. (1) Where at the time any instalment falls due the following conditions are satisfied as respects any land which constitutes or forms part of a contributory property, that is to say,—

- (a) that the land is held for charitable purposes to which this section applies, and for such purposes only; and
- (b) that the land, as distinct from rents and profits thereof, is used in any manner (including use in a manner involving the occupation of the land by any person) for or in connection with the carrying out of the purposes for which the land is held, and not otherwise,

the Commissioner shall give such relief, by repayment or otherwise, to the person so holding the land as is necessary to reduce his net liability for contribution in respect of that land to nil, or, if the purposes for which the land is held are the advancement of education, learning, science or research only, or, if they include such purposes and the use of the land is solely or mainly for or in connection with the carrying out of such purposes, to one-third of its amount.

(2) The charitable purposes to which this section applies are charitable purposes of any of the following kinds, that is to say,—

- (a) the relief of poverty;
- (b) the making of provision for the cure or mitigation or prevention of, or for the care of persons suffering from, or subject to, any disease or infirmity or disability affecting human beings or for the care of women before, during, and after childbirth;
- (c) the advancement of religion;
- (d) the advancement of education, learning, science or research.

(3) Where immediately before the occurrence of war damage to a holding the conditions specified in paragraphs (a) and (b) of sub-section (1) are satisfied as respects land which constitutes or forms part of the holding—

- (a) if apart from this provision a value payment or a share of such a payment would be payable in respect of the damage under the preceding provisions of this Ordinance to the person by whom the land is held for charitable purposes, that payment or share, as the case may be, shall not be paid, but the Commissioner may, if he thinks fit, make, in lieu of that payment or share, a payment of such amount, to such person and subject to such conditions, as he may in his discretion determine after consultation with such persons or bodies (including, in the case of any land in respect of which the net liability for contribution has been reduced to one-third, the owner thereof) as may appear to the Commissioner to be appropriate having regard to the nature of the purposes for which the land is held;
- (b) if apart from this provision a payment of cost of works would be payable in respect of the damage under the preceding provisions of this Ordinance, the Commissioner may in his discretion after such consultation as aforesaid, and, if the land held for charitable

purposes was not the only land comprised in the holding, after consultation with the owners of the other lands comprised therein, determine either to make the payment, or to make in lieu thereof, or of any part thereof, a payment of such amount, to such person and subject to such conditions as the Commissioner may determine, or not to make any payment in respect of the damage ;

- (c) in respect of the cost of any works reasonably executed for temporarily meeting the circumstances created by the damage as to which, in consequence of the preceding provisions of this sub-section, the provisions of section 5 do not have effect, the Commissioner may make to the person by whom such cost is incurred such payment as appears to the Commissioner to be requisite in order to confer upon that person the like benefit as he would have had under the provisions of that section.

(4) If and so long as land normally used as mentioned in paragraph (b) of sub-section (1) is temporarily diverted from such use by reason of circumstances arising from war, the land shall be deemed for the purposes of this section to be used as it is normally used.

(5) Any land belonging to or vested in any local authority shall, notwithstanding that it is used for any of the purposes specified in sub-section (2), not be treated for the purposes of this section as held for charitable purposes.

(6) Any question arising in giving effect to the provisions of this section as to whether the conditions specified in paragraphs (a) and (b) of sub-section (1) are satisfied as respects any land at any time, or as to whether, or as to the extent to which, any land is held or used for or in connection with, the purposes of the advancement of education, learning, science or research, shall be determined by the Commissioner.

(7) If any conditions subject to which any sum is paid by the Commissioner under this section are not complied with, the sum paid shall be recoverable as a debt due to the Crown.

32. (1) In the case of any holding occupied mainly or exclusively for the purpose of the carrying on of an undertaking to which this section applies—

Land occupied for purposes of certain undertakings.

- (a) in lieu of a value payment in respect of war damage thereto in accordance with the preceding provisions of this Ordinance, such payment may be made to the persons carrying on the undertaking as may be determined by resolution passed by the State Council and ratified by the Governor, including payment towards the cost of such works as may be certified by the prescribed authority to be urgently required for meeting the circumstances created by war damage ; and

- (b) in lieu of the contribution prescribed by the preceding provisions of this Ordinance, such contribution may be made by the persons carrying on the undertaking as may be determined by resolution passed by the State Council and ratified by the Governor.

(2) The undertakings to which this section applies are tramway, gas or electricity undertakings and such other public utility undertakings as may be prescribed.

33. In the case of land constituting a highway—

Highways.

- (a) where the highway is maintained out of the general revenue of the Island, no contribution shall be recoverable and no payment in accordance with the preceding provisions of this Ordinance shall be made in respect of war damage to the highway ; and
- (b) where the highway is maintained by a local authority the payment to be made in respect of any war damage thereto, and the contribution to be made in respect thereof shall be such as may be determined by resolution passed by the State Council and ratified by the Governor.

In this section "highway" includes any bridge or culvert carrying any part of a highway.

34. (1) Where, in the exercise of emergency powers possession of any land (hereinafter referred to as "the requisitioned land") has been taken on behalf of His Majesty, the preceding provisions of this Ordinance relating to contributions shall have effect in relation to the land—

Requisitioned land.

- (a) as if throughout the period during which possession of the requisitioned land under the said powers continued, that land had continued to be in the form in which it was immediately before the time of taking possession thereof and to be used or occupied for the purposes for which it was used or occupied immediately before that time ; and

(b) as if the assessment of the annual value of the requisitioned land had continued in force throughout the period during which possession of the land under the said powers continued.

(2) Where the requisitioned land forms part of any holding, nothing in sub-section (1) of this section shall affect the contribution payable under this Ordinance in respect of any part of the holding other than the requisitioned land.

(3) Where, at any time during the period during which possession of the requisitioned land under emergency powers continues, a holding comprised wholly within the land sustains war damage such that a value payment becomes payable, then—

(a) in the application of section 3 to the computation of the amount of the payment, the depreciation in the value of the holding caused by the war damage shall be taken to be the amount by which the value of the holding in the state in which it was immediately after the occurrence of the damage is less than its value in the state in which it was immediately before the time of taking possession of the requisitioned land; and

(b) no sum shall be payable under sub-paragraph (1) (b) of paragraph 2 of the Defence (Compensation) Regulations, 1941 (which provides for payment of compensation for damage, other than wear and tear or damage caused by war operations, occurring to requisitioned land during the period of requisition) in respect of damage occurring to the holding.

Destination
of payments
in certain
cases.

35. (1) A devise or bequest of the whole or any part of any holding or of the proceeds of sale of any holding which sustains war damage in respect of which a value payment is made, or a payment is made under section 15, contained in a testamentary disposition made before the occurrence of the war damage shall, in the absence of any contrary intention expressed therein or in any other testamentary disposition made by the testator, have effect as if it had included a bequest of any such payment, or of any part of any such payment, to which the testator might become entitled in respect of that holding.

(2) Where a holding sustains war damage at a time when such holding or any part thereof is the subject of a contract of sale or of a notice of intention to take possession served under an enactment authorising the compulsory acquisition thereof, any value payment in respect of the damage, or share of such a payment, or payment under section 15, payable to the vendor in respect of that holding or part, shall, unless the contract is rescinded or the notice ceases to have effect, be held and be deemed to be held by him upon trust for the purchaser:

Provided that any lien upon the holding or part thereof to which the vendor is entitled by virtue of the contract shall extend to that payment or share.

(3) Where any holding which is subject to a *fidei commissum* sustains war damage, any value payment under this Ordinance payable in respect of the holding or any part thereof shall be paid into the District Court having local jurisdiction over the area in which the holding is situated and shall be subject to the *fidei commissum* in like manner as if the sum so paid into Court were the proceeds of a sale authorised by the Court under the Entail and Settlement Ordinance.

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(4) Where a value payment is to be made in respect of war damage to a holding and immediately before the occurrence of the damage a person had a right to remove from the holding an article comprised therein to which he would have been entitled on removing it, and either—

(a) any right to or interest in the article belonged to any person other than that person or belonged to him otherwise than in the capacity in which he had the right to remove the article (being a right or interest against which his right to remove it was exercisable); or

(b) the article was included in a mortgage of the holding or of any right to or interest in the holding, and that person's right to remove it was exercisable against the mortgagee;

then, for the purposes of section 9 the article shall be dealt with as a separate part of the holding, and

(i) in a case falling within paragraph (a) of this sub-section, section 9 and the other provisions of this Ordinance as to the vesting and devolution of the right to receive a share of a value payment shall have effect as if the right or interest mentioned in that paragraph had been owned by the person who had the right to

remove the article, or owned by him in the capacity in which he had the right to remove it, as the case may be; and

(ii) in a case falling within paragraph (b) of this sub-section, sub-section (4) of section 9 shall not have effect in relation to the share of the value payment attributable to the article.

(5) If the right to receive a payment under this Ordinance in respect of war damage, or a share of such a payment, is claimed by two or more persons adversely to each other, or the Commissioner is unable to ascertain in whom such a right is vested, or if it appears to the Commissioner to be expedient for him so to do in order to safeguard the rights of persons beneficially interested in any such payment or share or for any other special reason, he may make payment thereof into the District Court or, if the amount thereof does not exceed three hundred rupees, into the Court of Requests, having local jurisdiction over the area in which the land in respect of which the payment is to be made is situated and direct such persons to establish their several claims before such Court and obtain payment from such Court in accordance with its findings on such claims.

36. Where a contributory property is vested in any person as the assignee of the estate of an insolvent, any sum paid by that person in discharge of any liability in respect of an instalment of contribution becoming due in respect of the contributory property shall be treated as part of the costs of administration of the estate of the insolvent.

Payment of contribution by assignee of insolvent estate.

37. (1) Where any instalment, in respect of any contributory property subject to a mortgage, is paid by the owner of the property, the owner shall be entitled to deduct from the amount due at that time on the bond by which the mortgage was created a sum which bears to the instalment paid by him the proportion which the amount due on the bond bears to the value of the property at that time.

Right of person paying instalment and of other persons having an interest in the property.

(2) Where any instalment of the contribution in respect of any contributory property has in the prescribed circumstances been paid by any person other than the owner, such person shall be entitled to recover from the owner the amount so paid, or—

(a) where such person is the tenant of the property, to deduct such amount from any rent payable by him to the owner; and

(b) where such person is a usufructuary or other mortgagee of the property, to add such amount to the principal sum secured by the mortgage and to charge interest on such amount from the date on which the instalment was paid by him.

(3) Where any value payment is made in respect of war damage to any contributory property which is subject to a mortgage at the time of the payment, the mortgagee shall be entitled to receive a share of such payment which bears to the amount of such payment the proportion which the aggregate amount due to him at that time on the bond by which the mortgage was created bears to the value of the property at that time.

PART IV.

Administrative Arrangements and Miscellaneous Provisions.

38. (1) The Governor may appoint any person by name or by office to be the Commissioner for the purposes of this Ordinance, and such number of Assistant Commissioners and other officers and servants as to the Governor may seem necessary.

Commissioner.

(2) In the performance of his duties and the discharge of his functions under this Ordinance, the Commissioner shall be subject to the general direction and control of the Executive Committee of Labour, Industry and Commerce.

39. (1) The Board of Appeal for the purposes of this Ordinance shall consist of a Chairman and two other members appointed by the Governor. Each member of the Board shall hold office until such date as may be specified by the Governor in the notification relating to the appointment of that member or until a new member is appointed in his place.

Board of Appeal.

(2) Every appeal to the Board of Appeal shall be brought, and shall be determined or disposed of, in accordance with such regulations as may be made in that behalf under this Ordinance.

40. (1) Where a holding has sustained war damage and, in exercise of emergency powers, any materials that formed part of any building or other land comprised therein are removed from the land, the materials may be dealt with or disposed of in such manner as may be directed by or on behalf of the Governor, and the proceeds of any disposal thereof shall be credited to the War Damage Fund.

Disposal of salvage.

(2) No compensation shall be payable under the Defence (Compensation) Regulations, 1941, in respect of any materials dealt with or disposed of under this section.

Contributions and moneys provided by State Council to be paid into, and payments to be made out of, War Damage Fund.

41. (1) All sums received, collected or recovered by or on behalf of the Commissioner as contributions under this Ordinance shall be paid into a Fund to be maintained by him for the purposes of this Ordinance and to be known as the War Damage Fund. There shall also be paid into the Fund such moneys as may from time to time be provided by the State Council for the purposes of this Ordinance.

(2) All payments by the Commissioner in respect of war damage to immovable property and payments of interest on value payments and on payments to be made under section 15 shall be made out of the War Damage Fund.

(3) If at any time the aggregate amount standing to the credit of the Fund falls short of the aggregate of the payments falling to be made under this Ordinance at that time, then, notwithstanding anything in the preceding provisions of this Ordinance, a proportionate deduction may be made by the Commissioner from the amount of each such payment, and the reduced amount so paid by him shall be deemed for all purposes to be the payment required or authorised by the aforesaid provisions.

Annual statement of payments and receipts and audit of accounts.

42. (1) The Commissioner shall, in relation to each financial year, cause to be prepared statements of payments made by him and of instalments of contributions received by him under this Ordinance during that year, and of the proceeds of the disposal during that year of any materials in accordance with section 40, and such statements shall be laid on the table of the State Council for the information of the members thereof.

In this sub-section, "financial year" means the period of twelve months commencing on the first day of October in any year and ending with the thirtieth day of September in the next succeeding year.

(2) The Auditor-General shall be responsible for the audit of the accounts kept by the Commissioner for the purposes of this Ordinance.

Power of Commissioner to obtain information.

43. (1) Where for the purpose of the determination or ascertainment by the Commissioner of the nature or amount of a payment to be made under this Ordinance, or of the person entitled to receive such a payment or any share of such a payment, or of the determination by the Commissioner of any other question falling by virtue of this Ordinance to be determined by him, or for the purpose of facilitating the determination by agreement of any question arising thereunder, it is requisite to ascertain the rights or interests subsisting in a holding or the identity or address of the owner of any such right or interest, or any other fact relevant for any such purpose, the Commissioner, either of his own motion or on an application in that behalf being made by any person appearing to be interested, may require any person who is or has been in occupation of, or who receives or has received rent in respect of, the holding in question or any part thereof, to disclose the name and address of any other person to whom that person pays or has paid rent in respect thereof or of any part thereof, and may require any such person, or any other person appearing to be capable of giving any information relevant for any such purpose as aforesaid, to furnish any such information and to produce for inspection any documents relevant for any such purpose as aforesaid that may be in the possession or custody or under the control of such person.

(2) Any person who fails to furnish or produce any information or document which he is required under this section to furnish or produce shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees, and also to a fine not exceeding one hundred rupees for every day on which the failure continues.

(3) Any person who, being required under this section to furnish any information, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, or who, being required under this section to produce any document, with intent to deceive produces any document which he knows to be false in a material particular, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months, or to both such fine and such imprisonment.

Power to inspect damaged premises.

44. (1) The Commissioner or any person authorised in writing by the Commissioner may, on producing, if so required, his authority, enter at all reasonable hours any premises on which war damage has occurred or on which he has reasonable ground for believing war damage to have occurred, for the purpose of obtaining information as to the nature

and extent of the damage, as to the state in which the premises were immediately before, or immediately after, the occurrence of the damage, as to any works executed for the purpose of making good the damage or for temporarily meeting the circumstances created thereby, as to any articles which formed part of the premises and become available as materials in consequence of the damage, as to whether any conditions imposed by the Commissioner under this Ordinance have been observed, or as to any other matter as to which information may be reasonably required by the Commissioner for the purpose of the exercise of any of his functions :

Provided that if the premises are occupied, admission thereto shall not be demanded as of right unless twenty-four hours notice of the intended entry has been given to the occupier.

(2) Any person who wilfully obstructs the Commissioner or a person authorised by the Commissioner in the exercise of powers conferred on him by this section shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees.

45. The local authority for any area shall furnish the Commissioner with any such information relating to the valuation of any land or other property in that area as the Commissioner may require for the purposes of this Ordinance.

46. (1) No information relating to any individual business, being information which has been obtained by, or on behalf of, any person for the purposes of his functions under this Ordinance, shall, without the previous consent in writing of the owner for the time being of that business, be published or disclosed otherwise than in connexion with the execution or for the purposes of this Ordinance or any regulation, having effect by virtue of this Ordinance.

(2) Nothing in the preceding sub-section shall apply to any disclosure of any information made for the purposes of any legal proceedings pursuant to this Ordinance (including any appeal or reference to the Board of Appeal under this Ordinance) or of any criminal proceedings which may be taken whether pursuant to this Ordinance or otherwise, or for the purposes of any report of any such proceedings as aforesaid.

(3) If any person discloses any information in contravention of this section, he shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding three months or to a fine not exceeding five hundred rupees or to both such imprisonment and such fine or, on conviction on indictment, to imprisonment of either description for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both such imprisonment and such fine.

47. (1) Where any person is entitled under the Defence (Compensation) Regulations, 1941, to a payment in respect of war damage by reason of the doing of any work on land in the exercise of emergency powers, no payment in respect of the damage shall be made under the provisions of this Ordinance to that person or to any person claiming under him.

(2) Where war damage occurs to land, and at the time when, apart from the provisions of this sub-section, any payment (whether with or without interest) would be made to any person in respect thereof under this Ordinance, that person or any other person—

(a) has received (otherwise than by way of loan) in respect of the damage any sum paid on behalf of His Majesty, not being a sum paid by virtue of the Defence (Compensation) Regulations, 1941, or of this Ordinance ; or

(b) is entitled to receive (otherwise than by way of loan) in respect of the damage any sum payable on behalf of His Majesty, not being a sum payable by virtue of the Defence (Compensation) Regulations, 1941, or of this Ordinance,

the payment under this Ordinance shall be withheld or reduced, as the case may require, for the purpose of securing—

(i.) that the total amount (excluding any interest) paid in respect of the damage under this Ordinance is reduced by the aggregate of any such sums received or receivable in respect of the damage as are referred to in paragraphs (a) and (b) of this sub-section ; or

(ii.) if the aggregate of those sums exceeds the total amount (excluding any interest) which, apart from the provisions of this sub-section, would be payable in respect of the damage under this Ordinance, that no payment in respect of the damage is made under this Ordinance.

and any interest on the payment shall be withheld or reduced accordingly.

Information as to rating valuation.

Restriction on disclosure of information.

Avoidance of duplication of payments in respect of war damage.

(3) Where war damage occurs to any land in Ceylon and it is certified by an Officer of State or a Minister having general control over any department of Government that the damage arose out of action taken on behalf of or by agreement with, or under the direction of a person acting on behalf of or by agreement with the Crown, being action taken for purposes with which that department is concerned, no damages shall be recoverable for the damage to the land on the ground that the damage was attributable to negligence, nuisance or breach of duty.

(4) For the purposes of sub-section (3), a certificate purporting to be issued by an Officer of State or a Minister and to be signed by him or on his behalf, shall be receivable in evidence and shall be deemed, until the contrary is proved, to be a certificate of the Officer of State or Minister, as the case may be.

48. Contributions made and indemnities given under this Ordinance shall be treated for all purposes as outgoings of a capital nature.

49. (1) Notwithstanding anything in the preceding provisions of this Ordinance, any payment thereunder in respect of war damage, or any share of such a payment, which the Commissioner is satisfied would inure for the benefit of a person not resident in Ceylon at the time when the payment would fall due shall be payable only as to so much thereof, and subject to such conditions, as may be prescribed.

(2) Regulations made for the purposes of this section may contain such provisions (including penal provisions) as appear to the Executive Committee to be necessary for securing the due operation and enforcement of the regulations.

50. No sum shall be deducted in computing the amount of the profits or income of any person or business for any purpose of the Income Tax Ordinance or of the Excess Profits Duty Ordinance, No. 38 of 1941, and no sum shall be included in ascertaining the management expenses of any company for the purposes of section 42 (1) of the Income Tax Ordinance, in respect of—

- (i.) any payment made in or towards the discharge of any liability imposed on him under this Ordinance as contributor; or
- (ii.) any expenditure on repairing or otherwise making good war damage in so far as he is entitled to a payment in respect of the damage by virtue of the provisions of this Ordinance.

51. No person shall, after such date as may be prescribed, take part in the promoting or carrying on of any business or scheme whereby persons are, or may become, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of war damage to land.

52. (1) The Executive Committee may make regulations for or in respect of all matters required or authorised by this Ordinance to be prescribed and generally all such other regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

(2) No regulation made by the Executive Committee shall have effect until it has been approved by the State Council and ratified by the Governor. Notification of such approval and ratification shall be published in the *Gazette*.

(3) A regulation made by the Executive Committee when approved by the State Council and ratified by the Governor shall, upon notification of such approval and ratification in the *Gazette*, be as valid and effectual as if it were herein enacted.

53. (1) In this Ordinance the expression "war damage" means—

- (a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy or in repelling an imagined attack by the enemy;
- (b) damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of such damage as aforesaid;
- (c) accidental damage occurring as the direct result—
 - (i.) of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy; or
 - (ii.) of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action,
 being, in either case, measures involving a substantial degree of risk to property:

Contributions to be treated as capital outgoings.

Payments under the Ordinance to be subject to conditions in case of non-residents.

Certain expenses not to be a deduction for income tax, or excess profits tax.

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Provision as to certain mutual insurance schemes.

Regulations.

Definition of "war damage".

Provided that the measures mentioned in paragraph (c) of this sub-section do not include the imposing of restrictions on the display of lights or measures taken for training purposes.

(2) For the purposes of sub-section (1), such action against the enemy as is referred to in paragraph (a) of that sub-section—

(a) shall, in relation to any ship or aircraft taking part in such action, be deemed to continue until the ship or aircraft has returned to its base;

(b) includes naval, military or air reconnaissances and patrols.

(3) References in this Ordinance to the occurrence of war damage shall be construed as references to the taking of the action or measures specified in sub-section (1) of this section from which that damage results.

(4) In determining the value of a holding, or of a share or interest in a holding, in the state in which it was immediately after the occurrence of war damage, it shall be assumed that all war damage which is known at the time when the valuation is made to have resulted from the taking of the action or measures in question could have been foreseen immediately thereafter.

54. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

“agricultural building” includes any building occupied in connexion with any agricultural land and any agricultural cottage so occupied which is on or contiguous to that land;

“agricultural cottage” means, in relation to any land, a house used as a dwelling-house of a person who is employed in agricultural operations on that land in the service of the person in possession thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed;

“agricultural land” means any land used or capable of being used for the production, by cultivation or otherwise, of any article of food or of any material, substance or thing necessary for the manufacture, preparation or supply of any article essential to the life of the community;

“building” includes a building in an incomplete state, and in relation to such a building the expression “use” includes potential use;

“Commissioner” means the Commissioner appointed for the purposes of this Ordinance under section 38 and includes an Assistant Commissioner generally or specially authorised by the Commissioner to act on his behalf for any of the purposes of this Ordinance.

“contributory property” and “contributory value” have the meanings assigned to them respectively by sub-section (1) and by sub-section (2) of section 19;

“Defence Regulations” means regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, as adapted, modified and extended to Ceylon by Order of His Majesty in Council;

“emergency powers” means powers conferred—

(a) by regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, as applied to Ceylon by Order of His Majesty in Council; or

(b) by section 3 of the Telegraph Ordinance; or

(c) by section 7 of the Air Navigation Act, 1920, as applied to Ceylon by Order of His Majesty in Council; or

exercisable by virtue of the prerogative of the Crown; and “exercise” includes, in relation to emergency powers, a purported exercise thereof;

“Executive Committee” means the Executive Committee of Labour, Industry and Commerce;

“family” means, in relation to any person, any one or more of the following, that is to say—

(a) his wife, son, daughter, father, mother; and

(b) any person, whether related to him or not, who is wholly or mainly dependent upon him;

“immovable property” or “land”—

(a) includes any buildings or works (other than plant or machinery excluded by paragraph (c) of this definition) situated on, over or under land;

(b) includes such plant, machinery or other article affixed to the land as is deemed by virtue of sub-section (2) of this section to be a part of the land;

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(c) does not include any plant, machinery or article other than such as is included by virtue of paragraph (b) of this definition ;

(d) does not include any crop, whether grown for food or not, and does not include trees, except trees forming part of a hedge and trees whose value for shelter or amenity is greater than their value for felling or for the growing of fruit for sale ;

“local authority” means a Municipal Council, Urban Council, Local Board, Sanitary Board or Village Committee ;

“making good” includes, in relation to war damage, demolition or clearance requisite as a preliminary to, or in the course of, the making good thereof ;

“mortgage” does not include a floating charge, but, subject as aforesaid, includes any charge or lien on any property for securing money or money’s worth ;

“owner”, in relation to any Crown land held under a lease for a period of not less than fifty years, includes the lessee or tenant under such lease ;

“prescribed” means prescribed by regulations made under this Ordinance ;

“proper cost” has the meaning assigned to it by sub-section (3) of section 3 ;

“rates” includes the land tax known as the assessment tax imposed and levied by a Village Committee ;

“regulation” means a regulation made under this Ordinance ;

“risk period” means the period beginning with the first day of April, Nineteen hundred and forty-two, and ending with such date as the Governor may appoint by Proclamation published in the *Gazette* ;

“temporary works payment” has the meaning assigned to it by section 5 ;

“war damage” has the meaning assigned to it by section 53 ;

“works” includes any structure.

(2) Where any machinery, plant or other article has been affixed to any land, or building, comprised in any immovable property, such article shall, unless there is any person who is entitled to remove it from the land or building and who would be entitled to it if he so removed it, be deemed to be part of that land or immovable property and any war damage sustained by such article shall, for the purposes of this Ordinance, be deemed to be war damage sustained by that land or immovable property.

(3) References in this Ordinance to any other written law shall, save where the context otherwise requires, be construed as references to that law as amended by or under any subsequent law.

Schedule.

[Section 18 (2)].

1. The area within the administrative limits of the Colombo Municipal Council.

2. The area within the administrative limits of the Dehiwala-Mt. Lavinia Urban Council.

3. The area within the administrative limits of the Kotte Urban Council.

4. The area within the administrative limits of the Kolonnawa Urban Council.

5. The area within the administrative limits of the Trincomalee Urban Council.

6. The area within the administrative limits of the Galle Municipal Council.

Objects and Reasons.

The object of this Bill is to introduce by law a scheme for making payments in respect of war damage occurring to immovable property in Ceylon in cases where contributions towards the cost of such payments have been received from the owners of the property. The scheme will provide for compulsory contributions in respect of immovable property situated in Colombo and its environs and in Galle and Trincomalee and for voluntary contributions in respect of immovable property situated in other parts of the Island and will differ in that respect from the scheme which has been brought into operation in the United Kingdom by the War Damage Act, 1941, under which contributions are in all cases compulsory. The class of persons from whom contributions are to be collected under that Act is also much larger, because tenants for long periods are much commoner in England than in Ceylon and mortgagees under the English law have an interest in the mortgaged property which the ordinary mortgagee in Ceylon does not possess. In spite of these differences the relevant portions of the War Damage Act have been followed as closely as possible in the preparation of the Bill because that Act is the only model available.

2. The nature of the payments and the circumstances in which they will be made are set out in Part I. For the purposes of the proposed scheme, immovable property will be dealt with in units known as holdings. Holdings will be classified either as developed holdings or as undeveloped holdings, the former consisting of buildings with the land on which they stand and the land appertaining to them (Clause 2). The payment in the case of damage to a developed holding will ordinarily be payment of "cost of works" that is, of the reasonable cost of repairing the damage. In the case of damage to an undeveloped holding, a "value payment" will be made, so as to make good the depreciation in the value of the holding which is due to the damage (Clause 3). But in certain circumstances a value payment may be made in place of a payment of cost of works in respect of a developed holding, and a payment of cost of works may be made in place of a value payment in respect of an undeveloped holding, and the cases where this should be done are to be determined by the Commissioner, whose decision will be subject to an appeal to the Board of Appeal appointed for the purposes of the new law. In addition to the payments referred to, there will also be in suitable cases "temporary works payment" to meet the cost of any urgent works of a temporary nature that may be necessary to repair the damage (Clauses 4 to 6).

3. For the purpose of preserving the amenities of a place or safeguarding the public interests generally, the Governor will have power to issue directions to the Commissioner as to the conditions that may be imposed on persons to whom payments are to be made with regard to the manner in which works or repairs are to be carried out (Clause 7).

4. Payment of cost of works or temporary works will be made as soon as possible after the completion of the works to the person by whom they are carried out. Value payments will be made to the owner of the damaged holdings, but only at a date to be prescribed under the new law. In case of necessity an advance payment may be made (Clause 8).

5. Notice is to be given of any damage sustained and claims are to be made in accordance with regulations made in that behalf (Clause 10). No payment will be made in any case where the total amount claimed is less than fifty rupees (Clause 11).

6. Where any damage is made more serious by the failure to carry out timely repairs a deduction will be made from the amount that is payable (Clause 12). In special cases the amount of a value payment may be increased (Clause 14). Where any damaged land is compulsorily acquired the payment in respect of the damage will consist of the reasonable cost of repairing the damage as estimated by the Commissioner, whether or not any work of repair has been done (Clause 16).

7. Contributions may be made in respect of any immovable property which is assessed for the purposes of rates by a local authority, the assessment tax of a Village Committee being included under Clause 54 as rates for this purpose (Clause 19). The period for which the contributions are to be made and the number of the instalments by which they are to be paid are to be prescribed by regulation; but the amount of each instalment will be equal to two and one half per cent. of the annual value of the property, except in the case of agricultural lands or sports or recreation grounds, in respect of which the rate will be five-eighths per cent. (Clause 20). Where, however, the contributions received are not sufficient for making the payments anticipated at any time the number and the amount of the instalment or either of them may be increased by resolution of the State Council ratified by the Governor (Clause 22).

8. Contributions may be made by the owners of property or in prescribed circumstances by tenants, usufructuary mortgagees or other persons who have interests of any description prescribed by regulation (Clause 23). Co-owners may contribute in proportion to their respective shares (Clause 24). The contribution or the balance of the contribution payable by any person may be paid by him in advance if he so desires (Clause 26). No contribution, however, will be payable or recoverable where the property concerned has been rendered unfit for the use for which it was intended (Clause 27). Power is to be taken to make regulations authorising a specified officer or a local authority to collect contributions on behalf of the Commissioner (Clause 29.)

9. No payment will be made or contributions recovered in respect of any property which belonged to the Crown or to a Government department at the time of the damage (Clause 30). In the case of land held for a charitable purpose such as the alleviation of poverty, suffering or distress, or the advancement of religion, provision will be made for relief which will reduce the liability for contributions to nil; and in the case of land held for such purposes as the advancement of

education or learning relief may be given so as to reduce the liability to one-third (Clause 31). Both payments and contributions in respect of lands occupied for the purposes of any tramway, gas or electricity undertaking, and land constituting a highway maintained by a local authority, are to be at such rates as may be determined hereafter by resolution of the State Council (Clauses 32 and 33).

10. Where any land bequeathed or devised to any person sustains war damage, the payment made in respect of the damage will be deemed to have been bequeathed to that person. Any payment made in respect of war damage to any property subject to a *fidei-commissum* will be paid into Court in like manner as the proceeds of a sale authorised by the Court (Clause 35). Contributions paid by any person other than the owner of a property may be recovered by that person from the owner (Clause 37).

11. The Commissioner for the purposes of the new law will be the Commissioner for War Risks Insurance appointed under the War Risks (Goods) Insurance Ordinance, No. 1 of 1942 (Clause 38). The Board of Appeal will be specially appointed for the purposes of the proposed law and will consist of a Chairman and two other members. (Clause 39).

12. In order to avoid double payment, it will be provided that no sum will be payable in respect of war damage under the proposed law to any person who is entitled to receive compensation in respect of the damage under the Defence (Compensation) Regulations, 1941 (Clause 47).

13. The risk period will be the period commencing on the first day of April, 1942, and ending on a date to be appointed hereafter by the Governor (Clause 54). Although the actual number of years for which contributions will be payable is not stated in the Bill and power is taken merely to prescribe the length of the period (Clause 20); the intention is that contributions should be payable for four years and, unless this decision is altered, the regulation made for that purpose will prescribe a period of four years.

G. C. S. COREA,

Minister for Labour, Industry and Commerce.

Colombo, September 17, 1942.

THE WAR DAMAGE (IMMOVABLE PROPERTY)
BILL.

Table of Sources.

Ceylon Bill.	United Kingdom Act.	Remarks.
2	2	.. Sub-section (1) modified
3	3	
4	4	
5	5	
6	6	
7	7	.. Sub-section (6) omitted
8	8	.. Sub-section (4) omitted
9	9	.. Part of sub-section (3) and sub-section (4) omitted
10	10	
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12	12	
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17	17 and Third Schedule	
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19	19	.. Modified; sub-sections (3) and (5) omitted
20	20	.. Modified; sub-section (2) and part of sub-section (3) omitted
21	21	
22	22	.. Sub-section (3) omitted
23	—	.. New
24	29	.. Modified
25	30	.. Sub-section (3) omitted
26	32	
27	33	.. Sub-section (2) omitted
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29	36	
30	37 (2)	
31	39	.. Sub-section (3) omitted
32	40	.. Modified
33	41	.. Modified
34	44	.. Modified

Ceylon Bill.	United Kingdom Act.	Remarks.
35	.. 46 (2)-(5)	.. Sub-clause (3) is new
36	.. 47 (2)	
37	.. —	.. New
38	.. —	.. New
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49	.. 83	
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52	.. —	.. New
53	.. 80	
54	.. 95	

MINUTE.

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

L. D.—O 25/38

An Ordinance to amend the Thoroughfares Ordinance.

Chapter 148,
(Volume IV.,
page 3.)

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 Thoroughfares (Amendment) Ordinance, No. of 1942.

Short title.

2. The following sections shall be inserted immediately after section 62 of the Thoroughfares Ordinance and shall have effect respectively as sections 62A, 62B, 62C, 62D, 62E, 62F and 62G of that Ordinance:—

Insertion of
new sections
62A to 62G in
Chapter 148.

62A. (1) It shall not be lawful for any person, at any time after such date as the Governor may appoint by notification published in the *Gazette*—

Building
limits along
roads.

(a) to erect any building, boundary wall or gateway within a limit, (hereinafter referred to as the "building limit"), of twenty-five feet from the centre of any road in charge of the Public Works Department and used or intended for vehicular traffic; or

(b) except under the authority of a licence granted by the District Committee of the district, to re-erect, or to make any addition to, any building, boundary wall or gateway within the building limit of any such road:

Provided, however, that nothing in the preceding provisions of this sub-section shall be deemed to apply to any repairs effected in any building, boundary wall or gateway existing on the date appointed as hereinbefore provided.

For the purposes of this sub-section, "repairs" shall not be deemed to include any work of re-erection or re-construction or the addition of any new part.

(2) (a) No licence shall be granted under sub-section (1) by the Chairman of any District Committee except with the written consent of the Executive Engineer of the district for which the Committee is constituted.

(b) It shall be a condition of any licence granted by the Chairman of a District Committee under sub-section (1) for the re-erection of, or for any addition to, any building, boundary wall or gateway that 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, the compensation payable in respect of such building, wall or gateway shall be the value thereof at the time when the licence is granted, as determined in accordance with the provisions of section 62E.

Cap. 203.

(3) (a) Full particulars of every licence granted under sub-section (1), including particulars of the condition set out in sub-section (2) and of the land and the building, boundary wall or gateway to which the condition relates shall be entered by the District Committee in a register to be kept for the purpose at the Office of the Chairman of the Committee; and the Chairman shall cause a certified copy of every such entry to be registered in the Office of the

Registrar of Lands of the place in which such land is situate. The Registrar of Lands shall register all such copies free of any charge or duty.

(b) Upon the registration of any entry under this sub-section, the condition of the licence set out in such entry shall be binding upon the land and the building, wall or gateway affected thereby in accordance with the tenor of such condition, into whosoever ownership or possession the land or building or wall or gateway may at any time pass.

(c) Every register kept under paragraph (a) at the office of the Chairman of a District Committee shall be made available for inspection to any person interested at any time when the office is open for the transaction of business.

Cap. 57.

(d) The provisions of section 2 of the Prevention of Frauds Ordinance shall not apply in the case of any entry or any copy of any entry referred to in this sub-section.

(4) Subject to the condition referred to in sub-section (2), any person who is otherwise entitled to re-erect or make any addition to any building, boundary wall or gateway shall be entitled to a licence to re-erect or make such addition to such building, wall or gateway within the building limit :

Provided that no part of the building, wall or gateway so re-erected or added to shall, upon such re-erection or addition, extend nearer to the centre of the road than it so extended in its original condition.

(5) The expression "re-erect", with reference to a building, includes the restoration of any wall forming part of the building or of any support to the building which has been demolished or otherwise destroyed to or within a distance of five feet from the ground, but does not include any operation which, in the opinion of the Chairman of the District Committee, may reasonably be considered to be a repair to the wall or support.

Modification
of building
limit.

62B. The Executive Committee of Communications and Works may, upon the recommendation of the District Committee of any district, by notification published in the *Gazette*, modify or extend the building limit in respect of any road or any part of any road in charge of the Public Works Department and situated in that district; and for the purposes of the application of the provisions of this Ordinance relating to the building limit along roads, the building limit along such road or part of a road shall be the building limit as so modified or extended by the Executive Committee :

Provided, however, that a District Committee shall, before recommending any such modification, have regard to the convenience of the public, and to the need for preserving the amenities of the locality and for ensuring that the modification will not increase the cost of any proposed scheme for the development, diversion or enlargement of the road, or any part of the road, which will be affected by such modification :

Provided further that a District Committee shall not recommend any such modification or extension except with the prior approval of the Director of Public Works.

Powers of
District
Committee
upon
contravention
of section
62A.

62C. If any person erects or re-erects any building, boundary wall or gateway or makes any addition to any building, boundary wall or gateway in contravention of any of the provisions of section 62A, the District Committee shall be entitled to cause such building, wall or gateway to be demolished or removed by any officer or servant of the Committee, and for that purpose the District Committee shall have the same rights of entry and survey and the same powers of removal, abatement and recovery of costs as in the case of an obstruction or encroachment or a supposed obstruction or encroachment upon a road, and all the provisions of this Ordinance relating to such obstructions and encroachments, so far as they are applicable, shall apply accordingly with such modifications as may be necessary.

Compensation
in respect of
land
developed
by buildings.
Cap. 203.

62D. Where any building, boundary wall or gateway erected within the building limit of any road 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, then notwithstanding anything to the contrary in that Ordinance—

(a) the compensation payable in respect of such building, wall or gateway shall, if it has been re-erected or added to under the authority of a licence under section 62A, be the value thereof as specified in

that licence, and the value assigned to the land shall be the market value of the land at the time of the acquisition ;

- (b) no compensation shall be allowed in respect of any building, wall or gateway erected in contravention of section 62A, or in respect of any re-erection or addition made or effected thereto in contravention of that section.

62E. (1) The value of any building, boundary wall or gateway shall, for the purposes of section 62A (2)—

- (a) be fixed by agreement between the District Committee and the owner or owners of the building, boundary wall or gateway ; or
 (b) where it is not so fixed by agreement, be determined by the arbitration of two arbitrators, one nominated by the owner or owners of the building, boundary wall or gateway, and the other by the District Committee, or if such arbitrators cannot agree upon the said value, by an umpire chosen jointly by the two arbitrators.

Valuation of buildings, &c., within building limit

(2) In determining the value of any building, boundary wall or gateway or any part thereof for the purposes of section 62A (2), the following principles shall be followed :—

- (a) where any building, boundary wall or gateway, or any part thereof the removal of which would render the remaining part useless, is situated within the building limit of any road, and where, for that reason, the removal of the entire building, boundary wall or gateway will become necessary in the event of the road being widened, the value of the entire building, boundary wall or gateway shall be determined ; and such value shall be the difference between the market value of the premises, that is to say, of the building, boundary wall or gateway together with the land attached thereto, at the time of the valuation, and the market value at that time of the land as distinct from the building, boundary wall or gateway ;
 (b) where only a part of a building, boundary wall or gateway is situated within the building limit of any road, and after the severance and removal of such part the remaining part will be capable of adaptation either to the original purpose of the building, boundary wall or gateway or to any other purpose permitted by law, the value of the part within the building limit shall alone be determined ; and 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 ; and
 (ii.) the estimated cost, in the case of a building, of adapting the part of the building which will then remain to the purpose for which the building is used at the time of the valuation, and in the case of a boundary wall or gateway, of completing such additions or repairs as may be necessary ;
 (c) where, at the time of the valuation of any building, boundary wall or gateway, the value of such building, boundary wall or gateway is found to have been increased by any alteration or improvement effected in the building, boundary wall or gateway after the date appointed under section 62A (1), then notwithstanding that the alteration or improvement may have been authorised by a licence under section 62A (1), the amount of the increase shall not be taken into account unless the alteration or improvement was necessary for the maintenance of the building, boundary wall or gateway in a proper state of repair.

62F. (1) Where the right of the owner of any land, part of which is situated within the building limit of any road, to erect a building on the land, is restricted by reason of the provisions of section 62A, such owner may, if he desires to erect a building, make application to the Provincial Committee requiring that land at the rear of his land, of sufficient extent to afford him building facilities of the same nature as he would have enjoyed if the provisions of section 62A had not been in force, be acquired for him at his expense ; and the Governor may, upon the recommendation

Acquisition of adjacent land for owner of land affected by building limit.

of the Provincial Committee and after such inquiry as he may deem necessary, order that a specified extent of the land at the rear of the land of such owner shall be acquired for such owner, and the provisions of any written law relating to the acquisition of private land for public purposes shall thereupon apply for the purposes of the acquisition of such extent of land in like manner as if such extent of land were required for public purposes

(2) All costs, charges, and other expenses incurred in the acquisition of any extent of land in pursuance of an order under sub-section (1) shall be paid by the owner of the land upon whose application such extent of land is acquired.

Application
of sections
62A to 62F.

62G. (1) For the purpose of the application of the provisions of sections 62A to 62F in the case of any road in any province which has not been divided into districts, any reference in any of those provisions to a District Committee shall be deemed to be a reference to the Provincial Committee constituted for that province; and any reference to an Executive Engineer shall be deemed to be a reference to the Superintending Engineer of that province.

(2) For the purposes of sections 62A to 62F, a road shall be deemed to be in charge of the Public Works Department if it is maintained by the Public Works Department from funds provided out of the general revenue of Ceylon; and a certificate under the hand of the Director of Public Works to the effect that any road is in charge of the Public Works Department shall be conclusive evidence of the fact that the road is so maintained.

(3) Nothing in sections 62A to 62F shall apply in the case of any building, boundary wall or gateway erected or re-erected, or proposed to be erected or re-erected—

(a) along any principal thoroughfare which is situated in any town as defined in the Urban Councils Ordinance, No. 61 of 1939, and in relation to which the provisions of section 56 (2) of that Ordinance are applicable; or

(b) along any road in respect of which street lines providing for a roadway exceeding fifty feet in width have been defined under section 19 of the Housing and Town Improvement Ordinance

Cap. 199.

Objects and Reasons.

Section 87 of the Urban Councils Ordinance, No. 61 of 1939, provides that no building shall be erected within a distance of twenty-five feet from the centre of any road used for vehicular traffic and restricts the re-erection or extension of buildings which are situated within that distance. This provision applies only in areas within the administrative limits of Urban Councils, and it is considered necessary that similar provisions should be made applicable in the case of all public roads in Ceylon which are used for vehicular traffic and are maintained out of general revenue.

2. The object of Clause 2 of this Bill is to insert in the Thoroughfares Ordinance (Chapter 148), new provisions which are based to some extent on sections 87 to 92 of the Urban Councils Ordinance.

Under the new section 62A inserted by clause 2 the erection, after an appointed date, of any building or wall within a limit of twenty-five feet from the centre of any road in charge of the Public Works Department will be prohibited; and the re-erection or extension of any existing building or wall within such limit will be unlawful unless a licence for the purpose has been granted by the Chairman of the District Committee. Where such a licence is granted in respect of any land which is subsequently acquired by Government, compensation will be payable only in respect of the buildings existing at the time when the licence is granted.

The Executive Committee will be empowered by section 62B to modify or extend the building limit prescribed in section 62A upon the recommendation of the District Committee concerned. The District Committee before making any recommendation for such modification in respect of any road must obtain the prior approval of the Director of Public Works, and must consider the convenience of the public and the amenities of the locality, as well as the question whether such modification will increase the cost of any proposed scheme for the diversion or enlargement of the road.

3. The new section 62D contains special provisions relating to the payment of compensation in a case where any building or wall, erected within the building limit, is situated upon any land acquired under section 7 of the principal Ordinance

or under the Land Acquisition Ordinance. Where any such building or wall is re-erected or extended under a licence, the compensation to be paid in respect of the building or wall will be specified in the licence, and the value of the land itself will be separately determined at the time of acquisition.

No compensation will be payable in respect of a building erected in contravention of section 62A or in respect of any re-erection or addition effected in contravention of that section.

4. Section 62F will enable the Governor, in any case where the right of the owner of land to build is restricted by reason of the provisions in section 62A, to order that a specified extent of land at the rear of the land affected shall be compulsorily acquired for such owner at his expense.

5. The new sections 62A to 62F will not be applicable in relation to any thoroughfare for the protection of which an Urban Council is responsible or to any road in respect of which street lines providing for a roadway exceeding fifty feet in width have been defined under section 19 of the Housing and Town Improvement Ordinance (Chapter 199).

J. L. KOTELAWALA,
Minister for Communications and Works.
Colombo, September 10, 1942.