

argument of four days, the Counsel on both sides have displayed a research and knowledge of principles of law, backed by a calm, dispassionate, but close and able reasoning, highly creditable to them, and which has greatly assisted me in coming to a conclusion, on the many different points on which I am called to express an opinion.

The general facts are well known and may be thus briefly stated. This Island long ago granted in large blocks of about 20,000 acres each, was, as time went on, let by the grantees, in small parcels, generally for long terms of 100 to 900 years, reserving an acreable rent of about 1s. The grant contained conditions, for a breach of which the Crown might have entered and avoided the grants, and they also reserved a quit rent. Out of these tenures sprung an agitation which, under various names, for many years occasioned much discord in the Colony, and in the year 1862 an Act was passed, under the provisions of which a large portion of the Island was purchased by the Government from its owners. But a considerable portion remained in the hands of others who declined to sell, and the Compulsory "Land Act of 1875" was passed. Under its authority a tribunal called the Commissioners Court was organised, and it is out of proceedings instituted in that Court, for obtaining a compulsory transfer of these Lands to the Government, that the present questions arise. As it will be necessary in giving a construction to various parts of this Act, to consider its character, i.e. how far its provisions are of a penal or arbitrary nature, it will be convenient to state its provisions and effect in the first instance.

The preamble recites "that it is very desirable that the leasehold tenures should be converted into freehold estates, upon terms just and equitable to the tenants, as well as the proprietors." It then, by its 1st section, defines that the word "Proprietor" shall be construed to include and extend to any person for the time being receiving or entitled to receive the rents and profits of any Township lands exceeding 500 acres in the aggregate, whether such lands be leased or unleased, occupied or unoccupied, cultivated or wilderness; *provided*, that nothing therein contained shall be construed to affect any proprietor whose lands in his actual use and occupation, and untenanted, do not exceed 1,000 acres. The effect of this is not only to subject proprietors, usually so called—to be deprived of their reversionary interest in their leased lands and of their unleased lands—but also to deprive all owners of lands in fee simple, no matter how acquired, of all they hold over that quantity. It, then, after providing for the appointment of the tribunal, and pointing out the mode of procedure by its 28th sec., enacts, that in estimating the amount of compensation to be paid to proprietors for their interest or right to the lands, the Commissioners shall take the following facts and circumstances into consideration, and sub-sec. (e.) of this 28th sec., on which many questions arise, is as follows: "The number of acres possessed or occupied by any persons, who have not attorned to or paid rent to the proprietor, and who claim to hold such land adversely to such proprietors, and the reasonable *probabilities* and expense of the proprietor sustaining his claim against such persons holding adversely in a Court of Law, shall each and all be elements to be taken into consideration by the said Commissioners, in estimating the value of such proprietor's lands; (1.) the conditions of the original grants from the Crown; (2.) the performance or non-performance of these conditions; (3.) the effects of such non-performance, and how far the Despatches from the English Colonial Secretaries to the different Lieutenant-Governors of this Island, or other action of the Crown or Government have operated as waivers of any forfeitures; (4.) the quit rents reserved in the original grants, and how far the payment of the same have been waived or remitted by the Crown." It must be observed that this 28th sec., and its sub-sections, directs the Commissioners to consider many matters involving very nice and difficult questions of law, which, according to the opinion they form, may materially reduce the amount of compensation they award, and yet no provision is made by the Act that they shall be persons possessing the legal knowledge qualifying them to decide such questions. The 29th, 30th, & 31st sections are as follows: The 29th enacts "when the award shall have been made, it shall be published by delivering a copy to the proprietor or his agent, duly authorised, as aforesaid, and filing the original with the Prothonotary." The 30th section provides "that at the expiration of sixty days from such publication of the award the Government shall pay into the Colonial Treasury the sum so awarded by the said Commissioners, or any two of them, to the credit of the suit or proceeding in which such award shall have been made." By the 31st section the Colonial Treasurer shall, immediately after such payment, deliver to the Prothonotary of the Supreme Court a certificate of the amount paid into the Treasury, as aforesaid, which shall be in the form of this Act, annexed, marked A."

On the construction of these three sections another important question depends. The 29th and 30th sections relate to the award of compensation, and the 31st section relates to the payment of the same.