

By the 28th section and subsections of said Act, it is provided that the Commissioners appointed thereunder in estimating the amount of compensation to be paid to a proprietor for his estate should take into consideration the price at which other proprietors had heretofore sold their lands to the Government, the number of acres under lease, the length of leases, the rent reserved, the arrears, the years over which they extend, and the probability of their being recovered, the number of acres unleased, and their value, the gross rental actually paid for the previous six years, with the expenses incident to their collection, the number of acres held adversely, the reasonable probabilities of the proprietor sustaining his claim against squatters, and the expenses attending thereon, the performance or nonperformance of the conditions in the original grants from the Crown, the effect of such nonperformance, and how far the several despatches from the English Colonial Secretaries to the Lieutenant Governor of this island or other action of the Crown or Government have operated as waivers of any forfeitures, the quitrents reserved in the original grants, and how far the payments of the same have been waived or remitted by the Crown.

Proceedings have been taken in many cases under "the Land Purchase Act, 1875," by the Commissioner of Public Lands for the purchase of the estates of proprietors, and awards have been made by the Commissioners appointed to adjudicate thereon. The awards made in those cases adjudicated upon by the Commissioners, of whom the Right Honourable Hugh C. E. Childers was chairman, were on the face of them silent as to the matters set forth in the section 28 and its subsections, although, in fact, they were as fully investigated and enquired into by the Commissioners as the nature of the several cases would permit of, and were taken into their consideration in estimating the value of the lands. This section was looked upon and construed as merely directory of the matters they were to consider in forming their conclusions as to the value of the proprietors' estates.

It never was contemplated as enacting matters which the Commissioners should be bound specifically to set out on the face of their awards; such a construction as that would operate to defeat the object of the Act entirely, inasmuch as no specific award could be made on some of the points, such, for instance, as the boundaries of the land held by each squatter, without endless trouble and expense.

The awards were drawn in general terms, simply stating the sum awarded to the proprietor, giving no description of the land nor the acreage, and making no reference to the matters mentioned in section 28.

A large majority of the proprietors whose estates were thus awarded for have not appealed from the awards, but the decision of the Supreme Court has thrown doubts upon the validity of these awards, which doubts it is essential should be removed. Applications were made in two cases on behalf of the proprietors (Miss Sullivan and the Honourable Ponsonby Fane) to restrain the public trustee from executing a conveyance of their estates under section 32 of the main Act, and to set aside the awards on the grounds that they did not expressly find and determine on their face the matters mentioned in said section 28 and subsections, and that they were uncertain inasmuch that they did not describe the lands by metes and bounds, nor give the acreage.

The Supreme Court of this Province has decided in favour of these objections, and has quashed the awards in both of the cases argued before them.

The Commissioner of Public Lands has appealed Miss Sullivan's case to the Supreme Court at Ottawa; negotiations for a peaceful settlement of the Fane estate are pending. I have no hesitation in stating that the intention of the Legislature was that the facts and circumstances set forth in the said section 28 and subsections were merely to be taken into consideration by the Commissioners in valuing the land and not that the finding on each fact and circumstance should be specifically set forth in their awards.

Indeed it would seem from the very matters themselves that they were intended more as guides to the Commissioners in making their awards than subjects for any specific finding, such, for instance, as the probabilities of proprietors recovering land from squatters, and the effect of despatches from the Colonial Office relative to the performance and nonperformance of the conditions under which this island was originally granted away by the Crown.

For the purpose of carrying out the intention of the Local Legislature, this Act provides that no awards heretofore made or hereafter to be made shall be void by reason of the said facts and circumstances not being expressly found in such awards, but still retains to the Supreme Court the power of remitting them back to the Commissioners in cases where they do not contain descriptions of the estates, and also power to restrain the public trustee from executing a conveyance of such estates until a description shall be settled by the Court.