

EXPROPRIATION ORDINANCE 1920-1934.

I Thomas Griffiths Brigadier-General British Military Administrator of the Colony of German New Guinea by virtue of the powers me thereunto enabling do hereby order enact and proclaim as follows:—

1. This Ordinance may be cited as the *Expropriation Ordinance 1920-1934*⁽¹⁾ and shall come into force forthwith.⁽¹⁾

Short title.
Amended by
No. 3 of 1934,
s. 50.

(1) The *Expropriation Ordinance 1920-1934* comprises the *Expropriation Ordinance 1920*, as amended by the other Ordinances referred to in the following Table:—

TABLE.

PART I.—ORDINANCES MADE BY THE BRITISH MILITARY ADMINISTRATOR OF THE COLONY OF GERMAN NEW GUINEA.

Short title.	Date on which made by British Military Administrator.	Date on which published in Govt. Gaz.	Date on which took effect.
<i>Expropriation Ordinance 1920</i> ^(a)	1.9.1920	1.9.1920	"Forthwith" (Sec. 1, <i>Expropriation Ordinance 1920</i>)
<i>Expropriation (Amendment) Ordinance 1920</i> ^(a)	11.10.1920	11.10.1920	"Forthwith" (Sec. 1, <i>Expropriation (Amendment) Ordinance 1920</i>)
<i>Expropriation (Amendment No. 2) Ordinance 1920</i> ^(a)	18.10.1920	30.10.1920	"Forthwith" (Sec. 1, <i>Expropriation (Amendment No. 2) Ordinance 1920</i>)
<i>Expropriation (Amendment No. 3) Ordinance 1921</i> ^(a)	6.5.1921	7.5.1921	"Forthwith" (Sec. 1, <i>Expropriation (Amendment No. 3) Ordinance 1921</i>)

(a) Continued in force by the *Laws Repeal and Adopting Ordinance 1921-1939*.

PART II.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Gov.-Gen. in Council.	Date on which notified in Cwlt. Gaz.	Date on which took effect.
<i>Expropriation Ordinance 1921</i> (No. 6 of 1921)	3.6.1921	9.6.1921	9.6.1921 (<i>Cwlt. Gaz.</i> of 9.6.1921)
<i>Expropriation Ordinance 1921</i> (No. 2) (No. 9 of 1921)	21.7.1921	22.7.1921	9.5.1921 (Sec. 2, <i>Expropriation Ordinance 1921</i> (No. 2))
<i>Expropriation Ordinance 1921</i> (No. 3) (No. 12 of 1921)	9.9.1921	10.9.1921	10.9.1921 (<i>Cwlt. Gaz.</i> of 10.9.1921)
<i>Expropriation Ordinance 1922</i> (No. 1 of 1922)	10.2.1922	23.2.1922	23.2.1922 (<i>Cwlt. Gaz.</i> of 23.2.1922)
<i>Expropriation Ordinance 1923</i> (No. 29 of 1923)	11.7.1923	19.7.1923	19.7.1923 (<i>Cwlt. Gaz.</i> of 19.7.1923)
<i>Expropriation Ordinance</i> (No. 2) 1923 (No. 33 of 1923)	7.9.1923	13.9.1923	13.9.1923 (<i>Cwlt. Gaz.</i> of 13.9.1923)
<i>Expropriation Ordinance 1924</i> (No. 9 of 1924)	19.3.1924	27.3.1924	27.3.1924 (<i>Cwlt. Gaz.</i> of 27.3.1924)
<i>Expropriation Ordinance 1926</i> (No. 13 of 1926)	14.5.1926	18.5.1926	18.5.1926 (<i>Cwlt. Gaz.</i> of 18.5.1926)
<i>Expropriation Ordinance</i> (No. 2) 1926 (No. 22 of 1926)	20.10.1926	28.10.1926	28.10.1926 (<i>Cwlt. Gaz.</i> of 28.10.1926)
<i>Expropriation Ordinance 1927</i> (No. 31 of 1927)	13.10.1927	18.10.1927	11.11.1927 (<i>Cwlt. Gaz.</i> of 3.11.1927)
<i>Expropriation Ordinance 1928</i> (No. 24 of 1928)	5.11.1928	8.11.1928	8.11.1928 (<i>Cwlt. Gaz.</i> of 8.11.1928)
<i>Expropriation Ordinance 1929</i> (No. 11 of 1929)	14.8.1929	22.8.1929	8.11.1928 (Sec. 2, <i>Expropriation Ordinance 1929</i>)

[Footnote (1) continued on next page].

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Definitions.

Amended by No. 31 of 1927, s. 3.

2. In this Ordinance—

- “authorised person” means a person authorised by the Custodian for the purposes of this Ordinance;
- “personal representative” means the executor, administrator, or trustee of a prescribed estate;
- “property” includes both real and personal property and any rights whether legal or equitable arising out of real or personal property;
- “the Administrator” means the principal official of the Government of the Territory;

Definition of “the Board” omitted by No. 31 of 1927, s. 3.

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Amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2; substituted by No. 9 of 1921, s. 3.

“the Custodian” means the Custodian of Expropriated Property appointed in pursuance of Part II. of the Treaty of Peace Regulations made under the *Treaty of Peace (Germany) Act 1919-1920* of the Commonwealth of Australia;

Inserted by No. 31 of 1927, s. 3.

“the Delegate” means the person to whom the Custodian has, under section five of this Ordinance, delegated all or any of his powers or functions under this Ordinance;

“the *Rabaul Gazette*” means the Government or Official Gazette of the Territory;

“the Territory” means the Territories which, at the date of the commencement of this Ordinance, are known as German New Guinea, that is to say, Kaiser Wilhelm’s Land, the Bismarek Archipelago, the German Solomon Islands, the Admiralty Group, and all other German Pacific Possessions south of the Equator, other than the German Samoan Islands and the Island of Nauru.

Declaration of firms companies or persons as prescribed companies or nationals.

3. This Ordinance shall apply to—

- (a) any firm or company (in this Ordinance referred to as a “prescribed company”) which the Administrator by notice in writing under his hand, declares to be, in his opinion, managed or controlled, directly or

(1)—continued:—

PART III.—ORDINANCE OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Expropriation Ordinance 1934</i> (No. 29 of 1934)	8.2.1934	15.8.1934	8.2.1934 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 85)

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indirectly by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of, subjects of Germany or persons resident or carrying on business in Germany;

- (b) any person (in this Ordinance referred to as a "prescribed national") whom the Administrator, by notice in writing under his hand, declares to be in his opinion, a German national; and
- (c) the estate (in this Ordinance referred to as a "prescribed estate") of a deceased German national which the Administrator, by notice in writing under his hand, declares to be an estate to which this Ordinance applies.

4. Upon—

- (a) the publication of any such declaration in the *Rabaul Gazette*; or
- (b) the service of the declaration upon the prescribed company or national or the personal representative or upon any person at the office, place of business or plantation of the prescribed company or national or at any office, place of business or plantation, maintained in connection with the prescribed estate, as the case may be,

Effect of publication of declaration.

Section 4 amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, No. 6 of 1921, s. 2, No. 9 of 1921, s. 6, and by No. 12 of 1921, s. 2.

all property belonging to or held or managed for or on behalf of the prescribed company, national, or estate on the tenth day of January 1920, and the right to transfer, manage and otherwise deal with that property, shall thereupon be deemed to have vested, as on the tenth day of January, 1920, in the Custodian,⁽²⁾ and shall be treated at all times as having so vested and the estate and interest of the prescribed company or national therein or, as regards a prescribed estate, of any person, shall be by force of this Ordinance determined.

4A. The Custodian may by notice published in the *Government Gazette* or by notice in writing under his hand declare that any contract existing at the date of the notice and which was entered into by a Company or person or on behalf of an estate which or who after the making of the contract becomes a prescribed company prescribed national or prescribed estate as the case may be shall be null and void as from the date specified in the notice and thereupon the contract shall as from such date become null and void as regards all rights and obligations thereunder and from and after such date no party to such contract shall be liable in damages or otherwise for failure to perform the terms and conditions thereof.

Existing contracts. Inserted by Expropriation (Amendment) Ordinance 1920, s. 3; amended by No. 13 of 1926, s. 2.

(2) See Section 4 of the *Expropriation Ordinance 1921 (No. 2)*, printed on p. 2085.

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Vesting to operate as from 10th January, 1920.
Section 4B inserted as 4A by No. 9 of 1921, s. 7; re-numbered 4B by No. 12 of 1921, s. 3.

4B.—(1.) Where the property, rights and interests of a prescribed company, prescribed national or prescribed estate are vested or have, at any time after the commencement of the Principal Ordinance, been vested in the Public Trustee⁽²⁾ for the time being appointed under the *Treaty of Peace Act 1919*⁽³⁾ of the Commonwealth of Australia or in the Custodian, the property, rights and interests belonging to that company, national or estate as on the tenth day of January, One thousand nine hundred and twenty, shall be deemed to be, and at all times to have been, the property, rights and interests which so vested in the Public Trustee⁽²⁾ or the Custodian, and the Custodian shall be entitled to all income, profits and increment in value earned by, arising out of or accruing to such property, rights and interests since the tenth day of January, One thousand nine hundred and twenty.

(2.) Where the property, rights and interests as existing on the tenth day of January, One thousand nine hundred and twenty, of a prescribed company, prescribed national or prescribed estate have, prior to being vested, pursuant to the Principal Ordinance, in the Public Trustee⁽²⁾ or in the Custodian, become converted into other property, rights or interests, such other property, rights or interests may, upon the issue by a Court of competent jurisdiction of an order to that effect, be attached by the Custodian in satisfaction or part satisfaction of his claim, pursuant to the Principal Ordinance, to the property, rights and interests as existing on the tenth day of January, One thousand nine hundred and twenty, of the company, national or estate.

Burden of proof as to date of acquisition of property.
Inserted by No. 12 of 1921, s. 4.

4c. The burden of proving that any property, belonging to or held or managed for or on behalf of, a prescribed company, prescribed national or prescribed estate at the date of the publication or service of a declaration under section four of this Ordinance in relation to that company, national, or estate is not property that so belonged or was so held or managed on the tenth day of January, 1920, shall be upon that company or national, or upon the person representing that estate as the case may be.

Land subject to conditions.
Section 4D inserted by No. 22 of 1926, s. 2; substituted by No. 29 of 1934, s. 2.

4D.—(1.) Where property vested in the Custodian in pursuance of section four of this Ordinance consists of rights or interests in land which are subject to forfeiture for failure to comply with conditions relating to improvements or cultivation, those conditions shall be deemed to be, and to have been, waived until the issue of a certificate of title in respect of those rights or interests under the *Lands Registration Ordinance 1924-1933*.⁽⁴⁾

(2.) Upon the issue of the certificate of title, the conditions shall again apply and commence to run.

(2) See Sections 4 and 5 of the *Expropriation Ordinance 1921 (No. 2)*, printed on p. 2085.

(3) Now the *Treaty of Peace (Germany) Act 1919-1920*.

(4) Now the *Lands Registration Ordinance 1924-1939*.

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5.—(1.) The Custodian may, by writing under his hand, delegate all or any of his powers and functions under this Ordinance (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate as fully and effectually as if he were the Custodian.

Delegation by Custodian.
Sub-section (1) amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, and by No. 9 of 1921, s. 8.

(2.) Every delegation under this section shall be revocable in writing at will, and no delegation shall prevent the exercise of any power or function by the Custodian.

Sub-section (2) amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, and by No. 9 of 1921, s. 8.

6. Subject to this Ordinance the Custodian shall, in relation to any property vested in him under this Ordinance, have the same powers as are, by the *Treaty of Peace Act* 1919⁽³⁾ and the regulations made thereunder and by the *Trading with the Enemy Act* 1914-16,⁽⁵⁾ vested in the Public Trustee⁽²⁾ constituted or appointed under those Acts and regulations.

Custodian to have powers under *Trading with the Enemy Act* and *Treaty of Peace Regulations*.
Amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, and by No. 9 of 1921, s. 9.

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Section 7 amended by Expropriation (Amendment No. 2) Ordinance 1920, s. 3, Expropriation (Amendment No. 3) Ordinance 1921, s. 2, No. 9 of 1921, s. 10, No. 13 of 1926, ss. 3 and 4, and by No. 31 of 1927, s. 15; repealed by No. 31 of 1927, s. 4.

8.—(1.) The Delegate shall, on behalf of the Custodian, have power to manage and otherwise deal with the property vested in the Custodian in pursuance of this Ordinance but not the power to dispose of land or any interest therein other than any interest arising under a mortgage.

Power of Delegate to deal with property vested in Custodian.
Sub-section (1) amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, No. 9 of 1921, s. 10, and No. 31 of 1927, s. 5.

(2.) The Delegate may, where in his opinion it is necessary to do so in order to protect any property rights or interests vested in the Custodian by or under this Ordinance, purchase by auction or private contract any real or personal property, and, for the purposes of any such purchase by auction, may authorize any person to bid on his behalf.

Sub-section (2) inserted by No. 33 of 1923, s. 2; amended by No. 31 of 1927, s. 5.

8A. For the purposes of this Ordinance there shall be a Special Tribunal consisting of the Chief Judge of the Territory.

Special Tribunal.
Inserted by No. 29 of 1923, s. 2.

(2) See Sections 4 and 5 of the *Expropriation Ordinance* 1921 (No. 2), printed on p. 2085.

(3) Now the *Treaty of Peace (Germany) Act* 1919-1920.

(5) The *Trading with the Enemy Act* 1914-1921 was repealed by the *Statute Law Revision Act* 1934.

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Custodian may refer questions to Special Tribunal.
Inserted by No. 29 of 1923, s. 2; amended by No. 31 of 1927, s. 6.

8B. The Custodian may refer to the Special Tribunal any question, arising out of this Ordinance, as to the ownership of property, and in particular, where the Custodian certifies that there is difficulty in ascertaining the extent of the interest, any question as to the extent of the interest, as on the tenth day of January, 1920, of any prescribed company, prescribed person or prescribed estate in any property.

Special Tribunal to determine question.
Section 8c inserted by No. 29 of 1923, s. 2.
Sub-section (1) amended by No. 31 of 1927, s. 7.

8c.—(1.) The Special Tribunal shall, upon any question being referred to it by the Custodian, have jurisdiction to consider and determine the question.

(2.) The determination of the Special Tribunal shall be final and conclusive and without appeal, and shall be binding on all persons interested in the property.

Power to summon witnesses, &c.
Amended by No. 29 of 1923, s. 3, and by No. 31 of 1927, s. 8.

9. For the purpose of this Ordinance the Special Tribunal, the Custodian, the Delegate or any authorised person shall have power to—

- (a) summon witnesses;
- (b) take evidence on oath; and
- (c) require the production of documents, books and papers.

Failure to appear as witness, &c.
Amended by No. 29 of 1923, s. 4, and by No. 31 of 1927, s. 9.

10. Any person summoned as a witness by the Special Tribunal, the Custodian, the Delegate or an authorised person who refuses or fails without just cause to appear as a witness or to be sworn, or to produce documents books and papers which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, shall be guilty of an offence.

Penalty: Fine of One hundred pounds or imprisonment for a term of six months or both.

Person or company holding property of prescribed company or national to notify Delegate.
Paragraph (a) amended by No. 31 of 1927, s. 10.

11.—(a) Any person or company who, or which, immediately prior to the declaration of a firm, company, national, or estate as a prescribed company, national or estate, holds or administers property for or on behalf of that firm, company, national or estate, shall, within fourteen days after the declaration of the firm, company, national or estate as a prescribed company, national or estate, in pursuance of this Ordinance, by notice in writing communicate the fact to the Delegate, and shall furnish the Delegate with such particulars in relation thereto as the Delegate requires by notice in writing.

(b) Every person charged with the custody or in the possession of any books accounts or documents in any way whatsoever relating to or connected with such property shall safeguard and preserve

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such books accounts or documents in good order condition and repair, and every person employed for the purpose of compiling accounts and recording transactions of every nature whatsoever relating to or in connection with such property shall conscientiously and faithfully compile and keep such accounts and record such transactions to the best of his skill and ability.

(c) Any person firm or company having knowledge information or possession of any books accounts documents or papers or any records of any transactions in any way relating to any prescribed company national or estate shall forthwith supply and deliver all such information and matters to the Delegate without being required to do so.

Paragraph (c) amended by No. 31 of 1927, s. 10.

The penalty for a breach of section eleven hereof shall be a fine of Five hundred pounds or imprisonment for a term of one year or both.

12.—(1.) Until the property is delivered to the Delegate or an authorised person in accordance with a demand made in pursuance of the next succeeding section—

Property of prescribed company or national to be held in trust.

(a) all property held or administered by a prescribed company or national;

Sub-section (1) amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, No. 9 of 1921, s. 10, and by No. 31 of 1927, s. 11.

(b) all property held or administered by any person or company which, but for this Ordinance, would have been held or administered by that person or company for or on behalf of a prescribed company or national; and

(c) all property held or administered by a personal representative, which but for this Ordinance, would have been held or administered by the personal representative for or on behalf of a prescribed estate,

shall be held and administered by the prescribed company, national, or the personal representative, or the person or company as the case may be, in trust for the Custodian, and the prescribed company, national or personal representative or the person or company shall comply with all directions given by the Delegate or an authorised person.

Penalty: Five hundred pounds or imprisonment for one year or both.

(2.) The imposition of a penalty for any breach of this section shall not prevent the institution of proceedings against a prescribed company or national or a personal representative or a person or company in respect of a breach of trust.

(3.) (a) The Delegate may prescribe the remuneration to be paid to any person or company holding or administering property in trust for the Custodian.

Paragraph (a) amended by No. 9 of 1921, s. 10, and by No. 31 of 1927, s. 11.

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Paragraph (b) amended by No. 9 of 1921, s. 10, No. 13 of 1926, s. 5, and by No. 31 of 1927, s. 11.

Delivery of property to Delegate on demand.

Amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, No. 9 of 1921, s. 10, and by No. 31 of 1927, s. 12.

Employees not to be discharged without consent of Delegate.

Sub-section (1) amended by Expropriation (Amendment No. 3) Ordinance 1921, s. 2, No. 9 of 1921, s. 10, and by No. 31 of 1927, s. 13.

Sub-section (2) amended by No. 9 of 1921, s. 10, and by No. 31 of 1927, s. 13.

Sub-section (3) amended by No. 9 of 1921, s. 10, No. 13 of 1926, s. 6, and by No. 31 of 1927, s. 13.

Demands made and documents executed by Delegate.

Amended by No. 31 of 1927, s. 14.

(b) The person or company holding property in trust for the Custodian, if dissatisfied with the remuneration prescribed by the Delegate, may appeal to the Custodian whose decision shall be final.

13. Upon demand by the Delegate or an authorised person by notice in writing, a prescribed company or national or a personal representative or any person or company who or which is in pursuance of the last preceding section, charged with the duty of holding or administering any property in trust for the Custodian, shall deliver the property, or any securities relating to the property, to the Delegate or authorised person.

Penalty: Five hundred pounds or imprisonment for one year or both.

14.—(1.) Until the property is delivered to the Delegate or an authorised person in accordance with a demand made in pursuance of the next preceding section no person employed by a prescribed company or national or in connection with the administration of a prescribed estate immediately prior to the date of the vesting of the property in the Custodian, shall cease work or be discharged without the consent of the Delegate:

Provided that any such person shall not be required to serve for a period exceeding twelve months from the date of the vesting of the property in the Custodian.

Penalty: One hundred pounds or imprisonment for six months, or both.

(2.) Any such person shall, until he ceases work or is discharged with the consent of the Delegate, receive wages at the rates and be subject to the conditions which the Delegate, having regard to the agreements of service, verbal or written, in force prior to the date of the vesting of the property in the Custodian, prescribes.

(3.) In the event of any dispute arising as to the rate of wages or conditions of employment of any person continuing in employment as provided by this section, the Delegate shall refer the matter to the Custodian whose decision shall be final.

15. For the purposes of any proceeding under this Ordinance, it shall be evidence that a demand or requirement was made or a document executed by the Delegate if the demand, requirement or document is signed by the Delegate and—

(a) published in the *Rabaul Gazette*; or

(b) served on the person or company concerned or his personal representative or served upon any person at the office place of business or plantation of the person or company concerned or of his personal representative.

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15A.—(1.) Where in pursuance of regulation thirty-six of the Treaty of Peace Regulations made under the *Treaty of Peace (Germany) Act 1919-1920* of the Commonwealth of Australia the Governor-General orders that any property rights or interests be released from the charges specified in that regulation the order shall, where the property rights or interests have been vested in the Custodian in pursuance of this Ordinance, operate as a release of the property rights or interests from the provisions of this Ordinance and shall, subject to the provisions of those regulations, have the effect of revesting the property rights or interests in the person to whom they belonged at the date of the coming into force of the Treaty or, where that person is dead or bankrupt, in his personal representative or the official assignee of his property as the case may be.

Release of property rights and interests.
Section 15A inserted by No. 1 of 1922, s. 2.

Sub-section (1) amended by No. 9 of 1924, s. 2.

(2.) Where property is, in pursuance of the Treaty of Peace Regulations, revested in any person in accordance with the last preceding sub-section, that person shall not be entitled, as against the Commonwealth or the Administration of New Guinea or any authority of the Commonwealth or that Administration, to compensation or damages in respect of any action taken by the Commonwealth, the Administration or any such authority in respect of that property prior to its being so revested.

16. The penalty pecuniary or otherwise set out—

- (a) at the foot of any section of this Ordinance, or
- (b) at the foot of any sub-section of any section of this Ordinance but not at the foot of the section,

Penalties at foot of sections or sub-sections.

shall indicate that any contravention of the section or of the sub-section respectively, whether by act or omission, shall be an offence against this Ordinance, punishable upon conviction by a penalty not exceeding the penalty mentioned:

Provided that where the penalty is expressed to apply to a part only of the section or sub-section, it shall apply to that part only.

17.—(1.) When any property vested in the Custodian in pursuance of this Ordinance has been liquidated, the Custodian may, out of the proceeds of the liquidation, satisfy claims against the property which are proved to his satisfaction and are made by or on behalf of nationals of the Allied and Associated Powers, nationals of neutral powers, or German nationals whose property has been released from expropriation or who are resident in Australia and may pay interest thereon at such rate as is approved by the Treasurer.

Proceeds of liquidation may be used to satisfy certain claims.

Section 17 added by No. 24 of 1928, s. 2.

Sub-section (1) amended by No. 11 of 1929, s. 3.

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(2.) Any payment made out of the proceeds of the liquidation of any property vested in the Custodian in pursuance of this Ordinance prior to the commencement of this section shall be deemed to be as valid and effectual as if this section had been in force at the time at which the payment was made.
