



ANNO DECIMO SEXTO

GEORGII V REGIS.

A.D. 1925.

No. 1724.

An Act to repeal the Lands Clauses Consolidation Acts, 1847 to 1918, and to make Better Provision for the Acquisition of Land for Works and Undertakings of a Public Nature, and for purposes consequent thereon and incidental thereto.

[Assented to, January 6th, 1926.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PRELIMINARY PROVISIONS.

1. This Act may be cited as the "Compulsory Acquisition of Land Act, 1925."

Short title.
Cf. 6, 1847, s. 4.

2. This Act shall come into force on a date to be fixed by proclamation.

Commencement of Act.

3. The provisions of this Act are arranged as follows :—

Arrangement of Act.
New.

PART I.—Preliminary Provisions.

PART II.—Compensation.

PART III.—Purchase of Land and Determination of Compensation by Agreement.

PART IV.—Taking of Land and Determination of Disputed Compensation.

DIVISION I.—Preliminary Procedure :

PART I.

Compulsory Acquisition of Land Act.—1925.

DIVISION II.—Determination of Disputed Claims for Compensation :

DIVISION III.—Determination of Compensation where no Claim made :

DIVISION IV.—Payment and Application of Compensation :

DIVISION V.—Vesting of Land in the Promoters :

DIVISION VI.—Costs under this Part :

DIVISION VII.—General Provisions.

PART V.—Mortgages, Encumbrances, and Leases.

DIVISION I.—Mortgages :

DIVISION II.—Encumbrances :

DIVISION III.—Leases.

PART VI.—Conveyances.

PART VII.—Powers in Relation to Land.

PART VIII.—Miscellaneous Provisions.

Acts repealed.

4. The Acts mentioned in the Schedule are, to the extent therein mentioned, hereby repealed.

Application and incorporation of this Act.
6, 1847, s. 1.

5. (1) This Act shall apply to and in respect of every work or undertaking of a public nature authorised by any Act passed since the twenty-sixth day of March, one thousand eight hundred and forty-seven, which authorises the purchase of land or the taking of land compulsorily for the undertaking.

(2) This Act is hereby incorporated with every such Act, and any such Act and this Act shall be read as one Act.

Act to apply notwithstanding Real Property Act.

6. The provisions of this Act shall apply notwithstanding the provisions of the Real Property Act, 1886.

Interpretation of terms used in this Act.

7. (1) In this Act, unless some other meaning is clearly intended—

Cf. *ibid.*, ss. 2, 3.

“ Compensation ” means any compensation (whether for land purchased or taken, or for the injurious affection of any land, or otherwise) to which any person is entitled under this Act or the Special Act from the promoters, and includes the purchase price of any land purchased by agreement :

“ Convey ” means convey, transfer, release, assign, surrender, or otherwise assure, according to the exigencies of the case :

“ Encumbrance ” includes any rent-service, rent-charge, chief or other rent, or other charge or encumbrance upon land, other than a mortgage :

“ Land ”

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- “Land” includes any estate or interest (legal or equitable) in land and any easement, right, power, or privilege in, under, over, affecting, or in connection with land : 202, 1881, s. 4. (part).
- “Lease” includes an agreement for a lease :
- “Mental defective” means a mentally defective person within the meaning of the Mental Defectives Act, 1913, and “mental defect” has a corresponding meaning : No. 1122 of 1913.
- “Owner,” with respect to land, includes any person who, under this Act or the Special Act, is enabled to sell or convey the land to the promoters :
- “Prescribed” means prescribed or provided for by the Special Act :
- “Promoters,” with respect to an undertaking, means the persons authorised by the Special Act to execute the undertaking :
- “Special Act,” with respect to an undertaking, means the Act authorising the execution of the undertaking and the taking of land for the purposes of the undertaking :
- “Works” or “Undertaking” means the works or undertaking authorised by the Special Act to be executed, whatever may be the nature of such works or undertaking.

(2) In any Special Act passed before the commencement of this Act, any word or expression defined by The Lands Clauses Consolidation Act shall have the same meaning as such word or expression had immediately before the commencement of this Act.

Interpretation of terms defined by existing Special Acts.

PART II.

COMPENSATION.

PART II.

8. (1) If any land is purchased or taken under the provisions of this Act or the Special Act by the promoters for the purposes of the Special Act, or is injuriously affected by reason of the execution of the works, every person interested in the land shall, subject to the provisions of this Act and the Special Act, be entitled to compensation for the same from the promoters.

Title to compensation.
Cf. 6, 1847, ss. 22, 63, 68.
Cf. N.Z., 160, 1908, s. 35.
Cf. Comm., 26, 1906, s. 26.

(2) If no claim for the injurious affection of any land is made within five years of the execution of the works, or of the extension or alteration of the works, alleged to cause such injurious affection, such claim shall be deemed to have been waived and abandoned.

Cf. N.S.W., 26, 1900, s. 43 (3).

9. If any question arises respecting the title to any land in respect of which any compensation is payable under this Act or the Special Act, the person in possession of the land as being the owner thereof, or in receipt of the rents of the land as being entitled thereto, at the time of the land being purchased or taken, shall be deemed to have

Party in possession to be deemed the owner.
6, 1847, s. 79.
Cf. Comm., 13, 1906, s. 12.

have been entitled to the land until the contrary is shown; and unless the contrary is so shown, the person so in possession and all persons claiming under him or consistently with his possession, shall be deemed entitled to the compensation and to the interest and dividends of the securities (if any) purchased therewith, and such moneys, interest, and dividends shall be paid and applied accordingly.

Where greater interest claimed than from year to year, lease to be produced.

6, 1847, s. 109.

Cf. Comm., 13, 1906, s. 30.

10. (1) If any person having a greater interest in any land required for the purposes of the Special Act than as tenant at will claims compensation in respect of any unexpired term or interest under any lease, the promoters may, by demand in writing, require such person to produce the lease in respect of which the claim is made, or the best evidence thereof in his power.

(2) If the demand is not complied with within twenty-one days after service thereof on the claimant, he shall be deemed to be a tenant holding from year to year, and shall not be entitled to further compensation than as such tenant.

Compensation for entry and occupation of land.

Cf. *ibid.*, s. 31.

11. (1) Where, by reason of the execution of any powers under Part VII. of this Act, the owner or occupier of any land suffers damage he shall be entitled to compensation under this Act.

(2) Where the promoters or any person authorised by them enters into the temporary occupation of any land, the compensation shall include—

(a) damage of a temporary as well as of a permanent character; and

(b) the value of all clay, stone, gravel, earth, timber, wood, materials, or things taken for carrying out the undertaking.

Basis of compensation.

Cf. 1326, 1918, s. 3.

Cf. Imp. Act, c. 57, 1919, s. 2.

Cf. 6, 1847, ss. 49, 63.

12. In determining the amount of any compensation payable by the promoters under this Act or the Special Act regard shall be had (subject to this Act and the Special Act) to the following rules:—

(1) In any case where land is taken, regard shall be had to—

(a) the value of the land taken; and

(b) the damage (if any) by reason of the severing of the land taken from other land of the person entitled to compensation; and

(c) the damage (if any) to other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the execution of the works, or of the carrying on or use of the works by the promoters on the land taken.

(2) The value of the land shall, subject as hereinafter provided, be taken to be its value—

(a) in any case where land is taken, at the beginning of the period of twelve months prior to the giving by the promoters of the notice to treat; or

(b) in

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(b) in any case where land is not taken, at the beginning of the period of twelve months prior to the commencement of the execution of the works,

together in either case with the actual value of any improvements *bona fide* made during the said period of twelve months: Provided that the Court or arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant.

(3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any *bona fide* offer for the purchase of the land made before the passing of the Special Act which may be brought to the notice of the Court or arbitrator may be taken into consideration.

(4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental of the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

(5) Where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Court or arbitrator is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.

(6) No allowance shall be made on account of the acquisition being compulsory.

(7) No allowance shall be made for any enhancement or diminution in the value of the land arising in consequence of—

- (a) the passing of the Special Act; or
- (b) the acquisition under the Special Act of any other land; or
- (c) any proposal to construct or establish the works or any expectation that the works will be constructed.

(8) Allowance shall be made in favor of the promoters for any enhancement in value of other land adjoining the land taken or injuriously affected, or severed therefrom, of the person entitled to compensation by reason of the execution, carrying on, or use of the works by the promoters, but in no case shall this rule operate so as to require any payment to be made by the claimant to the promoters in consideration of such enhancement in value. Cf. Comm., 13, 1906, s. 28.

(9) The

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(9) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land.

(10) For the purposes of these rules, the term "commencement of the execution of the works" shall, in a case where an authorised work is extended or altered after it has been substantially completed, be taken to refer to the commencement of the execution of such extension or alteration.

(11) For the purposes of this section, the Court or arbitrator shall be entitled to be furnished with such returns and assessments as it or he may require.

PART III.**PART III.**

**PURCHASE OF LAND AND DETERMINATION OF
COMPENSATION BY AGREEMENT.**

Power of promoters
to purchase land by
agreement.

6, 1847, s. 6,

13. Subject to the provisions of this Act and the Special Act, the promoters may agree—

- (a) with the owner of any land which is authorised by the Special Act to be taken and is required for the purposes of such Act, for the purchase of the land, or of any part thereof; and
- (b) with the owner of any land which is injuriously affected by reason of the execution of the works, with respect to the amount of compensation payable by the promoters for the injurious affection.

Power of persons
under disability.

Ibid., s. 7.

Comm., 13, 1906, s. 8.

14. (1) Any person seised or possessed of or entitled to any land which is authorised by the Special Act to be taken, and is required for the purposes of such Act, particularly—

- (a) any corporation;
- (b) any tenant in tail or for life;
- (c) any married woman seised in her own right or entitled to dower;
- (d) any guardian;
- (e) any committee of a mental defective;
- (f) any trustee or feoffee in trust for charitable or other purposes;
- (g) any executor or administrator;

(h) any

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(h) any person for the time being entitled to the receipt of the rents and profits of any land in possession or subject to any estate in dower; or

(i) any lessee for life, or for life and years, or for years, or for any less interest,

may (by force of this Act and notwithstanding anything to the contrary in any law, deed of settlement, memorandum or articles of association, deed, or instrument) sell and convey the land to the promoters: Provided that nothing in this Act or the Special Act shall enable any Municipal Corporation to sell for the purposes of the Special Act, without the approval of the Governor, any lands which such Corporation could not have lawfully sold before the passing of the Special Act or which the promoters are not by this Act or the Special Act authorised to take compulsorily. 6, 1847, s. 15.

(2) The power to release any land from any encumbrance, or to agree for the apportionment of any encumbrance or rent, may be exercised by any person who under this Act or the Special Act is able to sell and convey the land to the promoters. Ibid., s. 8.

(3) The powers conferred by this section may be exercised whether the land is purchased by agreement or taken compulsorily.

15. The powers conferred by section 14 may be exercised—

Extent of powers
Cf. *ibid.* s. 7.
Comm., 13, 1906,
s. 9.

(a) by any person (other than a married woman entitled to dower, or a lessee for life, or for life and years, or for years, or for any less interest) not only on behalf of himself and his heirs, executors, administrators and successors, but also on behalf of every person entitled in reversion, remainder, or expectancy after him, and in defeasance of the estate of every person so entitled; and

(b) in the case of a married woman, whether she is of full age or not, as if she were of full age and a *feme sole*; and

(c) in the case of a guardian, on behalf of his ward, and to the same extent as the ward could have done if he were not under a disability; and

(d) in the case of a committee of a mental defective, on behalf of the mental defective, and to the same extent as the mental defective could have done if he were not under a disability; and

(e) in the case of trustees, executors, or administrators on behalf of their *cestui que trusts* (whether persons under a disability or not) to the same extent as the *cestui que trusts* could have done if they were not under a disability.

16. The power to sell and convey land includes the power to—

Power of sale
includes subsidiary
powers.

(a) exchange or otherwise deal with the land with the promoters;

(b) convey

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- (b) convey the land to the promoters, or as they may direct :
- (c) enter into all agreements or contracts necessary for the said purposes :
- (d) do or suffer all such other acts and things as are necessary or convenient for effecting or perfecting any of the said purposes.

Where vendor under disability, compensation to be approved by Court.
Cf. 6, 1847, s. 9.

17. Where the owner of any land—

- (a) purchased by the promoters by agreement ; or
- (b) injuriously affected by reason of the execution of the works, is under any legal disability or is not able to sell and convey the land or agree as to the compensation to be paid for the injurious affection of the land except under the provisions of this Act or the Special Act, the compensation to be paid for the purchase of the land or for the injurious affection (whether any land is purchased or taken by the promoters from such person or not) shall, if it is not determined as provided by Part IV., be not less than an amount approved by any Court in which an action for the compensation might be instituted, and shall be paid and applied for the benefit of the persons interested, as provided by Division IV. of Part IV.

Power to purchase land required for additional accommodation.
Ibid., s. 12.

18. If the promoters are authorised by the Special Act to purchase land for extraordinary purposes, any person who under the provisions of this Act is able to sell and convey land to the promoters may sell and convey the land so authorised to be purchased for extraordinary purposes.

Power to sell and purchase such land.
Ibid., s. 13.

19. The promoters may sell or dispose of any land which they have acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as they think fit, and may purchase other land for the like purposes, and afterwards sell or dispose of the same, and so from time to time : Provided that the total quantity of land held at any one time by the promoters for extraordinary purposes shall not exceed the prescribed quantity.

Purchase of land for extraordinary purposes from persons under disability.
Ibid., s. 14.

20. (1) The promoters shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any person who is under legal disability, or who is not able to sell and convey the land except under the provisions of this Act or the Special Act.

(2) If the promoters purchase more than the prescribed quantity of land from any such person and afterwards sell or dispose of the whole or any part of the land so purchased, no person who is under legal disability or who is enabled to sell and convey land only under the provisions of this Act or the Special Act shall sell or convey to the promoters any other land in lieu of the land so sold or disposed of by them.

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PART IV.

PART IV.

TAKING OF LAND AND DETERMINATION OF
DISPUTED COMPENSATION.

DIVISION I.—PRELIMINARY PROCEDURE.

DIVISION I.

21. When the promoters require to take any land which is authorised by the Special Act to be taken and is required for the purposes of such Act, they shall give notice to treat to all persons who are interested in the land, or who are under the provisions of this Act or the Special Act able to sell or convey the land to the promoters, or to such of the said persons as, after diligent inquiry, become known to the promoters.

Notice to treat.
6, 1847, s. 18 (part).

22. The notice to treat—

Contents of notice
to treat.

- (a) shall state that the promoters require to take the land to which the notice relates, and shall give particulars of the land ;
- (b) shall state that the promoters are willing to treat for the purchase of the land and as to the compensation to be made for any damage (if any) sustained by reason of severance or injurious affection ; and
- (c) shall demand from the persons to whom the notice is given particulars of their estate and interest in the land and of the claims for compensation made by them in respect thereof, and, if they claim in respect of damage, the nature of the damage.

Cf. *ibid.*, s. 18
(part);
Cf. N.S.W., 26,
1900, s. 41 (2).

23. (1) The notice to treat shall—

Service of notice to
treat.

- (a) be served personally on the person required to be served therewith ; or
- (b) be left at his last usual place of abode ; or
- (c) in the case of a body corporate, be left at the principal office of business of such body corporate.

Cf. 6, 1847, ss. 19,
20.

(2) If—

- (a) any person required to be served with the notice to treat is absent from the State or cannot be found after diligent inquiry ; or
- (b) in the case of a body corporate, the principal place of business of such body corporate cannot be found after diligent inquiry,

the notice to treat for such person or body corporate shall be served on the occupier of the land or, if there is no such occupier, shall be affixed on some conspicuous part of the land.

24. (1) In order to obtain compensation, every person who—

- (a) is served with a notice to treat ; or

Claimant to
deliver notice of
claim.
New.

(b) has

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DIVISION I.*Compulsory Acquisition of Land Act.—1925.*Cf. Imp. Act, c. 57,
1919, s. 5 (2).

- (b) has any claim for compensation against the promoters for the injurious affection of any land by reason of the execution of the works, or otherwise, under this Act or the Special Act,

is hereby required to deliver to the promoters notice of his claim.

Cf. 6, 1847, s. 23.

- (2) The claimant, in his notice of claim, shall—

- (a) state the several areas and descriptions of the land to be taken or alleged to be injuriously affected, and the exact nature of and particulars of the estate or interest therein in respect of which he makes his claim ;
- (b) if the claimant claims as owner, and the land is subject to any mortgage, encumbrance, lease, or easement, state particulars of such mortgage, encumbrance, lease, or easement ;
- (c) give the amount and details of the compensation claimed, distinguishing the amounts under separate heads, and show how the amount claimed under each head is calculated ;
- (d) if any claim is made for damage, state the nature and particulars of the damage ;
- (e) if any claim is made for accommodation works, state particulars of such accommodation works, including the number, kind, and dimensions thereof ; and
- (f) state his full name and address.

The notice of claim may also state whether, in the event of a dispute as to the amount of compensation, the claimant desires to have such amount determined by arbitration under this Act.

Cf. N.S.W., 26, 1900,
s. 41 (2).

- (3) No claimant shall be at liberty to institute any proceedings for the recovery of his claim until after the expiration of fourteen days from the delivery to the promoters of his notice of claim as provided by this section.

Upon receipt of
notice of claim
notice to treat may
be withdrawn.Cf. Imp. Act, ch. 57,
1919, s. 5 (2).
Cf., 1439, 1920, s. 3.

25. Upon receipt of the notice of claim the promoters may, at any time before proceedings are commenced for determining the claim for compensation, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land to which the notice of claim relates, but shall be liable to pay compensation to any such claimant or other person for any loss or expense occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined in the manner provided for the determination of disputed claims for compensation.

26. (1) Upon

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DIVISION I.

26. (1) Upon receipt of the notice of claim the promoters shall—

- (a) notify the claimant that they admit the claim for compensation, and that the compensation claimed will be paid to the claimant on compliance with this Act; or
- (b) offer the claimant such amount as the promoters think reasonable in satisfaction of the claim for compensation, and notify the claimant that the amount offered will be paid to him, on compliance with this Act, if he accepts the offer; or
- (c) notify the claimant that they dispute the claim for compensation.

Procedure on notice of claim for compensation being received.
Comm. 13, 1906, s. 34.

(2) The claimant shall, within twenty-one days after the receipt of the offer of the promoters, by notice in writing, notify them whether he does or does not accept the offer.

27. If—

- (a) the promoters offer the claimant an amount in satisfaction of the claim for compensation, and the claimant does not within twenty-one days after the receipt of the offer accept it; or
- (b) the promoters notify the claimant that they dispute the claim for compensation,

When claim becomes a disputed claim for compensation.
Ibid., s. 35.

the claim for compensation shall be a disputed claim for compensation.

DIVISION II.—DETERMINATION OF DISPUTED CLAIMS FOR COMPENSATION.

DIVISION II.

28. Subject to this Act, a disputed claim for compensation may be determined as follows:—

Methods of determining disputed claims.
Cf., *ibid.*, s. 36.

- (a) By agreement between the promoters and the claimant; or
- (b) By an action for compensation by the claimant against the promoters; or
- (c) By a proceeding in a Court on the application of the promoters.

29. (1) If within twenty-one days after a claim for compensation became a disputed claim for compensation the parties concur in the appointment of a single arbitrator, the amount of compensation may be determined by the arbitrator so appointed.

If parties agree on single arbitrator amount of compensation may be determined by him.
Cf. 6, 1847, ss. 25-35.

(2) The appointment of the arbitrator shall be in writing, and shall be delivered to the arbitrator appointed thereby.

(3) The appointment shall be deemed a submission to arbitration on the part of both parties, and after the making of the appointment neither party shall have power to revoke the same without the consent of the other party, nor shall the death of either party operate as a revocation.

(4) The

(4) The arbitrator shall make his award within three months after his appointment or within such other period as may from time to time be agreed in writing between the parties. If the arbitrator fails to make his award within the said period, then his appointment as such arbitrator shall determine and the submission to arbitration shall be deemed to be revoked.

(5) If the arbitrator dies or becomes incapable of acting before he makes his award, the amount of compensation in dispute may be determined under this section as if he had not been appointed, provided the parties concur in the appointment of another single arbitrator within twenty-one days after the death or incapacity of the first-mentioned arbitrator.

(6) Before any arbitrator enters upon the consideration of any of the matters referred to him, he shall, in the presence of a Justice, make and subscribe the following declaration, that is to say—

I, A.B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the [*naming the Special Act*].

Made and subscribed in the presence of

A.B.

Such declaration shall be annexed to the award when made. If any arbitrator, having made such declaration, wilfully acts contrary thereto, he shall be liable to imprisonment for any period not exceeding two years.

(7) The arbitrator may—

- (a) call for the production of any documents in the possession or power of either party to the arbitration which he thinks necessary for determining the matters referred to arbitration; and
- (b) examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose; and
- (c) enter on and inspect the land, or any part thereof.

(8) The arbitrator shall deliver his award in writing, and shall—

- (a) on demand, produce the award and allow the same to be inspected or examined by either party, or any person appointed by him for that purpose; and
- (b) at the expense of the party applying for the same, furnish a copy thereof to either party.

(9) Every award of any single arbitrator upon any question of fact shall, subject to subsection (10) hereof, be final and binding on the parties, and the persons claiming under them respectively, but the arbitrator may, and shall, if the Supreme Court so directs, state at any stage of the proceedings in the form of a special case for the opinion of the Supreme Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the Supreme Court.

(10) Where

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DIVISION II.

(10) Where the arbitrator has misconducted himself, the Supreme Court or a Judge thereof may remove him, and where an arbitrator has misconducted himself or his award has been improperly procured, the said Court or a Judge thereof may set the award aside.

(11) No appointment or award made under this section shall be set aside or be invalid for irregularity or error in the matter of form.

30. An action for compensation may be instituted by the claimant against the promoters in any Court of competent jurisdiction, and, subject to the following provisions, the action shall be heard and determined in the same manner as ordinary actions:—

Action for compensation.
Cf. Comm., 13, 1906, s. 37.

- (a) The action shall be tried without a jury :
- (b) The Court shall have no power to direct a reference to arbitration unless by consent of parties :
- (c) Costs shall be allowed in accordance with the provisions of Division VI. of this Part.

31. (1) If within six months after a claim for compensation became a disputed claim for compensation—

Determination of compensation on application of promoters.
Cf. *Ibid.*, s. 38.

- (a) it has not been determined by agreement between the promoters and the claimant ; or
- (b) it has not been referred to arbitration ; or
- (c) no process in an action for compensation by the claimant against the promoters to determine the claim has been served on the promoters,

the promoters may apply to any Court in which an action for compensation might be instituted to determine the claim.

(2) The Court shall, after such notice to such persons as it directs, hear the application and determine the claim.

(3) The Court may make such order as to costs as it thinks just, regard being had to the provisions of Division VI. of this Part.

(4) The determination of the Court shall be final and conclusive and without appeal, and shall be binding on the claimant, whether he was represented before the Court on the hearing of the application or not, but such determination shall not affect or prejudice in any way the respective rights of the claimant and the other persons (if any) interested in the land, as between themselves.

32. The Court or arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the determination.

Particulars of award may be demanded.
Cf. 6, 1847, s. 49.
202, 1881, s. 8.
Cf. *Imp. Act*, ch. 57, 1919, s. 3 (3).

DIVISION III.—DETERMINATION OF COMPENSATION WHERE NO CLAIM MADE.

DIVISION III.

33. (1) If any person who has been duly served with a notice to treat in respect of any land does not deliver to the promoters notice of claim within six months of the service upon him of the notice to treat, the promoters may apply to a Court to determine the amount of compensation payable.

Procedure to determine compensation where no claim made.
Cf. *Comm.*, 13, 1906, s. 39.

(2) The

(2) The application shall be made to the Supreme Court if the promoters consider the compensation awarded will amount to more than Four Hundred and Ninety Pounds, but shall be made to a Local Court of Full Jurisdiction if the promoters consider the compensation awarded will not amount to more than Four Hundred and Ninety Pounds.

(3) The Court shall, after such notice to such persons as it directs, hear the application and determine the amount of compensation payable.

(4) The determination of the Court shall be final and conclusive and without appeal, and shall be binding on all persons having any right to compensation in respect of the land referred to in the notice to treat, whether represented before the Court on the hearing of the application or not, but such determination shall not affect or prejudice in any way the respective rights of such persons as between themselves.

(5) The Court may make such order as to costs as it thinks just, regard being had to the provisions of Division VI. of this Part.

DIVISION IV.

Compensation for Crown lands held under agreements to be paid to Commissioner on account.
202, 1881, s. 14.

Moneys payable to parties under disability amounting to Two Hundred Pounds to be paid into Court.
Cf. 6, 1847, s. 69 (part).
1035, 1911, s. 4.

Application of moneys so paid into Court.
6, 1847, s. 69 (part).

DIVISION IV.—PAYMENT AND APPLICATION OF COMPENSATION.

34. The compensation payable for or in respect of any land held under agreement for purchase from the Crown shall be paid by the promoters to the Commissioner of Crown Lands on account of the money owing to the Crown on such agreement, and shall be accounted for accordingly.

35. If—

(a) the compensation is payable to any person who is not able to sell and convey the land for or in respect of which the compensation is payable except under the provisions of this Act or the Special Act; and

(b) the compensation amounts to or exceeds the sum of Two Hundred Pounds,

the moneys shall be paid by the promoters into the Supreme Court, to the credit of the person entitled to the compensation.

36. The moneys paid into Court as aforesaid shall remain in Court until they are applied to some one or more of the following purposes :—

(a) In the purchase, redemption, or discharge of any tax, debt, or encumbrance affecting the land in respect of which such moneys have been paid into Court, or affecting other land settled therewith to the same or the like uses, trusts, or purposes; or

(b) In the purchase of other land or of Government securities to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the land in respect of which such moneys have been paid into Court; or

(c) If

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- (c) If the moneys are paid into Court in respect of any buildings taken under the authority of this Act or the Special Act, or injuriously affected by reason of the exercise of any powers under this Act or the Special Act, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Supreme Court may direct ;
- (d) In payment of any person becoming absolutely entitled to such moneys ; or
- (e) In such manner as the Supreme Court may direct.

37. (1) The moneys paid into Court may be applied as aforesaid upon an order of the Supreme Court or a Judge thereof, made on the application of the person who would for the time being have been entitled to the rents and profits of the land in respect of which the moneys have been paid into Court.

Order for application, and investment meanwhile.
Cf. *ibid.*, s. 70.

(2) Until the moneys can be so applied they may, upon the like order, be invested by the proper officer of the Court in Government or real securities, and the interest, dividends, and annual proceeds thereof shall be paid to the person who would for the time being have been entitled to the rents and profits of the land.

38. (1) If the compensation does not amount to the sum of Two Hundred Pounds but exceeds the sum of Twenty Pounds, the same shall be either—

Sums from Twenty Pounds to Two Hundred Pounds to be paid into Court or paid to trustees.
Cf. *ibid.*, s. 71.

- (a) paid into Court and applied as provided by sections 35, 36, and 37 ; or
- (b) subject to subsection (4) hereof, paid to two trustees nominated as provided by this section.

(2) Such trustees shall be nominated—

- (a) by the persons who would for the time being have been entitled to the rents and profits of the land in respect of which the compensation is payable ; or
- (b) in case of the incapacity by infancy, mental defect, or otherwise of the person so entitled, by the guardian, committee, or trustee, as the case may be, of such person.

(3) The nomination shall be made in writing under the hand of the person making the nomination.

(4) The moneys shall not be paid to trustees unless the promoters approve thereof and of the trustees nominated for the purpose.

(5) The moneys paid to the trustees under this section, and the interest, dividends, and annual proceeds of such moneys, shall be by the trustees applied in the manner provided by sections 36 and 37, but it shall not be necessary to obtain any order for that purpose.

39. If

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Sums under Twenty Pounds may be paid to parties.

Ibid., s. 72.

39. If the compensation does not exceed the sum of Twenty Pounds, such moneys may be paid—

- (a) to the person who would for the time being have been entitled to the rents and profits of the land in respect of which such moneys are payable for his own use and benefit ; or
- (b) in case of the incapacity by infancy, mental defect, or otherwise of the person so entitled, to the guardian, committee, or trustee, as the case may be, of such person, for the use and benefit of such person.

Moneys payable under contract with persons not absolutely entitled to be paid into Court.

bid., s. 73.

40. (1) All compensation exceeding the sum of Twenty Pounds payable by the promoters for or in respect of the taking or using of or the interfering with any land under a contract or agreement with any person who is not entitled to dispose absolutely for his own benefit of such land or of the interest therein contracted to be sold by him, shall, at the option of the promoters, be paid by them into the Supreme Court or to trustees under section 35 or section 38 and, subject to subsection (3) hereof, the provisions of sections 36 and 37 shall apply to the application of such moneys.

(2) No such person shall retain for his own use any portion of the moneys so agreed or contracted to be paid—

- (a) for or in respect of the taking or using of, or the interfering with, any such land ; or
- (b) in lieu of bridges, tunnels, or other accommodation works ; or
- (c) for assenting to or not opposing the passing of the Bill for the Act authorising the taking of such land,

but all such moneys shall be deemed to have been agreed or contracted to be paid for and on account of the several persons interested in the land, as well in possession as in remainder, reversion, or expectancy.

(3) It shall be in the discretion—

- (a) of the Supreme Court or a Judge thereof, where the moneys are paid into Court ; or
- (b) of the trustees, where the moneys are paid to trustees,

to allot any tenant for life or for any other partial or qualified estate, for his own use, a portion of the moneys as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the land taken and of the damage to the land held therewith by reason of the taking of such land and the execution of the works.

41. Where

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41. Where the compensation has been paid into Court in respect of any lease for a life or lives or years, or for a life or lives and years, or of any estate in land less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, the Supreme Court, or a Judge thereof, on the application of any person interested in the moneys, may order that the moneys shall be laid out, invested, accumulated, and paid in such manner as the Court or Judge considers will give to the persons interested the same benefit therefrom as they would lawfully have had from the lease, estate, or reversion in respect of which the moneys have been paid into Court, or as near thereto as may be.

Supreme Court may direct application of moneys paid into Court in respect of leases or reversions. *Ibid.*, s. 74.

42. If the promoters fail to pay any compensation to the person entitled thereto or into the Supreme Court or to trustees (as, according to the provisions of this Act or the Special Act, the case may require) for the period of twelve months next after the delivery of the notice of claim, then the promoters shall pay to the person entitled to the compensation interest on the amount thereof at the rate of Five Pounds per centum per annum computed from the expiration of such period until payment of such compensation.

Promoters to pay interest in event of delay. Cf. 1326, 1918. s. 3 (2).

DIVISION V.—VESTING OF LAND IN THE PROMOTERS.

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43. (1) Upon the compensation agreed or determined to be paid for any land being paid into Court as provided by section 35, or paid as provided by section 38 or section 39, every person who, under the provisions of this Act or the Special Act, is able to sell and convey the land to the promoters shall, when required to do so by the promoters, duly convey the land to the promoters, or as they may direct.

Provision for conveyance of land where money paid into Court on account of disability of owner. 6.1874, s. 75.

(2) If any such person makes default—

- (a) in conveying the land as aforesaid ; or
- (b) adducing a good title to the land to the satisfaction of the promoters,

the promoters may, if they think fit, execute a deed poll.

(3) Such deed poll shall—

- (a) be under the common seal of the promoters, if they are a body corporate, or, if not, under the hands and seals of the promoters or of any two of them ;
- (b) contain a description of the land in respect of which the default has been made ;
- (c) recite the purchase or taking of the land by the promoters, the names of the persons from whom the land was purchased or taken, and the payment into Court in respect thereof ; and
- (d) declare that the default has been made.

(4) Upon

(4) Upon the registration of the deed poll, all the estates and interest in the land of, or capable of being sold and conveyed by, the person between whom and the promoters the agreement was made, or as between whom and the promoters the compensation has been determined, as the case may be, shall vest absolutely in the promoters, and as against such persons and all persons on behalf of whom they are by this Act enabled to sell, the promoters shall be entitled to immediate possession of the land.

Provision for case where owner refuses to convey or makes no claim.
Cf. *ibid.*, s. 76.

44. (1) If the owner of any land purchased or taken by the promoters, on tender of the compensation agreed or determined to be paid therefor—

- (a) refuses to accept the same; or
- (b) neglects or fails to make out a good title to the land to the satisfaction of the promoters; or
- (c) refuses to convey the land to the promoters or as directed by them,

the promoters may pay the compensation payable for the land into the Supreme Court, to the credit of the persons interested in the land (describing them so far as the promoters can do so).

(2) If at the expiration of six months after the determination of the amount of compensation no application has been made for payment of the compensation, the promoters may pay the compensation into the Supreme Court, to the credit of the persons appearing to be entitled thereto (describing them so far as the promoters can do so).

Ct. 6, 1847, s. 77.

(3) Upon the compensation payable for any land being paid into Court as provided by this section, the proper officer of the Supreme Court shall give to the promoters, or to the person paying in the moneys by their direction, a receipt therefor specifying therein—

- (a) for what purpose and the persons to whose credit the moneys have been received (describing the persons as described by the promoters when paying the moneys into Court); and
- (b) the land in respect of which the moneys have been paid into Court.

(4) Upon the compensation payable for the land being paid into Court as provided by this section, the promoters may, if they think fit, execute a deed poll.

(5) Such deed poll shall—

- (a) be under the common seal of the promoters, if they are a body corporate, or, if not, under the hands and seals of the promoters or of any two of them;
- (b) contain a description of the land in respect of which the compensation has been paid into Court; and
- (c) declare the circumstances under which, and the persons to whose credit, the compensation has been paid into Court.

(6) Upon

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(6) Upon the registration of the deed poll all the estate and interest in the land in respect of which the compensation has been paid into Court of the persons to whose credit the compensation has been paid into Court shall vest absolutely in the promoters, and as against such persons the promoters shall be entitled to the immediate possession of the land.

45. Upon the application of any person making any claim—

- (a) to the moneys which have been paid into Court under section 44, or to which section 44 applies, or to any part thereof; or
- (b) in respect of the land in respect of which the moneys have been paid into Court, or any part thereof,

Application of moneys so paid into Court.

Cf. *ibid.*, s. 78.

the Supreme Court or a Judge thereof may, in a summary way, as to such Court or Judge seems fit, order the moneys to be laid out or invested in Government or real securities, or may order distribution thereof, or payment of the interest or dividends thereof, according to the respective estates or interests of the persons making claim to the moneys or land, or any part thereof, and may make such other order as to the Court or Judge seems fit.

DIVISION VI.—COSTS UNDER THIS PART.

DIVISION VI.

46. (1) Where the promoters have at any time made an unconditional offer in writing of any sum as compensation to any claimant, and the sum awarded by the Court or arbitrator to that claimant does not exceed the sum offered, the Court or arbitrator shall, unless for special reasons it or he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the promoters so far as such costs were incurred after the offer was made.

Costs of determining claims for compensation.

Cf. *Imp. Act. ch. 57, 1919, s. 5.*

(2) If the Court or arbitrator is satisfied that a claimant has failed to deliver to the promoters a notice of claim giving sufficient particulars and in sufficient time to enable the promoters to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by the promoters at the time when, in the opinion of the Court or arbitrator, sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer.

(3) Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has delivered a sufficient and proper notice of claim, and the sum awarded is equal to or exceeds that sum, the Court or arbitrator shall, unless for special reasons it or he thinks proper not to do so, order the promoters to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4) Where the promoters have made an unconditional offer in writing to any claimant with respect to—

- (a) the value of any lands, or of any part thereof; or

(b) the

- (b) the apportionment of any encumbrance or of any rent ; or
- (c) any other matter of dispute arising under this Act or the Special Act,

and the matter is determined on terms not more favorable to the claimant than those contained in the said offer, the Court shall, unless for special reasons it thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the promoters so far as such costs were incurred after the offer was made.

(5) Where a claimant has made an unconditional offer in writing to the promoters with respect to—

- (a) the value of any lands, or of any part thereof ; or
- (b) the apportionment of any encumbrance, or of any rent ; or
- (c) any other matter of dispute arising under this Act or the Special Act,

and the matter is determined on terms more favorable to the claimant than those contained in the said offer, the Court shall, unless for special reasons it thinks proper not to do so, order the promoters to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(6) If the Court is of opinion that the action might have been brought in a lower Court, costs, if awarded to the claimant, shall only be allowed on the scale applicable to costs in the lower Court, unless the Court certifies that special circumstances existed which made it proper to institute the action in the higher Court.

1298, 1917, s. 4.

(7) Subject as aforesaid, the costs of determining disputed claims for compensation shall be in the discretion of the Court or arbitrator determining the matter, and the Court or arbitrator may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid, or any part thereof, and may award costs to be paid as between solicitor and client, and may in any case disallow the cost of counsel wholly or in part.

(8) There shall be an appeal from any direction or award under this section (except from any such direction or award by a Judge of the Supreme Court, in which case such direction or award shall be final), and such appeal shall be to a Judge of the Supreme Court in Chambers upon a Judge's summons.

(9) Instead of taxing or settling the amount of such costs, the Court or arbitrator may, or, if either party so requires, shall, refer such costs to the Master of the Supreme Court to be taxed, and the Court or arbitrator may certify as to what time has been reasonably occupied in the inquiry, and, for the purposes of taxing the costs, such certificate shall be final.

(10) For the purposes of this section, costs include any fees, charges, and expenses of the proceedings, or of the award, or determination thereon.

47. (1) Where

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47. (1) Where the claimant is ordered to pay the costs of the promoters, or any part of such costs, the promoters may deduct the amount so payable by the claimant from the amount of compensation payable to him.

Recovery of costs.
Cf. Imp. Act, c. 57,
1919, s. 5 (6), (7).

(2) Without prejudice to any other method of recovery, the amount of costs ordered to be paid by any party, or any part thereof, may be recovered by action in any Court of competent jurisdiction as a debt.

48. (1) Subject to subsection (2) hereof, in all cases where moneys are paid into the Supreme Court under the provisions of this Act or the Special Act, the Supreme Court or a Judge thereof may order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters:—

Costs in cases where
moneys paid into
Court.
6, 1847, s. 80.

- (a) the costs of the purchase or taking of the land, or which are incurred in consequence thereof, other than such costs as are otherwise provided for by this Act; and
- (b) the costs of the investment of the compensation in Government or real securities, and of the reinvestment thereof in the purchase of other land; and
- (c) the costs of obtaining the proper orders for any of the said purposes, and of the orders for the payment of the interest and dividends of the securities upon which such moneys are invested, and of the orders for the payment out of Court of the principal of such moneys, or of the securities in which the same are invested; and
- (d) the costs of all proceedings relating to the said matters, except such as are occasioned by litigation between adverse claimants:

Provided that the costs of one application only for reinvestment in land shall be allowed, unless it appears to the Court or Judge that it is for the benefit of the persons interested in the moneys that the same should be invested in the purchase of land in different sums and at different times, in which case the Court or Judge may, if thought fit, order the costs of any such investments to be paid by the promoters.

(2) The provisions of this section shall not apply in any case where the compensation is paid into Court—

- (a) by reason of the wilful refusal of the person entitled to the compensation to accept the same, or to convey the land in respect of which the compensation is payable, or his interest therein, to the promoters or as directed by them; or
- (b) by reason of the wilful neglect or failure of the person entitled to the compensation to make out a good title to the land, or his interest therein, to the satisfaction of the promoters; or
- (c) by reason of the fact that no application had been made for payment of the compensation.

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DIVISION VII.—GENERAL PROVISIONS.

Limit of time for compulsory purchase.

Ibid., s. 110.

202, 1881, s. 16.

Capital to be subscribed before compulsory powers put into force.

6, 1847, ss. 16, 17.

Person not to be required to sell part of a house.

Cf. ibid., s. 92.

Cf. 1439, 1920, s. 3 (4).

Owners of intersected land may insist on sale, or levelling of site.

6, 1847, s. 93.

49. (1) Subject to subsection (2) hereof, the power of the promoters to take land compulsorily for the purposes of the Special Act shall not be exercised after the expiration of the prescribed period, or, if no period is prescribed, then such powers shall not be exercised after the expiration of three years from the commencement of the Special Act.

(2) The power to take land compulsorily for the purposes of any undertaking authorised by any Act and for carrying out which moneys have been or are authorised to be appropriated by Parliament may be exercised without limit as to time.

50. (1) Where the undertaking is intended to be carried out by means of a capital to be subscribed by the promoters the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful for the promoters to exercise the powers under this Act or the Special Act for the taking of land compulsorily for the purposes of the undertaking.

(2) A certificate under the hand of a Special Magistrate, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters and the production of such evidence as any Special Magistrate thinks proper and sufficient, any Special Magistrate shall grant such certificate accordingly.

51. (1) No person shall at any time be required to sell or convey to the promoters a part only of any house or other building or manufactory, if such person is willing and able to sell and convey the whole thereof and gives notice thereof to the promoters within twenty-one days of the service of the notice to treat.

(2) If any person gives such notice to the promoters, the promoters may at any time before proceedings are commenced for determining the claim for compensation withdraw the notice to treat, and shall not be liable to pay any compensation in respect of the giving or the withdrawal of the notice to treat.

52. (1) If—

(a) any land, not being situate in a town or built upon, is so cut through and divided by the works as to leave, either on both sides or on one side thereof, a piece of land of less extent than half a statute acre; and

(b) the owner of the piece of land requires the promoters to purchase the same along with the other land required for the purposes of the Special Act,

then,

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then, unless the owner thereof has other land adjoining to that so left into which the same can be thrown so as to be conveniently occupied therewith, the promoters shall purchase such piece of land

(2) If the owner has any other land adjoining the land so left, then the promoters shall, if so required by the owner, at their own expense, throw the piece of land so left into the adjoining land by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

53. (1) If—

- (a) any land intersected by the works is so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters are, under the provisions of this Act or the Special Act, compellable to make; and
- (b) the owner of the land has no other land adjoining such piece of land and requires the promoters to make such communication,

Promoters may insist on purchase where expense of accommodation works exceeds value of land.
Ibid., s. 94

then the promoters may require the owner to sell to them the piece of land.

(2) In case of dispute the value of the piece of land or the expense of making such communication, shall be determined in the manner provided for the determination of disputed claims for compensation, and, if either party so requires, such value or expense shall be determined at the same time and in the same manner as the claim for compensation for the land taken for the purposes of the works is determined.

54. (1) In every case in which the promoters are liable to make any works for the accommodation of the owners or occupiers of land adjoining the undertaking, the kind or number of such accommodation works and the dimensions or sufficiency thereof shall be agreed upon or determined before the hearing of any claim for compensation for or in respect of the land of which the persons entitled to accommodation works are the owners or occupiers.

Accommodation works to be determined before hearing of claims for compensation.
202, 1881, s. 15.

(2) If the kind, number, dimensions, or sufficiency of such accommodation works is not determined by agreement between the owners or occupiers and the promoters such matters shall be determined by the Court in which the action for compensation is instituted.

(3) If the owner or occupier neglects to have the question of his claim for accommodation works determined as hereinbefore directed, he shall have no further right to compel the promoters to make such accommodation works.

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Power to redeem mortgages.
6, 1847, s. 95 (part).

Procedure by promoters to redeem mortgage.
Ibid., ss. 95 (part), 96.

PART V.**MORTGAGES, ENCUMBRANCES, AND LEASES.****DIVISION I.—MORTGAGES.**

55. The promoters may purchase or redeem the interest of the mortgagee of any land which is required for the purposes of the Special Act, whether—

- (a) they have previously purchased the equity of redemption of the land or not ; or
- (b) the mortgagee is entitled thereto in his own right or in trust for any other person ; or
- (c) the mortgagee is in possession of the land by virtue of such mortgage or not ; or
- (d) the mortgage affects the land solely or jointly with any other land not required for the purposes of the Special Act.

56. (1) For the purpose of the promoters purchasing or redeeming the interest of the mortgagee of any land as provided by section 55 the following provisions shall apply :—

- (a) The promoters may pay or tender to the mortgagee the principal and interest due on the mortgage, together with his costs and charges (if any), and also six months' additional interest. Upon such payment or tender the mortgagee shall immediately convey his interest in the mortgaged lands to the promoters, or as they may direct ; or
- (b) The promoters may give notice in writing to the mortgagee that they will pay off the principal and interest due on the mortgage at the end of six months, computed from the day of giving such notice. If the promoters have given any such notice, or if the person entitled to the equity of redemption of the land has given six months' notice of his intention to redeem the same, then, at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters to the mortgagee of the principal moneys due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses (if any), the mortgagee shall convey his interest in the mortgaged land to the promoters, or as they may direct.

(2) Upon such conveyance, all the estate and interest of the mortgagee in the mortgaged land, or of any person in trust for him, or for whom he may be a trustee, shall vest absolutely in the promoters, and in case such mortgagee himself was entitled to immediate possession of the land, they shall be entitled to immediate possession thereof.

(3) If

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(3) If, upon such payment or tender as provided by subsection (1) hereof, the mortgagee fails to convey his interest in the mortgaged land to the promoters or as directed by them, or fails to adduce a good title thereto to their satisfaction, the promoters may pay into the Supreme Court the principal and interest, together with the costs and charges (if any) due on such mortgage, and also, if such payment is made before the expiration of the six months' notice, such further interest as would at that time become due. Upon such moneys being paid into Court the promoters may, if they think fit, execute a deed poll. The provisions of section 44 shall, *mutatis mutandis*, apply to and in respect of moneys paid into Court and deed polls executed under this section.

(4) Upon the registration of the deed poll, all the estate and interest of the mortgagee in the mortgaged land, or of any person in trust for him, or for whom he may be a trustee, shall vest absolutely in the promoters, and in case such mortgagee himself was entitled to immediate possession of the land, they shall be entitled to immediate possession thereof.

57. (1) If the mortgaged land is of less value than the principal, interest, and costs secured thereon, the value of the land or the compensation to be paid by the promoters in respect thereof may be settled by agreement between the mortgagee and the person entitled to the equity of redemption of the land on the one part, and the promoters on the other part, or if such parties fail to agree with respect to the amount of such value or compensation, the same shall be determined in the same manner as disputed claims for compensation.

Provision for case when mortgage exceeds the value of the land.

Ibid., ss. 97, 98.

(2) The amount of such value or compensation so agreed upon or determined shall be paid by the promoters to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be accepted by him in such satisfaction, and shall be a full discharge of the mortgaged land from all moneys due thereon.

(3) Upon payment or tender of such amount, the mortgagee shall convey all his interest in the mortgaged land to the promoters, or as they may direct.

(4) If upon such payment or tender the mortgagee fails to convey his interest in the mortgaged land to the promoters or as directed by them, or fails to adduce a good title thereto to their satisfaction, the promoters may pay the amount so agreed upon or determined into the Supreme Court, and the moneys so paid into Court shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the mortgaged land from all moneys due thereon. Upon such moneys being paid into Court, the promoters may, if they think fit, execute a deed poll. The provisions of section 44 shall, *mutatis mutandis*, apply to and in respect of moneys paid into Court and deed polls executed under this section.

(5) Upon

(5) Upon the registration of the deed poll, all the estate and interest in the mortgaged land of the mortgagee, or of any person in trust for him, or for whom he may be a trustee, shall vest absolutely in the promoters, and in case the mortgagee himself was entitled to immediate possession of the land, they shall be entitled to immediate possession thereof.

(6) Notwithstanding anything done under the provisions of this section, all rights and remedies possessed by the mortgagee against the mortgagor by virtue of any bond or covenant or other obligation other than the right to the mortgaged land shall remain in force in respect of so much of the mortgage debt as has not been satisfied by the moneys paid under this section.

Provision for case where part only of mortgaged land taken.
Ibid., ss. 99, 100.

58. (1) If—

- (a) part only of any of the mortgaged land is required for the purposes of the Special Act ; and
- (b) the part so required is of less value than the principal, interests, and costs secured on the land ; and
- (c) the mortgagee does not consider the remaining part of the land a sufficient security for the moneys charged thereon, or is not willing to release the part so required,

then the value of the part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, may be settled by agreement between the mortgagee and the person entitled to the equity of redemption of the land on the one part, and the promoters on the other part, or if such parties fail to agree with respect to the amount of such value or compensation, the same shall be determined in the same manner as disputed claims for compensation.

(2) The amount of such value or compensation so agreed upon or determined shall be paid by the promoters to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be accepted by him in such satisfaction, and shall be a full discharge of the portion of the mortgaged land in respect of which such payment is made from all moneys due thereon.

(3) Upon payment or tender of such amount the mortgagee shall convey to the promoters, or as they may direct, all his interest in the mortgaged land in respect of which such payment or tender is made.

A memorandum of the amount so paid shall be indorsed on the instrument creating the mortgage and shall be signed by the mortgagee, and a copy of such memorandum shall at the same time (if required) be furnished by the promoters at their expense to the person entitled to the equity of redemption of the land comprised in the mortgage.

(4) If upon such payment or tender the mortgagee fails to convey to the promoters, or as they may direct, his interest in the land in respect of which such payment or tender has been so made, or
fails

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fails to adduce a good title thereto to the satisfaction of the promoters, the promoters may pay the amount so agreed upon or determined into the Supreme Court, and the moneys so paid into Court shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge from all moneys due thereon of the portion of the mortgaged land in respect of which such moneys have been paid into Court. Upon such moneys being paid into Court, the promoters may, if they think fit, execute a deed poll, in respect of the portion of the mortgaged land in respect of which such moneys have been paid into Court. The provisions of section 44 shall, *mutatis mutandis*, apply to and in respect of moneys paid into Court and deed polls executed under this section.

(5) Upon the registration of the deed poll, all the estate and interest of the mortgagee in such portion of the mortgaged land, or of any person in trust for him, or for whom he may be a trustee, shall vest absolutely in the promoters, and in case the mortgagee himself was entitled to immediate possession of such portion, they shall be entitled to immediate possession thereof.

(6) Notwithstanding anything done under the provisions of this section, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage moneys, or of the residue thereof (as the case may be), and the interest thereof, upon and out of the residue of the mortgaged land, or the portion thereof not required for the purposes of the Special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the land originally comprised in such mortgage.

59. (1) If a time is limited in the mortgage for payment of the principal money thereby secured, and under the provisions of this Division the mortgagee has been required to accept payment of his mortgage money, or of any part thereof, at a time earlier than the time so limited, the promoters shall pay to the mortgagee, in addition to the sum which has been so paid off, all such costs and expenses as are incurred by the mortgagee in respect of, or which are incidental to, the reinvestment of the sum so paid off. Such costs shall, if disputed, be taxed by the Master or other officer of the Supreme Court, and payment thereof may be enforced, in the manner provided by Part VI. with respect to the costs of conveyances.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.
Ibid., s. 101.

(2) If the rate of interest secured by the mortgage is higher than can reasonably be expected at the time the same is paid off to be obtained on reinvesting the same, regard being had to the then current rate of interest, the promoters shall pay to the mortgagee, in addition to the principal and interest provided for by this Division, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off. If the amount of such compensation is not settled by agreement between the mortgagee and the promoters, the same shall be determined in the same manner as disputed claims for compensation. (3) Until

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(3) Until payment or tender of the moneys payable by the promoters under this section the promoters shall not be entitled, as against such mortgagee, to possession of the mortgaged land under the provisions of this Division.

DIVISION II.

DIVISION II.—ENCUMBRANCES.

Release of part of
land from encum-
brance.
Ibid., s. 103.

60. (1) If part only of the land subject to any encumbrance is required for the purposes of the Special Act, such encumbrance shall be apportioned between the land so required and the residue of such land.

(2) Such apportionment may be settled by agreement between the party entitled to such encumbrance and the owner of the land on the one part, and the promoters on the other part, and if such apportionment is not settled by agreement between such parties, the same shall be determined, on the application of the promoters, by any Court having jurisdiction to entertain an action for compensation under this Act.

(3) If the part of the land which is not required for the purposes of the Special Act is a sufficient security for the encumbrance then, with the consent of the owner of such part, the person entitled to the encumbrance may release therefrom the land required for the purposes of the Special Act, on condition or in consideration of the land not so required remaining exclusively subject to the whole of the encumbrance.

Deposit, in case of
refusal to release.
Ibid., s. 104.

61. (1) Upon payment or tender of the compensation agreed upon or determined in respect of any encumbrance to the person entitled to the encumbrance, such person shall execute a release of the encumbrance to the promoters, or as they may direct; and if he fails so to do, or if he fails to adduce a good title to the encumbrance to the satisfaction of the promoters, the promoters may pay the amount of the compensation into the Supreme Court, and upon such compensation being paid into Court as aforesaid the promoters may, if they think fit, execute a deed poll. The provisions of section 44 shall, *mutatis mutandis*, apply to and in respect of moneys paid into Court and deed polls executed under this section.

(2) Upon the registration of the deed poll the encumbrance, or the portion thereof in respect of which the compensation has been paid into Court, shall cease and be extinguished.

Encumbrance to
continue on land not
taken.
Ibid., s. 105.

62. (1) If any land is released from any encumbrance to which it was subject jointly with other land, or from any portion of such encumbrance, the remaining land shall alone be charged with the whole of the encumbrance, or with the remainder thereof, as the case may be; and the person entitled to the encumbrance shall have all the same rights and remedies over the remaining land for the whole or for the remainder of the encumbrance, as the case may be, as he had previously over the whole of the land subject to the encumbrance.

(2) If

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(2) If any encumbrance is released in pursuance of this Act, the promoters shall, upon the deed or instrument creating or transferring the encumbrance being tendered to them for the purpose, sign a memorandum endorsed on the deed or instrument specifying the part of the land originally subject to the encumbrance which has been purchased or taken for the purposes of the Special Act, and—

- (a) how much, if any, of the encumbrance has been released and how much continues payable ; or
- (b) that the remaining land is thenceforward to remain exclusively charged with the whole of the encumbrance.

(3) Such memorandum shall be made and executed at the expense of the promoters, and shall be evidence in all Courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

DIVISION III.—LEASES.

DIVISION III.

63. (1) If a part of any land comprised in a lease for a term of years unexpired is required for the purposes of the Special Act, the rent payable in respect of the land comprised in the lease shall be apportioned between the land so required and the part not required.

Where part only of land under lease taken, the rent to be apportioned.
Ibid., s. 106.

(2) The apportionment may be settled by agreement between the lessor and lessee of the land on the one part, and the promoters on the other part, and if such apportionment is not settled by agreement between such parties, such apportionment shall be determined, on the application of the promoters, by any Court having jurisdiction to entertain an action for compensation under this Act.

(3) After such apportionment has been settled—

- (a) the lessee shall as to all future accruing rent be liable only for the rent apportioned in respect of the land not required for the purposes of the Special Act ; and
- (b) the lessor shall, as against the part not so required, have the same rights and remedies for the rent so apportioned as he had, previously to the apportionment, for the whole rent ; and
- (c) all covenants, conditions, and agreements in the lease (except as to the amount of rent) shall remain in force with regard to the part not required for the purposes of the Special Act.

PART VI.

PART VI.

CONVEYANCES.

64. (1) Conveyances of land purchased or taken under the provisions of this Act or the Special Act which is not under the provisions of the Real Property Act, 1886, may be according to any form prescribed by regulation made under this Act, or as near thereto as the circumstances of the case admit, or by deed in any other form which the promoters think fit.

Form of conveyance
Ibid., s. 81.

(2) All

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(2) All conveyances made according to any form prescribed by any such regulation, or as near thereto as the circumstances of the case admit, shall be effectual and shall operate—

- (a) to vest the land thereby conveyed in the promoters :
- (b) to merge all terms of years attendant by express declaration or by construction of law on the estate or interest thereby conveyed :
- (c) to bar and destroy all such estates tail and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the land comprised in such conveyances which have been purchased or compensated for by the consideration therein mentioned.

(3) Although terms of years are merged by the operation of such conveyance, they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters to attend the reversion and inheritance.

Costs of conveyances.
Ibid., s. 82.

65. The costs of all conveyances of land purchased or taken under the provisions of this Act or the Special Act shall be borne by the promoters, and such costs shall include all charges and expenses incurred on the part as well of the seller as of the purchaser—

- (a) of all conveyances and assurances of any land, and of any outstanding terms or interests therein ;
- (b) of deducing, evidencing, and verifying the title to such land, terms, or interests ;
- (c) of making out and furnishing such abstract and attested copies as the promoters may require ; and
- (d) all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.
Ibid., s. 83.

66. (1) If the promoters and the person entitled to the costs of any conveyance do not agree as to the amount thereof, such costs shall be taxed by the Master or other proper officer of the Supreme Court, upon the application of either party.

(2) The promoters shall pay what the Master or taxing officer certifies to be due in respect of such costs to the person entitled thereto, and in default thereof the same may be recovered in the same way as any costs payable under any order of the said Court or of a Judge thereof are recoverable or by distress.

(3) The expenses of taxing such costs shall be borne by the promoters unless upon such taxation one-sixth part of the amount of such costs or more is disallowed, in which case the costs of such taxation shall be borne by the person whose costs are taxed, and the amount of such costs of taxation shall be settled by the Master or taxing officer, and deducted by him in his certificate of such taxation.

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PART VII.

POWERS IN RELATION TO LAND.

67. Subject to the provisions of this Part the promoters shall not, except by consent of the owners and occupiers, enter upon any land which is required to be taken or permanently used for the purposes of and under the powers of this Act or the Special Act, until they have either—

Payment of price to be made previous to entry.
Cf. *ibid.*, s. 84 (part).

- (a) paid to every person interested in the land ; or
- (b) paid into the Supreme Court, or to trustees, or otherwise, as, according to the provisions of Division IV. of Part IV. of this Act, the case may require,

the compensation agreed or determined to be paid to such persons respectively for their respective interests therein : Provided that if, for twenty-one days after the due service of the notice to treat in respect of any land, no notice of claim is delivered to the promoters in respect of the land, the promoters may enter upon and take possession of and use the land, and shall not be liable to any penalty or forfeiture under this Act in respect of such entry, taking possession, or use.

68. (1) For the purpose merely of—

- (a) surveying and taking levels of any land ; or
- (b) probing, boring, or sinking pits on or in any land, or otherwise examining the soil thereof ; or
- (c) doing anything necessary for ascertaining the suitability of any land for the purposes of the undertaking ; or
- (d) setting out the line of the works,

Promoters may enter and examine land before payment of compensation.
Cf. *ibid.*, s. 84 (part).
Cf. 1154, 1914, s. 12.

the promoters, after giving not less than three or more than fourteen days' notice to the owners or occupiers thereof, may enter upon the land without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

(2) If the amount of such compensation is not agreed between the owner or occupier and the promoters, the same shall be determined in the same manner as disputed claims for compensation.

69. (1) If a sufficient and proper notice of claim has been delivered to the promoters in respect of any land required to be taken or permanently used for the purposes of and under the powers of this Act or the Special Act, and the promoters desire to enter upon and use the land before the compensation therefor has been agreed or determined and paid to the persons entitled thereto, the promoters may—

If promoters desire to enter before payment, compensation to be paid into Court.
Cf. 6, 1847, s. 85, 86.
26, 1855-6, s. 7.

- (a) pay into the Supreme Court, by way of security, either the amount of compensation claimed by the person who does not consent to such entry or a sum determined by a Judge of the Supreme Court on application by the promoters ; and
- (b) give to such non-consenting person a bond in a penal sum equal to the sum paid into Court as aforesaid.

(2) Such

(2) Such moneys shall be paid into Court to the credit of such non-consenting person.

(3) The said bond shall be under the common seal of the promoters, if they are a body corporate, or if not, under the hands and seals of the promoters or of any two of them, and shall be conditioned for the payment to the non-consenting person or for the payment into the Supreme Court for the benefit of the persons interested in the land (as according to the provisions of this Act the case may require) of the compensation payable by the promoters for the land, together with interest thereon at the rate of Five Pounds per centum per annum from the time of entering on the land until the compensation is paid as aforesaid.

(4) Upon the moneys being paid into Court as aforesaid, and the bond being delivered or tendered to the non-consenting person, the promoters may enter upon and use the land.

(5) Upon the moneys being paid into the Supreme Court as aforesaid the proper officer of the Court shall give to the promoters or to the persons paying in the moneys, by their direction, a receipt for the money, specifying therein for what purpose and to whose credit the same has been paid into Court.

Moneys paid into Court to remain as a security, and to be applied under the direction of the Court.

Ibid., s. 87.

70. (1) The moneys paid into Court shall remain in the Supreme Court by way of security to the persons whose land is entered upon for the performance of the condition of the bond given by the promoters.

(2) Such moneys may, on application by the promoters to a Judge of the Supreme Court, be ordered to be invested in Government or real securities, and accumulated.

(3) Upon the condition of the said bond being fully performed, any Judge of the Supreme Court may, upon the like application, order the moneys so paid into Court, or the funds in which the same have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters.

(4) If the condition of the bond has not been fully performed, any Judge of the said Court may, on the application of any of the persons for whose security such moneys have been paid into Court, order the same or any part thereof to be applied in such manner as he thinks fit, for the benefit of such persons.

Possession of land may be given to promoters.

26, 1855-6, s. 5.

71. (1) If, for twenty-one days after the due service of the notice to treat, any person to whom the notice is given fails to deliver his notice of claim in respect of the land to which the notice to treat relates, and such person offers any obstruction to the undertaking or the works thereof, the promoters may apply to any Special Magistrate to inquire into the claim of such person.

(2) Upon such application and upon reasonable evidence of the facts being furnished to him by the promoters, such Special Magistrate may summon such person to appear before him at a time and place to be named in the summons.

(3) At

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(3) At the time and place named in the summons such Special Magistrate may inquire into the title of such person to the land, and for that purpose may examine the parties and any witnesses upon oath, and administer the oaths necessary for that purpose.

(4) If upon such inquiry it appears that such person has no valid title to the lawful possession of the land, or if such person is absent from such inquiry, then, upon proof of due service of the summons, such person shall, as against the promoters, be deemed a trespasser on the land, and thereupon the Special Magistrate may immediately issue his warrant under his hand to some one or more person or persons named therein, commanding him or them within a period to be therein named, being not less than seven nor more than fourteen clear days from the date of the warrant, to enter (by force if needful) into the land, and to give possession thereof to the promoters, for the purpose of affording them protection and facility in executing the works of the undertaking.

(5) The costs of every such inquiry shall be in the discretion of the Special Magistrate, and he shall settle the amount thereof.

72. When any land has been purchased or taken under this Act or the Special Act for the purposes of the Special Act, the promoters, and all persons authorised by them, may enter any land—

Power to occupy and use land temporarily.
Cf. 1154, 1914, s. 13.

- (a) being within a distance of five hundred yards from the nearest boundary of the land so purchased or taken ; and
- (b) not being a garden, orchard, or plantation attached or belonging to a house, or a park, planted walk, avenue, or ground ornamentally planted ; and
- (c) not being within a distance of five hundred yards from the dwelling-house of the owner of the land so entered,

and may occupy the land so entered so long as may be necessary for the purposes of any works connected with the carrying out of the undertaking.

73. (1) The promoters and all persons authorised by them may, in connection with the carrying out of the undertaking, exercise on or in relation to any land occupied by them under section 72 all or any of the following powers, namely, they may—

Power to take materials and make roads on land so occupied.
Cf. *ibid.*, s. 14.

- (a) take clay, stone, gravel, earth, timber, wood, or material, or things required for carrying out the undertaking ;
 - (b) make cuttings or excavations ;
 - (c) deposit clay, stone, gravel, earth, timber, wood, materials, or other things ;
 - (d) manufacture goods or articles required for carrying out the undertaking ;
 - (e) erect workshops, sheds, and buildings, of a temporary character ;
 - (f) make roads.
- (2) The

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(2) The power to take clay, stone, gravel, or earth shall not be exercised in respect of any stone or slate quarry, brickfield, or other like place commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same.

Rent for temporary occupation and compensation for damages.

Cf. *ibid.*, s. 15.

Cf. Comm. 13, 1906, s. 24.

74. (1) When the promoters or any person authorised by them enters any land and temporarily occupies it under section 72, the promoters shall pay to the owner or occupier of the land, as the case requires, a rent for the occupation of the land.

(2) The amount of rent and the times of payment shall be settled by agreement between the promoters and the owner or occupier, or, if they cannot agree, then on the application of the promoters, by any Court having jurisdiction to entertain an action for compensation under this Act.

(3) Nothing in this section shall take away the right of any person to compensation for damage sustained by reason of the exercise of any power under this Part of this Act.

Fencing of land temporarily occupied.

Cf. 1154, 1914, s. 16.

75. The promoters shall, if required by the owner or occupier of any land occupied under section 72, separate such land from any adjoining land by a sufficient fence, with such gates as may be necessary for the convenient occupation of such adjoining land.

Penalty on promoters entering upon land without consent before payment.

6, 1847, s. 89.

76. (1) If the promoters, or any of their contractors, except as aforesaid, wilfully enter upon and take possession of any land without the consent of the owner and occupier, or without having made payment for the benefit of the persons interested in the land or such payment by way of security as provided by this Part, the promoters shall forfeit to the person in possession of the land the sum of Ten Pounds over and above the amount of any damage done to the land by reason of such entry and taking possession. Such penalty and damage respectively may be recovered summarily before any Special Magistrate.

(2) If the promoters or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of the land, the promoters shall be liable to forfeit the sum of Twenty-five Pounds for every day they or their contractors unlawfully remain in possession. Such penalty shall be recoverable by the person in possession of the land, with costs, as a debt by action in any Court of competent jurisdiction.

(3) The decision of any such Special Magistrate under this section shall not be conclusive as to the right of entry on any land by the promoters.

(4) Nothing herein contained shall subject the promoters to the payment of any such penalties as aforesaid if they have *bona fide* and without collusion paid the compensation agreed or determined to be paid in respect of the land in question—

(a) to any person whom the promoters reasonably believed to be entitled thereto; or

(b) into

Ibid., s. 90.

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- (b) into Court, or to trustees, or otherwise, under Division IV. of Part IV. of this Act, or into Court by way of security under this Part of this Act for the benefit of the persons whom the promoters reasonably believed to be the persons interested in the land,

although such person or persons may not have been legally entitled thereto.

77. (1) In any case where, according to the provisions of this Act or the Special Act, the promoters are authorised to enter upon and take possession of or occupy any land required for the purposes of or in connection with the carrying out of the undertaking, if the owner or occupier of the land or any other person refuses to give up possession thereof, or hinders the promoters from entering upon or taking possession of or occupying or using the same, the promoters may issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same.

Proceedings in case of refusal to deliver possession of land.
Cf. *ibid.*, s. 91.

(2) Upon receipt of such warrant the Sheriff shall deliver possession of the land accordingly, and the costs accruing by reason of the issuing and execution of such warrant shall be paid by the person so refusing or hindering.

(3) The amount of such costs shall be settled by the Sheriff, and—

- i. such costs shall be deducted and retained by the promoters from the compensation, if any, then payable by them to the person so refusing or hindering; or
- ii. if no such compensation is payable to such person, or if it is less than the amount of such costs, then such costs, or the excess thereof beyond such compensation may, if not paid on demand, be levied by distress. Any Justice upon application to him shall issue his warrant for that purpose.

78. (1) If at any time after the promoters have entered upon any land which, under the provisions of this Act or the Special Act they are authorised to take, and which are permanently required for the purposes of the Special Act, any person appears to be entitled to any estate or interest in the land which the promoters have, through mistake or inadvertence, failed or omitted duly to take, or to pay compensation for, then, whether the period allowed for the taking of land has expired or not, the promoters may remain in the undisturbed possession of the land.

Where interests in land overlooked, promoters may remain in possession but must pay compensation.
Ibid., ss. 111, 112.

(2) The promoters shall—

- (a) if such estate or interest is not disputed by them, within six months after delivery upon them of notice of claim in respect of such estate or interest; or
- (b) if the same is disputed, then within six months after the right thereto is finally established by law in favor of the person claiming the same, purchase

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purchase or pay compensation for the same, and shall also pay to such persons, or to any other person who establishes a right thereto, full compensation for the mesne profits or interest which would have accrued to such persons respectively in respect of such estate or interest during the interval between the entry of the promoters on the land and the time of the payment of such compensation by the promoters, so far as such mesne profits or interest is recoverable in law or equity.

(3) Such compensation shall be agreed, or determined, and paid, in like manner as, according to the provisions of this Act, the same respectively would have been agreed, determined, or paid, in case the promoters had taken such estate or interest before their entering upon the land, or as near thereto as circumstances will admit.

(4) Such compensation shall be assessed as if notice to treat had been given by the promoters in respect of such estate or interest at the time the land was entered upon by them, and as if no improvements or works has been made or constructed in or on the land by the promoters.

Promoters to pay costs of litigation. *Ibid.*, s. 113.

(5) Before the promoters become absolutely entitled to any such estate or interest, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate or interest has been disputed by them and determined in favor of the person claiming the same, pay the full costs and expenses of any proceedings for the determination or recovery of the same to the persons with whom any such litigation in respect thereof has taken place.

(6) Such costs and expenses shall, if disputed, be taxed by the proper officer of the Court in which the litigation took place.

(7) Such costs and expenses shall be in addition to the compensation payable in respect of such estate or interest.

Meaning of "estate or interest" in this section.

(8) Without in any way limiting the meaning of the words "estate or interest" in the other provisions of this Act, the said words shall in this section include any estate or interest in land (legal or equitable), and any easement, right, power, privilege, lease, mortgage, charge, or other encumbrance, in, under, over, or affecting or in connection with land.

If land is not required for undertaking, promoters to dispose of same. *Cf.* 6, 1847, s. 114.

79. If any land which has been acquired by the promoters under the provisions of this Act or the Special Act is not or is no longer required for the purposes of the works or undertaking, the promoters shall sell such superfluous land.

Land to be offered to owners of land from which they were originally taken, or to adjoining owners. *Ibid.*, s. 115.

80. (1) Before the promoters sell any such superfluous land, they shall, unless such land is situate within a town or is land built upon or used for building purposes, first offer to sell the same to the person then entitled to the land (if any) from which the same was originally severed.

(2) If such person refuses to purchase the same, or cannot be found after diligent inquiry, then the promoters shall offer to sell the same

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same to the person or to the several persons whose land immediately adjoins the land so proposed to be sold, provided such lastmentioned person or persons are capable of entering into a contract for the purchase of the land.

(3) Where more than one person is entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another, in such order as the promoters think fit.

(4) If any such person desires to purchase the land, then within six weeks after the offer of sale by the promoters, he shall signify to the promoters his desire to do so. *Ibid.*, s. 116.

(5) If such person refuses such offer, or if for the said six weeks he does not signify his desire to purchase the land, his right of pre-emption in respect of the land included in such offer shall cease.

(6) A declaration in writing made before a Justice by some person not interested in the matter in question, stating—

- (a) that such offer was made and was refused ; or
- (b) that such offer was made and was not accepted within six weeks from the time of making the same ; or
- (c) that any person or all the persons entitled to the right of pre-emption cannot be found after diligent inquiry, or are not capable of entering into a contract for the purchase of the land,

shall, in all Courts, be sufficient evidence of the facts therein stated.

81. If any person entitled to such right of pre-emption desires to purchase any land, and such person and the promoters do not agree as to the price thereof, then such price shall, on the application of the promoters, be determined in the same manner as disputed claims for compensation.

If not agreed, price to be determined under Part IV. *Ibid.*, s. 117.

82. (1) Upon payment or tender to the promoters of the undertaking of the purchase-money agreed upon or determined as aforesaid, the promoters shall convey the land to the purchasers thereof.

Land to be conveyed to purchasers. *Ibid.*, s. 118.

(2) Such conveyance shall be effectual to vest the land comprised therein in the purchaser of the land for the estate which has been purchased by him.

(3) A receipt under the common seal of the promoters, if they are a body corporate, or, if they are not a body corporate, under the hands and seals of the promoters or of any two of them, shall be a sufficient discharge to the purchaser for the purchase-money in such receipt expressed to be received.

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Rules of Court may
be made.
New.

83. Rules of Court may be made under the Supreme Court Act, 1878, with respect to—

- (a) the payment of moneys into the Supreme Court and the investment or application of such moneys under this Act; and
- (b) proceedings in or before and applications and appeals to the Supreme Court or a Judge thereof under this Act; and
- (c) the taxing of costs by the Master or other officer of the Supreme Court under this Act; and
- (d) the fees payable in respect of any matter or thing arising under any Rules of Court made by virtue of this Act,

and the provisions of Part V. of the said Act shall, so far as the same are applicable, apply to rules made by virtue of the powers hereby conferred.

Taxes, rates, &c., to
be made good.
6, 1847, s. 120.

84. (1) If the promoters become possessed by virtue of this Act or the Special Act of any land charged with any tax, rate, or assessment imposed by law, they shall from time to time until the works are completed and assessed to such tax, rate, or assessment, be liable to make good the deficiency in the several assessments for any tax, rate, or assessment by reason of the land having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which the land, with any building thereon, was valued or rated at the time of the passing of the Special Act.

(2) On demand of the deficiency, the promoters shall pay such deficiency to the collector of the tax, rate, or assessment.

(3) If at any time the promoters think fit to redeem the tax, rate, or assessment, they may do so in accordance with any powers given in that behalf.

Distress, how to be
levied.
Ibid., s. 125.

85. (1) Where in this Act or the Special Act any sum of money, whether in the nature of penalty, cost, or otherwise, is to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the person liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned on demand to the person whose goods have been distrained.

Distress not unlawful
for want of form.
Ibid., s. 128.

(2) No distress levied by virtue of this Act or the Special Act shall be deemed unlawful, nor shall the person levying the same be deemed a trespasser, on account of any defect or want of form in
the

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the summons, conviction, warrant, or other proceeding relating thereto, nor shall such person be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect, want of form, or irregularity may recover full satisfaction by action in any Court of competent jurisdiction for any special damage suffered by them.

86. (1) All actions and prosecutions against any person for anything done or purporting to be done in pursuance of this Act shall be commenced within six months after the act complained of was committed, and not otherwise.

Proceedings against persons acting under this Act or Special Act.

Cf. *ibid.*, s. 122.

(2) Notice in writing of every such action, and of the cause thereof, shall be given to the defendant ten days at least before the commencement of the action.

(3) In any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereon.

(4) No plaintiff shall succeed in any such action if tender of sufficient amends has been made before action brought, or if a sufficient sum of money has been paid into Court after action brought by or on behalf of the defendant together with the costs incurred up to that time.

(5) If a verdict is given for the defendant, or the plaintiff becomes non-suited or discontinues any such action after issue joined, or if judgment is given against the plaintiff, the defendant shall recover his full costs as between solicitor and client, and have the like remedy for the same as any defendant has by law in other cases.

(6) Notwithstanding that a verdict has been given for the plaintiff in any such action, the plaintiff shall not have costs against the defendant unless the Court before which the trial takes place certifies its approbation of the action and the verdict obtained thereon.

87. (a) Any person who has been duly summoned under this Act or the Special Act to give evidence, and to whom a tender of his reasonable expenses has been made, who fails to appear at the time and place specified in the summons without sufficient cause; and

Penalty on witnesses making default.

Ibid., s. 45.

(b) any person, whether summoned or not, who appears as a witness and refuses to be examined on oath touching the subject-matter in question,

shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Twenty Pounds.

88. Any person who, upon any examination upon oath under the provisions of this Act or the Special Act, wilfully and corruptly gives false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

Ibid., s. 135.

PART VIII.

Compulsory Acquisition of Land Act.—1925.

Summary proceed-
ings for offences.

89. All proceedings in respect of offences against this Act (other than any indictable offence) shall be disposed of summarily.

Appeal.

90. There shall be an appeal in respect of proceedings in respect of offences against this Act.

Special case.

91. In the event of an appeal in respect of proceedings in respect of offences against this Act a special case may be stated.

Regulations.

92. The Governor may make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to or carrying out this Act.

Service by post.
Cf. Comm. 13, 1906,
s. 65.

93. Any notice, claim, or document required by this Act to be served on the promoters or on any person may be served by post.

In the name and on behalf of His Majesty, I hereby assent to
this Bill.

TOM BRIDGES, Governor.

Compulsory Acquisition of Land Act.—1925.

THE SCHEDULE.

Section 4

Reference to Acts.	Title or Short Title of Acts.	Extent of Repeal.
No. 6 of 1847 ...	The Lands Clauses Consolidation Act	The whole
No. 26 of 1855-6	An Act to amend the "Lands Clauses Consolidation Act"	The whole
No. 202 of 1881	Land Clauses Consolidation Amendment Act, 1881	The whole, except section 3, and except section 4 in so far as it amends the Railways Clauses Consolidation Act and any Act amending or incorporating such Act, and except section 15 so far as it applies in respect of a railway
No. 1035 of 1911	The Lands Clauses Consolidation Further Amendment Act 1911	The whole
No. 1163 of 1914	The Lands Clauses Consolidation Further Amendment Act, 1914	The whole
No. 1298 of 1917	Land Clauses Consolidation Further Amendment Act, 1917	The whole
No. 1326 of 1918	Land Clauses Consolidation Further Amendment Act, 1918	The whole