

LANDS RESUMPTION.

No. 88 of 1957.

AN ACT to consolidate and amend the law relating to the acquisition or resumption of estates and interests in land by the Crown.

[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

- Short title.** **1** This Act may be cited as the *Lands Resumption Act 1957*.
- Repeal.** **2** The Acts that are specified in the first schedule are repealed.
- Interpretation.** **3** In this Act, unless the contrary intention appears—
- 1 Geo. V No. 11, s. 4.
No. 69 of 1955, (C'th), s. 5.
- “acquire” means purchase or take;
- “convey” includes surrender, release, transfer, assign, and otherwise assure;
- “Court” means the Supreme Court;
- “Crown land” means land that is the property of the Crown, whether reserved, acquired, or dedicated for a public purpose or not, but does not include an estate or interest granted to a person by the Crown;
- “incumbrance” means a rent-service, rent-charge, chief or other rent, or other charge or incumbrance upon land, other than a mortgage;
- “judge” means a judge in chambers;
- “lease” includes an agreement for a lease;
- “owner” includes, with respect to land, a person who, under this Act, is enabled to sell or convey the land to Her Majesty.
- 4** A person who is seised or possessed of, or entitled to, land, particularly—
- (a) a corporation;
- (b) a tenant in tail or for life;
- Power of persons under disability to sell to Her Majesty.
No. 22 of 1949, s. 9 (1).
C'th., s. 37.

- (c) a married woman restrained from anticipation;
- (d) a guardian;
- (e) the committee of the estate of a lunatic or an idiot;
- (f) the quasi-committee, under section one hundred and fifty-five of the *Supreme Court Civil Procedure Act 1932*, of the estate of a person;
- (g) a person who has the custody or administration of the estate of a defective under the *Mental Deficiency Act 1920*;
- (h) the administrator of a convict's property;
- (j) a trustee;
- (k) an executor or administrator; or
- (l) a person who is for the time being entitled to the receipt of the rents and profits of land—
 - (i) in possession; or
 - (ii) that is subject to a lease for life or for lives and years or for years or for a less interest,

may (by force of this Act and notwithstanding anything to the contrary in any law, memorandum or articles of association, deed, or instrument) sell and convey the land to Her Majesty, and may enter into an agreement for that purpose.

5—(1) The power to sell and convey land under the authority of section four may be exercised—

- (a) by a person, other than a lessee for life or for lives and years or for years or for a less interest, not only on behalf of himself and his heirs, executors, administrators, and successors, but also on behalf of every person who is entitled in reversion, remainder, or expectancy after him, and in defeasance of the estate of every person who is so entitled;
- (b) in the case of a guardian, on behalf of his ward and to the same extent as the ward could exercise that power if he were not under a disability;
- (c) in the case of the committee of the estate of a lunatic or an idiot, on behalf of the lunatic or idiot, and to the same extent as the lunatic or idiot could exercise that power if he were not under a disability;
- (d) in the case of the quasi-committee, under section one hundred and fifty-five of the *Supreme Court Civil Procedure Act 1932*, of the estate of a person, on behalf of that person, and to the same extent as that person could exercise that power if he were not under a disability;

Extent of power of persons under disability to sell.
No. 22 of 1949, s. 9 (2), (3).
C'th., s. 38.

- (e) in the case of a person having the custody or administration of the estate of a defective under the *Mental Deficiency Act 1920*, on behalf of the defective, and to the same extent as the defective could exercise that power if he were not a defective;
- (f) in the case of the administrator of a convict's property, on behalf of the convict, and to the same extent as the convict could exercise that power if he were not a convict; and
- (g) in the case of trustees, executors, or administrators, on behalf of their *cestuis que trustent* (whether persons under a disability or not) to the same extent as the *cestuis que trustent* could exercise that power if they were not under a disability.

(2) The powers conferred by section four and this section on the quasi-committee, under section one hundred and fifty-five of the *Supreme Court Civil Procedure Act 1932*, of the estate of a person to sell and convey land on behalf of that person may, in all cases, be exercised only with the approval of the Court or a judge.

Application of purchase money or compensation where parties not entitled to sell excepting under this Act.
1 Geo. V No. 11, s. 7.
C'th., s. 39.

6—(1) Where land is sold or conveyed to Her Majesty by or acquired from a person who is not entitled to sell or convey the land to Her Majesty except under this Act, the purchase money or compensation may be applied as follows, namely:—

- (a) With the consent of all interested parties, the purchase money or compensation may be paid to a trustee subject to such trusts as are declared by a deed of trust approved by the Crown Solicitor; or
- (b) The purchase money or compensation may be paid to the Registrar of the Court to be applied in accordance with an order of the Court or a judge.

(2) The Court or a judge may, on the application of an interested person, order any purchase money or compensation to be applied as follows, namely:—

- (a) In the discharge of any debt or incumbrance affecting the land, or affecting other land settled therewith to the same or the like uses, trusts, and purposes;
- (b) In the purchase of other land, or of Government securities of the Commonwealth or the State, 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 the purchase money or compensation was paid;
- (c) If the purchase money or compensation has been paid in respect of buildings acquired under the authority of this Act or any Act authorizing the taking of the land for a work or purpose to which that Act relates, or authorizing the

carrying out of a work in connection with any such purpose, in removing or replacing the buildings or substituting others in their stead;

- (d) In such manner as the Court or judge directs; or
- (e) In payment to a person who has become absolutely entitled to the purchase money or compensation.

(3) Where the purchase money or compensation does not exceed two hundred and fifty pounds it may be paid to the persons who would for the time being have been entitled to the rents and profits of the land.

(4) Where any infant, lunatic, or idiot is interested in or entitled to receive any purchase money or compensation, his consent to any application or disposition of the purchase money or compensation may be given by a committee or guardian on his behalf, or the purchase money or compensation may be paid to his committee or guardian.

7—(1) The Court may, on the application of an interested person, order that any purchase money or compensation paid or deposited in respect of land acquired under this Act shall be invested or applied in such manner as the Court considers will give to the parties interested therein, as nearly as may be, the same benefit as they would have had from the land if it had not been acquired under this Act.

Power of Court to make orders as to application of purchase money.
1 Geo. V No. 11, s. 8.
C'th., s. 39.

(2) The costs of and incident to an application under this section, or to an investment ordered under this section, are in the discretion of the Court.

(3) The powers of the Court under this section may be exercised by a judge.

8 If a question arises respecting the title to land in respect whereof any purchase money or compensation is payable under this 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 acquired by Her Majesty, shall be deemed to have been entitled to the land, until the contrary is shown, and, unless the contrary is shown, the person so in possession and all persons claiming under him or consistently with his possession shall be deemed to be entitled to the purchase money or compensation, and it shall be paid and applied accordingly.

Person in possession to be deemed the owner.
1 Geo. V No. 11, s. 9.

PART II.
ACQUISITION OF LAND.
Division I—General.

9—(1) Where under or by virtue of—

- (a) any Act, Her Majesty, or the Governor, or a Minister of the Crown, is authorized or empowered to undertake, construct, or provide a public work, and land is required for the purposes of that work;

Application of Act.
1 Geo. V No. 11, s. 10.

(b) any Act, Her Majesty, or the Governor, or a Minister of the Crown, is empowered to purchase, acquire, or take land for a purpose therein specified or referred to; or

(c) this Act, the Minister is authorized by the Governor to purchase or take land,

the land required may be acquired under, and is subject to, the provisions of this Act.

(2) Except as provided in section sixty-nine, nothing in this Act affects any right of Her Majesty to resume land by virtue of a right reserved in the grant thereof or under section one hundred and seventeen of the *Crown Lands Act 1935*, but land that may be so resumed may be acquired under the provisions of this Act.

10 The Governor may, by order-in-council, authorize the Minister to purchase or take land for a public purpose or public work, and his authorization shall be deemed to be an authority to the Minister under this Act.

11 Land that may be acquired under the provisions of this Act may be acquired—

(a) by agreement in accordance with section twenty; or

(b) compulsorily.

Division II—Compulsory acquisition.

12—(1) Where it is proposed under the provisions of this Act to acquire compulsorily any land (other than incorporeal hereditaments not requiring entry for their enjoyment), the Minister shall serve notice to treat as provided in this section.

(2) A notice to treat shall—

(a) identify the land to be acquired and contain such other particulars as may be prescribed;

(b) contain a statement that if agreement for the surrender of the land is not reached within thirty days after the service of the notice the Governor may take the land compulsorily, and that if he does so the owner will receive a further notice and will then be entitled only to receive compensation as set out in the further notice; and

(c) contain a warning that having received notice to treat the owner cannot do anything to the land that will increase the amount of compensation payable by the Crown.

(3) Land may be identified for the purposes of paragraph (a) of subsection (2) of this section by—

(a) name;

(b) metes and bounds;

Power of Governor to authorize taking of land for public purpose or public work.

1 Geo. V No. 11, s. 11.

Modes of acquisition of land.

Cf. No. 23 of 1949, s. 5. C'th., s. 6.

Notice to treat. C'th., s. 9.

- (c) a sketch plan; or
- (d) any other means that will enable the person receiving the notice to know the approximate location and extent of the land.

(4) A notice to treat shall be served—

- (a) on the occupier, if any, of the land proposed to be affected; and
- (b) if there is no occupier or if he has not power to sell and convey the whole estate or interest proposed to be acquired, on any other person so that the person or persons served can himself or between themselves sell and convey that estate or interest.

(5) A notice to treat to an occupier is sufficient if it is addressed to "The Occupier of (indicating the land)", without naming him.

(6) A notice to treat may be served personally or by registered post, but a notice to the occupier may be served by delivering it to some person apparently sixteen years old or more at the dwelling of the occupier or, if neither the occupier nor any such person can be found on the land, by affixing the notice on the occupier's door or in some other conspicuous place on the land.

(7) Where the land to be acquired is subject to the *Real Property Act* 1862, the Minister shall, at the same time as he gives notice to treat, give a copy of the notice to the Recorder of Titles who shall thereupon make an appropriate entry on the relevant folium of the register book, and the rights under the notice shall be deemed to be an incumbrance for the purposes of section forty of that Act.

(8) The Minister may, at any time before the gazettal of the notification under section thirteen in respect of the land and while there is no concluded agreement for surrender of the land, withdraw the notice to treat by notice similarly served with a copy to the Recorder of Titles, where required, and if the case so requires the Recorder shall cancel the entry of the notice.

(9) When a notice to treat is withdrawn a person who is interested in the land and who has suffered any loss or expense by the giving and withdrawal of the notice is entitled to compensation by the Minister, and the amount thereof shall, in default of agreement, be determined in the same manner as a disputed claim for compensation.

(10) Withdrawal of a notice to treat does not prevent the issue of another notice to treat in respect of the same land.

(11) The relationship between a person on whom a notice to treat has been served and the Crown is, except where otherwise provided in this Act, the same as it would have been if when the notice was served the person served therewith had agreed to sell to the Crown the estate or interest to which the

notice related for an amount to be determined as provided in Part IV, but not so that either party has any right to enforce performance of the notional contract of sale created by this subsection otherwise than in the manner provided by this Act.

(12) A person who has power to sell and convey land to Her Majesty may agree with the Minister on behalf of Her Majesty to consent to the acquisition of the land by notification under section thirteen, and all the estate and interest in the land that the person so agreeing has by this Act or otherwise power to sell and convey may be so acquired notwithstanding the nonfulfilment of any other condition precedent to such a notification.

Gazetted of
notifications.
No. 23 of
1949, s. 13.

13—(1) The Governor may—

(a) in the case of corporeal hereditaments and of chattels real and of incorporeal hereditaments requiring entry for their enjoyment, if at the expiration of thirty days after the service of a notice to treat there is an estate or interest subject to the notice that is not agreed to be surrendered or granted, or if by that time agreement has been reached for the surrender or grant of the whole estate or interest subject to the notice but later for some reason the person or one of the persons who has agreed to surrender or grant refuses to perform his agreement when called on to do so; or

(b) in the case of incorporeal hereditaments not requiring entry for their enjoyment, at any time, by notification published in the *Gazette*, declare that the land is being acquired under this Act for the purpose specified in the notification.

(2) A copy of the notification shall be laid on the table of each House of Parliament within the first fourteen sitting days of the House after its publication in the *Gazette*.

Effect of
notification to
vest land in
Her Majesty.
1 Geo. V No.
11, s. 14.

14 Upon the registration in accordance with section eighteen of a notification under section thirteen, the land described therein, by force of this Act—

(a) reverts to and reverts in Her Majesty absolutely for the purpose specified in the notification, freed and discharged from all estates and interests, save only such as may be expressly excepted or created by the notification; and

(b) the estate and interest of every person who is entitled to the land specified in the notification, unless excepted by the notification, is converted into a claim for compensation.

Notice to
owner.
1 Geo. V No.
11, s. 15.

15—(1) Forthwith after the publication in accordance with section thirteen of a notification that land is being acquired under this Act, the Minister shall cause a copy of the notification, together with a plan of the land, to be served

personally or by registered post upon the owners of the land resident within the State, or such of them as can with reasonable diligence be ascertained.

(2) If an owner cannot after diligent inquiry be found, a copy of the notification, together with a plan of the land, shall be left with the occupier of the land, or if there is no occupier, shall be affixed upon some conspicuous part of the land.

16—(1) A notification whereby land is acquired under this Act (in this section referred to as “the original notification”) may, at any time within six months after the first publication thereof or within such further time as the Governor may allow, be annulled or amended by a subsequent notification in the *Gazette*.

Notice taking land may be annulled or amended.
1 Geo. V No. 11, s. 16.

(2) Except in the case of incorporeal hereditaments not requiring entry for their enjoyment, a notification shall not be amended to include any extra land except by agreement with the owner thereof or where that extra land might, by reason of prior notice to treat, be acquired by notification under section thirteen.

(3) Upon the gazettal of a subsequent notification, the original notification ceases to have effect—

(a) wholly, if annulled; or

(b) to the extent indicated in the subsequent notification, if otherwise.

(4) Effect shall be given to subsection (3) of this section by cancelling, withdrawing, or amending any certificate of title, caveat, memorial, memorandum, or entry in accordance with such provisions (if any) as may be prescribed.

(5) No person is prejudiced in respect of any mortgage, charge, claim, estate, or interest in land by reason of his having, in consequence of the original notification, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation in respect of that mortgage, charge, claim, estate, or interest.

(6) Except as provided by section seventeen, no person has any right of action or claim against the Crown or the Minister for anything done in good faith under a notification before the annulment or amendment thereof.

(7) Nothing in this section limits the power of the Governor to take, by a subsequent notification, the whole or any part of the land mentioned or described in any notification annulled in whole or in part under this section.

(8) In lieu of amending a notification under this section, the Minister may substitute a fresh notification for the original notification, and in respect of land that is subject to both notifications the later notification shall be deemed to have operated from the date on which the original notification took effect.

Compensation on notification of acquisition of land being annulled.

1 Geo. V No. 11, s. 17.

17 When a notification is annulled, a claimant who would otherwise have been entitled to compensation shall be paid by the Minister compensation for any loss or expense by reason of the proceedings for acquisition so terminated, to be agreed upon, or determined as a claim for compensation under the provisions of this Act.

Registration of notification. Cf. C'th., s. 15.

18—(1) Where the land comprised in a notification under section thirteen is subject to the *Real Property Act 1862*, the Minister shall cause a certified copy of the notification and a plan of the land to be lodged in the office of the Recorder of Titles.

(2) The Recorder shall register a notification lodged under subsection (1) of this section by entering a memorial thereof on the folium of the register book containing the title to the land and may make such cancellations, corrections, or entries in the register as he may think necessary to give effect to the notification, and shall endorse the like memorial and cancellations, corrections, or entries upon the grant or certificate of title affected when it is next produced to him and if it is not wholly cancelled either return it or issue a new certificate of title, as he thinks fit but no duty is payable thereon under the *Stamp Duties Act 1931*.

(3) Where the land comprised in a notification under section thirteen is not subject to the *Real Property Act 1862*, the Minister shall register the notification in the Registry of Deeds by lodging a memorial thereof signed by the Minister or the Crown Solicitor and certified as provided by the *Registration of Deeds Act 1935*.

(4) A memorial under subsection (3) of this section shall contain a copy of the notification and of the plan, if any, referred to therein and shall set forth the names and additions of the persons who were seised or possessed of any estate or interest in the land thereby affected and the name of the district or place where the land is situated.

(5) If the last conveyance or document of title of land to which subsection (3) of this section applies is produced to the Crown Solicitor for that purpose he shall make thereon a memorandum of the registration of the notification and of the date thereof.

(6) No fee is payable in respect of the lodging or registration of a notification or memorial in pursuance of this section.

Dedication of land for highways.

19—(1) Where the line of an existing highway is to be altered or widened or a new highway is to be opened, the Minister may obtain compulsorily the dedication of the necessary lands to the use of the public by the same proceedings as nearly as possible as are provided in this Act for taking an easement of way, but the notification under section thirteen shall be in accordance with the form in the second schedule, and on its registration in accordance with section eighteen the land therein described shall be deemed to be dedicated to the use of the public as a highway or part thereof and the persons whose interests are thereby affected shall be deemed to be entitled to compensation under this Act.

(2) Except—

- (a) where a new highway is to be opened;
- (b) in a city or town;
- (c) along lands subdivided for building purposes; and
- (d) where the highway, the line of which is to be altered or widened, is defined on a purchase grant, certificate of title, surrender enrolled, or other public document,

the land to be dedicated may be described by reference only to the existing line and the new line as then set out, but in other cases it shall be described as if the fee therein were being taken.

(3) A person who has a power of sale by virtue of section four or section five over any land has the like power to dedicate that land as a highway.

(4) Nothing in this section limits the right or power of an owner to dedicate land for a highway, but the regulations may prescribe the procedure to be followed and the instruments to be used by the Crown in obtaining dedications of land for highways in prescribed circumstances.

(5) Whether, in the cases mentioned in subsection (1) of this section, a dedication, either compulsory or voluntary, should be obtained or the fee in the surface, height, and depth should be acquired is in the discretion of the Secretary for Lands.

Division III—Purchase by agreement.

20—(1) The Minister may, if he thinks fit, agree with the owners of lands the acquisition of which is authorized by this Act, and with all parties having an estate or interest in those lands, or by this Act enabled to sell and convey them, for the absolute purchase for a consideration in money or money's worth of those lands or such parts thereof as are thought proper, and of all estates and interests of any kind therein.

Power to
purchase
lands by
agreement.

1 Geo. V No.
11, s. 21.

(2) Where the consideration is not the payment of money—

- (a) the contract shall provide for the payment of a sum of money by way of liquidated damages if the agreed consideration is not executed by a day to be specified in the contract; and
- (b) the vendor shall complete his contract upon tender to him of Her Majesty's bond conditioned for the payment of the agreed liquidated damages in the event of non-execution of the consideration, together with interest thereon at the rate of four per cent per annum until payment.

(3) The Crown Solicitor shall furnish the Secretary for Lands with such reasonable particulars of title with respect to land that is purchased under the authority of this section as may be required by the Secretary for Lands for the purpose of being shown upon the maps and records in his office.

Enrolment,
surrenders,
&c.

14 & 15 Vic.,
c. 42, s. 6.
16 & 17 Vic.,
c. 56, s. 6.
Cf. 15 & 16
Geo. V c. 49,
s. 218 (2).

21—(1) All deeds whereby land that is not subject to the *Real Property Act 1862* are hereafter purchased by the Crown shall forthwith be enrolled in the office of the Secretary for Lands and, when so enrolled and without any enrolment thereof in the Supreme Court, are as good and effective as if they were enrolled in the Supreme Court.

(2) A deed that is required to be enrolled under this section shall be copied with a pen or typewriter on suitable sheets of durable paper and the copy so made shall be kept in a locked loose-leaf book.

(3) When a copy of a deed is locked into a book as provided in subsection (2) of this section it shall be deemed to have been duly enrolled of record and the copy locked in the book shall be deemed to be an enrolment of the deed.

(4) A person who removes an enrolment from a book kept for the purposes of this section is liable to a penalty of fifty pounds.

Division IV—Crown lands.

Crown lands.
Cf. 1 Geo. V
No. 11, s. 12.

22—(1) Where power is given to acquire land for any purpose under the provisions of this Act, the Governor may, by order-in-council published in the *Gazette*, set apart any Crown land for that purpose and may, by a subsequent order-in-council so published, revoke, alter, or cancel the setting apart of that land.

(2) Nothing in this section applies to any land that is—

- (a) reserved under section seven of the *Scenery Preservation Act 1915*;
- (b) dedicated under section fourteen of the *Forestry Act 1920* or purchased under section sixteen or reserved under section eighteen of that Act;
- (c) reserved under section twelve of the *Closer Settlement Act 1929*;
- (d) reserved under section seven of the *Crown Lands Act 1935*; or
- (e) by any Act, expressly reserved, dedicated, or set aside in perpetuity for a particular purpose.

Crown land
taken to be
shown upon
the maps and
plans in the
office of the
Secretary
for Lands.

23 Where an order-in-council sets apart any Crown land in pursuance of section twenty-two, the Secretary for Lands shall cause the land to which the order-in-council relates to be shown upon the proper maps and records in his office so that the land will not be disposed of for any purpose other than the purpose specified in the order-in-council.

PART III.

POWERS IN RELATION TO LANDS.

Power to
enter and
examine
lands.

1 Geo. V No.
11, s. 23.
C'th., s. 16.

24—(1) Upon reasonable notice to the occupier the Minister and a person who is authorized by him in that behalf may—

- (a) enter upon any land;

- (b) make surveys, take levels, sink pits, and examine the soil; and
- (c) do anything necessary for ascertaining the suitability of the land for any purpose for which land may be taken.

25—(1) Where a notice to treat has been given in respect of any land and it appears to the Governor that immediate possession of the land is an urgent public necessity he may, by order-in-council, empower the Minister forthwith to enter and retain the land for the purpose for which it is proposed to be taken.

Immediate entry in cases of urgency.

(2) If entry is made under this section and the notice to treat is withdrawn, any acts of the Minister under this section are matters in respect of which compensation is payable under subsection (9) of section twelve.

26 Where land has been acquired under this Act for any purpose for which land may be so acquired, the Minister and a person who is authorized by him in that behalf may upon reasonable notice to the occupier enter any land—

Power to occupy lands temporarily.
1 Geo. V No. 11, s. 24.
C'th., s. 17.

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

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 purpose for which the firstmentioned land is acquired.

27—(1) The Minister and a person who is authorized by him in that behalf may, in connection with the carrying out of a purpose for which land may be acquired under this Act, on or in relation to any land occupied by him under this Part—

Power to take materials, make roads, &c., on adjacent lands.

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

1 Geo. V No. 11, s. 25.
C'th., s. 18.

(2) The power to take clay, stone, gravel, sand, 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 them.

Rent for temporary occupation: Compensation for damage.

1 Geo. V No. 11, s. 26.
C'th., s. 18.

28—(1) Where the Minister or a person authorized by him enters land and temporarily occupies it under the powers conferred by this Part, the Minister shall, out of the moneys provided for the purpose for which the entry and occupation is made, 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 times of payment shall be settled by agreement between the Minister and the owner or occupier, or, if they cannot agree, by the Court on the application of the Minister.

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

Minister to fence land in certain cases.

1 Geo. V No. 11, s. 27.

29—(1) When the Minister enters into possession of any land under this Act, and the owner thereof requires for the protection of the property adjoining the land acquired that the land acquired shall be fenced where it adjoins his land, the Minister, before authorizing any operation on the land acquired, shall cause such fence as is necessary to be erected.

(2) A dispute as to the necessity for protection as provided by this section shall be settled by arbitration under the *Arbitration Act 1892*, and that Act applies to the arbitration as if the arbitration were pursuant to a submission under that Act.

PART IV.

COMPENSATION.

Division I—Right to compensation.

Right to compensation.

1 Geo. V No. 11, s. 30.

30 Where an estate or interest is acquired compulsorily under this Act, the person entitled thereto, if deprived thereof wholly or in part, is entitled to compensation under this Act.

Compensation.

C'th., s. 23.

31—(1) In determining compensation under this Act, regard shall be had to the following matters:—

- (a) The value of the land acquired;
- (b) The damage caused by severance of the land acquired to other land of the person entitled to compensation; and
- (c) The enhancement or depreciation in value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out of the purpose for which the acquired land was acquired.

(2) The enhancement or depreciation in value shall be set off against, or added to, the amount of the value and damage specified in paragraphs (a) and (b) of subsection (1) of this section.

Value of land.

32—(1) Compensation for land taken under this Act shall, in a case where notice to treat has been given, be assessed, as at the date of giving the notice, in accordance with subsection (11) of section twelve, and in any other case shall be assessed as at the date of the notification under section thirteen.

(2) Where the value of land is an element in assessing compensation under this Act, it shall be assessed without reference to any increase in value arising from the proposal to carry out the purpose for which the land is acquired.

33—(1) If a person who has a greater interest than as a tenant at will of any land taken under this Act makes a claim for compensation in respect of an unexpired term of interest under a lease, the Crown Solicitor may, by demand in writing, require him to produce the lease in respect of which the claim is made, or the best evidence in his power of that lease, or where there is no written lease the best evidence in his power of his title.

Production of lease where lessee claims greater interest than as tenant at will.
1 Geo. V No. 11, s. 36.

(2) If a demand under this section is not complied with within twenty-one days after service thereof on the claimant, he shall be deemed to be a tenant holding—

- (a) in the case of land used for farming and similar purposes, or commercial and industrial premises of greater assessed annual value than five thousand pounds, or houses of greater assessed annual value than one thousand pounds, from year to year;
- (b) in the case of other commercial and industrial premises of greater assessed annual value than five hundred pounds and other houses of greater assessed annual value than two hundred and fifty pounds, from month to month; and
- (c) in any other case, from week to week,

and is not entitled to any further compensation than as such a tenant.

34—(1) Subject to subsection (3) of this section, where, by reason of the execution of any powers under Part III, the owner or occupier of any land suffers damage he is entitled to compensation under this Act.

Compensation for entry on and occupation of land.
1 Geo. V No. 11, s. 37.
C'th., s. 19.

(2) Where the Minister or a person authorized by him enters into the temporary occupation of any land, the compensation includes—

- (a) damage of a temporary as well as of a permanent character; and
- (b) the value of all clay, stone, gravel, sand, earth, timber, wood, materials, or things taken for carrying out the purpose for which the Minister's power was exercised.

(3) No compensation is payable for any act, matter, or thing done under Part III, if it is done in the exercise of a right reserved by an Act or by a grant or other instrument.

Division II—Claims for compensation.

35—(1) A person who claims to be entitled to compensation under this Act may make a claim for compensation in accordance with this section.

Claim for compensation.
1 Geo. V No. 11, s. 38.
C'th., s. 20
(1).

(2) A claim for compensation—

- (a) shall be in writing;
- (b) shall be served on the Minister;
- (c) shall set forth the prescribed particulars; and
- (d) shall be in accordance with the prescribed form applicable to the case.

(3) A claim for compensation shall be deemed to be made when it has been served on the Minister.

Time for making claim for compensation.

1 Geo. V No. 11, s. 39. C'th., s. 20 (2).

36 A claim for compensation shall be made—

- (a) where the claim is for land acquired, within sixty days after the publication of the notification of acquisition; or
- (b) where the claim is for damage suffered by reason of the exercise of any powers under Part III, within sixty days after the completion of the acts in respect of which compensation is claimed.

Procedure on receipt of claim for compensation.

1 Geo. V No. 11, s. 40. C'th., s. 20 (3).

37—(1) Within sixty days after a claim for compensation has been made, the Minister shall cause the claim to be examined and a report made to him as to the value of the land of the claimant or the amount of damage to which the claimant is entitled, as the case may be.

(2) After the receipt of the report the Minister shall—

- (a) notify the claimant that he admits the claim for compensation, and that the compensation claimed will be paid to the claimant on compliance with this Act;
- (b) offer the claimant such amount as the Minister thinks 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 he disputes the claim for compensation.

(3) The claimant shall, within thirty days after the receipt of the offer of the Minister, by notice in writing, notify the Minister whether he does or does not accept the offer.

When claim becomes a disputed claim for compensation.

1 Geo. V No. 11, s. 41.

38 If the Minister—

- (a) offers the claimant an amount in satisfaction of the claim for compensation, and the claimant does not within thirty days after the receipt of the offer accept it; or
- (b) notifies the claimant that he disputes the claim for compensation,

the claim for compensation becomes a disputed claim for compensation.

39 Where the Minister has notice that—

- (a) an unascertained person has an estate or interest in any land acquired or to be acquired under this Act; or
- (b) some person on whom personal service of notices cannot reasonably be effected has an estate or interest in that land,

and that that person, if ascertained or found, would have a claim to compensation independently of any party to whom a notice to treat has been given under section twelve, the Minister may give notice to treat to the Public Trustee on behalf of that person, and the Public Trustee may take any action in respect of that person's estate or interest in the land which he might take if he were the beneficial owner thereof, and has a charge for his costs and expenses upon any part of the compensation that is payable to that person under this Act.

Division III—Determination of disputed claims for compensation.

40—(1) Subject to this Act, a disputed claim for compensation may be determined—

- (a) by agreement between the Minister and the claimant;
- (b) with the consent in writing of the Minister and the claimant, by arbitration under the *Arbitration Act 1892*;
- (c) by an action for compensation by the claimant against the Minister; or
- (d) by a proceeding in the Court on the application of the Minister.

(2) Where the Minister and the claimant consent to a disputed claim for compensation being determined by arbitration, the *Arbitration Act 1892* applies to the arbitration as if it were pursuant to a submission under that Act.

41 An action for compensation may be instituted by the claimant against the Minister in the Court, and the action shall be heard and determined in the same manner as ordinary actions, except that—

- (a) the action shall be tried without a jury;
- (b) the Court shall not direct a reference to arbitration unless by consent of the parties; and
- (c) the costs are in the discretion of the Court.

42—(1) If within three months after a claim for compensation becomes a disputed claim for compensation—

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

Public Trustee to represent unascertained or missing claimants.
Cf. No. 22 of 1949, s. 28.

Methods of determining disputed claims.

1 Geo. V No. 11, s. 42.

Action for compensation.

1 Geo. V No. 11, s. 43.

Determination of compensation on application of the Minister.

1 Geo. V No. 11, s. 44.
C'th., s. 29.

the Minister may apply to a judge for an order calling upon the owner to prosecute his claim within a time specified in the order.

(2) The order shall be served on such persons and in such manner as the judge may direct.

(3) In default of compliance with the order the Court may determine *ex parte* the amount of compensation that is payable and the persons to whom it shall be paid, and the order of the Court is final and conclusive and binding on all persons.

Division IV—Determination of compensation where no claim made.

Case of no claim.

1 Geo. V No. 11, s. 45.

43 Where land has been taken under this Act, and no claim for compensation has been made within three months after the right to make the claim arose, and no application to the Minister for further time to make a claim has been granted or is pending, or if, such an application having been granted, no claim has been made within the time limited by the Minister, the Minister may proceed as provided by section forty-two, and the provisions of that section have effect as if a disputed claim existed.

Division V—Payment of compensation.

Interest on compensation.

1 Geo. V No. 11, s. 46. Cth., s. 36.

44 Compensation under this Act bears interest at the rate of five per cent per annum—

(a) in the case of the acquisition of a corporeal hereditament, a chattel real, or an incorporeal hereditament requiring entry for its enjoyment, from the date of entry by the Crown or any earlier date on which entry was required by, and offered to, the Crown; or

(b) in any other case, from the time when the right to compensation arises,

until payment thereof is made to the claimant or until the amount thereof has been deposited in the Treasury.

Payment of compensation to claimant.

1 Geo. V No. 11, s. 47.

45—(1) A claimant or person who is entitled to a determined amount of compensation is, upon application to the Minister, and upon making out to the satisfaction of the Crown Solicitor a title to the land in respect of which the compensation is payable, and upon complying with subsection (2) of this section, entitled to receive payment of the compensation.

(2) Where an estate or interest in land has been converted into a claim for compensation—

(a) the grant or certificate of title of the land shall be lodged with the Recorder of Titles for the purposes of subsection (2) of section eighteen;

(b) the last conveyance of, or document of title to, the land shall be produced to the Crown Solicitor for the purposes of subsection (5) of that section; or

- (c) the title deeds of the land, or the documents of title to the converted estate or interest, shall be delivered to the Crown Solicitor,

as the Crown Solicitor directs, to ensure that the claimant does not remain able to show a paper title to the converted estate or interest.

46—(1) If at the expiration of three months after the determination of the amount of compensation—

- (a) no application has been made for payment of the compensation; or
 (b) an application has been made for payment of the compensation, but the applicant has, by reason of some default or delay on his part, or by reason of failure on his part to make title, not received payment of the compensation,

the Minister may deposit the amount of compensation in the Treasury.

(2) At the time of the depositing of the amount of compensation, the Minister shall also deposit in the Treasury a statement of the material facts relating to the matter.

47 The Treasurer may, if he thinks fit, and at the risk of the person entitled, invest the compensation deposited with him in the purchase of Government securities of the Commonwealth or the State, and any interest received in respect thereof, less a fair charge to reimburse the Treasurer for the costs of investment and management, shall be deemed to be part of the compensation.

48—(1) Compensation that is deposited in the Treasury may be paid to a claimant—

- (a) upon the direction of the Crown Solicitor; or
 (b) upon an order of the Court, and upon the certificate of the Crown Solicitor that the claimant has complied with this Act to his satisfaction.

(2) No direction shall be given by the Crown Solicitor under this section until the claimant has produced to him evidence of title and has complied with subsection (2) of section forty-five to the satisfaction of the Crown Solicitor.

(3) No certificate under this section shall be given by the Crown Solicitor until the claimant has complied with subsection (2) of section forty-five to the satisfaction of the Crown Solicitor.

(4) In this section “compensation that is deposited in the Treasury” means compensation that is so deposited, or the securities in which it has been invested, or the proceeds of those securities, together with any interest thereon that is deemed to be part of the compensation.

49 The Court may, upon the application of a person who claims to be entitled to compensation deposited in the Treasury, and on proof of his title to its satisfaction, make a declaration that that person is entitled to the compensation, and may make such other order in the premises as it thinks fit.

Deposit of compensation in the Treasury.

1 Geo. V No. 11, s. 48.
 C'th., s. 33.

Investment of compensation deposited in Treasury.

1 Geo. V No. 11, s. 49.

Payment out of compensation deposited in Treasury.

1 Geo. V No. 11, s. 50.

Power of Court to order that claimant is entitled to compensation deposited in Treasury.

1 Geo. V No. 11, s. 51.
 C'th., s. 35.

Payments to be good discharge.

1 Geo. V No. 11, s. 52.

50 A payment of compensation made by the Minister to the person entitled thereto in accordance with this Act is a good and valid discharge to the Minister, and it is not necessary for him to see to the application of any money so paid or deposited or to the performance of any trusts.

Compensation to Crown purchasers.

1 Geo. V No. 11, s. 35 (4).

51 The compensation in respect of land that is under contract of sale from the Crown shall be retained and deducted from the purchase money on the completion of the purchase thereof.

PART V.

MORTGAGES, INCUMBRANCES, AND LEASES.

Division I—Mortgages.

Power of Minister to redeem mortgages.

1 Geo. V No. 11, s. 53.

52—(1) If land that is acquired under this Act is subject to a mortgage, the Minister may pay off the mortgage.

(2) Before exercising the power conferred on him by subsection (1) of this section, the Minister shall give notice to the mortgagee that he intends at or before the expiration of six months from the date of the notice to pay off the mortgage and to pay to the mortgagee the amount to which he is entitled under this section.

(3) The amount to which a mortgagee is entitled under this section is—

- (a) the principal secured by the mortgage;
- (b) the interest due at the date of the notice, and six months' additional interest;
- (c) the costs and charges, if any, due to the mortgagee under the mortgage;
- (d) the mortgagee's costs of discharging the mortgage and conveying his interest in the land to Her Majesty;
- (e) in case the mortgage is paid off prematurely, a sum to meet the costs of reinvestment of the principal; and
- (f) in case the mortgage is paid off prematurely and the rate of interest secured by the mortgage is higher than the interest that can reasonably be expected to be obtained on the reinvestment, regard being had to the then current rate of interest, a sum to meet the loss sustained by the mortgagee by reason of the premature repayment of the principal.

(4) Upon receipt of a notice under subsection (2) of this section and upon payment or tender to him within the time specified in the notice of the amount to which he is entitled under this section, the mortgagee shall execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to Her Majesty.

(5) If a mortgagee fails to execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to Her Majesty as required by this section, the Minister may assess the amount to which the mortgagee is entitled, and may deposit the amount in the Treasury with a statement of the facts relating to the deposit.

(6) After the deposit has been made, the Minister may, for and on behalf of Her Majesty, execute a deed poll containing a description of the land in respect of which, and describing the circumstances in which, the deposit was made, and the names of parties concerned, and may cause the deed poll to be registered in the appropriate registry.

(7) Upon the registration of the deed poll, the land mentioned therein is freed and discharged from the mortgage, and all interest of the mortgagee in the land vests in Her Majesty.

53—(1) Where a mortgage is converted, wholly or in part, into a claim for compensation under this Act, the mortgagee may—

- (a) join with the mortgagor in making a claim for compensation;
- (b) make an independent claim for compensation; or
- (c) by notice to the Minister, waive his right to compensation,

Rights of mortgagee on taking of his interest.

1 Geo. V No. 11, ss. 54, 55. C'th., s. 41.

and the amount of compensation shall be determined by agreement between the Minister and the mortgagor and the mortgagee.

(2) In default of agreement the claims for compensation shall be determined in the same manner as disputed claims for compensation.

54 The compensation to a mortgagee shall be estimated in accordance with the following principles, namely:—

- (a) The mortgage shall be taken to be discharged as from the date of the acquisition of the land, to the extent to which the compensation payable in respect of the land is sufficient to satisfy the mortgage;
- (b) The mortgagee is entitled to interest at the rate secured by the mortgage for six months after the date of the acquisition of the land on so much of the principal as the compensation payable in respect of the land would, after payment of back interest and charges, be sufficient to satisfy;
- (c) The mortgagee is also entitled to the costs of discharging the mortgage; and
- (d) The mortgagee is also entitled, if the principal was not repayable (with or without notice) at the date of the acquisition of the land, to the costs of reinvesting any principal paid off, and, if a loss of interest might reasonably be expected,

Compensation to a mortgagee, how estimated.

1 Geo. V No. 11, s. 56. C'th., s. 46.

regard being had to the rate of interest secured by the mortgage and the rate of interest likely to be obtained on the reinvestment, to compensation for loss of interest.

Mortgagee to have a charge on compensation.

1 Geo. V No. 11, s. 57.

55—(1) The compensation in respect of land that is subject to a mortgage shall be charged with the mortgage unless the mortgagee has waived his right to compensation.

(2) Upon payment or tender of the compensation or any part of it to the mortgagee, he shall execute a discharge of the mortgage to the extent to which the amount paid or tendered is sufficient to satisfy it.

(3) The rights and remedies of the mortgagee are not affected in relation to the remainder, if any, of the mortgage debt, or in relation to any other land that is subject to the mortgage.

Rights of mortgagee not affected in certain cases.

1 Geo. V No. 11, s. 58.

56 Where the mortgagee has waived his right to compensation, the acquisition of the land acquired does not affect the mortgage in relation to any other land that is subject thereto, or in relation to his rights and remedies against the mortgagor.

Division II—Incumbrances.

Apportionment of charges where part of land only acquired.

1 Geo. V No. 11, s. 59.

57 If a part only of land that is subject to an incumbrance is acquired under this Act, the apportionment of the incumbrance may be settled by agreement between the party entitled to the incumbrance, the owner of the land subject to the incumbrance, and the Minister, or in default of agreement, by the Court on the application of the Minister.

Incumbrance to continue as to land not acquired.

1 Geo. V No. 11, s. 60.

58—(1) If any land acquired under this Act was, immediately before its acquisition, subject to an incumbrance jointly with any other land, and the land so acquired is released by virtue of this Act or any instrument from the incumbrance, then, subject to any agreement between the parties, the other land continues to be subject to the whole of the incumbrance or part thereof, as the case requires, and the party entitled to the incumbrance has the same rights and remedies in respect of the land continuing subject to the incumbrance or part thereof as he previously had in respect of the whole of the land.

(2) If an incumbrance is released in pursuance of this Act, the Crown Solicitor shall, upon tender of the instrument creating or conveying the incumbrance to him for the purpose, sign a memorandum indorsed on the instrument specifying the part of the land originally subject to the incumbrance which has been acquired under this Act, and—

- (a) how much, if any, of the incumbrance 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 incumbrance.

(3) A memorandum under subsection (2) of this section shall be made and executed at the expense of the Crown, and is *prima facie* evidence of the facts stated therein.

Division III—Leases.

59—(1) If a part of any land comprised in a lease for a term of years unexpired is acquired under this Act, the rent payable in respect of the land comprised in the lease shall be apportioned between the part acquired and the part not acquired.

Apportionment of rent where part of leased land acquired.
1 Geo. V No. 11, s. 61.

(2) The apportionment shall be settled by agreement between the lessor, the lessee, and the Minister, or by the Court.

(3) After the apportionment has been settled—

- (a) the lessee is, as to all future accruing rent, liable only to the rent apportioned in respect of the part not acquired;
- (b) the lessor has, as against the part not acquired, and as against the lessee, the same rights and remedies for the rent so apportioned as he had, before the apportionment, for the whole rent; and
- (c) all covenants, conditions, and agreements in the lease (except as to the amount of rent) remain in force in relation to the part not acquired.

PART VI.**MISCELLANEOUS.**

60—(1) If at any time after the Crown has entered upon land that might have been acquired under the provisions of this Act for some purpose for which the entry was made and that is permanently required for that purpose, a person appears to be entitled to an estate or interest in the land that the Crown has, through mistake or inadvertence, failed or omitted to acquire, then, whether the period allowed for the taking of land has expired or not, the Crown may remain in the undisturbed possession of the land subject to the provisions of subsections (2) and (3) of this section.

Interest overlooked to be purchased or taken.

21 Vict. No. 11, ss. 75, 76.

(2) Where the Crown remains in possession under subsection (1) of this section—

- (a) if it does not dispute the outstanding estate or interest within three months after service upon it of a notice of claim in respect of that estate or interest; or
- (b) if it does dispute the outstanding estate or interest within three months after the right thereto is finally established by law in favour of the person claiming it,

the Crown shall purchase, or, subject to this Act, take, the outstanding estate or interest, as the case requires, and shall also pay to that person or to any other person who establishes a right thereto, full compensation for the mesne profits or interests that would have accrued to those persons

respectively in respect of the estate or interest during the interval between the notice of claim and the time of the payment of the compensation by the Crown, so far as those mesne profits or interests are recoverable at law or in equity.

(3) If, within the time mentioned in subsection (2) of this section, the Crown does not acquire an outstanding estate or interest, it prevails over any estate or interest of the Crown, but not so that an unregistered estate or interest prevails over a registered estate or interest over which it would not otherwise prevail.

(4) Compensation that is payable in pursuance of this section shall be agreed or determined, and paid, in like manner as, according to the provisions of this Act, it would have been agreed, determined, or paid, in case the Crown had acquired the estate or interest before entering upon the land, or as near thereto as circumstances will admit.

(5) Compensation that is payable in pursuance of this section shall be assessed as if notice to treat had been given by the Minister in respect of the estate or interest at the time the land was entered upon by the Crown, and as if no improvements or works had been made or constructed in or on the land by the Crown.

(6) When compensation is payable in pursuance of this section in respect of an estate or interest in respect of which the Crown has already made payment by way of consideration for the purchase thereof or compensation for the taking thereof to a person who is not entitled to receive it, the Crown may recover from that person the amount that he was not entitled so to receive.

Irregular
occupation.

1 Geo. V No.
11, s. 22.

61—(1) Where, after the commencement of the *Lands Resumption Act 1935*, by reason of an error, omission, or inadvertence land has been occupied for a purpose for which land may be taken under this Act without having been taken in compliance with the provisions of this Act, and that land is afterwards acquired for that purpose as provided by this Act, any claim arising in respect of the irregular occupation shall be included with the claim for compensation in respect of the land, and shall be determined as provided by this Act in conjunction with the claim for compensation.

(2) If in a case to which subsection (1) of this section relates an action or proceeding is commenced against the Crown or against any person in respect of the occupation, a judge on the application of the Minister may stay the action or proceeding and may order that the claim in respect of which it was commenced shall be determined as provided by this section.

(3) Where a claim for compensation is made in respect of land where there has been irregular occupation, so much of the claim as does not relate to the irregular occupation shall be dealt with as if notice to treat had been given at the commencement of the irregular occupation.

(4) No interest shall be paid on compensation under this section in respect of any period before the person to whom the compensation is payable has made a claim on the Crown in respect of the irregular occupation.

62 Any time prescribed in Division II or Division III of Part IV as the time within which any act or thing shall be done or any proceeding shall be taken, in connection with the making or determination of a claim for compensation, may, either before or after the expiration of the time so prescribed, be extended by agreement between the Minister and the claimant or, in default of agreement, by order of a judge made on the application of the Minister or the claimant, and thereupon that act or thing may be done or that proceeding may be taken accordingly within that extended time.

Extension
of time.

63—(1) No person shall—

- (a) assault, resist, or wilfully obstruct a person whom he knows to be a person acting in the exercise of any power or authority conferred on him by or under this Act;
- (b) threaten, intimidate, or use improper or abusive language to a person whom he knows to be a person so acting; or
- (c) instigate or incite a person to do any of the foregoing things.

Obstruction
&c., of persons exercising powers under this Act.
25 Geo. V
No. 65, s. 7.

Penalty: Twenty pounds or six months' imprisonment.

(2) A police officer may arrest, without warrant, a person who commits an offence against paragraph (a) of subsection (1) of this section.

64 If a person who is—

- (a) in possession of land acquired under this Act refuses to give up possession of the land, or hinders the Minister or any person authorized by the Minister from taking possession of the land; or
- (b) in occupation of land refuses to permit the Minister or any person authorized by the Minister to enter upon the land,

Warrant to enforce entry and possession of land.
1 Geo. V No.
11, s. 63.

a judge may, on the application of the Attorney-General, direct the issue of a writ authorizing the Sheriff to deliver the possession of the land or to enforce the entry on the land.

65 All persons claiming any purchase money or compensation shall, at their own expense, when required, produce as prescribed all deeds and documents relating to or evidencing their title to the land in respect of which purchase money or compensation is payable, and particulars of any damage claimed by them.

Claimants to produce title.
1 Geo. V No.
11, s. 64.

Costs of conveyances, &c.
1 Geo. V No. 11, s. 65.
C'th., s. 58.

66—(1) Where land is acquired compulsorily under this Act, the Crown shall pay the reasonable costs, charges, and expenses of producing such documents, and making out and furnishing such abstracts and attested copies, as the Crown Solicitor requires.

(2) If the Crown Solicitor and the party entitled thereto do not agree to the amount of the costs, they shall be taxed by the Registrar of the Court upon the application of either party.

(3) The expense of taxing the costs shall be borne by the Crown, unless on the taxation one-sixth part of the costs or more is disallowed, in which case the expense shall be borne by the party whose costs are taxed, and be deducted from the amount of his costs against the Crown.

(4) The Minister shall forthwith pay to the party entitled thereto the amount that the Registrar certifies to be due in respect of the costs.

Power to dispose of superfluous lands.
Cf. 1 Geo. V No. 11, s. 66 (1), (1A).
No. 22 of 1949, ss. 61, 62.
C'th., s. 58.
10 & 11 Geo. V c. 79, s. 2.

67—(1) Where land that has been acquired under the provisions of this Act or any corresponding previous enactment is no longer required for the purpose for which it was so acquired, that land may, with the Governor's approval and subject to subsection (2) of this section, be disposed of—

- (a) on such terms and conditions, and to such persons, as the Governor approves; or
- (b) by the Commissioner of Crown Lands, under and in accordance with the provisions of the *Crown Lands Act 1935*.

(2) Land shall not, in the circumstances prescribed in subsection (3) of this section be disposed of under the authority of subsection (1) hereof, except in accordance with the following provisions:—

- (a) Before the land is so disposed of, the Minister shall offer to sell the land—
 - (i) if it was severed from other land, to the person from whose land it was severed or his successors in title; or
 - (ii) if it was not severed from other land, to the person from whom it was acquired or his personal representative;
- (b) An offer under paragraph (a) of this subsection shall be made by notice in writing which may be served personally upon the person to whom it is addressed or may be forwarded to him by post at his last-known place of abode, or, if the whereabouts of that person are unknown, may be posted upon the land;
- (c) A person to whom a notice under paragraph (b) of this subsection is addressed may, within three months after the date of the notice, by writing under his hand, accept the Minister's offer and arrange with the Minister for the disposal of the land to him accordingly;

- (d) Where a person accepts an offer under paragraph (c) of this subsection he may make his acceptance subject to agreement on the price and then if that person and the Minister do not agree thereon, the price shall be determined in the manner prescribed for determining disputed claims for compensation as if the Minister were the claimant and the parties shall be deemed to have agreed on the price so determined; and
- (e) If the Minister's offer is not accepted within the time prescribed in paragraph (c) of this subsection the land may be disposed of under subsection (1) of this section, anything to the contrary in this subsection notwithstanding.

(3) The circumstances in which a right to pre-emption under subsection (2) of this section arises are—

- (a) where the land has within the ten years immediately preceding the date on which the Governor's approval under subsection (1) of this section is given been acquired under the provisions of this Act or of any corresponding previous enactment;
- (b) where the land having been so acquired was severed from other land the owner of which is the person who was the owner at the date of severance; and
- (c) where the land having been so acquired was not severed from other land and the person from whom it was acquired is still alive.

(4) A person by whom the right of pre-emption conferred by subsection (2) of this section is or would for the time being be exercisable in respect of any land if it were being disposed of under this section has power at any time to release that right so as to discharge the land or any part thereof to which the release relates from all that right of pre-emption.

(5) A grant of land by the Crown under this section shall not be impeached on the ground that a condition precedent to the grant contained in this section has not been performed, but a person who is deprived of any right or interest by virtue of this subsection is entitled to compensation therefor by the Minister, the amount of which shall, in default of agreement, be determined in the same manner as a disputed claim for compensation.

(6) The proceeds of the sale of any land disposed of under the authority of this section shall be paid to the credit of the fund or account out of which the costs and expenses of the acquisition of the land were defrayed, or, if there is no such fund or account, or if the fund or account has ceased to exist at the time of the disposal of the land, shall be paid into the Consolidated Revenue.

(7) If a payment under subsection (6) of this section into a fund or account would produce an excess therein not appropriated by law to the purpose of that fund or account, the excess shall be paid into such account as the Treasurer may direct.

(8) A return of all land disposed of under the authority of this section, whether by way of sale or lease or otherwise (showing the manner of its disposal), shall be laid on the table of each House of Parliament within the first thirty sitting days of the House after the disposal of the land.

Service by post.

1 Geo. V No. 11, s. 67.

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

Resumption procedure.

69—(1) Where Her Majesty has power to resume land by virtue of a right reserved in the grant thereof the Minister may give notice of resumption to the owner specifying the date on which re-entry will be made on behalf of Her Majesty and having thereon or annexed thereto a plan of the land to be resumed.

(2) A notice of resumption under this section shall be served or otherwise dealt with as provided in section fifteen and the provisions of section eighteen shall be complied with in respect thereof as if it were notification under section thirteen.

(3) Section sixty-four applies to land for which a notice of resumption has been given under this section as if it were land acquired under this Act.

Regulations.

1 Geo. V No. 11, s. 69. C^{th.}, s. 68.

70 The Governor may make regulations for the purposes of this Act.

THE FIRST SCHEDULE.

(Section 2.)

Date and number of Act.	Short title.
1 Geo. V No. 11	<i>Lands Resumption Act 1910.</i>
26 Geo. V No. 40	<i>Lands Resumption Act 1935.</i>
4 Geo. VI No. 11	<i>Lands Resumption (Public Utilities) Act 1940.</i>
8 Geo. VI No. 12	<i>Lands Resumption Act 1944.</i>
9 & 10 Geo. VI No. 59	<i>Lands Resumption Act 1945.</i>

THE SECOND SCHEDULE.

(Section 19.)

Lands Resumption Act 1957.

NOTIFICATION OF COMPULSORY DEDICATION FOR A HIGHWAY.

Notice is hereby given that I, the Minister administering the *Lands Resumption Act 1957*, by virtue of the powers conferred on me by section nineteen of that Act do on behalf

of the owner of the lands situate at _____ and known as
 [or more particularly described in certi-
 ficate of title volume _____ folio _____]
 bounded by [or through which runs]
 dedicate to the use of the public as
 the land described in the schedule hereto.

Given at _____ this _____ day of _____
 M.N. Minister for _____

STOCK.

No. 89 of 1957.

AN ACT to amend the *Stock Act 1932*.

[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania,
 by and with the advice and consent of the Legislative
 Council and House of Assembly, in Parliament assembled,
 as follows:—

1—(1) This Act may be cited as the *Stock Act 1957*.

Short title
and citation.

(2) The *Stock Act 1932*, as subsequently amended, is in
 this Act referred to as the Principal Act.

2 Section thirteen of the Principal Act is amended—

Compensation
to owner of
destroyed
stock.

(a) by omitting from subsection (1) the word
 “Where” and substituting therefor the words
 “Except in a case to which section thirteen A
 applies, where”; and

(b) by omitting from that subsection the words
 “paragraphs II, III, and IV of”.

3 After section thirteen of the Principal Act the following
 section is inserted in Part V:—

“13A—(1) Notwithstanding anything in section thirteen,
 where—

Compensation
where
animal, &c.,
destroyed on
account of
foot and
mouth
disease.

I An animal is destroyed in pursuance of an order
 under section eleven made in relation to the disease
 known as foot and mouth disease: or

II Any fittings that have been in a place in which that
 disease has occurred are ordered, in pursuance of
 the regulations, to be destroyed,

the owner of that animal or of those fittings shall be paid
 compensation in accordance with this section.