

T A S M A N I A.



1857.

ANNO VICESIMO-PRIMO

VICTORIÆ REGINÆ,

English
849 Vic. c. 18. No. 11.
Jan. 84 23 & 24 C. c. 106
32 & 33 C. c. 18

Jan. 84 H.H.C. No. 11

AN ACT to consolidate in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a Public Nature. [4 December, 1857.]

849 Vic c 18]

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Legislative enactments relative to the acquisition of Lands required for Undertakings or Works of a Public Nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves: Be it therefore 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:—

PREAMBLE.

1 This Act shall apply to every undertaking authorised by any Act hereafter passed authorising the purchase or taking of lands for such undertaking, and this Act shall be incorporated therewith; and all the clauses and provisions thereof, save so far as they may be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same are applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act incorporated with such Act, form part thereof, and be construed together therewith, as forming one Act.

Act to apply to all undertakings authorised by Acts hereafter to be passed.

Construction.

Construction of terms in this Act.
“Special Act.”

“Prescribed.”

“The works.”
“The undertaking.”

“Promoters of the undertaking.”

“Lease.”

“Owner.”

“Justices.”

See 48 Vic. No. 1. § 3.

Form in which portions of this Act may be incorporated with other Acts.

Purchase of Lands by Agreement.

Power to purchase lands by agreement.

Construction.

2 The expression “the Special Act” used in this Act shall be construed to mean any Act hereafter passed which authorises the taking of lands for the undertaking to which the same relates, and with which this Act is so incorporated as aforesaid :

The word “prescribed” used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as is prescribed or provided for in the Special Act ; and the sentence in which such word occurs shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the Special Act” had been used :

The expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which by the Special Act are authorised to be executed :

The expression “the promoters of the undertaking” shall mean the parties, whether Company, Undertakers, Commissioners, Trustees, Corporations, or Private Persons, by the Special Act empowered to execute such works or undertaking :

The following terms, both in this and the Special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction ; that is to say,—

The word “lease” shall include an agreement for a lease :

Where, under the provisions of this or the Special Act, or any Act incorporated therewith, any notice is required to be given to the owner of any lands, or where any Act is authorised or required to be done with the consent of any such owner, the word “owner” shall be understood to mean any person or Corporation who, under the provisions of this or the Special Act, would be enabled to sell and convey lands to the promoters of the undertaking :

The word “Justices” shall mean Justices of the Peace for the Colony, who are not interested in the matter ; and where any matter is authorised or required to be done by Two Justices, the expression “Two Justices” shall be understood to mean Two Justices assembled and acting together.

3 In case some portion only of the provisions of this Act is required to be incorporated with Acts hereafter passed, it shall be sufficient, for the purpose of making any such incorporation in any such Act, to enact that the clauses of this Act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act, in the words printed in italics as a heading to the provisions with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein, with reference to the matter to which such Act relates.

Purchase of Lands by Agreement.

4 Subject to the provisions of this and the Special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the Special Act authorised to be taken, and which are required for the purposes of such Act, and with all parties having any

estate or interest in such lands, or by this or the Special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they think proper, and of all estates and interests in such lands of what kind soever.

*Purchase of
Lands by Agree-
ment.*

5 It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid, so to sell, convey, or release, that is to say—all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, or all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the Special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestuique trusts, whether infants, issue born, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the Special Act, if they had respectively been under no disability.

Parties under dis-
ability enabled to
sell and convey.

6 The power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may be lawfully exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Parties under dis-
ability to exercise
other powers.

7 The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, except under the provisions of this or the Special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same has been determined by arbitration, or by the valuation of a surveyor appointed by two Justices under the provision hereinafter contained, be less than is determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party; and if two such surveyors cannot agree in the valuation, then by such third surveyor, as any two Justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two

Amount of com-
pensation in case
of parties under
disability to be
ascertained by
valuation, and
paid into Court.

*Purchase of
Land by Agree-
ment.*

surveyors if they agree, or if not, then the surveyor nominated by the said Justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Supreme Court for the benefit of the parties interested, in manner hereinafter mentioned.

*Purchase of
Lands otherwise
than by Agree-
ment.*

Purchase and taking of Lands otherwise than by Agreement.

Capital to be sub-
scribed before
compulsory
powers of purchase
put in force.

8 Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, 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 to put in force any of the powers of this or the Special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

A certificate of
two Justices to be
evidence that the
capital has been
subscribed.

9 A certificate under the hands of two Justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and on the application of the promoters of the undertaking, and the production of such evidence as such Justices think proper and sufficient, such Justices shall grant such certificate accordingly.

Notice of inten-
tion to take lands.

10 When the promoters of the undertaking require to purchase or take any of the lands which by this or the Special Act or any act incorporated therewith they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey, or release the same, or such of the said parties as, after diligent inquiry, are known to the promoters of the undertaking; and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Service of notices
on owners and
occupiers of land.

11 All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and, in case any such parties are absent from the Colony, or cannot be found after diligent enquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands, and also published in some newspaper in *Hobart Town* and in *Launceston*.

Service of notice
on a corporation
aggregate.

12 If any such party be a corporation aggregate, such notice shall be left at the principal office of business of such corporation, or if no such office can, after diligent enquiry, be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands, and also published in some newspaper in *Hobart Town* and in *Launceston*.

If parties fail to
treat, or in case of

13 If for twenty-one days after the service of such notice any such party fails to state the particulars of his claim in respect of any

such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking do not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the Special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled by arbitration in the manner hereinafter provided.

Purchase of Lands otherwise than by Agreement.

dispute, question to be settled as after mentioned.

14 Unless both parties concur in the appointment of a single Arbitrator, each party, on the request of the other party, shall nominate and appoint one Arbitrator, to whom the disputed amount of compensation shall be referred; and every appointment of an Arbitrator shall be made on the part of the promoters of the undertaking, under the hands of the said promoters or any of them, or of their Secretary or Clerk, and on the part of any other party under the hand of such party, or if such party be a Corporation aggregate under the common seal of such Corporation; and such appointment shall be delivered to the Arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same is made; and after any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after a request in writing, in which is stated the matter so required to be referred to arbitration, has been served by the one party on the other party to appoint an Arbitrator, such last-mentioned party fails to appoint such Arbitrator, then upon such failure the party making the request, and having himself appointed an Arbitrator, may appoint such Arbitrator to act on behalf of both parties, and such Arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single Arbitrator shall be final.

Appointment of Arbitrator when questions are to be determined by arbitration.

15 If, before the matters so referred are determined, any Arbitrator appointed by either party dies, or becomes incapable, the party by whom such Arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of fourteen days after notice in writing from the other party for that purpose, he fails to do so, the remaining or other Arbitrator may proceed *ex parte*; and every Arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former Arbitrator at the time of such his death or disability as aforesaid.

Vacancy of Arbitrators to be supplied.

16 Where more than one Arbitrator has been appointed, such Arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an Umpire to decide on any such matters on which they may differ, or which may be referred to him under the provisions of this or the Special Act; and if such Umpire dies or becomes incapable to act, they shall forthwith, after such death or incapacity, appoint another Umpire in his place, and the decision of every such Umpire on the matters so referred to him shall be final.

Appointment of Umpire.

17 If, in either of the cases aforesaid, the said Arbitrators refuse, or for seven days after the request of either party to such arbitration neglect, to appoint an Umpire, two Justices shall, on the application of either party to such arbitration, appoint an Umpire, and the decision of such Umpire on the matters on which the Arbitrators differ, or which are referred to him under this or the Special Act, shall be final.

Two Justices empowered to appoint an Umpire on neglect of the Arbitrators.

*Purchase of
Lands otherwise
than by Agree-
ment.*

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In case of death
of single Arbitra-
tor, the matter to
begin *de novo*.

If either Arbitra-
tor refuse to act
the other to pro-
ceed *ex parte*.

If Arbitrators fail
to make their
award within
twenty-one days,
the matter to go
to the Umpire.

Power of Arbi-
trators to call for
books, &c.

Arbitrator or
Umpire to make
a declaration.

Costs of arbitra-
tion, how to be
borne.

Award to be
delivered to the
promoters of the
undertaking.

Submission may
be made a rule of
Court.

18 If, when a single Arbitrator has been appointed, such Arbitrator dies or becomes incapable to act before he has made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the Special Act, in the same manner as if such Arbitrator had not been appointed.

19 If, where more than one Arbitrator has been appointed, either of the Arbitrators refuse, or for seven days after notice in writing neglect to act, the other Arbitrator may proceed *ex parte*, and the decision of such other Arbitrator shall be as effectual as if he had been the single Arbitrator appointed by both parties.

20 If, where more than one Arbitrator has been appointed, and where neither of them refuses or neglects to act as aforesaid, such Arbitrators fail to make their award within twenty-one days after the day on which the last of such Arbitrators has been appointed, or within such extended time (if any) as may have been appointed for that purpose by both such Arbitrators under their hands, the matters referred to them shall be determined by the Umpire to be appointed as aforesaid.

21 The said Arbitrators or their Umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

22 Before any Arbitrator or Umpire enters into the consideration of any 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 and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the Act [*naming the Special Act.*]

“ *A. B.* ”

“ Made and subscribed in the presence of ”

And such declaration shall be annexed to the award when made; and if any Arbitrator or Umpire, having made such declaration, wilfully acts contrary thereto, he shall be guilty of a misdemeanor.

23 All the costs of any such arbitration, and incident thereto, to be settled by the Arbitrators, shall be borne by the promoters of the undertaking, unless the Arbitrators award the same or a less sum than has been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the Arbitrators shall be borne by the parties in equal proportions.

24 The Arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party, or any person appointed by him for that purpose.

25 The submission to any such arbitration may be made a rule of the Supreme Court, on the application of either of the parties.

26 No award made with respect to any question referred to arbitration under the provisions of this or the Special Act shall be set aside for irregularity or error in matter of form.

Purchase of Lands otherwise than by Agreement.

27 The purchase money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party, who, by reason of absence from the Colony, is prevented from treating, or who cannot, after diligent enquiry, be found, and the compensation to be paid for any permanent injury to such lands shall be such as may be determined by the valuation of such able practical Surveyor, not interested in the matter, as two Justices nominate for that purpose, as hereinafter mentioned.

Award not void through error in form.

Compensation to absent parties to be determined by a Surveyor appointed by two Justices.

28 Upon application by the promoters of the undertaking to two Justices, and upon proof satisfactory to them that any such party is, by reason of absence from the Colony, prevented from treating, or cannot after diligent inquiry be found, such Justices shall, by writing under their hands, nominate an able practical Surveyor, not interested in the matter, for determining such compensation as aforesaid, and such Surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Two Justices to nominate a Surveyor.

29 Before such Surveyor enters upon the duty of making such valuation as aforesaid, he shall, in the presence of such Justices, or one of them, make and subscribe the declaration following at the foot of such nomination, that is to say—

Declaration to be made by the Surveyor.

“ I, *A. B.*, do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me, and that I am not in any way, directly or indirectly, interested in the matter.

“ *A. B.* ”

“ Made and subscribed in the presence of

And if any Surveyor corruptly or falsely makes such declaration, or, having made such declaration, wilfully acts contrary thereto, he shall be guilty of a misdemeanor.

30 The said nomination and declaration shall be annexed to the valuation to be made by such Surveyor, and shall be preserved together therewith by the promoters of the undertaking ; and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Valuation, &c. to be produced to the owner of the lands on demand.

31 All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Expenses to be borne by promoters.

32 In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the Arbitrators, or Surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the Special Act, or any Act incorporated therewith ; as also to every expense which the owner may have to incur, or has incurred, in the repair or construction of fences in consequence of his land having been so taken.

Purchase money and compensation how to be estimated.

*Purchase of
Lands otherwise
than by Agree-
ment.*

Where compensa-
tion to absent
party has been
determined by a
Surveyor, the
party may have
the same sub-
mitted to arbitra-
tion.

33 When the compensation payable in respect of any lands, or any interest therein, has been ascertained by the valuation of a Surveyor, and deposited in Court under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found, or was absent from the Colony, if such owner or party is dissatisfied with such valuation, it shall be lawful for him, before he has applied to the Court for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Question to be
submitted to the
Arbitrators.

34 The question to be submitted to the Arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum
awarded, pro-
motors to pay
or deposit same
within twenty-one
days.

35 If the Arbitrators award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within twenty-one days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by suit in the Supreme Court.

Costs of the
arbitration.

36 If the Arbitrators determine that the sum so deposited was sufficient, the costs of and incident to such arbitration to be determined by the Arbitrators shall be in the discretion of the Arbitrators; but if the Arbitrators determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

To be settled by
arbitration,
at the option of
the party claiming
compensation.

37 If any party is entitled to any compensation in respect of any lands, or of any interest therein, which have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking have not made satisfaction under the provisions of this or the Special Act, or any Act incorporated therewith, such party may have the same settled by arbitration, and it shall be lawful for him to give notice in writing to the promoters of the undertaking of his desire for such arbitration, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided.

*Application of
Compensation.*

Purchase money
payable to parties
under disability,
amounting to Two
hundred Pounds,
to be deposited in
Court.

*Application of Purchase-money or Compensation coming to Parties having
limited Interests, or prevented from treating or not making Title.*

38 If the purchase-money or compensation payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the

Special Act, or the compensation to be paid for any permanent damage to any such lands amounts to or exceeds the sum of Two hundred Pounds, the same shall be paid into the Supreme Court, and the Registrar shall carry the same to an account to be headed *ex parte* the promoters of the undertaking (describing them by their proper name) in the matter of the Special Act (citing it), pursuant to the method prescribed by any Act or regulation for the time being in force for regulating moneys paid into the said Court; and such moneys shall remain so deposited until the same shall be applied to some one or more of the following purposes; that is to say—

Application of Compensation.

In the purchase, redemption, or discharge of any tax, debt, or incumbrance affecting the land in respect of which such money has been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or,

Application of moneys deposited.

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money has been paid stood settled; or,

If such money is paid in respect of any buildings taken under the authority of this or the Special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Supreme Court may direct; or,

In payment to any party becoming absolutely entitled to such money.

39 Such money may be so applied as aforesaid upon an order of the Supreme Court, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money has been deposited; and until the money can be so applied, it 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 paid to the party who would, for the time being, have been entitled to the rents and profits of the lands.

Order for application and investment meanwhile.

40 If such purchase-money or compensation does not amount to the sum of Two hundred Pounds, and exceeds the sum of Twenty Pounds, the same shall either be paid into Court and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding Two hundred Pounds, or the same may lawfully be paid to two Trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same is payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the Trustees named for the purpose; and the money so paid to such Trustees, and the produce arising therefrom, shall be by such Trustees applied in the manner hereinbefore directed with respect to money paid into Court; but it shall not be necessary to obtain any order of the Court for that purpose.

Sums from £20 to £100 to be deposited, or paid to Trustees.

41 If such money does not exceed the sum of Twenty Pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same is payable, for their own use and

Sums not exceeding £20 to be paid to parties.

Application of Compensation.

benefit; or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

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

42 All sums of money exceeding Twenty Pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who is not entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into Court, or to trustees, in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Supreme Court, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into Court, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith by reason of the taking of such lands, and the making of the works.

Proviso.

Supreme Court may direct application of money in respect of leases or reversions, as they may think just.

43 Where any purchase-money or compensation paid into Court under the provisions of this or the Special Act has been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on such lease or estate, it shall be lawful for the Supreme Court, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey; or, in default, the lands to vest in the promoters of the undertaking, upon a deed poll being executed.

44 Upon deposit in Court in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid, in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the Special Act, or any Act incorporated therewith, the owner of such lands, including in such terms all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal, if they be a corporation; or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default is made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the

undertaking such agreement has been come to, or as between whom and the promoters of the undertaking such purchase money or compensation has been determined by arbitration, or by a Surveyor appointed by two Justices as herein provided, and has been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Application of Compensation.

45 If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking; or if he refuse to convey or release such lands as directed by the promoters of the undertaking; or if any such owner be absent from the Colony, or cannot after diligent inquiry be found, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in Court, to be placed by the Registrar of the Court, except in the cases herein otherwise provided for, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the Court.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

46 Upon any such deposit of money as last aforesaid being made, the Registrar of the Court shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same has been received, and in respect of what purchase the same has been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their Common Seal, if they be a Corporation; or if they be not a Corporation, under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit has been made, and declaring the circumstances under which, and the names of the parties to whose credit, such deposit has been made; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation has been deposited, shall vest absolutely in the promoters of the undertaking, and as against such parties, they shall be entitled to immediate possession of such lands.

Upon deposit being made, a receipt to be given, and the lands to vest upon a deed poll being executed.

47 Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same has been so deposited, or any part of such lands, or any interest in the same, the Supreme Court may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in Government or real securities, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court seems fit.

Application of moneys so deposited.

48 If any question arises respecting the title to the lands in respect whereof such moneys have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners

Party in possession to be deemed the owner.

Application of Compensation.

thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the securities in which the same have been invested, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

49 In all cases of moneys deposited in Court under the provisions of this or the Special Act, or any Act incorporated therewith, except where such moneys have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same are payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Supreme Court to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; that is to say—the costs of the purchase or taking of the lands, or which have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys are invested, and for the payment out of Court of the principal of such moneys, or of the securities whereon the same are invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it appears to the Supreme Court that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

*Conveyances of Lands.**Form of conveyance.**Conveyances of Lands.*

50 The conveyances of lands to be purchased under the provisions of this or the Special Act, or any Act incorporated therewith, may be according to the form in the Schedule, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the form in the Schedule, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and destroy all estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

51 The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

*Conveyances of
Lands.*

Costs of conveyance.

52 If the promoters of the undertaking and the party entitled to any such costs do not agree as to the amount thereof, such costs shall be taxed by the taxing Officer of the Supreme Court, upon an order of the same Court, or of one of the Judges thereof, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said Officer certifies to be due in respect to such costs to the party entitled thereto; or in default thereof the same may be recovered in the same way as any other costs payable under an order of the Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs be disallowed, in which case the costs of such taxation shall be borne by the party whose costs are so taxed, and the amount thereof shall be ascertained by the said Officer, and deducted by him accordingly in his certificate of such taxation.

Taxation of costs
of conveyances.

Entry on Lands by the Promoters of the Undertaking.

Entry on Lands.

53 The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands required to be purchased or permanently used for the purposes and under the powers of this or the Special Act, until they have paid to every party having any interest in such lands or deposited in Court, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Payment of price
to be made pre-
vious to entry,
except to survey,
&c.

Proviso.

54 If the promoters of the undertaking, or any of their contractors, except as aforesaid, wilfully enter upon and take possession of any lands required to be purchased or permanently used for the purposes of the Special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of Ten Pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two Justices; and if the promoters of the undertaking or their contractors, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of Twenty-five Pounds for every day they or their contractors so remain in possession as afore-

Penalty on the
promoters of the
undertaking
entering upon
lands without
consent before
payment of the
purchase money.

Entry on Lands.
 Proviso.

said; such penalty to be recoverable by the party in possession of such lands, with costs, by action in the Supreme Court: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or have deposited the same in Court for the benefit of the parties interested in the lands, although such person may not have been legally entitled thereto.

Decision of Justices not conclusive as to the right of the promoters.

55 On the trial of any action for any such penalty as aforesaid, the decision of the Justices under the provisions hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

56 If in any case in which, according to the provisions of this or the Special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands, or any other person, refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the Sheriff, to deliver possession of the same to the person appointed in such warrant to receive the same; and upon the receipt of such warrant, the Sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession; and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party; or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress; and, upon the application to any Justice for that purpose, he shall issue his warrant accordingly.

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

57 No party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building, if such party be willing and able to sell and convey the whole thereof.

Intersected Lands.

Small Portions of intersected Lands.

Owners of intersected lands may insist on sale.

58 If any lands, not being situate in a town or built upon, are so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre; and if the owner of such small parcel of land requires the promoters of the undertaking to purchase the same along with the other land required for the purposes of the Special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left, into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

59 If any such land 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 of the undertaking are, under the provisions of this or the Special Act, or any Act incorporated therewith, compellable to make; and if the owner of such lands has not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the Arbitrators shall, if required by either party, ascertain by their award the value of any such severed piece of land, and also what would be the expense of making such communication.

Intersected Lands.

Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

Lands subject to Mortgage.

60 It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the Special Act; and that whether they have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right, or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely or jointly with any other lands not required for the purposes of the Special Act; and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest; and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they direct; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they have given any such notice, or if the party entitled to the equity of redemption of any such lands have 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 of the undertaking to the mortgagee of the principal money 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, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they direct.

Lands in Mortgage.

Power to redeem mortgages.

61 If, in either of the cases aforesaid, upon such payment or tender, any mortgagee fails to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fails to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in Court, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful

Deposit of mortgage money on refusal to accept.

Lands in Mortgage.

for them if they think fit to execute a deed poll, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee and of all persons in trust for him, or for whom he may be a trustee in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

62 If any such mortgaged lands are of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and upon payment or tender thereof, the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they direct.

Deposit of money when refused on tender.

63 If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in Court, in the manner provided by this Act in like cases, and every such payment or deposit 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 such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, in manner hereinbefore provided in the case of the purchase of lands by them, and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession: nevertheless, 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 such lands, shall remain in force in respect of so much of the mortgage debt as may not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

64 If a part only of any such mortgaged lands is required for the purposes of the Special Act, and if the part so required is of less value than the principal money, interest, and costs secured on such lands, and the mortgagee does not consider the remaining part of such lands a sufficient security for the money charged thereon, or is not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof, or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed com-

*Lands in
Mortgage.*

compensation, and the amount of such value or compensation being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they direct, all his interest in such mortgaged lands the value whereof has been so paid; and a Memorandum of what has been so paid shall be endorsed on the deed creating such 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 of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money
when refused on
tender.

65 If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee fails to convey or release to the promoters of the undertaking, or as they direct, his interest in the lands in respect of which such compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into Court, in the manner provided by this Act, in the case of moneys required to be deposited in Court, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession, they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, 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 lands originally comprised in such mortgage.

66 In any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time has been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained, the mortgagee has been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which has been so paid off, all such costs and expenses as may be incurred by such mortgagee in respect of, or which are incidental to, the re-investment of the sum so paid off, such costs in case of difference to be taxed, and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest

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

- Lands in Mortgage.* hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation ; and until payment or tender of such compensation as aforesaid, the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.
- Rent-charges.* *Lands charged with any Rent-charge, or other Payment or Incumbrance not hereinbefore provided for.*
- Release of lands from rent-charges. **67** If any difference arises between the promoters of the undertaking and the party entitled to any rent-charge or other payment or incumbrance not hereinbefore provided for upon any lands required to be taken for the purposes of the Special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the Special Act, the same shall be determined as in other cases of disputed compensation.
- Release of part of lands from charge. **68** If part only of the lands charged with any such rent-charge, payment, or incumbrance be required to be taken for the purposes of the Special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two Justices ; but if the remaining part of the land so jointly subject be a sufficient security for such charge, then, with the consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.
- Deposit in case of refusal to release. **69** Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge ; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in Court, in the manner hereinbefore provided in like cases ; and also, if they think fit, to execute a deed poll, in manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon the rent-charge, payment or incumbrance, or the portion thereof in respect whereof such compensation has been so paid, shall cease and be extinguished.
- Charge to continue on lands not taken. **70** If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be ; and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge ; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or, if they be a corporation, shall affix their common seal to a memorandum

of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge has been purchased by virtue of the Special Act; and if the lands be released from part of such charge, what proportion of such charge has been released, and how much thereof continues payable; or if the lands so required have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, 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.

Rent-charges.

Lands subject to Leases.

Leases.

71 If any lands are comprised in a lease for a term of years unexpired, part only of which lands are required for the purposes of the Special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part; and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two Justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the Special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which is not required for the purposes of the Special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Where part only of lands under lease taken, the rent to be apportioned.

72 Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise, by reason of the execution of the works.

Tenants to be compensated.

73 If any such lands be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain; or if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two Justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the Special Act.

Compensation to be made to tenants from year to year.

Leases.

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

74 If any party, having a greater interest than as tenant from year to year, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim is made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Interests omitted to be purchased.

Promoters of the undertaking empowered to purchase interests in lands, the purchase whereof may have been omitted by mistake.

Interests in Lands which have, by Mistake, been omitted to be purchased.

75 If at any time after the promoters of the undertaking have entered upon any lands which, under the provisions of this or the Special Act, or any Act incorporated therewith, they were authorised to purchase, and which are permanently required for the purposes of the Special Act, any party appears to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking, through mistake or inadvertence, have failed or omitted duly to purchase, or to pay compensation for, then, whether the period allowed for the purchase of lands has expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands: Provided, within six months after notice of such estate, right, interest, or charge, in case the same is not disputed by the promoters of the undertaking, or in case the same is disputed, then within six months after the right thereto has been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same respectively would have been agreed on, or awarded and paid, in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

How value of such lands to be estimated.

76 In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the Arbitrators or Justices, as the case may be, shall assess the same according to what they find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such lands.

77 In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge has been disputed by them,

and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same, to the parties with whom any such litigation in respect thereof has taken place; and such costs and expenses shall, in case the same are disputed, be settled by the taxing officer of the Court in which such litigation took place.

Interests omitted to be purchased.

Sale of superfluous Lands.

78 Within the prescribed period, or if no period be prescribed, within ten years after the expiration of the time limited by the Special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all lands, acquired by them under the provisions of this or the Special Act, not required for the purposes of the undertaking, and apply the purchase money arising from such sales to the purposes of the Special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Sale of superfluous Land.

Lands not wanted to be sold; or in default, to vest in owners of adjoining lands.

79 Before the promoters of the undertaking dispose of any such superfluous lands, they shall unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuses to purchase the same, or if he or his agent cannot, after diligent enquiry, be found, then the like offer shall be made to the person or to the several persons whose lands immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such 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 of the undertaking shall think fit.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

80 If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a Justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the Colony, or could not, after diligent enquiry, be found, or were not capable of entering into a contract for the purchase of such lands, shall, in all Courts, be sufficient evidence of the facts therein stated.

Right of pre-emption to be claimed within six weeks.

81 If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the Arbitrators.

Differences as to price to be settled by arbitration.

82 Upon payment or tender to the promoters of the undertaking of the purchase money so agreed upon or determined as aforesaid, they

Lands to be conveyed to purchasers.

*Sale of superfluous
Lands.*

shall convey such lands to the purchasers thereof by deed, under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation, under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

*Effect of the word
"Grant" in con-
veyances.*

83 In every conveyance of lands to be made by the promoters of the undertaking under this or the Special Act, the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; that is to say—

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them.

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking, and their successors, from all incumbrances created by the promoters of the undertaking.

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them.

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them assign breaches of covenants, as they might do as if such covenants were expressly inserted in such conveyances.

*Service of Notices
upon Promoters
of Undertaking.**Service of notices.**Service of Notices on Promoters of the Undertaking.*

84 Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post, directed to the principal office of the promoters of the under-

taking, or one of the principal offices where there is more than one, or being given or transmitted through the post direct to the Secretary, or if there is no Secretary, the Solicitor of the said promoters, or if no Solicitor then to any one of the promoters.

Tender of Amends.

Tender of Amends.

85 If any party has committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the Special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party makes tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender has been made, it shall be lawful for the defendant, at any time before issue joined, to pay into Court such sum of money as he thinks fit, and thereupon such proceeding shall be had as in other cases where defendants are allowed to pay money into Court.

Tender of amends.

See note under Amends 63 h.c. 36 § 1 subg. III.

Recovery of Penalties and Costs.

Recovery of Penalties.

86 Every penalty or forfeiture imposed by this or the Special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two Justices, in the manner prescribed by *The Magistrates Summary Procedure Act*.

Penalties to be summarily recovered before two Justices.

87 If any such sum is payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed Twenty Pounds, be recovered by distress of the goods of the Treasurer of the said promoters, and the Justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such Treasurer, unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, has been given to such Treasurer or left at his residence; and if such Treasurer pays any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress against the Treasurer.

88 No distress levied by virtue of this or the Special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto; nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form.

89 No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the Special Act, or any Act incorporated therewith, for any offence made cognizable before a Justice, unless the complaint respecting such offence has been made before such Justice within six months next after the commission of such offence.

Penalties to be sued for within six months.

90 No proceeding in pursuance of this or the Special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into the Supreme Court.

Proceedings not to be quashed for want of form.

