

THE LANDS RESUMPTION ACT, 1910.

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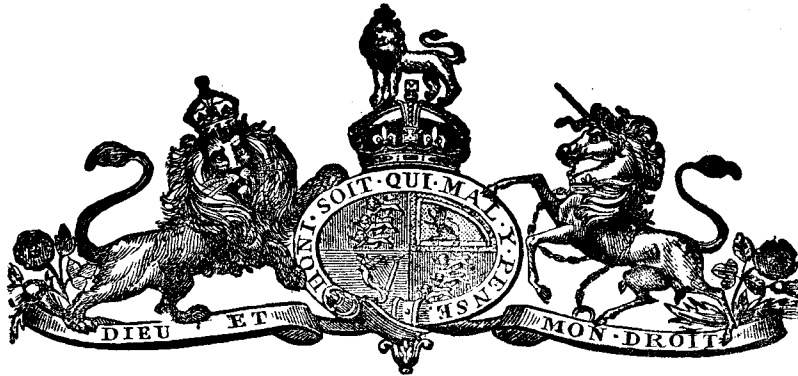
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T A S M A N I A.



1910.

ANNO PRIMO

GEORGII V. REGIS,

No. 11.

AN ACT to provide for the Acquisition by the Crown of Land required for Public Purposes, and to provide for Compensation for Land so acquired, and for other purposes connected therewith. [13 September, 1910.]

A.D.
1910.

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.

- 1 This Act may be cited as "The Lands Resumption Act, 1910." Short title.
- 2—(1.) The Acts specified in the schedule to this Act are hereby repealed. Repeal.
- (2.) Compensation for land taken or resumed for public works or public purposes before the commencement of this Act, unascertained

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at the passing of this Act, shall be ascertained in the manner provided by this Act.

Parts.

3 This Act is divided into parts, as follows:—

Part I.—Preliminary.

Part II.—Acquisition of Land.

Part III.—Powers in Relation to Lands.

Part IV.—Compensation—

Division I.—Right to Compensation.

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Division I.—Mortgages.

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Division III.—Leases.

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Definitions.

4 In this Act, unless the contrary intention appears—

“Any Act” means any Act, whether passed before or after the commencement of this Act:

“Convey” means surrender, convey, transfer, or lease:

“Crown land” means any land the property of the Crown, whether reserved or dedicated for any public purpose or not, but does not include any estate or interest granted by the Crown to any person:

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

“Land” includes any estate or interest (legal or equitable) in land, whether Crown land or not Crown land, and any easement, right, power, or privilege over, in, or in connection with land:

“Lease” includes an agreement for a lease:

“Minister” means the Minister for Lands and Works for the time being, and also any member of the Executive Council acting as Minister for Lands and Works:

“Owner” includes, with respect to land, any person who under this Act is enabled to sell or convey the land to His Majesty:

“Special Act” means any Act authorising the taking of land for any public work or public purpose to which the same relates, or authorising the carrying out of any public work in connection with any public purpose:

“The Supreme Court” means the Supreme Court of the State or a judge thereof.

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5 Any person seised, possessed, or entitled to any land, particularly any— A.D. 1910.

- I. Corporation :
- II. Tenant in tail or for life :
- III. Married woman seised in her own right or entitled to dower :
- IV. Guardian :
- V. Committee of a lunatic or idiot :
- VI. Trustee or feoffee in trust :
- VII. Executor or administrator :
- VIII. Person for the time being entitled to the receipt of the rents and profits of any land in possession or subject to any estate in dower : or
- IX. Lessee for life, or for life and years, or for years, or for any less interest—

Persons under disability may sell land to His Majesty.

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

6 The power to sell and convey land may be exercised—

Extent of power to sell.

- I. By any person (other than a married woman entitled to dower, or a lessee for life, or for life and years, or for years, or for any less interest) not only on behalf of himself and his heirs, executors, administrators, and successors, but also on behalf of every person entitled in reversion, remainder, or expectancy after him, and in defeasance of the estate of every person so entitled : and
- II. In the case of a married woman, whether she is of full age or not, as if she were of full age and a feme sole : and
- III. In the case of a guardian, on behalf of his ward, and to the same extent as the ward could have done if he were not under a disability : and
- IV. In the case of a committee of a lunatic or idiot, on behalf of the lunatic or idiot, and to the same extent as the lunatic or idiot could have done if he were not under a disability : and
- V. In the case of trustees, executors, or administrators, on behalf of their *cestui que* trusts (whether persons under a disability or not) to the same extent as the *cestui que* trusts could have done if they were not under a disability.

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

Application of purchase money or compensation where parties not entitled to sell.

- I. With the consent of all parties interested, 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

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ii. The purchase money or compensation may be paid to the Registrar of the Supreme Court to be applied in accordance with any order of the Court.

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

- i. In the discharge of any debt or encumbrance affecting the land, or affecting other land settled therewith to the same or the like uses, trusts, and purposes : or
- ii. In the purchase of other land, or of Government securities of 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 : or
- iii. If the purchase money or compensation has been paid in respect of any buildings acquired under the authority of this Act or any special Act—in removing or replacing the buildings or substituting others in their stead : or
- iv. In such manner as the Supreme Court directs : or
- v. In payment to any person becoming absolutely entitled to the purchase money or compensation.

(3.) Provided that where the purchase money or compensation does not exceed 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.

Power of Court to make orders as to purchase money.

8— (1.) The Supreme Court may, on the application of any person interested, order that any purchase money or compensation paid or deposited in respect of any 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.

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

Person in possession to be deemed the owner.

9 If any question arises respecting the title to any 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 His Majesty, shall be deemed to have been entitled to the land, until the contrary is shown ; and unless the contrary is so

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shown, the person so in possession and all persons claiming under him or consistently with his possession shall be deemed entitled to the purchase money or compensation, and it shall be paid and applied accordingly.

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**PART II.****ACQUISITION OF LAND.****10** Whenever—

- i. Under or by virtue of any Act, His Majesty, or the Governor, or the Governor in Council, or any Minister of the Crown, is authorised or empowered to undertake, construct, or provide any public work, and any land is required for the purposes of such work : or
- ii. Under or by virtue of any Act, His Majesty, or the Governor, or the Governor in Council, or any Minister of the Crown, is empowered to purchase, acquire, or take land for any purpose therein specified or referred to : or
- iii. Under or by virtue of this Act the Minister is authorised by the Governor to purchase, acquire, or take land—

Empowering the taking of land for public purpose.

the land required may be taken under the provisions of this Act.

11 The Governor, by order-in-council, may authorise the Minister to purchase, acquire, or take land for any public purpose or public work, and such authorisation shall be deemed an authority to the Minister by and under this Act.

Governor may authorise taking of land for public purpose or public work.

12 Whenever power is given to take land for any public purpose or public work under the provisions of this Act, such power includes the power to set apart or procure the setting apart of Crown land for such purpose or work.

Crown lands.

13—(1.) The Governor may, by notification published in the "Gazette," declare that the land has been set apart or acquired under this Act for the public purpose or public work therein expressed.

Notification of acquisition.

(2.) A copy of the notification shall be laid before both Houses of the Parliament within Fourteen days after its publication in the "Gazette," if the Parliament is then sitting, and if not, then within Fourteen days after the next meeting of the Parliament.

Notification to be laid before Parliament.

14 Upon the publication of the notification in the "Gazette," the land described therein shall, by force of this Act—

Effect of notification to vest land in His Majesty.

- i. Revert to and vest in His Majesty absolutely for the public purpose therein expressed, freed and discharged from all

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Conversion of
estates and
interests into
claim for
compensation.

estates, interests, trusts, obligations, contracts, licences, charges, rates, and rights-of-way or other easements: and

- ii. The estate and interest of every person entitled to the land specified in the notification shall be taken to have been converted into a claim for compensation.

Provided that the Governor may, by the same or any subsequent notification, declare that the estate or interest of any lessee or occupier of the land shall continue uninterrupted until taken by further notification.

Notice to owner.

15.—(1.) Forthwith after the publication of the notification in the "Gazette" that land has been acquired under this Act, the Minister shall cause a copy of the notification, together with a plan of the land, to be served upon the owners of the land resident within the State, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known places of abode.

(2.) If the 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.

Notice taking
land may be
annulled or
amended.

16—(1.) Any notification whereby land is set apart or acquired under this Act may, at any time within Ninety days of the first publication thereof, be annulled or amended by a subsequent notification in the "Gazette;" and if annulled, and so far as amended shall, as from the publication thereof, be absolutely void and of no effect.

(2.) No person shall be prejudiced in respect of any mortgage, charge, claim, estate, or interest existing in respect of such land, by reason of his having, in consequence of the earlier 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 such mortgage, charge, claim, estate, or interest.

(3.) Except as provided in the next following section, no person shall have any right of action or claim against the Crown or the Minister for anything *bona fide* done under such notification before the annulment or amendment thereof.

(4.) Nothing herein contained shall limit the power of the Governor to take, by any subsequent notification, the whole or any part of the land mentioned or described in any notification so annulled in whole or in part.

Compensation
on notification
taking land
being annulled.

17 When a notification is annulled, any claimant who would otherwise have been entitled to compensation shall be paid by the Minister compensation for any actual damage done to the land, and such reasonable costs incurred to the date of the notification whereby the notification taking the land was annulled, to be agreed upon, or determined as a claim for compensation under the provisions of this Act.

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18 In every case where land is acquired under this Act, except the following : A.D. 1910.

- i. Where moneys have been provided by Parliament for or towards the purpose for which the land was acquired :
or
 - ii. Where the Governor has sanctioned the construction or carrying out of the work or undertaking in respect of which the land was acquired, and public funds are legally available for the purpose : or
 - iii. Where the Minister certifies under his hand that the estimated value of the land does not exceed One hundred Pounds—
- either House of the Parliament may, within Thirty days after a copy of the notification has been laid before it, pass a resolution that the notification shall be void and of no effect ; and thereupon the notification shall be void and of no effect, and the land shall be deemed not to have been vested in His Majesty, and the owner of the land shall be entitled to compensation for any damage which he may have suffered by reason of the notification, or of the exercise of the powers of the Minister consequent thereupon.

Parliament may declare notification to be void.

19—(1.) If a copy of the notification in the "Gazette," certified under the hand of the Crown Solicitor, is lodged with the Registrar of Deeds or Recorder of Titles or other proper officer of the State, he shall register it in the register, and in the manner as nearly as may be in which dealings with land are registered, and shall deal with and give effect to the notification as if it were a grant, or conveyance, or memorandum, or instrument of transfer of the land to His Majesty duly executed under the laws in force in the State.

Registration of notification.

(2.) If any certificate of title or grant of any land under "The Real Property Act" is required by the Recorder of Titles for the purpose of endorsing a memorial of the gazetted notification thereon, he may call in the same as containing a misdescription within the meaning of Section One hundred and thirty-six of "The Real Property Act," and may correct the same or issue a new certificate of title, as he thinks fit ; but the new certificate of title shall not be subject to stamp duty under "The Stamp Duties Act, 1882," or any amendment thereof.

Certificate of title or grant may be called in for the purpose of endorsing memorial thereon.

20 Where a notification sets apart any Crown land, the Minister shall cause the land included in the notification to be shown upon the proper maps and records of the lands affected thereby in the office of the Minister for Lands and Works, so as to prevent such land being disposed of contrary to such notice.

Crown land taken to be shown on the maps and records in the Lands Office.

Taking Land by Agreement.

21 Notwithstanding anything hereinbefore contained, it shall be lawful for the Minister, if he thinks fit, to agree with the owners of any lands the acquisition of which is authorised by this Act, and with all parties having any estate or interest in such lands, or by this Act enabled to sell and convey the same, for the absolute purchase for a

Power to purchase lands by agreement. 55 Vict. No. 42, s. 26.

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consideration in money of any such lands or such parts thereof as shall be thought proper, and of all estates and interests in such lands of what kind soever.

Taking Additional Lands.

Lands may be taken for any public work after or during completion.

22—(1.) If, after or during the execution of any public work, it is found—

- i. That any land required therefor has not been taken in the manner required by law, or that the provisions relating to the taking of such land have not been fulfilled: or
- ii. Desirable to take other land for the use, convenience, or enjoyment of any public work executed or in course of execution—

such land, or the estate or interest of any person therein, may be taken in the same manner as land required for such public work in the first instance.

(2.) All the provisions of this Act relating to the taking of land, and the payment of compensation therefor, shall apply.

(3.) No person who has received compensation for any such land, nor any person claiming by, through, or under him, shall be entitled to any further compensation.

PART III.**POWERS IN RELATION TO LANDS.**

Power to examine lands.

23 The Minister and all persons authorised by him may—

- i. Enter upon any land: and
- ii. Make surveys, take levels, sink pits, and examine the soil: and
- iii. Do anything necessary for ascertaining the suitability of the land for any public purpose or public work.

Power to occupy lands temporarily.

24 Where any land has been purchased or taken under this Act for any public purpose or public work the Minister and all persons authorised by him may enter any land—

- i. Being within a distance of Two hundred yards from the nearest boundary of the land so purchased or taken: and
- ii. Not being a garden, orchard, or plantation, attached or belonging to a house, or a planted walk, avenue, or ground ornamentally planted: and
- iii. 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 public purpose or public work.

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25—(1.) The Minister and all persons authorised by him may, in connection with the carrying out of any public purpose or public work, exercise on or in relation to any land occupied by him under this part of this Act all or any of the following powers:—

- i. To take clay, stone, gravel, earth, timber, wood, or material, or things required for carrying out the public purpose or public work :
- ii. To make cuttings or excavations :
- iii. To deposit clay, stone, gravel, earth, timber, wood, or material :
- iv. To manufacture goods or articles required for carrying out the public purpose or public work :
- v. To erect workshops, sheds, and buildings of a temporary character :
- vi. To make roads.

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

26—(1.) Where the Minister or any person authorised by him enters any land and temporarily occupies it under the powers conferred by this Act, the Minister shall, out of moneys to be provided by Parliament, 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, then, on the application of the Minister, by any court having jurisdiction to entertain an action for compensation under this Act.

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

27 When the Minister enters upon possession of any land under this Act, and the owner thereof requires for the protection of the property on either side of the land acquired that the land acquired shall be fenced on one or both sides thereof, the Minister, before authorising any operation on the land acquired, shall cause such fences as are necessary to be erected; and in the event of any dispute as to the necessity of such protection, the same shall be settled by arbitration under "The Arbitration Act, 1892," and that Act shall apply to the arbitration as if the arbitration were pursuant to a submission under that Act.

28 Notwithstanding anything hereinbefore contained, the Minister may, in the case of a railway or tramway, make and use cattle-guards instead of gates in any place where the railway or tramway crosses any public or private road, highway, street, or place, and such cattle-guards shall be so made and maintained as to effectually prevent the

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

Rent for temporary occupation.

Minister to cause fences to be erected.

Cattle-guards may be used in place of gates. Cf. 1 Ed. VII. No. 14, s. 24.

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straying of horses, cattle, sheep, or other animals from such road, highway, street, or place to the railway or tramway: Provided that any such road, highway, street, or place be not thereby decreased in width at the crossing, and that the railway or tramway be securely fenced at such points.

Measure of precaution to be adopted.

29 In every case in which the Minister uses cattle-guards instead of gates, he shall erect a notice-board on each side of the line of railway or tramway at every such crossing as aforesaid, warning travellers as to passing trains, and whenever any train is approaching such crossing the engine-whistle shall be sounded.

The rate of speed of a train while passing any such crossing on any street in a town shall in no case exceed Five miles per hour.

PART IV.**COMPENSATION.***Division I.—Right to Compensation.*

Right to compensation.

30 Where any land (other than Crown land) is acquired compulsorily, the owner of the land shall, if deprived of the land in whole or in part, be entitled to compensation under this Act.

No compensation payable in case of les-see, tenant, or licensee whose estate continues uninterrupted.

31 No compensation shall be claimed by or awarded to any person who is lessee, tenant, or licensee of any land taken, if the Minister is ready and willing, and agrees to allow the estate or interest of such person to continue uninterrupted until taken by subsequent notification.

No compensation payable in respect of Crown land or land taken for road, &c., where right to make road, &c., reserved to Crown.

32 No compensation shall be payable in respect of any portion of Crown lands lawfully taken or set apart for any public work, nor in respect of any land taken for a road or railway the right to make a road over which is otherwise reserved to the Crown and has not lapsed or become barred.

On acquisition of land no compensation payable if otherwise provided in grant or enabling Act.

33—(1.) When any land is taken under the authority of this Act, and such land might have been taken or resumed by His Majesty, or the Governor, or any Minister, for the same purpose under—

i. The conditions of any Crown grant, lease, or other instrument: or

ii. The provisions of any other Act—

no compensation shall be payable under this Act which would not have been payable if the land had been taken or resumed under the conditions of the grant, lease, or other instrument, or the provisions of such other Act, and notwithstanding that any special provisions as to the taking or resumption may not have been complied with.

(2.) If the land taken under this Act exceeds the quantity which might have been taken or resumed under the grant, lease, or other

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instrument, or such other Act, compensation shall be payable under this Act only in respect of the excess. A.D. 1910.

(3.) The compensation in respect of such excess shall be the sum which bears the same proportion to the amount of compensation that would otherwise be payable in respect of the whole area taken as such excess bears to the whole area taken. The compensation that would otherwise be payable in respect of such whole area shall be ascertained as hereinafter provided

34—(1.) In determining the compensation under this Act regard shall be had (subject to this Act) to the following matters:—

Compensation,
how estimated.

i. The value of the land acquired :

ii. The damage caused by the severance of the land acquired from other land of the person entitled to compensation : and

iii. 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 public purpose or public work 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 i. and ii. of Subsection (1.) of this section.

35—(1.) The value of any land acquired compulsorily shall be assessed as follows:—

Value of land,
how estimated.

i. In the case of land acquired for a public purpose or public work not authorised by a special Act, according to the value of the land on the First day of *January* last preceding the date of acquisition : and

ii. In the case of land acquired for a public purpose or public work authorised by a special Act, according to the value of the land on the First day of *January* last preceding the first day of the Parliament in which the special Act was passed.

Provided that with respect to land alienated or contracted to be alienated in fee simple from the Crown after the First day of *January* referred to in Paragraph i. or ii., as the case may be, the value of the land shall be deemed to be the same rate per acre as was paid or contracted to be paid when the same was alienated or contracted to be alienated from the Crown, with an addition of Ten Pounds per centum thereon, together with the value of the buildings and improvements, if any, on the land acquired.

Cf. 48 Vict. No.
41, s. 3.

(2.) The value of the land shall be assessed without reference to any increase in value arising from the proposal to carry out the public purpose or public work.

No assessment roll shall be conclusive evidence as to value, but any assessment roll in force on the First day of *January* referred to in

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Paragraph i. or ii., as the case may be, of Subsection (1.) of this section, and containing an entry as to the value of the land, shall be *prima facie* evidence of such value.

Cf. 48 Vict. No. 41, s. 3.

(3.) The compensation in respect of any land under contract of sale from the Crown shall be deducted from the purchase money on the completion of the purchase thereof.

Production of lease where lessee claims greater interest than as tenant at will.

36 If any person having a greater interest than as a tenant at will of any land acquired compulsorily makes a claim for compensation in respect of any unexpired term or interest under any 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 thereof in his power.

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

Compensation for entry on and occupation of land

37—(1.) Subject to Subsection (3.) of this section, where, by reason of the execution of any powers under Part Three of this Act, the owner or occupier of any land suffers damage he shall be entitled to compensation under this Act.

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

- i. Damage of a temporary as well as of a permanent character :
and
- ii. The value of all clay, stone, gravel, earth, timber, wood, materials, or things taken for carrying out the public purpose.

(3.) No compensation shall be payable for any act, matter, or thing done under Part Three of this Act, or under this section, the right or authority to exercise which is reserved by this or any other Act, or by any regulation, Crown grant, or other instrument, except to the extent therein mentioned, notwithstanding that the terms and conditions imposed by such Act, regulation, grant, or instrument have not been performed.

Division II.—Claims for Compensation.

Claim for compensation.

38—(1.) Any person claiming to be entitled to compensation under this Act may make a claim for compensation.

(2.) A claim for compensation shall be in writing, and shall be served on the Minister, and shall set forth the prescribed particulars, and shall be in accordance with such of the prescribed forms as is applicable to the case.

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

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39—(1.) Except as allowed in Subsection (2.) of this section, a claim for compensation shall be made within the following times : —

- i. Where the claim is for land acquired, within One hundred and twenty days after the publication of the notification of acquisition :
- ii. Where the claim is for damage suffered by reason of the exercise of any powers under Part Three, within One hundred and twenty days after the completion of the acts in respect of which compensation is claimed.

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Time for making claim for compensation.

(2.) The Minister, if he is satisfied that any claim for compensation is *bona fide*, may allow such further time for making it (whether the time for making it has expired or not) as he thinks just, and it may be made accordingly.

40—(1.) Within One hundred and twenty 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 and the amount of damage to which the claimant is entitled.

Procedure on claim for compensation being received.

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

- i. 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 : or
- ii. 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
- iii. Notify the claimant that he disputes the claim for compensation.

(3.) The claimant shall, within Sixty 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.

41 If—

- i. The Minister offers the claimant an amount in satisfaction of the claim for compensation, and the claimant does not within Sixty days after the receipt of the offer accept it : or
- ii. The Minister notifies the claimant that he disputes the claim for compensation—

When claim becomes a disputed claim for compensation.

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

Division III.—*Determination of Disputed Claims for Compensation.*

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

- i. By agreement between the Minister and the claimant : or
- ii. With the consent in writing of the Minister and the claimant by arbitration under "The Arbitration Act, 1892;" and that

Method of determining disputed claims.

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Act shall apply to the arbitration as if the arbitration were pursuant to a submission under that Act: or

- iii. By an action for compensation by the claimant against the Minister: or
- iv. By a proceeding in a court of competent jurisdiction on the application of the Minister.

Action for compensation.

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

- i. The action shall be tried without a jury:
- ii. The court shall have no power to direct a reference to arbitration unless by consent of parties:
- iii. In the case of an action brought in the Supreme Court, if that court is of opinion that the action might have been brought in the Supreme Court in its "Local Courts Act" jurisdiction, or in a local court under "The Local Courts Act, 1896," costs, if awarded to the claimant, shall only be allowed on the scale applicable to costs in the Supreme Court in its said jurisdiction, or such local court, as the case may be, unless the Supreme Court certifies that special circumstances existed which made it proper to institute the action in the Supreme Court:
- iv. The costs shall be in the discretion of the court.

Determination of compensation on application of the Minister.

44—(1.) If within Six months after a claim for compensation became a disputed claim for compensation—

- i. It has not been determined by agreement between the Minister and the claimant: or
- ii. It has not been referred to arbitration: or
- iii. No process in an action for compensation by the claimant against the Minister to determine the claim has been served on him—

the Minister may apply to a court of competent jurisdiction in which an action for compensation might be instituted, to determine the claim.

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

(3.) The court may make such order as to costs as it thinks just.

(4.) The determination of the court shall be final and conclusive and without appeal, and shall be binding on the claimant, whether he was represented before the court on the hearing of the application or not.

Division IV.—Determination of Compensation where no Claim made.

Procedure to determine compensation where no claim made.

45—(1.) Where any land has been acquired compulsorily, and no claim for compensation has been made within Six 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,

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such an application having been granted, no claim has been made within the time limited by the Minister, the Minister may apply to a court to determine the amount of compensation payable. A.D. 1910.

(2.) The application shall be made to the Supreme Court if the Minister considers the compensation awarded will amount to more than Three hundred Pounds, but shall be made to a court of competent jurisdiction held under "The Local Courts Act, 1896," including the Supreme Court in its jurisdiction under that Act, if the Minister considers the compensation awarded will not amount to more than Three hundred Pounds.

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

(4.) The determination of the court shall be final and conclusive and without appeal, and shall be binding on all persons having any right to compensation in respect of the acquisition of the land, whether represented before the court on the hearing of the application or not.

Division V.—Payment of Compensation.

46 Compensation shall bear interest at the rate of Four per centum per annum from the date of the acquisition of the land, or the time when the right to compensation arose, until payment thereof is made to the claimant, or until the amount thereof has been deposited in the Treasury. Interest on compensation.

Provided that where the compensation awarded in an action for compensation, or determined in a judicial proceeding, is not more than the amount offered by the Minister in satisfaction of the claim for compensation, the compensation shall only bear interest to the date when the offer of the Minister is communicated to the claimant.

47 Any claimant or person entitled to any compensation shall, 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 executing such conveyances or assurances as the Crown Solicitor directs, be entitled to receive payment of the compensation. Payment of compensation to claimant.

48—(1.) If at the expiration of Three months after the determination of the amount of compensation—
1. No application has been made for payment of the compensation: or

ii. 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.

Deposit of compensation in the Treasury.

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Investment of
compensation
deposited in
Treasury.

49 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 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.

Payment out of
compensation.

50—(1.) Any compensation deposited in the Treasury may be paid to any claimant—

- i. Upon the direction of the Crown Solicitor : or
- ii. Upon an order of the Supreme 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 executed conveyances of his title or interest to the satisfaction of the Crown Solicitor.

(3.) No certificate under this section shall be given by the Crown Solicitor until the claimant has executed conveyances of his title or interest to the satisfaction of the Crown Solicitor.

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

Order that
claimant is
entitled to
compensation
deposited in
Treasury.

51 The Supreme Court may, upon the application of any person claiming to be entitled to any compensation deposited in the Treasury, and on proof of his title to its satisfaction, make an order that the person claiming is entitled to the compensation, and may make such other order in the premises as it thinks fit.

Payments
to be a good
discharge.

52 All payments and deposits made on behalf of His Majesty by virtue of this Act shall be good and valid discharges, and it shall not be necessary to see to the application of any money so paid or deposited, or to see to the performance of any trusts.

PART V.**MORTGAGES, ENCUMBRANCES, AND LEASES.**Division I.—*Mortgages.*Power to
redeem
mortgages.

53—(1.) If any land acquired under this Act by agreement is subject to a mortgage, the Minister may pay off the mortgage.

(2.) In order thereto 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.

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(3.) The amount to which a mortgagee is entitled under this section shall be— A.D. 1910.

- i. The principal secured by the mortgage : and
- ii. The interest due at the date of the notice and Six months, additional interest : and
- iii. The costs and charges (if any) due to the mortgagee under the mortgage : and
- iv. The mortgagee's costs of discharging the mortgage and conveying his interest in the land to His Majesty : and
- v. In case the mortgage is paid off prematurely, a sum to meet the costs or reinvestment of the principal : and
- vi. In case the mortgage is paid off prematurely and the rate of interest secured by the mortgage is higher than the interest which 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.) The mortgagee shall thereupon, 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, execute a discharge of the mortgage and any conveyance necessary to convey his interest in the land to His 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 His 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. Execution of deed poll where mortgagee fails to convey.

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

(7.) Upon the registration of the deed poll the land mentioned therein shall be freed and discharged from the mortgage, and all interest of the mortgagee in the land shall vest in His Majesty.

54 Where any land acquired compulsorily is at the time of acquisition subject to a mortgage, the mortgagee may— Rights of mortgagee on acquisition of land.

- i. Join with the mortgagor in making a claim for compensation :
- or
- ii. Make an independent claim for compensation : or
- iii. By notice to the Minister, waive his rights to compensation.

55 Where any land acquired compulsorily is at the time of acquisition subject to a mortgage, the amount of compensation shall be determined by agreement between the Minister and the mortgagor and the mortgagee. Determination of amount of compensation.

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

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Compensation
to a mortgagee.

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

- i. 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 :
- ii. The mortgagee shall be 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 :
- iii. The mortgagee shall also be entitled to the costs of discharging the mortgage and of conveying his interest in the land to His Majesty :
- iv. The mortgagee shall also be 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, should a loss of interest reasonably be expected, 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.

57—(1.) The compensation in respect of the land shall be charged with the mortgage unless the mortgagee has waived his rights 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 shall not be affected as regards the remainder, if any, of the mortgage debt, or as regards any other land subject to the mortgage.

Rights of
mortgagee not
affected in
certain cases.

58 Where the mortgagee has waived his rights to compensation, the acquisition of the land acquired shall not affect the mortgage as regards any other land subject thereto, or as regards his rights and remedies against the mortgagor.

Division II.—*Encumbrances.*Apportionment
of charges
where part of
land only taken.

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

Encumbrance
to continue as
to land not
taken.

60—(1.) If any land acquired under this Act, whether by agreement or compulsorily, was immediately prior to its acquisition subject to any encumbrance jointly with any other land, and the land so

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acquired is released by virtue of this Act or any release or instrument from the encumbrance, then, subject to any agreement between the parties, the other land shall continue to be subject to the whole of the encumbrance or part thereof as the case requires, and the party entitled to the encumbrance shall have the same rights and remedies in respect of the land continuing subject to the encumbrance or part thereof as he previously had in respect of the whole of the land.

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(2.) If any encumbrance is released in pursuance of this Act, the Crown Solicitor shall, upon the deed or instrument creating or transferring the encumbrance being tendered to him for the purpose, sign a memorandum indorsed on the deed or instrument specifying the part of the land originally subject to the encumbrance which has been acquired under this Act, and—

- i. How much, if any, of the encumbrance has been released and how much continues payable: or
- ii. That the remaining land is thenceforward to remain exclusively charged with the whole of the encumbrance.

(3.) The memorandum shall be made and executed at the expense of the Crown, and shall be *prima facie* evidence of the facts stated therein.

Division III.—*Leases.*

61—(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 so acquired and the part not acquired.

Apportionment
of rent where
part of leased
land acquired.

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

(3.) After the apportionment has been settled—

- i. The lessee shall as to all future accruing rent be liable only to the rent apportioned in respect of the part not acquired: and
- ii. The lessor shall, as against the part not acquired, and as against the lessee, have the same rights and remedies for the rent so apportioned as he had, previously to the apportionment, for the whole rent: and
- iii. All covenants, conditions, and agreements in the lease (except as to the amount of rent) shall remain in force with regard to the part not acquired.

PART VI.

MISCELLANEOUS.

62 If the court is of opinion that any person claiming compensation has, at any time after the date the land is taken, done anything upon or under the land, with the effect of rendering the execution of the public work for which the land is taken more difficult or costly, the

Anything
done by
claimant to
make execution
of work more

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costly to be
taken into
account.

court shall take into account, by way of deduction from the amount of compensation to be awarded, any increase in the cost of executing such work likely to be caused thereby; and if in the opinion of the court such increase in cost exceeds the value of the land taken, the award shall be for the payment by any such person as aforesaid to the Minister of the amount of such excess, and the costs of the inquiry.

Warrant to
enforce
possession of
land.

63 If—

- i. Any person in possession of any land acquired under this Act refuses to give up possession of the land, or hinders the Minister or any person authorised by the Minister from taking possession of the land: or
- ii. Any person in occupation of any land refuses to permit the Minister or any person authorised by the Minister to enter upon the land—

a judge of the Supreme Court may, on the application of the Attorney-General, grant a warrant authorising the Sheriff to deliver the possession of the land or to enforce the entry on the land

Claimants to
produce title.

64 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 such purchase money or compensation is payable, and particulars of any damage claimed by them.

Costs of
conveyances,
&c.

65—(1.) In the case of all land acquired under this Act, the Crown shall bear all costs, charges, and expenses—

- i. Of all conveyances and assurances of the land, and of any outstanding interests therein: and
- ii. Of making out and furnishing such abstracts and attested copies as the Crown Solicitor requires.

(2.) If the Crown Solicitor and the party entitled do not agree to the amount of the costs, they shall be taxed by the Registrar of the Supreme 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 the amount which the Registrar or other officer certifies to be due in respect of the costs.

Power to dispose
of superfluous
lands.

66—(1.) If any land acquired or resumed, or deemed to have been acquired or resumed, under this Act, or under any Act repealed by this Act, is not required for any public purpose—

- i. The Governor may authorise the disposal of it as he thinks fit: or
- ii. Where the estimated annual value of the land does not exceed Fifty Pounds, the Minister may authorise the leasing of

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the land for such period not exceeding Three years, and on such terms and conditions, as he thinks fit—
and the land may be disposed of accordingly.

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(2.) A return of all land disposed of under this section, showing the manner of its disposal, shall be laid before both Houses of the Parliament within Thirty days after the disposal, if the Parliament is then sitting, and if not, then within Thirty days after the next meeting of the Parliament.

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

Service by post.

68 The Governor may, by proclamation, set apart for or dedicate to any public purpose any land which is vested in His Majesty, or in any officer or person on behalf of His Majesty ; and may, by proclamation, revoke, cancel, or alter the setting apart or dedication.

Power to dedicate lands.

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

Regulations.

SCHEDULE.

<i>Date and Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
48 Victoria, No. 41	"The Land for Public Purposes Act, 1884"	The whole Act
55 Victoria, No. 42	"The Lands Resumption Act, 1891"	The whole Act
56 Victoria, No. 17	"The Lands Resumption Amendment Act, 1892"	The whole Act

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