

NEW ZEALAND.

ANNO VICESIMO SEPTIMO.

VICTORIÆ REGINÆ.

No. 13.

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AN ACT to prescribe the mode in which Land shall be taken for Works and Undertakings of a Public nature.

[14th December, 1863.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows:—

Short Title.

I. The short Title of this Act shall be "The Lands Clauses Consolidation Act 1863."

Interpretation.

II. In the construction of this Act the words and expressions following shall have the meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction. The term "Special Act" shall mean any Act or Ordinance of the General Assembly or of any Provincial Legislature which shall hereafter be passed which shall authorize the taking of lands for the undertaking to which the same relates and with which this Act shall be incorporated as hereinafter mentioned. The term "prescribed" used in reference to any matter shall be construed to refer to such matter as the same shall be prescribed or provided for in the Special Act and the sentence in which such words shall occur shall be construed as if instead of the word "prescribed" the expression prescribed for that purpose in the Special Act had been used. The terms the "works" or the "undertaking" shall mean the works or undertaking of whatever nature which shall by the Special Act

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be authorized to be executed The term "promoters of the undertaking" shall mean those who by the Special Act are empowered to execute or carry out such works or undertakings The word lands shall include messuages lands tenements and hereditaments The word lease shall include an agreement for a lease The term "Treasury" shall mean the Colonial Treasury or any Sub-Treasury which shall from time to time be authorised by the Governor to receive any money required to be paid under the provisions of this Act The term "Registrar of the Supreme Court" and "Sheriff" shall mean the Registrar and Sheriff respectively of the district within which the lands are situate in relation to which any matter is required to be done The term "Justices" shall mean Justices of the Peace who shall not be interested in the matter and where any matter shall be authorised or required to be done by two Justices the term "two Justices" shall be understood to mean two Justices assembled and acting together Where under the provisions of this Act or the Special Act any notice shall be required to be given to the owner of any lands or when any Act shall be authorized or required to be done with the consent of any such owner the term "owner" shall 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.

III. This Act shall apply to every undertaking authorized by any Special Act which shall hereafter be passed and which shall authorize the purchase or taking of land for such undertaking and this Act shall be incorporated with such Special Act and all the clauses and provisions of this Act shall apply to the undertaking authorized thereby so far as the same shall be applicable to such undertaking and shall form part of such Act and be construed together therewith as forming one Act.

This Act to apply to undertakings authorized by Acts hereafter to be passed.

IV. For the purpose of making any incorporation of a portion only of this Act it shall be sufficient in the Special Act to refer to the sections intended to be incorporated by their numbers only and such Special Act shall be construed as if such sections were set forth therein.

Reference to Sections intended to be incorporated.

V. Subject to the provisions of this Act it shall be lawful for the promoters of any undertaking to agree with the owners of any land by the Special Act authorized to be taken and which shall be required for the purposes of such Act and with all parties having any estate or interest therein for the absolute purchase of any such lands or such parts thereof as they shall think proper and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.

VI. When the promoters of the undertaking shall require to purchase or take any of the land which by the Special Act they are authorized 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 and release the same or such of

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the said parties as shall after diligent enquiry be known to the promoters of the undertaking and by such notice shall demand from such parties the particulars of their estate and interest in the 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 by all parties for the damage that may be sustained by them by reason of the execution of the works 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 after diligent enquiry be found and in case any such parties shall be absent from New Zealand or cannot be found after diligent enquiry shall 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 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 fixed upon some conspicuous part of such lands.

Service of notices on individuals.

Service of notice on Corporations.

VII. If for Twenty-one Days after the Service of such Notice any such Party shall fail to state the Particulars of his Claim in respect of any such Lands or to treat with the Promoters of the Undertaking in respect thereof or if such Party and the Promoters of the Undertaking shall 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 in the Manner hereinafter provided for settling Cases of disputed Compensation.

If parties fail to treat or in case of dispute question to be settled as after mentioned.

VIII. If no Agreement be come to between the Promoters of the Undertaking and the Owners of or Parties by this Act enabled to sell and convey or release any Lands taken or required for or injuriously affected by the Execution of the Undertaking or any Interest in such Lands as to the Value of such Lands or of any Interest therein or as to the Compensation to be made in respect thereof and if in any such Case the Compensation claimed by such owner or parties or offered by the Promoters if no claim be made shall not exceed Fifty Pounds the same shall be settled by Two Justices.

Disputes as to compensation where the amount claimed does not exceed £50 to be settled by two Justices.

IX. If the Compensation claimed or offered in any such Case shall exceed Fifty Pounds and if the Party claiming Compensation desire to have the same settled by arbitration and signify such Desire by Notice in Writing to the Promoters of the Undertaking before they have issued their Warrant to the

Compensation exceeding £50 to be settled by arbitration or jury at the option of the party claiming compensation.

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Sheriff to summon a Jury in respect of such Lands under the Provisions herein-after contained stating in such Notice the Nature of the Interest in respect of which such Party claims Compensation and the Amount of the Compensation so claimed the same shall be so settled accordingly but unless the Party claiming Compensation shall as aforesaid signify his Desire to have the Question of such Compensation settled by Arbitration or if when the Matter shall have been referred to Arbitration the Arbitrators or their Umpire shall for Three Months have failed to make their or his Award or if no final Award shall be made the Question of such Compensation shall be settled by the Verdict of a Jury as herein-after provided.

X. It shall be lawful for any Justice upon the Application of either Party with respect to any Question of disputed Compensation by this or the Special Act authorized to be settled by Two Justices to summon the other Party to appear before Two Justices at a Time and Place to be named in the Summons and upon the Appearance of such Parties or in the Absence of any of them upon Proof of due Service of the Summons it shall be lawful for such Justices to hear and determine such Question and for that Purpose to examine such Parties or any of them and their Witnesses upon Oath and the Costs of every such Inquiry shall be in the Discretion of such Justices and they shall settle the Amount thereof.

Method of proceeding for settling disputes as to compensation by two Justices.

XI. When any Question of disputed Compensation by this or the Special Act authorized or required to be settled by Arbitration shall have arisen then unless both Parties shall concur in the Appointment of a single Arbitrator each Party on the Request of the other Party shall nominate and appoint an Arbitrator to whom such Dispute 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 Two 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 shall be made and after any such appointment shall have 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 any such dispute shall have arisen and after a request in writing in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail 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 which shall be 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.

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Vacancy of arbitrator to be supplied.

XII. If before the matters so referred shall be determined any arbitrator appointed by either party die or become 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 seven days after notice in writing from the other party for that purpose he fail 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.

Appointment of umpire.

XIII. Where more than one arbitrator shall have 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 shall differ or which shall be referred to him under the provisions of this or the special Act and if such umpire shall die or become 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.

Two Justices empowered to appoint an umpire on neglect of the arbitrators.

XIV. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after 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 shall differ or which shall be referred to him under this or the special Act shall be final.

In case of death of single arbitrator the matter to begin *de novo*.

XV. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have 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.

If either arbitrator refuse to act the other to proceed *ex parte*.

XVI. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days 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.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

XVII. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed or within such extended time not exceeding twenty-one days (if any) as shall 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.

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XVIII. 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.

Power of arbitrators to call for books &c.

XIX. Before any arbitrator or umpire shall enter 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

Arbitrator or umpire to make a declaration.

‘ 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 shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

XX. 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 shall award the same or a less sum than shall have been offered by the promoters of the undertaking in which case each party shall bear his own costs incident to the arbitration and the cost of the arbitrators shall be borne by the parties in equal proportions.

Costs of arbitration how to be borne.

XXI. 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 on demand 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.

Award to be delivered to the promoters of the undertaking.

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

Submission to be made a rule of Court.

XXIII. 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.

Award not void through error of form.

XXIV. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the

Promoters of the undertaking to give notice before summoning a jury.

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interest in such lands sought to be purchased by them from such party and for the damage to be sustained by him by the execution of the works.

Warrant for summoning jury to be addressed to the Sheriff.

XXV. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff requiring him to summon a jury for that purpose and if such Sheriff be interested in the matter in dispute such application shall be made to some Coroner who shall not be interested in the matter in dispute.

Provisions applicable to Sheriff to apply to Coroner.

XXVI. Throughout the provisions contained in this Act relating to the reference to a jury where the term "Sheriff" is used the provisions applicable thereto shall be held to apply to every Coroner lawfully acting in his place and in every case in which any such warrant shall have been directed to a Coroner the Sheriff shall immediately on receiving notice of the delivery of the warrant deliver over on application for that purpose to such Coroner or to any person appointed by him to receive the same the Jurors Book and Special Jurors List belonging to the District where the lands in question shall be situate.

Jury to be summoned.

XXVII. Upon the receipt of such warrant the Sheriff shall summon a jury of twenty-four indifferent persons duly qualified to act as common jurymen in the Supreme Court to meet at a convenient time and place to be appointed by him for that purpose such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant and he shall forthwith give notice to the promoters of the undertaking of the time and place so appointed by him.

Jury to be empanelled.

XXVIII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the Sheriff in such manner as juries for trials of issues joined in the Supreme Court are by law required to be drawn and if a sufficient number of jurymen do not appear in obedience to such summons the Sheriff shall return other indifferent men duly qualified as aforesaid of the Bystanders or others that can speedily be procured to make up the jury to the number aforesaid and all parties concerned may have their lawful challenges against any of the jurymen but no such party shall challenge the array.

Sheriff to preside witnesses to be summoned.

XXIX. The Sheriff shall preside on the said inquiry and the party claiming compensation shall be deemed the plaintiff and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law and if either party so request in writing the Sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question and on the like request the Sheriff shall order the jury or any six or more of them to view the place or matter in controversy in like manner as views may be had in the trial of actions in the Supreme Court.

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XXX. If the Sheriff make default in any of the matters herein- before required to be done by him in relation to any such trial or inquiry he shall forfeit fifty pounds for every such offence and such penalty shall be recoverable by the promoters of the undertaking by action in the Supreme Court and if any person summoned and returned upon any jury under this or the Special Act whether common or special do not appear or if appearing he refuse to make Oath or in any other manner unlawfully neglect his duty he shall unless he show reasonable excuse to the satisfaction of the Sheriff forfeit a sum not exceeding ten Pounds and every such penalty payable by a Sheriff or juryman shall be applied in satisfaction of the costs of the enquiry so far as the same will extend and in addition to the penalty hereby imposed every such Juryman shall be subject to the same regulations pains and penalties as if such jury had been returned for the trial of an issue joined in the Supreme Court.

Penalty on Sheriff and jury for default.

XXXI. If any person duly summoned to give evidence upon any such enquiry and to whom a tender of his reasonable expenses shall have been made fail to appear at the time and place specified in the summons without sufficient cause or if any person whether summoned or not who shall appear as a witness refuse to be examined on Oath touching the subject matter in question every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Penalty on witnesses making default.

XXXII. Not less than ten days notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

Notice of inquiry.

XXXIII. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two Justices in manner herein-after provided.

If the party make default the inquiry not to proceed.

XXXIV. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make Oath that they will truly and faithfully inquire of and assess such compensation or damage and the Sheriff shall administer such Oaths as well as the Oaths of all persons called upon to give evidence.

Jury to be sworn.

XXXV. When such inquiry shall relate to the value of lands to be purchased and also to compensation claimed for injury done or to be done to the lands held therewith the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen and for the sum of money to be paid by way of compensation for the Damage if any to be sustained by the owner of the Lands by the severing of the

Sums to be paid for purchase of lands and for damage to be assessed separately.

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lands taken from the other lands of such owner or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act.

Verdict and judgment
to be recorded.

XXXVI. The Sheriff before whom such inquiry shall be held shall give judgment for the purchase money or compensation assessed by such jury and the verdict and judgment shall be signed by the Sheriff and being so signed shall be kept by the Registrar of the Supreme Court of the District in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded and such verdicts and judgments shall be deemed records and the same or true copies thereof shall be good evidence in all Courts and elsewhere and all persons may inspect the said verdicts and judgments and may have copies thereof or extracts therefrom on paying one shilling for each Inspection thereof and for every one hundred words copied or extracted therefrom sixpence which copies or extracts the Registrar or Deputy Registrar is hereby required to make out and to sign and certify the same to be true copies.

Costs of the enquiry
how to be borne.

XXXVII. On every such inquiry before a jury where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking all the costs of such inquiry shall be borne by the promoters of the undertaking but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry having received due notice thereof one half of the costs of summoning impannelling and returning the jury and of taking the inquiry and recording the verdict and judgment thereon in case such verdict shall be taken shall be defrayed by the owner of the lands and the other half by the promoters of the undertaking and each party shall bear his own costs other than as aforesaid incident to such inquiry.

Particulars of the
costs.

XXXVIII. The costs of any such inquiry shall in case of difference be settled by the Registrar of the Supreme Court of the District in which the lands are situate on the application of either party and such costs shall include all reasonable costs charges and expenses incurred in summoning impannelling and returning the jury taking the inquiry the attendance of witnesses the employment of counsel and solicitors recording the verdict and judgment thereon and otherwise incident to such inquiry.

Payment of costs.

XXXIX. If any such costs shall be payable by the promoters of the undertaking and if within seven days after demand such costs be not paid to the party entitled to receive the same they shall be recoverable by distress and on application to any Justice he shall issue his warrant accordingly and if any such costs shall be payable by the owner of the lands or of any interest

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therein the same shall be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner or determined by the valuation of a surveyor under the provision hereinafter contained and the payment or deposit of the remainder if any of such money shall be deemed payment and satisfaction of the whole thereof or if such costs shall exceed the amount of the money so awarded or determined the excess shall be recoverable by distress and on application to any Justice he shall issue his warrant accordingly.

XL. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury such question shall be so tried provided that notice of such desire if coming from the other party be given to the promoters of the undertaking before they have issued their warrant to the Sheriff and for that purpose the promoters of the undertaking shall by their warrant to the Sheriff require him to nominate a special jury for such trial and thereupon the Sheriff shall as soon as conveniently may be after the receipt by him of such warrant summon both the parties to appear before him by themselves or their solicitors at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five or more than eight days from the service of such summons) and at the place and time so appointed the Sheriff shall proceed to nominate and strike a special jury in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the Supreme Court and the Sheriff shall appoint a day not later than the eighth day after striking such jury for the parties or their agents to appear before him to reduce the number of such jury and thereof shall give four days notice to the parties and on the day so appointed the Sheriff shall proceed to reduce the said special jury to the number of twenty in the manner used and accustomed by the proper officers of the Supreme Court.

Special jury to be summoned at the request of either party.

XLI. The special jury on such enquiry shall consist of twelve of the said twenty who shall first appear and the names being called over the parties having their lawful challenges against any of the said jurymen and if a full jury do not appear or if after such challenges a full jury do not remain then upon the application of either party the Sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen who shall not have been previously struck off the aforesaid list and who may then be attending the Court or can speedily be procured so as to complete such jury all parties having their lawful challenges against such persons and the Sheriff shall proceed to the trial and adjudication of the matters in question by such jury and such trial shall be attended in all respects with the like incidents and consequences and the like penalties shall be applicable as herein-before provided in the case of a trial by common jury.

Deficiency of special jurymen.

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Other inquiries before same special jury by consent.

XLII. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury provided the parties thereto respectively shall give their consent to such trial.

Jury men not to attend more than once a year.

XLIII. No juryman shall without his consent be summoned or required to attend any such proceeding as aforesaid more than once in any year.

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

XLIV. 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 New Zealand is prevented from treating or who cannot after diligent inquiry be found or who shall not appear at the time appointed for the inquiry before the jury as herein-before provided for after due notice thereof and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as two Justices shall nominate for that purpose as hereinafter mentioned.

Two Justices to nominate a surveyor.

XLV. Upon application by the promoters of the undertaking to two Justices and upon such proof as shall be satisfactory to them that any such party is by reason of absence from New Zealand prevented from treating or cannot after diligent inquiry be found or that any such party failed to appear on such inquiry before a jury as aforesaid after due notice to him for that purpose such Justices shall by writing under their hands nominate an able practical surveyor 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.

Declaration to be made by the surveyor.

XLVI. Before such surveyor shall enter 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

‘ 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. *A.B.*

‘ Made and subscribed in the presence of

And if any surveyor shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

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

XLVII. 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

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other documents on demand to the owner of the lands comprised in such valuation and to all other parties interested therein.

XLVIII. 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.

XLIX. In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any case arising under this or the Special Act regard shall be had by the Justices Jury 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. Purchase money and compensation how to be estimated.

L. When the compensation payable in respect of any lands or any interest therein shall have been ascertained by the valuation of a surveyor and deposited in the Colonial Treasury 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 New Zealand if such owner or party shall be dissatisfied with such valuation it shall be lawful for him before he shall have applied to the Supreme Court for payment or investment of the monies 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. Where compensation to absent party has been determined by a surveyor the party may have the same submitted to arbitration.

LI. 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. Question to be submitted to the arbitrators

LII. If the arbitrators shall 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 fourteen days after the making of such award or in default thereof the same may be enforced by attachment or recovered with costs by action in the Supreme Court. If further sum awarded promoters to pay or deposit same within fourteen days.

LIII. If the arbitrators shall 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 shall 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. Costs of the arbitration.

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

LIV. If any party shall be entitled to any compensation in respect of any lands or of any interest therein which shall have been taken for or injuriously affected by the execution of the works and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act and if the compensation claimed in such case shall exceed the sum of fifty pounds such party may have the same settled either by arbitration or by the verdict of a jury as he shall think fit and if such party desire to have the same settled by arbitration it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire 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 shall 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 or if the party so entitled as aforesaid desire to have such question of compensation settled by a jury it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking stating such particulars as aforesaid 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 they shall within twenty-one days after the receipt of such notice issue their warrant to the Sheriff to summon a jury for settling the same in the manner herein provided and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed and the same may be recovered by him with costs by action in the Supreme Court.

Purchase money payable to parties under disability amounting to £200 to be deposited in the Treasury.

LV. If the purchase money or compensation which shall be 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 or the compensation to be paid for any permanent damage to any such lands amount to or exceed the sum of two hundred pounds the same shall be paid into the Colonial Treasury in the name and with the privity of the Registrar of the Supreme Court to be placed to the account there of such Registrar *ex parte* the promoters of the undertaking (describing them by their proper name) in the matter of the special Act (citing it) and such monies shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say)

Application of monies deposited.

In the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid or affecting other lands settled therewith to the same or the like uses trusts or purposes or

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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 shall have been paid stood settled or

If such money shall be 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 shall direct or

In payment to any party becoming absolutely entitled to such money

LVI. 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 shall have been deposited and until the money can be so applied it may upon the like order be invested in General 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.

LVII. If such purchase money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds the same shall either be paid into the Treasury and applied in the manner herein-before 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 shall be 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 monies such nomination may lawfully be made by their respective husbands guardians committees or trustees but such last-mentioned application of the monies 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 herein-before directed with respect to money paid into the Colonial Treasury but it shall not be necessary to obtain any order of the Court for that purpose

Sums from £20 to £200 to be deposited or paid to trustees.

LVIII. If such money shall 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 shall be payable for their own use and benefit or in case of the coverture infancy idiotcy 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.

Sums not exceeding £20 to be paid to parties.

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All sums payable under contract with persons not absolutely entitled to be paid into the Colonial Treasury.

LIX. 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 shall not be 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 the Colonial Treasury 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 or in lieu of bridges tunnels or other accomodation works or for assenting to or not opposing the passing of the Bill authorising the taking of such lands but all such monies 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 the Colonial Treasury 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.

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

LX. When any purchase money or compensation paid into the Supreme Court under the provisions of this or the special Act shall have 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 any 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.

LXI. Upon deposit in the Treasury in manner herein-before 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 the owner of such 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

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promoters or any two of them containing a description of the lands in respect of which such default shall be 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 shall have been come to or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury or by arbitrators or by a surveyor appointed by two Justices as herein provided and shall have 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 herein-before enabled to sell and convey the promoters of the undertaking shall be entitled to immediate possession of such lands.

LXII. 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 New Zealand or cannot after diligent inquiry be found or fail to appear on the inquiry before a jury as herein provided for 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 the Colonial Treasury in the name and with the privity of the Registrar of the Supreme Court to be placed there 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 said Court.

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

LXIII. Upon any such deposit of money as last aforesaid being made the Colonial Treasurer Assistant Colonial Treasurer or Sub-Treasurer 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 shall have been received and in respect of what purchase the same shall have 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 shall have been made and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made and thereupon all the estate and interest in such lands of

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

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the parties for whose use and in respect whereof such purchase money or compensation shall have 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.

Application of monies
so deposited.

LXIV. 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 shall have been so deposited or any part of such lands or any interest in the same the said Supreme Court may in a summary way as to such Court shall seem fit order such money to be laid out or invested in General Government and real securities or may order distribution thereof or payment of the interest and proceeds 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 shall seem fit.

Party in possession to
be deemed the owner.

LXV. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid the parties respectively in possession of such lands as being the owners 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 interest or proceeds of the annuities or securities purchased therewith and the same shall be paid and applied accordingly.

Costs in cases of
money deposited.

LXVI. In all cases of monies deposited in the Treasury under the provisions of this or the special Act except where such monies shall 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 shall be 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 shall have been incurred in consequence thereof other than such costs as are herein otherwise provided for and the costs of the investment of such monies in Government or real securities and of the reinvestment thereof in the purchase of other lands and also the costs of obtaining the proper orders for the purposes aforesaid and of the orders for the payment of the interest of the securities upon which such monies shall be invested and for the payment out of the Court of the principal of such monies or of the securities wherever the same shall be invested and of

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all proceedings relating thereto except such as are occasioned by litigation between adverse claimants provided always that the costs of one application only for reinvestment in land shall be allowed unless it shall appear to the Supreme Court that it is for the benefit of the parties interested in the said monies 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.

LXVII. Conveyances of lands to be purchased under the provisions of this or the special Act 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 to destroy all such 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 shall 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. Conveyances.

LXVIII. 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. Costs of conveyances.

LXIX. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof such costs shall be taxed by the Registrar of the Supreme Court upon an order of the same Court 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 Registrar shall certify to be due in respect of 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 said Court or the same may be recovered by distress in the manner herein-before 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 shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed and the amount thereof shall be ascertained by the said Registrar and deducted by him accordingly in his certificate of such taxation. Taxation of costs of conveyances.

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Payment of price to be made previous to entry except for survey &c.

LXX. The promoters of the undertaking shall not except by consent of the owners and occupiers enter upon any such lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act until they shall either have paid to every party having any interest in such lands or deposited in the Treasury 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.

Promoters to be allowed to enter on lands before purchase on making deposit by way of security and giving bond.

LXXI. Provided also that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands it shall be lawful for the promoters of the undertaking to deposit in the Treasury by way of security as herein-after mentioned either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands and who shall not consent to such entry or such a sum as shall by a surveyor appointed by Two Justices in the manner herein-before provided in the case of parties who cannot be found be determined to be the value of such lands or of the interest therein which such party is entitled to or enabled to sell and convey and also to give to such party a bond under the common seal of the promoters 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 with two sufficient sureties to be approved of by two Justices in case the parties differ in a penal sum equal to the sum so to be deposited conditioned for payment to such party or for deposit in the Treasury for the benefit of the parties interested in such lands as the case may require under the provisions herein contained of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon together with interest thereon at the rate of eight pounds *per Centum per annum* from the time of entering on such lands until such purchase money or compensation shall be paid to such party or deposited in the Treasury for the benefit of the parties interested in such lands under the provisions herein contained and upon such deposit by way of security being made as aforesaid and such bond being delivered or tendered to such non-consenting party as aforesaid it shall be lawful for the promoters of the undertaking to enter upon and use such lands without having first paid or deposited the purchase money or compensation in

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other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

LXXII. The money so to be deposited as last aforesaid shall be paid into the Colonial Treasury in the name and with the privity of the Registrar of the Supreme Court to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon and who shall not have consented to such entry subject to the control and disposition of the said Court and upon such deposit being made the Colonial Treasurer or Assistant Treasurer or Sub-Treasurer 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 purpose and to whose credit the same shall have been paid in.

Upon deposit being made receipt to be given.

LXXIII. The money so deposited as last aforesaid shall remain in the Colonial Treasury by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking as herein-before mentioned and the same may on the application by petition of the promoters of the undertaking be ordered to be invested in Government or real securities and accumulated and upon the condition of such bond being fully performed it shall be lawful for the Supreme Court to order the money so deposited or the funds in which the same shall have been invested together with the accumulation thereof to be repaid or transferred to the promoters of the undertaking or if such condition shall not be fully performed it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

Deposit to remain as a security and to be applied under the direction of the Court.

LXXIV. If the promoters of the undertaking or any of their contractors shall except as aforesaid wilfully enter upon and take possession of any lands which shall be 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 or such deposit by way of security as aforesaid 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 shall 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 shall so remain in possession as aforesaid 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

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

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of the undertaking to the payment of any such penalties as aforesaid if they shall *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 shall have deposited the same in the Treasury for the benefit of the parties interested in the lands or made such deposit by way of security in respect thereof as herein-before mentioned although such person may not have been legally entitled thereto.

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

LXXV. On the trial of any action for any such penalty as aforesaid the decision of the Justices under the provision herein-before 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.

LXXVI. If in any case in which according to the provisions of this or the special Act 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 application to any Justice for that purpose he shall issue his warrant accordingly.

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

LXXVII. 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 or manufactory if such party be willing and able to sell and convey the whole thereof.

Owners of intersected lands may insist on sale.

LXXVIII. If any lands not being situate in a town or built upon shall be 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 require 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

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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.

LXXIX. If any such land shall be 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 compellable to make and if the owner of such lands have 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 jury or the arbitrators as the case may be shall if required by either party ascertain by their verdict or award the value of any such severed piece of land and also what would be the expense of making such communication.

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

LXXX. 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 shall 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 shall 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 shall have given any such notice or if the party entitled to the equity of redemption of any such lands shall 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 expences if any such mortgagee shall convey or release his interest in the lands

Power to redeem mortgages.

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comprised in such mortgage to the promoters of the undertaking or as they shall direct.

Deposit of mortgage money on refusal to accept.

LXXXI. If in either of the cases aforesaid upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking or if he fail to adduce a good title thereto to their satisfaction then it shall be lawful for the promoters of the undertaking to deposit in the Colonial Treasury 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 for them if they think fit to execute a deed poll in the manner herein-before 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.

LXXXII. If any such mortgaged lands shall be 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 shall direct.

Deposit of money when refused on tender.

LXXXIII. 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 the Colonial Treasury 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 the manner herein-before 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

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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 shall not have been satisfied by such payment or deposit.

LXXXIV. If a part only of any such mortgaged lands be required for the purposes of the special Act and if the part so required be of less value than the principal money interest and costs secured on such lands and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon or be 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 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 shall direct all his interest in such mortgaged lands the value whereof shall have been so paid and a memorandum of what shall have 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.

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

LXXXV. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the undertaking or as they shall direct his interest in the lands in respect of which such compensation shall so have been paid or tendered or if he shall fail 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 the Colonial Treasury in the manner provided by this Act in the case of monies required to be deposited in the Treasury 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 herein-before provided in the case of the purchase of

Deposit of money when refused on tender.

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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.

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

LXXXVI. Provided always that in any of the cases hereinbefore provided with respect to lands subject to mortgage if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured and under the provisions herein before contained the mortgagee shall have 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 shall have been so paid off all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be 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 re-investing 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 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 herein-before contained.

Release of lands from rent charges.

LXXXVII. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge 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.

LXXXVIII. If part only of the lands charged with any such rent-charge or other rent payment or incumbrance be required to be taken for the purposes of the special Act the apportionment of

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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 lands so jointly subject be a sufficient security for such charge then with 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.

LXXXIX. 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 a 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 the Colonial Treasury in the manner herein-before provided in like cases and also 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 the charge or incumbrance or the portion thereof in respect whereof such compensation shall so have been paid shall cease and be extinguished.

Deposit in case of refusal to release.

XC. 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 shall have been purchased by virtue of the special Act and if the lands be released from part of such charge what proportion of such charge shall have been released and how much thereof continues payable or if the lands so required shall 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.

Charge to continue on lands not taken.

XCI. If any lands shall be comprised in a lease for a term of years unexpired part only of which lands shall be required for

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

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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 lands which shall not be required for the purposes of the special Act in the same manner as they would have done in case such part only of the lands had been included in the lease.

Tenants to be compensated.

XCII. 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.

Compensation to be made to tenants from year to year.

XCIII. If any such lands shall 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 in-coming 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.

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

XCIV. 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 shall be made on the best evidence thereof in his power and if after demand made in writing by the promoters of the undertaking

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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.

XCV. The powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period and if no period be prescribed not after the expiration of three years from the passing of the special Act.

Limit of time for compulsory purchase.

XCVI. If at any time after the promoters of the undertaking shall 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 shall be permanently required for the purposes of the special Act any party shall appear to be entitled to any estate right or interest in or charge affecting such lands which the promoters of the undertaking shall 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 the lands shall have 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 sum shall not be disputed by the promoters of the undertaking or in case the same shall be disputed then within six months after the right thereto shall have 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 lands or as near thereto as circumstances will admit.

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

XCVII. 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 jury or arbitrators or Justices as the case may be shall assess the same according to what they shall 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.

How value of such lands to be estimated.

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

XCVIII. 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 shall have been disputed by the company 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 shall have taken place and such costs and expenses shall in case the same shall be disputed be settled by the proper officer of the Court in which such litigation took place.

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

XCIX. 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 such superfluous lands 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.

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

C. 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 refuse to purchase the same or cannot after diligent inquiry be found then the like offer shall be made to the person or to the several persons whose lands shall 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 shall be 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.

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

CI. 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 country or could not after diligent inquiry be found or were not capable of

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entering into a contract for the purchase of such lands shall in all Courts be sufficient evidence of the facts therein stated.

CII. 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.

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

Lands to be conveyed to the purchasers.

CIV. 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 heirs 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 conveyances ; (that is to say)

Effect of the word "grant" in conveyances.

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 seized 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

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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 if such covenants were expressly inserted in such conveyances.

Service of notices.

CV. 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 undertaking or one of the principal offices where there shall be more than one or being given or transmitted through the post directed to the secretary or in case there be no secretary the solicitor of the said promoters.

Tender of amends.

CVI. If any party shall have committed any irregularity trespass or other wrongful proceedings 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 make tender of sufficient amends to the party injured such last-mentioned party shall not recover in any such action and if no such tender shall have been made it shall be lawful for the defendant by leave of the Court where such action shall be pending at any time before issue joined to pay into court such sum of money as he shall think fit and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

Persons giving false evidence liable to the penalties of perjury.

CVII. Any person who upon any examination upon Oath under the provisions of this or the special Act shall wilfully and corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.