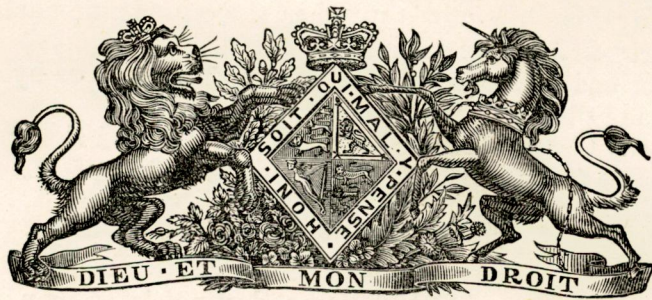


New South Wales.



ANNO QUINQUAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. XXXVII.

An Act to provide for the constitution of an Authority to investigate and report upon proposals for Public Works and the carrying out thereof when authorized by Parliament, to make better provision for the acquisition of land for carrying out such Works, and for other purposes in connection therewith. [Assented to, 5th June, 1888.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

PART I.

Constitution and Powers of Parliamentary Standing Committee on Public Works.

1. This Act may be cited as the "Public Works Act of 1888." Short title.
2. In this Act the expression "Authorized Work" means any work the carrying out of which has been authorized in manner herein provided. Interpretation of terms.
- "Committee" means the Parliamentary Standing Committee on Public Works as constituted under the provisions of this Act.
- "Constructing Authority" means the responsible Minister of the Crown empowered to undertake any public work after the authorization

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authorization thereof in manner herein provided, and the said expression includes the "Railway Commissioners," for the purpose of giving effect to any powers or duties conferred or imposed on them by this Act, or by the "Government Railways Act of 1888."

"Government Debentures" includes, in addition to such Debentures, any Government Stock issued by the Government of this Colony pursuant to any statutory power.

"Governor" means the Governor with the advice of the Executive Council.

"Justice" means any Justice of the Peace.

"Lands for Public Purposes Acquisition Act" means the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six.

"Prescribed" means prescribed by this Act, or by regulations made pursuant thereto.

"Railway Commissioners" means the Commissioners appointed under the "Government Railways Act of 1888."

Constitution and Powers of the Committee.

Constitution of
Parliamentary
Committee on
Public Works.

3. As soon as may be conveniently practicable after the passing of this Act, and thereafter, on some day not later than the seventh day after the commencement of each Session of every Parliament, a Joint Committee of Members of the Legislative Council and Legislative Assembly, to be called the "Parliamentary Standing Committee on Public Works," shall be appointed, according to the practice regulating the selection of Members to serve on Select Committees of the said Council and Assembly respectively. Five of the persons so to be appointed shall be Members of the Legislative Council, and eight shall be Members of the Legislative Assembly. Such thirteen persons shall hold office as a Joint Committee (subject to the provisions in the next following section contained) for the Session for which they were appointed, and during the interval between the prorogation of Parliament and the next ensuing Session thereof; and shall have and may exercise such powers and authorities, perform such duties, and be liable to such obligations, as are by this Act vested in or imposed upon such Committee. The names of the persons from time to time appointed to be members of such Committee shall be notified in the *Gazette* with all convenient despatch.

Extraordinary
vacancies.

4. Any member of the Committee may resign his seat on such Committee by writing under his hand addressed to the Governor. The seat of any such member shall also be deemed to have become vacant

(I) For any reason which would vacate his seat as a Member of the Assembly or Council (as the case may be);

(II) By his acceptance of any office of profit under the Crown;

On the occurrence of any such vacancy the same shall be filled upon motion in the usual manner, provided that the respective proportions in respect to the representation on the Committee of Members of the Legislative Council, and Members of the Assembly hereinbefore prescribed shall be observed in the filling up of all such vacancies.

Chairman and Vice-
Chairman.

5. (I) There shall be a Chairman and Vice-Chairman of the Committee who shall be elected by the members of the Committee at their first meeting, or as soon after such meeting as may be practicable. The Chairman or, in case of his absence or other disability, the Vice-Chairman shall preside at all meetings of the Committee.

Quorum.

(II) Any seven members of the Committee (of whom the Chairman or Vice-Chairman shall be one) shall form a quorum competent to exercise all powers and authorities and to incur all obligations conferred or imposed by this Act upon the Committee.

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6. Every member of the Committee, before entering on the duties of his office or sitting at any meeting of such Committee, shall make and subscribe a declaration in the form of the First Schedule hereto.

Declaration of members of Committee.

7. The Committee shall have power to sit and transact business during any adjournment or recess as well as during the Session for which they shall have been appointed, and may sit at such times and in such places, and conduct their proceedings in such manner as may seem most convenient for the proper and speedy dispatch of business, and such Committee shall sit in open Court.

Power to sit during recess, and in open Court.

8. The Committee shall, before the commencement of each Session of Parliament, make a report to the Governor of their proceedings under this Act; and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and, if not, then within fourteen days after the commencement of the next Session.

Report.

9. The Committee shall keep full minutes of their proceedings in such manner as the Governor may direct.

Minutes.

10. For the purposes of this Act the Committee shall have the following powers that is to say—

Powers of Committee.

- (a) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any land, building, place or material the entry or inspection of which appears to them requisite, upon the prescribed notice being given to the owners or occupiers of such land, building, place or material.
- (b) They may require, by summons under the hand of the Chairman or Vice-Chairman, the attendance of all such persons as they may think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make.
- (c) They may, in the prescribed manner, require and compel the production of all books, maps, plans, papers and documents relating to the matters before them.
- (d) They may, by their Chairman or Vice-Chairman, examine witnesses on oath; or where a witness, if examined before a Superior Court of Record, would be permitted to make a solemn declaration, or to give evidence in any other way than upon oath, then by such declaration or otherwise as the case may be.
- (e) If any person whose expenses have been paid or tendered to him shall neglect to appear; or if any person shall wilfully insult the Committee or any of its members, or shall interrupt the proceedings of the Committee, or shall misbehave himself before the Committee; or being summoned or examined as a witness in any inquiry or matter pending before the Committee, refuses to be sworn or to produce the documents mentioned in the summons served upon him or any of them, or to make a solemn declaration as aforesaid, or prevaricates in his evidence or refuses to answer any lawful question, it shall be lawful for the Chairman or Vice-Chairman to commit any such offender to gaol for any time not exceeding one month, or to impose on any such offender a fine not exceeding fifty pounds, and in default of immediate payment thereof to commit the offender to gaol for any time not exceeding one month, unless the fine be sooner paid; and in any of the cases aforesaid a warrant, in the form contained in the Second Schedule (A) hereto, shall and may be issued by such Chairman or Vice-Chairman, and shall be good and valid in law without any other warrant, order, or process

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process whatsoever; and the Sheriff, his Deputy, and all officers of the Police Force and gaolers to whom the same shall be addressed shall obey the same.

- (f) Where any person who has been duly served with a summons to attend as a witness before the Committee, and whose expenses have been paid or tendered to him, shall fail to appear in obedience to his summons, the Chairman or Vice-Chairman of the Committee, upon proof of such person having been duly served with such summons, and upon proof also that such person's non-appearance was without just cause or reasonable excuse, may issue a warrant in the form or to the effect of the Second Schedule (B) to bring such person before the Committee to give evidence.

Every person required by the Committee to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a superior Court of record, and, in case of dispute as to the amount to be allowed, the same shall be referred to the Prothonotary of the Supreme Court who, on request under the hand of the Chairman of the Committee, shall ascertain and certify the proper amount of such expenses.

Assessors.

11. The Committee may, from time to time, in the exercise of any powers by this Act conferred on them, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge, or possessing special local knowledge or experience. There shall be paid to such assessors such remuneration as the Committee may recommend and the Governor may approve and as Parliament may provide.

Functions of Committee.

12. The Committee shall, subject to the provisions contained in the next following section, consider and report upon all Public Works (except Fortifications and Works connected with the Military or Naval Defence of the Colony) to be executed after the passing of this Act, (and whether such works are continuations, completions, repairs, reconstructions, extensions or new works), in all cases where the estimated cost of completing such work exceeds twenty thousand pounds. And, in considering and reporting on any such work as aforesaid, the Committee shall have regard to the stated purpose thereof, and to the necessity or advisability of carrying it out; and, where such work purports to be of a reproductive or revenue producing character, the Committee shall have regard to the amount of revenue which such work may reasonably be expected to produce, and to the present and prospective public value of such work; and generally the Committee shall, in all cases, take such measures and procure such information as may enable them to inform or satisfy the Legislative Assembly as to the expediency of carrying out the work in question.

Conditions precedent to commencing Public Works.

13. After the first gazetting of the Parliamentary Committee of Public Works pursuant to this Act no Public Work of any kind whatsoever, (except as excepted in the last preceding section, and except such works as the Railway Commissioners are authorized to carry out pursuant to the "Government Railways Act of 1888,") the estimated cost of completing which shall exceed twenty thousand pounds, and whether such work be a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless sanctioned as hereinafter provided:

- (1) Every such proposed work shall, in the first place, be submitted and explained in the Legislative Assembly by some Member of the Executive Council having a seat in such Assembly (hereafter termed "the Minister"). The explanation shall comprise an estimate of the cost of such work when completed, together with

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with such plans and specifications or other descriptions as the Minister shall deem proper and, in the case of a proposed Railway or Tramway, a map or plan of the line and Book of Reference, together with a report by the Railway Commissioners on the probable cost of construction and maintenance of such railway or tramway, and an estimate of the probable revenue to be derived therefrom; And such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner;

- (II) Upon motion, in the usual manner, made by the Minister or by any Member of the Assembly such proposed work shall be referred to the Parliamentary Committee on Public Works for their report thereon.
- (III) The Committee shall, with all convenient dispatch, deal with the matter so referred to them, and, for that purpose may exercise all powers by this Act conferred on such Committee.
- (IV) The Committee shall, as soon as conveniently practicable, (regard being had to the nature and importance of the proposed work) report to the Legislative Assembly the result of their inquiries.
- (V) After the receipt of such report the said Assembly shall, by resolution, declare, either that it is expedient to carry out the proposed work, or that it is not expedient to carry out the same.

Provided always that the said Assembly, instead of declaring affirmatively or negatively as aforesaid, may resolve that the report of the Committee shall, for reasons or purposes to be stated in the resolution, be remitted for their further consideration and report to the said Committee; in which case such Committee shall consider the matter of such new reference, and report thereon accordingly.

14. Every resolution of the Legislative Assembly declaring that it is expedient or not expedient to carry out any such proposed work as aforesaid shall be notified in the *Gazette*. Notification of resolution.

15. If any such resolution declares that it is not expedient to carry out any proposed work no proposal for a public work in substance identical with the work referred to in such resolution shall be submitted to the Legislative Assembly until after the expiration of one year from the notification of such resolution as aforesaid, unless the Governor, by writing under his hand addressed to the said Committee, declares that, in his opinion and in view of the public interest, it is desirable that any such proposal should be re-submitted to the said Assembly. Under what circumstances negatived proposals may be re-submitted.

16. (I) Every Resolution of the Legislative Assembly declaring that it is expedient to carry out the work specified or mentioned in such resolution shall be deemed to impose a statutory duty on the Minister to introduce a Bill into the said Assembly to sanction the carrying out of such work, upon the passing whereof by Parliament and in such form as Parliament may think fit, the authorization of such work shall become absolute, and the Constructing Authority shall thereupon carry out such work, enter into such contracts, and take all such necessary steps for the proper execution thereof as such Authority may think proper. Provided always that no such contracts shall exceed in the aggregate by more than ten per centum the estimate for the same submitted as hereinbefore provided. Resolution when to be sufficient authority for execution of Works, &c.

(II) All such contracts may be made as follows (that is to say),—

With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, the Constructing Authority may make such contract in writing and under its seal, and in the same manner may vary or discharge the same.

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With respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, the Constructing Authority may make such contract in writing, and in the same manner may vary or discharge the same.

With respect to any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, the Constructing Authority may make such contract by parol only without writing, and in the same manner may vary or discharge the same.

And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Constructing Authority on behalf of Her Majesty, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract either by the said Authority or any other party thereto, such actions or suits may be brought either by or against the said Authority as might be brought had the same contracts been made between private parties.

Regulations.

17. The Governor, on the recommendation of the Committee, may frame regulations for giving effect to this Act. Such regulations when published in the *Gazette* shall have the full force of law; and copies thereof shall be laid before Parliament within fourteen days after such publication, if Parliament be then in Session, and, if not, then within fourteen days from the commencement of the then next Session of Parliament.

Provisions of Act may be extended to certain Public Works.

18. Notwithstanding anything hereinbefore contained, the Governor may, with respect to any Public Work the estimated cost of which does not exceed Twenty Thousand Pounds, direct that the same may be carried out under the "Public Works Act of 1888," in which case all the powers and provisions contained in Parts II and III of this Act shall be applicable to such work and the same shall, for all purposes of the said Parts, be deemed to be an "authorized work," and the Commissioners of Railways or Minister on whom the carrying out of such work devolves shall for the like purposes, be deemed a "Constructing Authority."

PART II.

General and Special Provisions in respect to the taking or acquisition of Lands for authorized Works, &c.

As to taking of lands after resolution.

19. The Governor may direct that any land required, in his opinion, for any authorized work may be acquired, either by taking the same under the "Lands for Public Purposes Acquisition Act," as adopted by this Act, or under the provisions contained in Part III hereof. Thereupon, subject to the provisions of this Act, the land so required may be taken or acquired in the manner directed, and the compensation for such land shall be ascertained and dealt with in all respects pursuant to the said Acts as so adopted, or the said Part, as the case may be.

As to lands taken for authorized works, under "Lands for Public Purposes Acquisition Act."

20. For the purpose of carrying out any authorized work if the Governor directs that any land required for such work shall be taken under the "Lands for Public Purposes Acquisition Act," he may by notification to be published in the *Gazette* and in one or more newspapers published or circulated in the Police District wherein is situated

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situated the land the subject of such notification declare that the land described in such notification has been appropriated (if Crown Land) or resumed (if private property) for the public purpose therein expressed. And an abstract of the land so appropriated or resumed together with the purpose for which the same is required shall, in every case, be laid before Parliament (if in Session at the date of such notification) within seven days after its publication in the *Gazette*; and if not, then within fourteen days after the commencement of the next ensuing Session.

21. Upon the publication of such notification in the *Gazette* the lands described or referred to in such notification shall forthwith be vested in the Constructing Authority on behalf of Her Majesty for the purposes of this Act for an estate in fee simple in possession, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way, or other easements whatsoever, and to the intent that the legal estate therein, together with all powers incident thereto, or conferred by this Act, shall be vested in such Authority as a trustee. And for the purpose of facilitating the acquisition and disposal of land under this Act the said Authority when a Minister is hereby declared to be a Corporation sole under the name of "the Minister"; and, by that name, shall have perpetual succession and an official seal, sue and be sued, and take all legal proceedings in all Courts and places whatsoever, with power to purchase, take and hold lands to him and his successors for the purposes of this Act, and also to sell and dispose of any superfluous lands if necessary, and to give effectual discharges in respect thereof to any purchaser.

Vesting &c. of land upon publication of notification in *Gazette*.

22. Where the land taken is Crown Land at the date of such publication, or is vested in any corporation or person on behalf of Her Majesty, or for public purposes, by virtue of any statute, or is within the limits with reference to centres of population prescribed by the "Crown Lands Act" in force for the time being, the effect of such publication shall be to withdraw the said land (to the extent taken) from any lease or license, or promise thereof, and to cancel, to the like extent, any dedication or reservation of the said land made under the authority of any such Act, or to divest the estate of such corporation or person, and to vest the said land to the extent aforesaid in the Constructing Authority for the purposes mentioned and for the estate limited in the last preceding section.

Effect of publication upon Crown Lands.

23. For the purpose of ascertaining and dealing with the compensation to be paid for the taking of such lands, the provisions of the "Lands for Public Purposes Acquisition Act" (as by this Act adopted) shall be applied, and shall govern both the party taking such lands, and the party from whom such lands are taken, and all persons claiming through or on behalf of such parties. And for such and all other subsidiary purposes, the tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-third and twenty-fourth sections of the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six shall be incorporated with this Act. Provided that, in the application of the said provisions, the expression "the Minister" or "Minister for Public Works," as and when used in any of such incorporated sections, shall mean "the Constructing Authority" as defined by this Act; and the expression "this Act" when so used in any of such sections shall mean the "Public Works Act of 1888" and the enactments incorporated therewith. Provided further that in lieu of the provisions of the "Government Railways Act," twenty-second Victoria number nineteen, incorporated in the Act forty-fourth Victoria number sixteen, the corresponding provisions as re-enacted in

Incorporation of provision of "Lands for Public Purposes Acquisition Act."

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Part III hereof, and indicated in the margin by references to the sections of the said "Government Railways Act," shall be substituted in applying the said "Lands for Public Purposes Acquisition Act."

General provision as to compensation for land howsoever taken or acquired.

24. For the purpose of ascertaining the purchase money or compensation to be paid by the Constructing Authority regard shall in every case after the passing of this Act be had by the magistrates, arbitrators, surveyors, valuers or jury (as the case may be) not only to the value of the land to be purchased or taken, 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 other lands of such owner or otherwise injuriously affecting such other lands by the exercise of any statutory powers by such Authority; and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time notice was given of such lands being required or having been taken. Provided always that the said magistrates, arbitrators, surveyors, valuers, and jury in ascertaining such purchase money or compensation shall take into consideration and give effect to by way of set-off or abatement any enhancement in the value of any land belonging to such owner adjoining the land taken or severed therefrom by the construction of the authorized work. But in no case shall this proviso operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement of value as aforesaid.

Compensation where land alienated by the Crown when taken &c. for Railway or Tramway.

25. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken for Railway or Tramway purposes under this Act, at any time within five years from the time when such land was alienated in fee by the Crown, whether absolutely or conditionally, shall be a sum of money, for each acre or portion of an acre of such land, equal to the amount of purchase money paid per acre by the grantee, or to the amount of deposit per acre paid by the conditional purchaser for such land (as the case may be), together with a sum not exceeding one hundred per centum on the amount of such purchase money or deposit; and, in addition thereto, the value of any improvements, of whatever value the same may be, then being upon such land, such value, together with compensation for damage if any by severance to be determined under the provisions of this Act.

Compensation to be paid within one month.
22 Vic. No. 19 s. 46.

26. All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Colonial Treasurer; and, in all cases where compensation or costs shall be awarded or adjudged to be paid by the Constructing Authority, the amount thereof shall be paid to the party lawfully entitled thereto, or to his agent duly authorized in his behalf, within one month next after the amount of the said compensation or costs shall have been determined. But in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein to the satisfaction of the Constructing Authority.

Title to be made out,

Public Works.

PART III.

As to the Acquisition of Land, and ascertaining and assuring the payment therefor, and of compensation for injuries in respect thereof, &c.

27. For the carrying out of any authorized work it shall be lawful for the Constructing Authority and all persons acting under such Authority,—

Power to enter upon
and take lands,
22 Vic. No. 19 s. 10,

- (I) To enter into and upon the lands and grounds of any person whomsoever, and to survey and take levels of the same, and to ascertain and stake or set out, take and appropriate, for the purposes herein mentioned, such parts thereof as may be necessary and proper for the laying out, making and using any authorized work, and all other works, matters and conveniences connected therewith.
- (II) In or upon such lands or any lands adjoining or contiguous thereto, to bore, dig, cut, trench, embank and sough, remove or lay, take, carry away and use any earth, stone, timber, gravel or sand or any other materials or things which may be dug, raised or obtained therein in constructing such authorized work and other works, out of any lands contiguous or adjoining thereto, and which may be proper or necessary for making, maintaining, altering, repairing or using any such authorized work, or which may hinder, prevent or obstruct the constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending or using the same respectively.
- (III) To make or construct in, upon, across, under or over any lands, streets, roads, rivers, streams or other waters, within the lands described in the plans or mentioned in the books of reference of any authorized work, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, fences, as shall be considered necessary.
- (IV) To alter the course of any rivers (not navigable), streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under the same, or for any other necessary purpose; and also to divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or to raise or sink the level of any such rivers or streams, streets, roads or ways, in order the more conveniently to carry the same over, or under, or by the side of, any such authorized work, as may be thought proper.
- (V) To make drains or conduits into, through, or under any lands adjoining any authorized work, for the purpose of conveying water from or to the same.
- (VI) In or upon any such authorized work or any lands adjoining or near thereto, to erect and construct such houses, warehouses, offices and other buildings, yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as shall be thought requisite.
- (VII) From time to time to alter or to repair or to discontinue the before-mentioned works or any of them and substitute others in their stead.

remove materials,

construct inclined
planes, tunnels, &c.,

OR alter the course
of rivers, &c.,

and of roads, &c.,
the level of any
such rivers or
streams,

to make drains, &c.

to erect toll-
houses, warehouses,
&c.

alterations and
repairs.

(VIII)

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Where work is in forest lands, &c.

(VIII) Where any authorized work shall be constructed in or shall pass through any wood lands or forest,—To fell or remove any trees standing thereon, within the distance of fifty yards from either or every side of such work.

General power.

(IX) And generally, to do all other acts necessary for constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending and using such authorized work.

Constructing Authority may dedicate highway.

28. The Constructing Authority may, in the prescribed manner, with the consent of the Governor, dedicate any portion of land vested in such Authority as a public highway, or to be an addition to, or extension of, an existing public highway. Provided that no highway so dedicated shall exceed one chain in width.

Map or plan and book of reference to be made in certain cases.

22 Vic. No. 19, s. 12.

29. (I) When any authorized work is a Railway or Tramway the Constructing Authority shall before commencing any such Railway or Tramway cause to be made and taken levels and surveys of the country and lands through which such Railway or Tramway is to be carried, together with a map or plan of the line, and of the lands through which it is to pass, and also a book of reference in which shall be set forth a description of the said several lands, and the names of the owners and proprietors thereof so far as the same shall be known or can with reasonable diligence be ascertained, with a description of the said lands setting forth the bearings of such Railway or Tramway as the case may require, and the nature and quality, state of cultivation, the inclosures (if any), and the quantity of such land which may be required for the purpose of making such Railway or Tramway.

Notice and objection.
Ib. s. 13.

(II) Notice of such map or plan and book of reference shall be given by the Constructing Authority by advertisement in the *Gazette* which notice shall set forth generally the extent and direction of the intended line of Railway or Tramway and shall refer to such map or plan and book of reference to be seen at the office of the said Authority at Sydney; and shall call upon all persons interested in the lands to be affected by the said intended Railway or Tramway, to set forth in writing to the said Authority, within one month from the first publication of such notice, any well-grounded objection that may appear to them to exist to the adoption of the said line of Railway or Tramway or any part thereof, or of any works proposed in connection therewith; and if any such objection shall be made the same shall be considered by the Governor, who shall, after due consideration thereof, confirm or alter the said map or plan and book of reference as to the said Governor shall seem meet, and thereupon notice shall be given by the Constructing Authority in the *Gazette* of such confirmation with or without alterations as the case may be.

Deposit with Clerks of Petty Sessions.
Ib. s. 14.

(III) The said map or plan and book of reference as so altered or confirmed shall be kept in the office of the Constructing Authority at Sydney, and true copies thereof signed by the said Authority shall be deposited with [the Clerk of Petty Sessions of the districts into or through which such Railway or Tramway shall be intended to be carried; and such map or plan and book of reference, and such copies thereof respectively shall be exhibited at all convenient times for public examination from the day of the date on which the notice of intention to make such Railway or Tramway hereafter mentioned shall be first published: And all persons shall have free liberty and permission, at all proper and convenient times, to view and examine the said map or plan and book of reference or copies as aforesaid.

Errors and omissions to be corrected.
Ib. s. 15.

(IV) If any omission, misstatement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the plan or book of reference the Constructing Authority, after having given ten day's notice to the owners

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owners of the lands affected by such proposed correction, may lodge an amended plan and book of reference, in the same manner as the original book of reference; and thereupon such original plan or book of reference shall be deemed to be so corrected; and the Constructing Authority may carry out the authorized work in accordance therewith.

(v) The Constructing Authority shall, by advertisement in the *Gazette* and in one or more of the Sydney newspapers, forty days before commencing any Railway or Tramway give notice that it is intended to make the said Railway or Tramway between certain places therein to be specified according to a map or plan and book of reference to be seen in the office of the said Authority at Sydney, and at the offices of the said Clerks of Petty Sessions; and, in case any material deviation from the said line indicated in such map or plan shall at any time afterwards be deemed by the Governor to be desirable, the like notices shall be given by the said Authority relative to the proposed deviation.

Authority to give notice of intention to make Railway or Tramway between certain places.
7b s. 16.

30. When the map or plan and book of reference in the case of a Railway or Tramway or the plan in case of any other authorized work shall have been confirmed by the Governor, the Constructing Authority shall give notice of the lands taken or required for the said work to all the parties interested in such land, or to the parties enabled by this Act to sell and convey or release the same, or to such of the said parties as shall after diligent inquiry be known to the Constructing Authority. Every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the Constructing Authority is willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or that may be sustained by them by the exercise of the powers conferred by this Act. Such Authority in the said notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the said Constructing Authority, the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and such other particulars and in such form as may be prescribed, together with an abstract of their title to such land; and, if they claim in respect of damage, the nature of the damage which they have sustained or will sustain by reason of the taking of such lands.

Notice of lands taken.
22 Vic. No. 19 s. 22.

31. It shall be lawful for the Constructing Authority to agree with the owners of any lands by this Act authorized to be taken, and which shall be required for the purposes of this Act, and with all parties having any estate or interest in such lands, or by this Act enabled to sell and convey the same, for the absolute purchase for and on behalf of Her Majesty, for a consideration in money, of any such lands or such parts thereof as shall be thought proper, and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.
8 Vic. c. 18 s. 6.
22 Vic. No. 19 s. 17.

32. (1) It shall be lawful for the Constructing Authority in addition to the lands authorized to be compulsorily taken by such authority as aforesaid to contract, with any party willing to sell the same, for the purchase for and on behalf of Her Majesty, for Railway or Tramway purposes of any lands for the purpose of making and providing additional stations, yards, wharfs, stappings, and places for the accommodation of passengers, and for receiving depositing and loading or unloading goods or cattle to be conveyed upon any Railway or Tramway; and for the erection of weighing machines toll-houses and other buildings and conveniences, and for any other purpose that may be deemed requisite or convenient for the use of the Railways or Tramways; and it shall be lawful for all parties who, under the provisions hereinbefore contained would be enabled to sell and convey lands, to sell and convey the same under and for the purposes of this section.

In certain cases power to purchase or take lands for additional accommodation.
22 Vic. No. 19 s. 20.

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(II) Instead of exercising the power of acquiring such lands so required for additional accommodation hereinbefore conferred, the Constructing Authority may acquire such lands compulsorily, pursuant to the provisions for compulsorily taking land hereinbefore contained.

Powers exercisable
from time to time, &c.

33. The aforesaid powers of taking or acquiring or purchasing land may be exercised by the Constructing Authority from time to time; and whether the particular work, for which lands may have been taken, acquired or purchased, has been actually constructed or not.

As to damages.

22 Vic. No. 19, s. 10.

34. In the exercise of the powers granted by this Act the Constructing Authority and all other persons shall do as little damage as possible; and, if required, full satisfaction shall be made in manner herein provided, to all persons interested in any lands or hereditaments which shall have been taken, used, injured or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

As to injuries to
houses, &c.

22 Vic. No. 19, s. 11.

35. Nothing herein contained shall empower the Constructing Authority or any person, in the exercise of the powers granted by this Act, to take, injure or damage any messuage, dwelling-house or other permanent building or the immediate appurtenances thereof, without the consent in writing of the owner and occupier thereof respectively, until after the expiration of three calendar months from the time the Constructing Authority shall have given notice to the owner thereof that the same is required under this Act.

Parties enabled
to sell and convey
and exercise other
powers.

8 Vic. c. 18 s. 7.

22 Vic. No. 19 s. 18.

36. (I) It shall be lawful for all parties being seised, possessed of or entitled to any such lands or any estate or interest therein, to sell and convey or release the same to the Constructing Authority for and on behalf of Her Majesty, and to enter into all necessary agreements for that purpose.

(II) It shall be lawful for all or any of the following parties, so seised, possessed or entitled as aforesaid, so to sell, convey or release, (that is to say) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors, administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest.

(III) The power so to sell and convey or release may lawfully be exercised by all such parties (other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest), not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties; and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively, could have exercised the same power under the authority of this Act, if they had been under no disability; and as to such trustees, executors or administrators, on behalf of their *cestui que* trusts whether infants, issue unborn, lunatics, *femes covert* or other persons, and that to the same extent as such *cestui que* trusts respectively could have exercised the same powers under the authority of this Act, if they had been under no disability.

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(iv) The power hereinafter given to release lands from any rent-charge or encumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands.

(v) The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell or convey such lands except under the provisions of this Act, and the compensation to be paid for any permanent damage or injury to any such lands shall not (except where the same shall have been determined by a surveyor appointed under the provisions hereinafter contained), be less than shall be determined by two Justices or by arbitrators appointed in the manner hereinafter provided.

Amount of compensation to be ascertained by arbitration in case of parties under disability.
22 Vic. No. 19 s. 19.

37. The Constructing Authority may sell and convey any lands so acquired, or any part thereof, in such manner and for such considerations and to such persons as such Authority may think fit; and may purchase other lands for the like purposes, and afterwards sell and convey the same, and so from time to time.

Authority to sell such lands and to purchase others.
8 Vic. c. 18 s. 13.
22 Vic. No. 19 s. 21.

38. All notices required to be served or given by the Constructing Authority upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found). In case any such parties shall be absent from the Colony, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there be no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

Service of notices on owners and occupiers of lands.
8 Vic. c. 18 s. 19.
22 Vic. No. 19 s. 23.

39. If, for twenty-one days after the service of such notice, any such party shall

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

(i) Omit to state the particulars of his claim in respect of any such land or to treat with the Constructing Authority in respect thereof; or

(ii) Fail to agree with the Constructing Authority as to the amount of the compensation to be paid by the Constructing Authority, for the interest in such lands belonging to such party or which he is by this Act enabled to sell; or for any damage that may be sustained by him by reason of the execution of the authorized work;—

8 Vic. c. 18 s. 21.
22 Vic. No. 19 s. 24.

The amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

But the owner or party claiming compensation shall not be at liberty to institute any proceeding for the recovery of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished to him. Provided that if no claim be made within two years after such notice as aforesaid by the party entitled to make such claim, the same shall be deemed to have been waived and abandoned.

40. If no agreement be come to between the constructing authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands taken or required for any authorized work, or injuriously affected by the exercise of any of the powers hereby granted, 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, the compensation claimed shall be settled (i) by two Justices where such claim shall not exceed one hundred pounds, (ii) by arbitrators as hereinafter provided where such claim shall exceed one hundred pounds.

How disputes as to compensation to be settled.

8 Vic. c. 18 s. 22.
22 Vic. No. 19 s. 25

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Method of proceeding before Justices for settling disputes as to compensation.

8 Vic. c. 18 s. 24.
22 Vic. No. 19 s. 26.

41. Any Justice may, upon the application of either party, with respect to any question of disputed compensation by this Act authorized to be settled by two Justices, 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, such Justices may hear and determine such question, and for that purpose examine such parties or any of them and their witnesses upon oath. The costs of every such inquiry shall be in the discretion of such Justices, and they shall settle the amount thereof. Provided always that, if the amount awarded by the Justices shall be one-third less than the amount claimed, the owner of the land or person claiming compensation shall pay to the Constructing Authority the costs of and occasioned by the inquiry, unless the Constructing Authority shall have offered a less amount than the sum awarded.

Compensation by Arbitration.—Jury, Surveyor, &c.

Appointment of arbitrators.

8 Vic. c. 18 s. 25.
22 Vic. No. 19 s. 27.

42. (I) When any question of disputed compensation or any dispute or other matter authorized or directed by this Act 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 or other matter shall be referred.

(II) Every appointment of an arbitrator shall be made, on the part of the Constructing Authority under his hand and official seal, and on the part of any other party under the hand of such party, or if such party be a corporation, under the common seal of such corporation.

(III) Such appointment shall be delivered to the arbitrator or arbitrators 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 to such submission operate as a revocation thereof.

(IV) If, after any such dispute or other matter shall have arisen, and after a request in writing setting forth 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 within fourteen days to appoint such arbitrator, then, upon such failure, the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters in dispute, and in such case, except as hereinafter provided, the award or determination of such single arbitrator shall be final and conclusive.

Vacancy of arbitrator to be supplied.

8 Vic. c. 18 s. 26.
22 Vic. No. 19 s. 28.

43. If, before the matter so referred shall be determined, any arbitrator appointed by either party die, or become incapable to act as arbitrator, or refuse, or for fourteen days neglect to act as arbitrator, 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 alone; and every arbitrator so to be substituted as aforesaid shall have the powers and authorities of the former arbitrator at the time of such death, refusal, neglect, or disability as aforesaid.

Appointment of umpire.

8 Vic. c. 18 s. 27.
22 Vic. No. 19 s. 29.

44. Where more than one arbitrator shall have been appointed the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ, or which shall be referred

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referred to him. If such umpire shall die or become incapable to act, or refuse, or for seven days neglect to act after being called upon to do so by the arbitrators, they shall forthwith, after such death, incapacity, refusal or neglect, appoint another umpire in his place. The decision of every such umpire on the matters so referred to him shall, except as hereinafter provided, be final.

45. If, in either of the cases aforesaid, the arbitrators shall refuse or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to 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 shall, except as hereinafter provided, be final.

One of the Judges of the Supreme Court to appoint umpire on neglect.

8 Vic. c. 18 s. 28.
22 Vic. No. 19 s. 30.

46. 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, or shall refuse, or for fourteen days neglect to act, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

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

8 Vic. c. 18 s. 29.
22 Vic. No. 19 s. 31.

47. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for fourteen days neglect to act, and where no substituted arbitrator shall have been appointed under section forty-three hereof, the other arbitrator may proceed alone; and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Where one arbitrator may proceed *ex parte*.

8 Vic. c. 18 s. 30.
22 Vic. No. 19 s. 32.

48. 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 (if any), not being greater in the whole than six months, as shall have been appointed for that purpose by both of such arbitrators, under their hands, the matters referred to them shall be determined by the umpire appointed as aforesaid.

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

8 Vic. c. 18 s. 31.
22 Vic. No. 19 s. 33

49. 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.

8 Vic. c. 18 s. 32.
22 Vic. c. 19 s. 34.

50. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a Justice of the Peace, make and subscribe the following declaration, that is to say:—

Arbitrator or umpire to make a declaration.

8 Vic. c. 18 s. 33.
22 Vic. No. 19 s. 35.

I do solemnly and sincerely declare that I have no interest, either directly or indirectly, in the property in question, and 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 "Public Works Act of 1888." A.B.

Made and subscribed in the presence of
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 misdemeanour.

51. (I) All the costs of and incident to any such arbitration as settled by the arbitrators shall be borne by the Constructing Authority, unless the sum awarded by the arbitrators shall be the same or a less sum than shall have been offered by the Constructing Authority, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Cost of arbitration how to be borne.

8 Vic. c. 18 s. 34.
22 Vic. No. 19 s. 36.

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(II) If the sum awarded shall be one-third less than the amount claimed, the whole costs of and incident to the arbitration and award shall be borne by the claimant, and the arbitrators shall direct the payment of the same accordingly.

(III) If either party be dissatisfied with the costs allowed by the arbitrators as aforesaid, the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court, and the amount allowed by such officer shall be the amount to be paid.

Award to be delivered to the Constructing Authority.

8 Vic. c. 18 s. 35.
22 Vic. No. 19 s. 37.

52. The arbitrators shall deliver their award in writing to the Constructing Authority who shall retain the same, and shall forthwith, on demand, furnish a copy thereof to the other party; 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.

Submission may be made a rule of Court.

8 Vic. c. 18 s. 36.
22 Vic. No. 19 s. 38.

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

Award not void through error in form.

8 Vic. c. 18 s. 37.
22 Vic. No. 19 s. 39.

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

Power to refer back award.

22 Vic. No. 19 s. 40.

55. In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge thereof shall have power at any time and from time to time, to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

Questions of compensation in certain cases to be decided by jury.

22 Vic. No. 19 s. 41.

56. If the compensation awarded by the arbitrators shall exceed the sum of three hundred pounds, and either party shall be dissatisfied with the award and shall desire to have the compensation settled by a jury, and shall, within fourteen days after the making of the award and notice thereof, signify such desire by notice in writing to the other party, then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall proceed by action in the Supreme Court, in the usual manner, to recover from the Constructing Authority the compensation to which he may be entitled under the provisions of this Act.

If, upon the trial of the said action, the verdict shall be—

(I) For a greater sum than the sum previously offered by the Constructing Authority and awarded by the arbitrators,

All the costs of the said action and of the arbitration and award shall be borne by the said Constructing Authority.

(II) For a less sum than the sum so awarded,

All the costs of the said action and of the arbitration and award shall be borne by the claimant.

(III) For the sum awarded by the arbitrators,

All the costs of the said action and of the arbitration and award shall be paid by the party requiring the same to be referred to a jury.

In every such case the costs of the arbitration and award shall be added to, and be recoverable as, the costs of the action.

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

8 Vic. c. 18 s. 58.
22 Vic. No. 19 s. 42.

57. The purchase-money or compensation to be paid for any lands to be purchased or taken by the Constructing Authority from any party who, by reason of absence from the Colony, is prevented from treating, or who cannot after diligent inquiry be found, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned.

Two Justices to nominate a surveyor.

8 Vic. c. 18 s. 50.
22 Vic. No. 19 s. 43.

58. Upon application by the Constructing Authority to two Justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Colony, prevented from treating, or cannot after diligent inquiry be found, such Justices shall

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shall, by writing under their hands, nominate a competent surveyor and valuator, for determining such compensation, who shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

59. Before such surveyor and valuator 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 following declaration at the foot of such nomination, that is to say:—

I A.B. do solemnly and sincerely declare that I have no interest, directly or indirectly, in the property in question and 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.

Made and subscribed in the)
presence of } A.B.

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

60. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor and valuator; and shall be delivered to the Constructing Authority to be kept for the purpose and in the manner hereinbefore provided in case of awards.

61. All the expenses of and incident to every such valuation shall be borne by the Constructing Authority.

Application of purchase money, &c.

62. If the purchase money or compensation payable in respect of any lands or any interest therein purchased or taken by the Constructing Authority 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, administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same, except under the provisions of this Act, or the compensation to be paid for any permanent damage to such lands amount to or exceed the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity, to be by him deposited to the account of such Master in Equity *ex parte* the Constructing Authority in the matter of A or B (the party entitled) pursuant to the method prescribed by any Act or by any rules, for the time being in force, for regulating moneys paid into the Supreme Court in its Equitable Jurisdiction; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes, (that is to say)—

- (I) In the redemption of the quit rent, or 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 and purposes; or
- (II) In the purchase of other lands or of Government debentures or other stock, 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
- (III) If such money shall be paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorized work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Primary Judge in Equity shall direct; or
- (IV) In payment to any party becoming absolutely entitled to such money.

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Order for application
and investment
meanwhile.

8 Vic. c. 18 s. 70.
22 Vic., No. 19 s. 48.

63. Such money may be so applied as aforesaid upon an order of the said Court or Judge 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 by the said Master in Equity in the purchase of Government Debentures or real securities, and the interest, dividends and annual proceeds thereof may be paid to the party who would, for the time being, have been entitled to the rents and profits of the lands.

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

8 Vic. c. 18 s. 71.
22 Vic. No. 19 s. 49.

64. (I) 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 to the Master in Equity to be by him deposited and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees.

(II) Such trustees shall 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. In case of the coverture, infancy, lunacy or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees.

(III) Payment of such moneys shall not be made to such trustees as aforesaid unless the Constructing Authority approve thereof and of the trustees named for the purpose.

(IV) The money so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money deposited to the account of the Master in Equity; but it shall not be necessary to obtain any order of the Court for that purpose.

Sums not exceeding
£20 to be paid to
parties.

8 Vic. c. 18 s. 72.
22 Vic. No. 19, s. 49.

65. 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, lunacy or other incapacity of such parties, such money shall be paid for their use to the respective husbands, guardians, committees or trustees of such persons.

All sums payable
under contract with
persons not absolutely
entitled to be paid to
Master in Equity or
trustees.

8 Vic. c. 18 s. 73.
22 Vic. No. 19 s. 50.

66. All sums of money exceeding twenty pounds which may be payable by the Constructing Authority 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 to the Master in Equity or to trustees, in manner aforesaid. 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 accommodation works, or for assenting to or not opposing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion or expectancy. Provided always that it shall be in the discretion of the Judges of the Supreme Court, or the Primary Judge in Equity, 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 deposited or so paid 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.

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67. All payments which shall be made in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the Constructing Authority; and such Authority shall not be bound or required to see to the application of any of the moneys paid to the Master in Equity or other person by virtue hereof, or to see to the performance of any trusts.

Payments made under this Act sufficient discharge to the Constructing Authority.
22 Vic. No. 19 s. 51.

68. Where any purchase money or compensation paid or deposited pursuant to this 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, the said Court or Judge may, on the petition of any party interested in such money, order that the same shall be laid out, invested, accumulated and paid, in such manner as the said Court or Judge 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 deposited, or as near thereto as may be.

Court of Equity may direct application of money in respect of leases or reversions as they may think just.
8 Vic. c. 18 s. 74.
22 Vic. No. 19 s. 52.

69. If the owner of any lands taken or purchased under the authority of this Act, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof,

Purchase money or compensation may in certain cases be paid to the Master in Equity.

- (i) Refuse to accept the same;
- (ii) Neglect or fail to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the Constructing Authority;
- (iii) Refuse to convey or release such lands as directed by the Constructing Authority;
- (iv) Be absent from the Colony or cannot after diligent inquiry be found;

8 Vic. c. 18 s. 76.
22 Vic. No. 19 s. 53.

The constructing authority may, if it shall think fit, deposit the purchase money or compensation payable in respect of such lands or any interest therein in the hands of the Master in Equity, to be by him deposited as aforesaid to his account to the credit of the parties interested in such lands, (describing them so far as he can do) subject to the control and disposition of the said Court.

70. 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 Court or Judge may in a summary way, as to such Court or Judge shall seem fit, order such money to be laid out or invested in the purchase of Government Debentures or real securities; or may order distribution thereof or payment of the dividends thereof, according to the respective estates, titles or interest 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 or Judge shall seem fit.

Application of moneys so deposited.
8 Vic. c. 18 s. 78.
22 Vic. No. 19 s. 54.

71. If any question arise respecting the title to the lands, in respect whereof such moneys 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, upon such inquiry as the Court shall think fit to direct, 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 dividend or interest of the securities purchased therewith, and the same shall be paid and applied accordingly.

Party in possession to be deemed the owner.
8 Vic. c. 18 s. 79.
22 Vic. No. 19 s. 55.

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Costs in case of
money deposited.
8 Vic. c. 18 s. 80.
22 Vic. No. 19 s. 56.

72. In all cases of moneys deposited under the provisions of this Act, except where such moneys 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 neglect of any party to make out a good title to the land required, the said Court or Judge may order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Constructing Authority (that is to say) the costs of—

- (I) 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;
- (II) The investment of such moneys in Government Debentures or real securities and of the re-investment thereof in the purchase of other lands;
- (III) Obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of such moneys or of the securities whereon the same shall be invested;
- (IV) All proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided always that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the said Court or Judge that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times; in which case the Court may, if it think fit, order the costs of any such investments to be paid by the Constructing Authority.

Conveyances, &c.

Form of Conveyances.
8 Vic. c. 18 s. 81.
22 Vic. No. 19 s. 57.

73. (I) Conveyances of lands to be purchased or taken under the provisions of this Act may be according to the form in the Third Schedule to this Act or as near thereto as the circumstances of the case will admit, or by deed in any other form which the Constructing Authority may think fit.

(II) All conveyances made according to the form in the said Schedule or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the Constructing Authority for and on behalf of Her Majesty; and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interests 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.

(III) 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 Constructing Authority to attend the reversion and inheritance.

Costs of conveyances.
8 Vic. c. 18 s. 82.
22 Vic. No. 19 s. 58.

74. The costs of all such conveyances shall be borne by the Constructing Authority; 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 interest therein, and of deducing, evidencing and verifying the title to such lands, terms or interests,
and

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and of making out and furnishing such abstracts and attested copies as the Constructing Authority may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title.

75. (I) If the Constructing Authority and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court, upon the application of either party;

Taxation of costs of conveyances.
8 Vic. c. 18 s. 83.
22 Vic. No. 19 s. 59.

(II) The Constructing Authority shall pay what the said Master or other proper officer shall certify to be due in respect of such costs to the party entitled thereto; or, in default thereof, any Judge of the Supreme Court may make an order for the payment of the same; and the said costs may be recovered in the same way as any other costs payable under any order of the said Court or a Judge thereof.

(III) The expense of taxing such costs shall be borne by the Constructing Authority, 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 Master or other proper officer and deducted by him accordingly in his certificate of such taxation.

76. Provided always that after any lands, which the Constructing Authority is by this Act authorized to take, shall have been set out, ascertained and finally appropriated for any of the purposes authorized by this Act, such lands and the fee simple and inheritance thereof, together with the yearly profits thereof and all the estate, use, trust and interest of every person therein, shall thenceforth be vested in the Constructing Authority, for and on behalf of Her Majesty, to and for the purposes of this Act, for ever, as fully and effectually, to all intents and purposes, as if the same had been conveyed by the persons legally entitled to sell and convey the said lands; but nevertheless the Constructing Authority may, if he think fit, in any case demand such conveyance.

Lands taken in pursuance of this Act to vest without conveyance.
22 Vic. No. 19 s. 60.

77. If, in any case in which, according to the provisions of this Act, the Constructing Authority is authorized to enter upon and take possession of any lands required for the purpose of the authorized work, the owner or occupier of any such lands or any other person refuse to give up the possession thereof or hinder the Constructing Authority from entering upon or taking possession of the same, it shall be lawful for such Authority to issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same. Upon the receipt of such warrant the Sheriff shall deliver possession of any such lands accordingly, and the cost 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 Constructing Authority from the compensation, if any, then payable 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.

Proceeding in case of refusal to deliver possession of lands.
8 Vic. c. 18 s. 91.
22 Vic. No. 19 s. 61.

78. No party shall, at any time, be required to sell or convey to the Constructing Authority 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.

Parties not to be required to sell part of a house.
8 Vic. c. 18 s. 92.
22 Vic. No. 19 s. 62.

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Owners of inter-
sected lands may
insist on sale.
8 Vic. c. 18 s. 93.
22 Vic. No. 19 s. 63.

79. If any lands not being situated in a town or built upon shall be so cut through and divided by the authorized work 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 Constructing Authority to purchase the same along with the other land required for the purposes of this Act, the Constructing Authority 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 Constructing Authority shall, if so required by the owner, throw the piece of land so left into the adjoining land, by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

Constructing
Authority may insist
on purchase where
expense of bridges
&c. exceed the value.
8 Vic. c. 18 s. 94.
22 Vic. No. 19 s. 64.

80. 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 Constructing Authority is, under the provisions of this Act compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the Constructing Authority to make such communication, then the Constructing Authority may require such owner to sell to him 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 in cases of disputed compensation. On the occasion of ascertaining the value of such land the Justices or the arbitrators or jury, as the case may be, shall, if required by either party, ascertain by their award or verdict the value of any such severed piece of land and also what would be the expense of making such communication.

Mortgages, Rent Charges, &c.

Power to redeem
mortgages.
8 Vic. c. 18 s. 108.
22 Vic. No. 19 s. 65.

81. (I) The Constructing Authority may purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of this Act; and that whether he 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 this Act.

(II) In order thereto, the Constructing Authority may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his cost 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 Constructing Authority or as he shall direct.

(III) The Constructing Authority may give notice in writing to such mortgagee that he 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 he 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 Constructing Authority to the mortgagee of the principal money due on such mortgage and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the Constructing Authority, or as he shall direct.

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82. 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 Constructing Authority, or if he fail to adduce a good title thereto to his satisfaction, then it shall be lawful for the Constructing Authority to pay into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the cases of moneys required to be paid to such Master in Equity, the principal and interest, together with the costs, if any, due on such mortgage; and if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at the time become due; and also, if such Authority think fit, to execute a deed poll, containing a description of the lands in respect whereof such deposit shall have been made and describing the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be duly registered by the Constructing Authority. 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 said Authority, and such Authority shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.
8 Vic. c. 18 s. 109.
22 Vic. No. 19 s. 66.

83. (I) If any of 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 Constructing Authority 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 Constructing Authority on the other part.

Sum to be paid when mortgage exceeds the value of the lands.
8 Vic. c. 18 s. 110.
22 Vic. No. 19 s. 67.

(II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the Constructing Authority 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 Constructing Authority or as he shall direct.

84. 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 Constructing Authority, it shall be lawful for the said Authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him, in the manner provided by this Act in like case of moneys required to be paid to such Master in Equity; 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 the said Authority may if it think fit, execute a deed poll in manner hereinbefore provided. And thereupon such lands, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, shall become absolutely vested in the Constructing Authority and such Authority shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of money when refused on tender.
8 Vic. c. 18 s. 111.
22 Vic. No. 19 s. 68.

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.

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

8 Vic. c. 18 s. 112.
22 Vic. No. 19 s. 69.

85. (I) If a part only of any such mortgaged lands be required for the purposes of this 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 constructing authority on the other part.

(II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the Constructing Authority 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 the Constructing Authority or as it 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 Constructing Authority at the expense of such Authority, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money
when refused on
tender.

8 Vic. c. 18 s. 113.
22 Vic. No. 19 s. 70

86. If, upon any 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 Constructing Authority or as it 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 Constructing Authority, it shall be lawful for such Authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the case of moneys required to be paid to such Master in Equity; 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 also if he think fit, to execute a deed poll in the manner hereinbefore provided. And thereupon such lands shall become absolutely vested in the Constructing Authority, 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 he 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 this 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.

Release of lands
from rent charges.

8 Vic. c. 18 s. 115.
22 Vic. No. 19 s. 71.

87. If any difference shall arise between the Constructing Authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or incumbrance not hereinbefore provided for upon any lands taken for the purposes of this Act, respecting the consideration to be paid for the release of such lands therefrom,

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therefrom, or from the portion thereof affecting the lands required for the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

88. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance, be taken for the purposes of this Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the Constructing Authority 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.

Release of part of lands from rent-charge.
8 Vic. c. 18 s. 116.
22 Vic. No. 19 s. 72.

89. 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 Constructing Authority a release of such charge. If he fail so to do, or if he fail to adduce a good title to such charge to the satisfaction of the Constructing Authority, it shall be lawful for such Authority to pay the amount of such compensation into the hands of the Master in Equity to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to such Master in Equity; and also if such Authority think fit to execute a deed poll, in the manner herein provided for in the case of the purchase of lands by him. And thereupon the rent-service, rent-charge, chief or other rent, payment 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.
8 Vic. c. 18 s. 117.
22 Vic. No. 19 s. 73.

90. If any such lands or portion thereof be so released from any such charge or incumbrance 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. 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 Constructing Authority for the purpose, he shall affix his seal to a memorandum of such release, indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of this 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. Such memorandum shall be made and executed at the expense of the Constructing Authority, 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.
8 Vic. c. 18 s. 118.
22 Vic. No. 19 s. 74.

Leases.

91. (1) If any lands shall be comprised in a lease for a term of years unexpired part only of which lands shall be required for the purposes of this 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.

Where part only of lands under lease taken the rent to be apportioned.
8 Vic. c. 18 s. 119.
22 Vic. No. 19 s. 75.

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(II) Such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the Constructing Authority 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.

(III) 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 this Act; and, as to the lands not so required, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as, previously to such apportionment, he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force, with regard to that part of the land which shall not be required for the purposes of this Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

8 Vic. c. 18 s. 120.
22 Vic. No. 19 s. 76.

92. Every such lessee as last aforesaid shall be entitled to receive from the Constructing Authority 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, for the purposes of the authorized work.

Compensation to be made to tenants from year to year.
8 Vic. c. 18 s. 121.
22 Vic. No. 19 s. 77.

93. (I) 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 land 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 any incoming tenant, and for any loss or injury he may sustain: or, if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same.

(II) The amount of such compensation shall be determined by two Justices in case the parties differ about the same.

(III) Upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up to the Constructing Authority or to the person appointed by such Authority to take possession thereof, any such lands in their possession required for the purposes of this Act.

Where greater interest claimed than at will lease to be produced.

8 Vic. c. 18 s. 122.
22 Vic. No. 19 s. 78.

94. If any party having a greater interest than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the Constructing Authority may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the Constructing Authority, 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.

Superfluous Lands.

Lands not wanted to be sold.
22 Vic. No. 19 s. 79.

95. In case any of the lands taken by the Constructing Authority under the provisions of this Act be not required for the purposes of any authorized work, such Authority shall absolutely sell and dispose of all such superfluous lands and apply the purchase money arising from such sales in such manner as the Governor shall direct.

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96. Upon payment or tender to the Constructing Authority of the purchase money so agreed upon or determined as aforesaid, such Authority shall convey such lands for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered; and a deed so executed and registered shall be effectual to vest the lands comprised therein in the said purchaser for the estate which shall so have been purchased by him, and a receipt under the hand and seal of the Constructing Authority 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.
8 Vic. c. 18 s. 131.
22 Vic. No. 19 s. 83.

Temporary possession of lands, &c.

97. It shall be lawful for the Constructing Authority and all persons by it authorized to enter, from time to time, upon any lands being within a distance of not more than two hundred yards from the nearest boundary of the authorized work as delineated on the plans thereof and not being a garden, orchard or plantation attached or belonging to a house, nor a park, planted walk, avenue or ground ornamentally planted, and not being nearer to the dwelling house of the owner of any such lands than a distance of five hundred yards, and to occupy the said lands, as long as may be necessary for the construction, reconstruction, repair, alteration, addition to or extension of the authorized work or the works connected therewith, and to use the same for any of the following purposes (that is to say),—

Power to take temporary possession of land.
22 Vic. No. 19 s. 84.

- (I) For the purpose of taking earth or soil by side cuttings therefrom.
- (II) For the purpose of depositing soil thereon.
- (III) For the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorized work or such other works as aforesaid.
- (IV) For the purpose of forming roads thereon to, or from, or by the side of the authorized work.

And in exercise of the powers aforesaid it shall be lawful for the Constructing Authority and all other persons employed therein to deposit, and also to manufacture and work upon such lands materials of every kind used in constructing the authorized work, and also to take from any such lands any timber, and also to dig and take from or out thereof any clay, stone, gravel, sand or other things that may be found therein, useful or proper for constructing the authorized work or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds and other buildings of a temporary nature. Provided always that nothing in this Act contained shall exempt the Constructing Authority from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid. Provided also that no stone or slate quarry, brickfield or other like place which, at the time of the passing of this Act, shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the Constructing Authority, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

98. If any such lands shall be used for any of the purposes aforesaid, the Constructing Authority shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be necessary for the convenient occupation of such lands; and in case of any difference between the owners or occupiers of such lands and the Constructing Authority as to the necessity for such fences and gates, then with such fences and gates as the Governor shall deem necessary for the purposes aforesaid.

Authority to separate the lands before using them.
22 Vic. No. 19 s. 85.

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Compensation to be made for temporary occupation.

22 Vic. No. 19 s. 86.

99. In any of the cases aforesaid, where the Constructing Authority shall take temporary possession of lands by virtue of the powers herein granted, such Authority shall

- (I) Within one month after his entry upon such lands, upon being required so to do, pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of the Constructing Authority so taking possession of his lands.
- (II) From time to time, during such occupation of the said lands, pay half-yearly or quarterly to such occupier or the owner of the lands, as the case may require, a rent, to be fixed by two Justices in case the parties differ.
- (III) Within six months after he shall have ceased to occupy the said lands, pay to such owner and occupier or deposit with the Master in Equity, in manner aforesaid, for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury that may have been sustained by them, by reason of the exercise as regards the said lands of the powers herein granted, including the full value of all such clay, stone, gravel, sand and other things taken from such land.

Compensation to be ascertained under the clauses in this Act relating to lands taken and injuries.

22 Vic. No. 19 s. 87.

100. The amount and application of the compensation payable by the Constructing Authority in any of the cases aforesaid shall be determined in the manner provided by this Act for determining the amount and application of the compensation to be paid for lands taken under the provisions hereof.

Crossing of roads.

22 Vic. No. 19 s. 88.

101. If the authorized work cross any public highway or carriage road, then such authorized work shall not be carried across, over or under such road, unless the proposed place and mode of such crossing and the immediate approaches thereto, and all other necessary works connected therewith, and the provisions to be adopted for the protection of the public using the same, shall have been previously notified, and shall have been approved of by the Governor.

Before roads interfered with others to be substituted.

22 Vic. No. 19 s. 89.

102. If, in the exercise of the powers hereby granted, it be found necessary to cross, cut through, raise, sink or use any part of any road, whether carriage road, horse road, tram road or railway, either public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or carriages or to the persons entitled to the use thereof, the Constructing Authority shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with and shall, at the public expense, maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be.

Party suffering damage from interruption of road to recover in an action on the case.

22 Vic. No. 19 s. 90.

103. If any party entitled to a right of way over any road so interfered with by the Constructing Authority shall suffer any special damage because such Authority shall fail to cause another sufficient road to be made before it interferes with the existing road, it shall be lawful for such party to recover the amount of such special damage from the Constructing Authority, with costs, by action in the Supreme Court.

Period for restoration of roads interfered with.

22 Vic. No. 19 s. 91.

104. (I) If the road so interfered with can be restored compatibly with the formation and use of the authorized work, the same shall be restored to as good a condition as it was in, at the time when the same was first interfered with by the constructing authority or as near thereto as may be.

(II) If such road cannot be restored compatibly with the formation and use of the authorized work, the Constructing Authority shall

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shall cause the new or substituted road or some other sufficient substituted road to be put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

And the former road shall be restored or the substituted road put into such condition as aforesaid, as the case may be, with all reasonable expedition.

105. If the authorized work shall cross any highway (other than a public carriage-way) on the level, the Constructing Authority shall make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails or other fences; and shall, if such highway be a bridle-way, erect and at all times maintain good and sufficient gates, and if the same be a footway, good and sufficient gates or stiles on each side of the authorized work where the highway shall communicate therewith.

Constructing Authority to make sufficient approaches and fences to bridle-ways and foot-ways crossing the line.
22 Vic. No. 19 s. 92.

106. The Constructing Authority shall make, and at all times maintain, the following works, for the accommodation of the owners and occupiers of lands adjoining any authorized work, that is to say,—

Works for benefit of owners.
22 Vic. No. 19 s. 93.

(I) Such and so many convenient gates, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the authorized work as shall be necessary for the purpose of making good any interruptions caused by the authorized work to the use of the lands through, in, or upon which such authorized work shall be made or constructed; and such work shall be made forthwith after such authorized work or part of it passing over such lands shall have been laid out or formed or during the formation thereof.

Gates, bridges, &c.

(II) Sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land, taken for or for the use of the authorized work, from the adjoining lands not taken and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, in consequence of such authorized work; together with all necessary gates made to open towards such adjoining lands and not towards the authorized work. All necessary stiles, and such posts, rails and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and such other works as soon as conveniently may be.

Fences, &c.

(III) All necessary arches, tunnels, culverts, drains or other passages either over or under, or by the sides of the authorized work, of such dimensions as will be sufficient, at all times, to convey the water as clearly from the lands lying near or affected by such authorized work as before the making of the authorized work or as nearly so as may be; and such works shall be made from time to time as the authorized work proceeds.

Drains.

Provided always that the Constructing Authority shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the authorized work; nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

107. If any difference arise, respecting the kind or number of any such accommodation works or the dimensions or sufficiency thereof or respecting the maintaining thereof, the same shall be determined by the Governor who shall also appoint the time within which such works shall be commenced and executed.

Differences as to accommodation works to be settled by Governor.
22 Vic. No. 19 s. 94.

108. If any of the owners or occupiers of lands affected by such authorized work shall consider the accommodation works made by the Constructing Authority or directed by the Governor to be

Power to owners of lands to make additional accommodation works.
made 22 Vic. No. 19 s. 95.

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made by the Constructing Authority insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the Constructing Authority.

Such works to be constructed under the superintendence of the Constructing Authority's Engineer.
22 Vic. No. 19 s. 96.

109. If the Constructing Authority so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of the Engineer or other officer superintending the making or construction of any authorized work, and according to plans and specifications to be submitted to and approved by the Constructing Authority. Nevertheless, the Constructing Authority shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by such Authority, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by such Authority.

Owners to be allowed to cross until accommodation works are made.
22 Vic. No. 19 s. 97.

110. Until the Constructing Authority shall have made the bridges or other proper communications which it shall, under the provisions herein contained, have been required to make between lands intersected by the authorized work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way shall be affected by the want of such communication, and their respective servants may, at all times, freely pass and repass with carriages, horses and other animals directly (but not otherwise) across the part of the authorized work constructed or made through, in, or upon their respective lands, solely for the purpose of occupying the same lands or for the exercise of such right-of-way, and so as not to obstruct the passage along such authorized work or to damage the same. Nevertheless, if the owner or occupier of any such lands have, in his arrangements with the Constructing Authority, received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the authorized work.

Penalty on persons omitting to fasten gates.
22 Vic. No. 19 s. 98.

111. If any person omit to shut and fasten any gate, set up at either side of the authorized work for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriages, cattle or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds, to be recovered in a summary way before any Stipendiary or Police Magistrate, or any two Justices at the suit of any person authorized by the Constructing Authority.

Power to parties to make private branch railways communicating with the railway.
22 Vic. No. 19, s. 99.

112. (1) This Act shall not prevent the owners or occupiers of lands adjoining any authorized work, when such authorized work is a Railway, or any other persons from laying down, either upon their own lands or upon the lands of other persons with the consent of such persons, any collateral branches of Railway to communicate with any Railway to be made under this Act, for the purpose of bringing carriages to or from or upon such Railway, but under and subject to the prescribed provisions and restrictions and to the provisions of this Act and the "Government Railways Act of 1888."

(II) The Constructing Authority shall, if required, at the expense of such owners and occupiers and other persons, make openings in the rails and such additional lines of rail, as may be necessary for effecting such communication, in places where the communication can be made with safety to the public and without injury to the Railway and without inconvenience to the traffic thereon.

(III) The Constructing Authority shall not take any rate or toll or other moneys for the passing of any passengers, goods or other

Public Works.

other things along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions (that is to say)—

- (a) No such branch Railway shall run parallel to the authorized Railway. Restrictions and conditions.
- (b) The Constructing Authority shall not be bound to make any such openings in any place which such Authority shall have set apart for any specific purpose with which such communication would interfere, or upon any inclined plane or bridge, or in any tunnel.
- (c) The persons making or using such branch Railways shall be subject to all by-laws and regulations of the Railway Commissioners, from time to time made with respect to passing upon or crossing the Railway and otherwise; and the persons making or using such branch Railways shall be bound to construct, and, from time to time, as need may require, to renew the rails, crossings, switches and sleepers according to the most approved plan adopted by the Constructing Authority and under the direction of the Engineer of the Railway.

113. The lands to be taken or used for any authorized work, where such authorized work is a Railway, shall not exceed one hundred yards in width except where a greater width shall be judged necessary for an approach to the Railway or for waggons and other carriages to turn, remain, stand in, lie or pass each other, or for raising embankments for crossing valleys or low grounds, or in cutting through high ground, or for the erection or establishment of any fixed or permanent machinery, tollhouses, warehouses, wharf or other erections and buildings or for excavating, removing, or depositing earth or other materials. Breadth of land to be taken for Railway. 22 Vic. No. 19 s. 11.

Provisions as to Lands containing minerals, &c.

114. Notwithstanding anything hereinbefore in this Act contained, or in any other Act incorporated, or made applicable by this Act, the Constructing Authority shall not be entitled to any mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under any land taken or purchased by such Authority after the passing of this Act, except only such portions thereof as shall be necessary to be dug or carried away or used in the construction of the works; unless the same shall have been expressly taken or purchased. And all such mines and deposits, except as aforesaid, shall be deemed to be excepted on the taking or out of the conveyance of such lands, unless they shall have been expressly taken or conveyed. Constructing Authority not to be entitled to minerals. 8 Vic. c. 20 s. 77.

115. If the owner, lessee or occupier of any mines or minerals lying under any authorized work or any of the works connected therewith or within forty yards from the boundary thereof be desirous of working the same, such owner, lessee or occupier shall give to the Constructing Authority notice in writing of his intention so to do, thirty days before the commencement of working. And upon the receipt of such notice it shall be lawful for the Constructing Authority to cause such mines to be inspected by any person appointed by him for the purpose; and if it appear to the Constructing Authority that the working of such mines or minerals is likely to damage the authorized work, and if the Constructing Authority be willing to make compensation for such mines or any part thereof to such owner, lessee or occupier, then he shall not work or get such minerals and if the Constructing Authority and such owner, lessee or occupier do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation as hereinbefore provided. Mines lying near the railway not to be worked if the Constructing Authority willing to take or purchase them. 8 Vic. c. 20 s. 78.

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If Constructing Authority unwilling to purchase owner may work the mines.
8 Vic. c. 20 s. 79.

116. (I) If before the expiration of such thirty days the Constructing Authority do not state its willingness to treat with such owner, lessee or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the Constructing Authority shall not have agreed to give compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate.

(II) If any damage or obstruction be occasioned to the authorized work by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee or occupier of such mines or minerals and at his own expense.

(III) It shall be lawful for the Constructing Authority, if such repair or removal be not forthwith carried out by, or, if such Authority think fit, without waiting for the same to be carried out by such owner, lessee, or occupier, to carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by action in the Supreme Court.

Mining communications.
8 Vic. c. 20 s. 80.

117. If the working of any such mines under the authorized work or within the abovementioned distance therefrom be prevented as aforesaid, by reason of apprehended injury to such authorized work, it shall be lawful for the respective owners, lessees and occupiers of such mines and whose mines shall extend so as to lie on both sides of the authorized work to cut and make so many air ways, headways, gateways or water-levels through the mines, measures or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain and work their said mines. But no such airway, headway, gateway or water-level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be prescribed, not greater than eight feet wide and eight feet high, or of such a nature as to injure or to impede the passage on, to, through or over the same.

Constructing Authority to make compensation for injury done to mines.
8 Vic. c. 20 s. 81.

118. The Constructing Authority shall from time to time pay to the owner, lessee or occupier of any such mines, lying on both sides of the authorized work, all such additional expenses and losses as shall be incurred by such owner, lessee or occupier by reason of the severance of the lands lying over such mines by the authorized work, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions, as not to prejudice or injure the railway, and for any minerals not taken or purchased by the Constructing Authority which cannot be obtained by reason of making or constructing and maintaining the authorized work. And if any dispute or question shall arise between the Constructing Authority and such owner, lessee or occupier as aforesaid touching the amount of such losses or expenses the same shall be settled by arbitration as hereinbefore mentioned.

And also for any airway or other work made necessary by the railway.
8 Vic. c. 20 s. 82.

119. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines, the working whereof shall have been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the Constructing Authority shall make full compensation to such owner or occupier for the loss or damage so sustained by him, if he is not also the owner, lessee or occupier of any mine under such lands, in connection with which such airway or other work has been made.

Power to Constructing Authority to enter and inspect the working of mines.
8 Vic. c. 20 s. 83.

120. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorized work it shall

Public Works.

shall be lawful for the Constructing Authority, after giving twenty-four hours' notice in writing, to enter upon any lands, through, in, on or near which the authorized work is constructed, and wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for such Authority to make use of any apparatus or machinery belonging to the owner, lessee or occupier of such mines and to use all necessary means for discovering the distance from the railway to the parts of such mines, which are being worked or about so to be.

121. If any such owner, lessee or occupier of any such mine shall refuse to allow any person, appointed by the Constructing Authority for that purpose, to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the Constructing Authority a sum not exceeding twenty pounds.

Penalty for refusal to inspect.
8 Vic. c. 20 s. 84.

122. If it appear that any such mines have been worked contrary to the provisions of this Act, the Constructing Authority may, if such Authority think fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the authorized work and preventing injury thereto. And if, after such notice, any such owner, lessee or occupier do not forthwith proceed to construct the works necessary for making safe such authorized work, the Constructing Authority may himself construct such works and recover the expense thereof from such owner, lessee or occupier, by action in the Supreme Court.

If mines improperly worked the Constructing Authority may require means to be adopted for the safety of the railway.
8 Vic. c. 20 s. 85.

SCHEDULES.

FIRST SCHEDULE.

I, A.B., do solemnly and sincerely promise and declare, that, according to the best of my skill and ability, I will faithfully, impartially, and truly execute the office and perform the duties of a Member of the Parliamentary Standing Committee on Public Works.

(Signed) A. B.

SECOND SCHEDULE.

(A.)

To the Sheriff of New South Wales, his Deputy and all Officers of the Police Force of the said Colony, and to the Keeper of the Gaol at

THESE are to command you the said Sheriff and all Officers as aforesaid, to apprehend A.B., and to convey him to the said gaol, and to deliver him to the said Keeper thereof together with this warrant; and you the said Keeper are hereby required to receive him into your custody in the said gaol, and him there safely to keep for the term of [or unless the sum of shall be sooner paid], I the undersigned of the (or) having now here adjudged the said A.B. [to pay a fine of, and in default of immediate payment thereof] to be imprisoned for the said term, for that he the said A.B.

[Here state the offence to the following effect as the case may require.]

That A.B. having been duly summoned as a witness, and having had his expenses paid or tendered, neglected to appear before the Parliamentary Standing Committee on Public Works, (or) that A.B. wilfully insulted the said Committee, (or) C.D. one of the members of the said Committee, (or) that A.B. interrupted the proceedings of the said Committee, (or) that A.B. misbehaved himself before the said Committee, (or) that A.B. having been summoned or being examined as a witness in a certain inquiry or matter pending

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pending before the said Committee refused to be sworn, or to produce a certain document mentioned in the summons served on him, viz., (or) that A.B. having been so summoned refused to be sworn or to make a solemn declaration pursuant to the "Public Works Act of 1888," (or) that A.B. was guilty of prevarication in his evidence or refused to answer a certain lawful question.

Given under my hand this _____ day of _____

C.D.,

Chairman (or Vice-Chairman) of the Parliamentary Standing Committee on Public Works.

(B.)

Form of Warrant.

In the matter of the "Public Works Act of 1888" and To the Sheriff of New South Wales, his Deputy and Assistants, and to all Officers of the Police Force of the said Colony.

WHEREAS pursuant to the provisions of sub-section (f) of section 10 of the said Act it has this day been proved to me that _____ of _____ has been duly summoned to attend and give evidence before the Parliamentary Standing Committee on Public Works pursuant to the "Public Works Act of 1888," but has failed to appear.

This is to require you forthwith to apprehend the said _____, and to detain him in custody and bring him before the said Committee to give evidence.

Given under my hand and seal at _____ aforesaid, this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

A.B.,

Chairman (or Vice-Chairman) of the said Committee.

THIRD SCHEDULE.

Form of Conveyance.

I _____ of _____ in consideration of the sum of _____ paid to me (or _____ as the case may be) into the hands of the Master in Equity of the Supreme Court or to _____ of _____ and _____ of _____ two trustees appointed to receive the same pursuant to the "Public Works Act of 1888" by the [here name the Constructing Authority] do hereby convey to the said Constructing Authority his successors and assigns for and on behalf of Her Majesty. All, &c. [describing the premises to be conveyed], together with all ways, rights and appurtenances thereto belonging and all such estate, right, title and interest in and to the same as I am or shall become seized or possessed of or am by the said Act empowered to convey, to hold the premises to the said Constructing Authority his successors and assigns for ever according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal the _____ in the year of our Lord _____

FOURTH SCHEDULE.

(A.)

Notice of claim and abstract.

To the [here name the Constructing Authority.] IN pursuance of the "Public Works Act of 1888" I of _____ (or we) hereby give you notice that I (or we) claim compensation in respect of the land hereunder described which has been taken under the said Act. The amount of such claim and other the particulars required by the said Act are stated in the subjoined abstract. [If the claim is not for land taken this form may be modified in accordance with the nature of the claim.]

Abstract.

Names and descriptions of parties claiming and nature of their interests, whether tenants for life, in tail, or otherwise.	Situation and description of property.	Quit rents payable if leasehold, name of landlord, term of lease, and rent reserved.	Names of occupiers, distinguishing whether tenants-at-will or under lease, rent reserved, terms, &c.	Particulars of claim, specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected, and name of claimant's solicitor or agent.

(Signature)
(Address)
(Date)

(B.)

Public Works.

(B.)

Notice of Valuation.

To A. B., claimant in respect of the land hereunder described, taken under the "Public Works Act of 1888."

TAKE notice that the land hereunder described, being that in respect of the taking whereof, under the authority of the aforesaid Act, your claim for compensation lodged has been valued at the sum of £

A.B. (Constructing Authority.)

Description of land or damage in respect of which claim has been made.

ALL that piece or parcel of land, &c., &c.

* Forms (A) and (B) in this Schedule, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Part II of the Act aforesaid.

FIFTH SCHEDULE.

"PUBLIC WORKS ACT OF 1888."

Offer and particulars of claim where lands taken for Railway or Tramway purposes.

To

I HEREBY offer to accept from the Constructing Authority as purchase money for the land (including buildings and fences erected thereon) of which I am* delineated on the tracing plan attached to the notice of land taken, and numbered , which I hereby acknowledge to have received, containing acres roods and perches, more or less, and as compensation for damage by severance, by the , or otherwise caused by the execution of the works, as particularly set forth in the subjoined Schedule of Claim, the sum of £ , which sum I declare to be my full claim in respect of the matters aforesaid.

Dated this day of 188 .

[Name and Address of Claimant.]

To the Constructing Authority, Sydney.

Schedule of Claim.

Land Resumed.	Reference No.	Area.	Character.	Estimated Value.		Total Value.
		a. r. p.		Per acre £	or per foot £	£ s. d.
			Building ...	£	.....
			Cultivation...	" £	.....
			Pasture .....	" £	.....
			Mineral.....	" £	.....
Improvements taken.	Nature and Description of Improvements taken.					
	Buildings					
	Fences					
	Other improvements					
Damage by severance or otherwise						
Total amount of Claim.....£						

[Signature of Claimant.]

- * (1) "the owner in fee simple,"
 - (2) "the owner of an estate for life,"
 - (3) "mortgagee with power of sale,"
 - (4) "I have a leasehold interest for years,"
- (as the case may be).

NOTE.—This form varied, so as to suit the particular circumstances of the case, may be used for land taken for Railway or Tramway purposes.

Blank Form

Faint, illegible text in the upper section of the page, possibly a header or introductory paragraph.

Second section of faint, illegible text, appearing to be a main body of content.

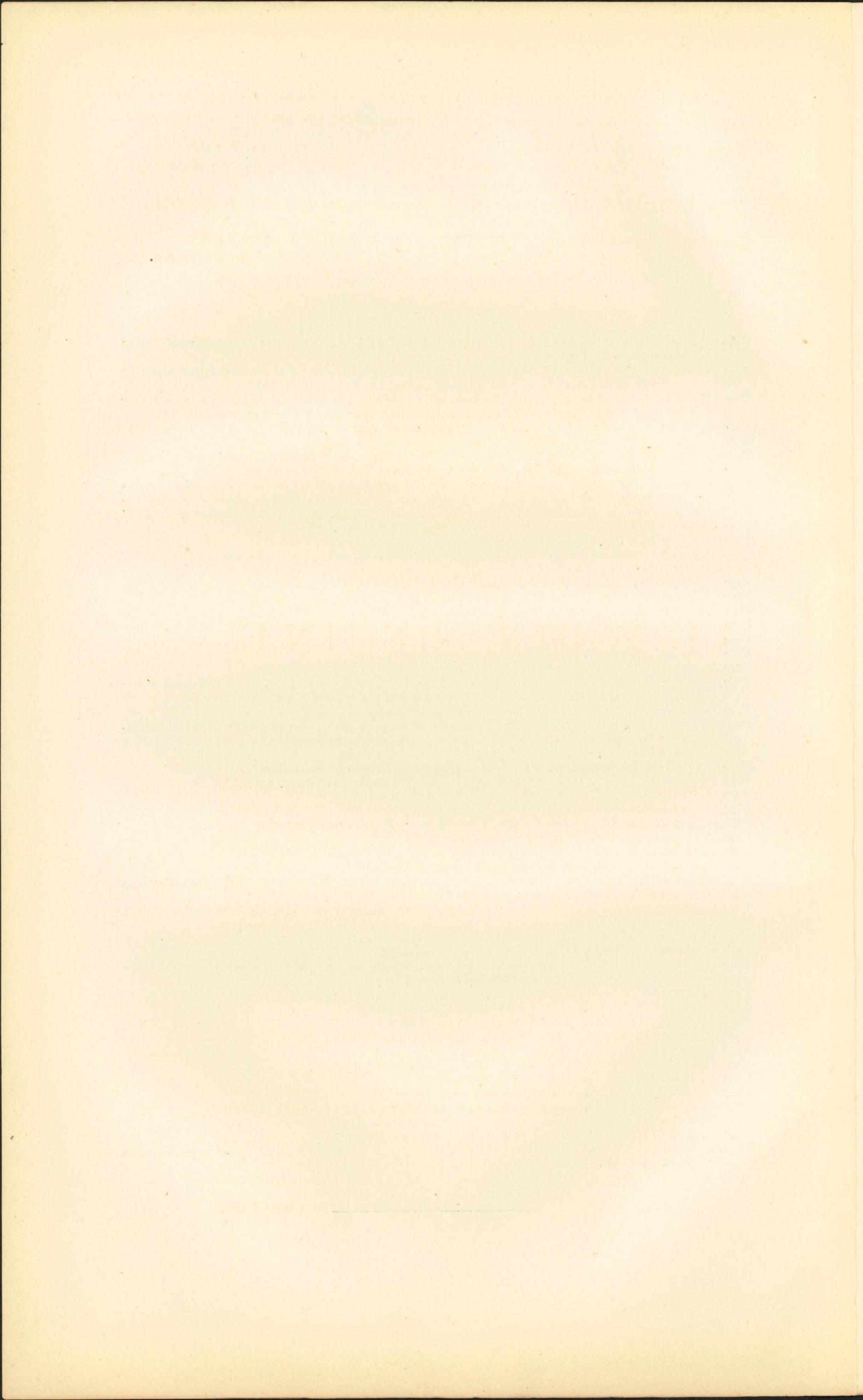
A large rectangular area containing faint, illegible text, possibly representing a table or a detailed list.

Third section of faint, illegible text, likely a concluding paragraph or a separate section.

PUBLIC WORKS BILL.

SCHEDULE of the Amendments referred to in Message of 10th May, 1888.

- Page 1, title. *Omit* "submitted to Parliament" *insert* "and the carrying out thereof when **authorized by Parliament**"
- Page 1, clause 2, lines 11 and 12. *Omit* "declared expedient by Resolution of the Legislative Assembly pursuant to this Act" *insert* "**authorized in manner herein provided**"
- Page 2, clause 2, lines 2 to 4. *Omit* "Resolution of the Legislative Assembly authorizing the carrying out of such work" *insert* "**the authorization thereof in manner herein provided**"
- Page 3, clause 8, line 16. *After* "the" *insert* "**commencement of the**"
- Page 3, clause 10. *Omit* subsection (e) *insert* new subsections (e) and (f)
- Page 4, clause 11, line 28. *After* "as" *insert* "**the Committee may recommend and**"
- Page 4, clause 11, line 29. *Omit* "appoint" *insert* "**approve**"
- Page 4, clause 13, lines 55 to 58. *Omit* "a Resolution of the Legislative Assembly affirming the expediency of executing such work shall first have been carried in accordance with the procedure and provisions hereinafter set forth" *insert* "**sanctioned as hereinafter provided**"
- Page 5, clause 14, line 35. *After* "Gazette" *omit* remainder of clause.
- Page 5, clause 16. *Omit* clause 16 *insert* new clause 16.
- Page 7, clause 18, lines 2 and 3. *Omit* "estimated to cost less than" *insert* "**the estimated cost of which does not exceed**"
- Page 7, clause 19, line 16. *Omit* "s" from "Acts"
- Page 7, clause 20, line 25. *Omit* "s" from "Acts"
- Page 8, clause 23, line 9. *Omit* "s" from "Acts"
- Page 8, clause 23, lines 24 and 25. *Omit* "twenty-two" *insert* "**twenty-second**"
- Page 8, clause 23, line 26. *Omit* "forty-four" *insert* "**forty-fourth**"
- Page 8, clause 23, line 26. *Omit* "twenty-six" *insert* "**sixteen**"
- Page 8, clause 23, line 30. *Omit* "s" from "Acts"
- Page 8, clause 24, lines 47 and 48. *Omit* "as well as any other benefit or advantage which such owner may or shall obtain"
- Page 8, clause 24, lines 51 and 52. *Omit* "or benefit or advantage"
- Page 9, clause 25 line 2. *After* "value" *omit* "remainder of clause" *insert* "**together with compensation for damage, if any, by severance, to be determined under the provisions of this Act**"
- Page 9, PART III, heading, line 20. *Omit* "(The Lands Clauses Consolidation Act provisions)"
- Page 10, clause 29, line 52. *Omit* "Commissioner" *insert* "**Constructing Authority**"
- Page 11, clause 29, line 21. *After* "plan" *omit* "or" *insert* "**and**"
- Page 11, clause 30, line 28. *Omit* "s" from "cases"
- Page 11, clause 30, line 29. *Omit* "aforesaid" *insert* "**of a Railway or Tramway**"
- Page 13, clause 38, line 31. *After* "served" *insert* "**or given**"
- Page 13, clause 39, line 58. *Omit* "twelve months" *insert* "**two years**"
- Page 14, clause 41, line 21. *Omit* "one-fourth" *insert* "**one-third**"
- Page 14, clause 41. At end of clause *add* "**unless the Constructing Authority shall have offered a less amount than the sum awarded**"
- Page 14, clause 43, line 56. *After* "arbitrator" *insert* "**or refuse or for fourteen days neglect to act as arbitrator**"
- Page 15, clause 43, line 4. *After* "death" *insert* "**refusal, neglect,**"
- Page 15, clause 47, line 29. *Omit* "seven" *insert* "**fourteen**"
- Page 15, clause 47, line 29. *After* "act" *insert* "**and where no substituted arbitrator shall have been appointed under section forty-three hereof**"
- Page 16, clause 51, line 8. *Omit* "one-fourth" *insert* "**one-third**"
- Page 19, clause 68, line 27. *After* "paid" *insert* "**or deposited**"
- Page 20, clause 73, line 44. *Omit* "Second" *insert* "**Third**"
- Page 22, clause 80, line 34. *Before* "land" *omit* "the" *insert* "**such**"
- Page 22, clause 80, line 34. *Omit* "so required to be taken"
- Page 31, clause 112, line 20. *Omit* "they" *insert* "**such authority**"
- Page 32, clause 116, line 12. *After* "of" *insert* "**such**"
- Page 32, clause 116, line 13. *Omit* "his" *insert* "**its**"
- Page 32, clause 116, line 26. *Omit* "he" *insert* "**such authority**"
- Page 33, clause 120, line 18. *Omit* "them" *insert* "**such authority**"
- Page 33, clause 122, line 31. *Omit* "they" *insert* "**such authority**"
- Pages 34 and 35, Schedules. *Omit* First, Second, Third, and Fourth Schedules; *insert* new Schedules **First to Fifth.**



This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 12 April, 1888.* }

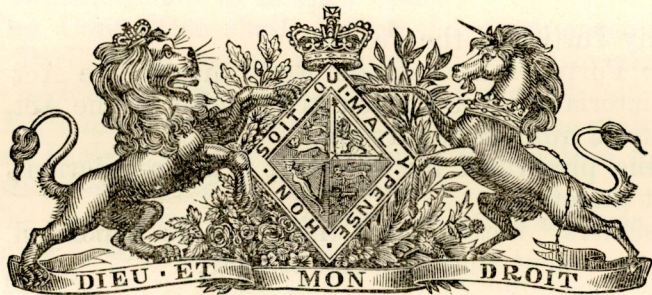
F. W. WEBB,
Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

*Legislative Council Chamber,
Sydney, 10th May, 1888.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. .

An Act to provide for the constitution of an Authority to investigate and report upon proposals for Public Works submitted to Parliament, and the carrying out thereof when authorized by Parliament, to make better provision for the acquisition of land for carrying out such Works, and for other purposes in connection therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

5

PART I.

Constitution and Powers of Parliamentary Standing Committee on Public Works.

1. This Act may be cited as the "Public Works Act of 1888." Short title.

2. In this Act the expression

10

"Authorized Work" means any work the carrying out of which has been declared expedient by Resolution of the Legislative Assembly pursuant to this Act authorized in manner herein provided.

Interpretation of terms.

15

"Committee" means the Parliamentary Standing Committee on Public Works as constituted under the provisions of this Act.

21—A

"Constructing

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

Public Works.

- 5 “Constructing Authority” means the responsible Minister of the Crown empowered to undertake any public work after resolution of the Legislative Assembly authorizing the carrying out of such work, the authorization thereof in manner herein provided, and the said expression includes the “Railway Commissioners,” for the purpose of giving effect to any powers or duties conferred or imposed on them by this Act, or by the “Government Railways Act of 1888.”
- 10 “Government Debentures” includes, in addition to such Debentures, any Government Stock issued by the Government of this Colony pursuant to any statutory power.
- “Governor” means the Governor with the advice of the Executive Council.
- “Justice” means any Justice of the Peace.
- 15 “Lands for Public Purposes Acquisition Act” means the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six.
- “Prescribed” means prescribed by this Act, or by regulations made pursuant thereto.
- “Railway Commissioners” means the Commissioners appointed under the “Government Railways Act of 1888.”

20 *Constitution and Powers of the Committee.*

3. As soon as may be conveniently practicable after the passing of this Act, and thereafter, on some day not later than the seventh day after the commencement of each Session of every Parliament, 25 a Joint Committee of Members of the Legislative Council and Legislative Assembly, to be called the “Parliamentary Standing Committee on Public Works,” shall be appointed, according to the practice regulating the selection of Members to serve on Select Committees of the said Council and Assembly respectively. Five of the persons so to be 30 appointed shall be Members of the Legislative Council, and eight shall be Members of the Legislative Assembly. Such thirteen persons shall hold office as a Joint Committee (subject to the provisions in the next following section contained) for the Session for which they were 35 appointed, and during the interval between the prorogation of Parliament and the next ensuing Session thereof; and shall have and may exercise such powers and authorities, perform such duties, and be liable to such obligations, as are by this Act vested in or imposed upon such Committee. The names of the persons from time to time 40 appointed to be members of such Committee shall be notified in the *Gazette* with all convenient despatch.

4. Any member of the Committee may resign his seat on such Committee by writing under his hand addressed to the Governor. The seat of any such member shall also be deemed to have become vacant 45

(I) For any reason which would vacate his seat as a Member of the Assembly or Council (as the case may be);

(II) By his acceptance of any office of profit under the Crown; On the occurrence of any such vacancy the same shall be filled upon motion in the usual manner, provided that the respective proportions in respect to the representation on the Committee of Members of the 50 Legislative Council, and Members of the Assembly hereinbefore prescribed shall be observed in the filling up of all such vacancies.

5. (I) There shall be a Chairman and Vice-Chairman of the Committee who shall be elected by the members of the Committee at their first meeting, or as soon after such meeting as may be practicable. 55 The Chairman or, in case of his absence or other disability, the Vice-Chairman shall preside at all meetings of the Committee.

(II) Any seven members of the Committee (of whom the Chairman or Vice-Chairman shall be one) shall form a quorum competent to exercise all powers and authorities and to incur all 60 obligations conferred or imposed by this Act upon the Committee.

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6. Every member of the Committee, before entering on the duties of his office or sitting at any meeting of such Committee, shall make and subscribe a declaration in the form of the First Schedule hereto.

Declaration of members of Committee.

5 7. The Committee shall have power to sit and transact business during any adjournment or recess as well as during the Session for which they shall have been appointed, and may sit at such times and in such places, and conduct their proceedings in such manner as may seem most convenient for the proper and speedy dispatch of business, and such Committee shall sit in open Court.

Power to sit during recess, and in open Court.

8. The Committee shall, before the commencement of each Session of Parliament, make a report to the Governor of their proceedings under this Act; and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and, if not, then within fourteen days after the commencement of the next Session.

Report.

9. The Committee shall keep full minutes of their proceedings in such manner as the Governor may direct.

Minutes.

10. For the purposes of this Act the Committee shall have the following powers that is to say—

Powers of Committee.

(a) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any land, building, place or material the entry or inspection of which appears to them requisite, upon the prescribed notice being given to the owners or occupiers of such land, building, place or material.

(b) They may require, by summons under the hand of the Chairman or Vice-Chairman, the attendance of all such persons as they may think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make.

(c) They may, in the prescribed manner, require and compel the production of all books, maps, plans, papers and documents relating to the matters before them.

(d) They may, by their Chairman or Vice-Chairman, examine witnesses on oath; or where a witness, if examined before a Superior Court of Record, would be permitted to make a solemn declaration, or to give evidence in any other way than upon oath, then by such declaration or otherwise as the case may be.

(e) They may, when sitting in open Court, by their Chairman or Vice-Chairman, punish for contempt in like manner as if they were a superior Court of record, and with the like effect in all respects.

(e) If any person whose expenses have been paid or tendered to him shall neglect to appear; or if any person shall wilfully insult the Committee or any of its members, or shall interrupt the proceedings of the Committee, or shall misbehave himself before the Committee; or being summoned or examined as a witness in any inquiry or matter pending before the Committee, refuses to be sworn or to produce the documents mentioned in the summons served upon him or any of them, or to make a solemn declaration as aforesaid, or prevaricates in his evidence or refuses to answer any lawful question, it shall be lawful for the Chairman or Vice-Chairman to commit any such offender to gaol for any time not exceeding one month, or to impose on any such offender a fine not exceeding fifty pounds, and in default of immediate payment thereof to commit the offender to gaol for any time not exceeding one month, unless the fine be sooner paid; and in any of the cases aforesaid a warrant, in the form contained in the

Second

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Second Schedule (A) hereto, shall and may be issued by such Chairman or Vice-Chairman, and shall be good and valid in law without any other warrant, order, or process whatsoever; and the Sheriff, his Deputy, and all officers of the Police Force and gaolers to whom the same shall be addressed shall obey the same.

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- (f) Where any person who has been duly served with a summons to attend as a witness before the Committee, and whose expenses have been paid or tendered to him, shall fail to appear in obedience to his summons, the Chairman or Vice-Chairman of the Committee, upon proof of such person having been duly served with such summons, and upon proof also that such person's non-appearance was without just cause or reasonable excuse, may issue a warrant in the form or to the effect of the Second Schedule (B) to bring such person before the Committee to give evidence.

Every person required by the Committee to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a superior Court of record, and, in case of dispute as to the amount to be allowed, the same shall be referred to the Prothonotary of the Supreme Court who, on request under the hand of the Chairman of the Committee, shall ascertain and certify the proper amount of such expenses.

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11. The Committee may, from time to time, in the exercise of any powers by this Act conferred on them, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge, or possessing special local knowledge or experience. There shall be paid to such assessors such remuneration as the Committee may recommend and the Governor may appoint approve and as Parliament may provide.

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12. The Committee shall, subject to the provisions contained in the next following section, consider and report upon all Public Works (except Fortifications and Works connected with the Military or Naval Defence of the Colony) to be executed after the passing of this Act, (and whether such works are continuations, completions, repairs, reconstructions, extensions or new works), in all cases where the estimated cost of completing such work exceeds twenty thousand pounds. And, in considering and reporting on any such work as aforesaid, the Committee shall have regard to the stated purpose thereof, and to the necessity or advisability of carrying it out; and, where such work purports to be of a reproductive or revenue producing character, the Committee shall have regard to the amount of revenue which such work may reasonably be expected to produce, and to the present and prospective public value of such work; and generally the Committee shall, in all cases, take such measures and procure such information as may enable them to inform or satisfy the Legislative Assembly as to the expediency of carrying out the work in question.

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13. After the first gazetting of the Parliamentary Committee of Public Works pursuant to this Act no Public Work of any kind whatsoever, (except as excepted in the last preceding section, and except such works as the Railway Commissioners are authorized to carry out pursuant to the "Government Railways Act of 1888"), the estimated cost of completing which shall exceed twenty thousand pounds, and whether such work be a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless a resolution of the Legislative Assembly affirming the expediency of executing such work shall first have been carried in accordance with the procedure and provisions hereinafter set forth sanctioned as hereinafter provided:

- 60
- (i) Every such proposed work shall, in the first place, be submitted and explained in the Legislative Assembly by some Member of

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- of the Executive Council having a seat in such Assembly (hereafter termed "the Minister"). The explanation shall comprise an estimate of the cost of such work when completed, together with such plans and specifications or other descriptions as the Minister shall deem proper and, in the case of a proposed Railway or Tramway, a map or plan of the line and Book of Reference, together with a report by the Railway Commissioners on the probable cost of construction and maintenance of such railway or tramway, and an estimate of the probable revenue to be derived therefrom; And such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner;
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- (II) Upon motion, in the usual manner, made by the Minister or by any Member of the Assembly such proposed work shall be referred to the Parliamentary Committee on Public Works for their report thereon.
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- (III) The Committee shall, with all convenient dispatch, deal with the matter so referred to them, and, for that purpose may exercise all powers by this Act conferred on such Committee.
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- (IV) The Committee shall, as soon as conveniently practicable, (regard being had to the nature and importance of the proposed work) report to the Legislative Assembly the result of their inquiries.
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- (V) After the receipt of such report the said Assembly shall, by resolution, declare, either that it is expedient to carry out the proposed work, or that it is not expedient to carry out the same.

Provided always that the said Assembly, instead of declaring affirmatively or negatively as aforesaid, may resolve that the report of the Committee shall, for reasons or purposes to be stated in the resolution, be remitted for their further consideration and report to the said Committee; in which case such Committee shall consider the matter of such new reference, and report thereon accordingly.

14. Every resolution of the Legislative Assembly declaring that it is expedient or not expedient to carry out any such proposed work as aforesaid shall be notified in the *Gazette*, and upon such notification as aforesaid (if in the affirmative), the work so proposed may be proceeded with as hereinafter provided.

Notification of resolution.

15. If any such resolution declares that it is not expedient to carry out any proposed work no proposal for a public work in substance identical with the work referred to in such resolution shall be submitted to the Legislative Assembly until after the expiration of one year from the notification of such resolution as aforesaid, unless the Governor, by writing under his hand addressed to the said Committee, declares that, in his opinion and in view of the public interest, it is desirable that any such proposal should be re-submitted to the said Assembly.

Under what circumstances negatived proposals may be re-submitted.

16. (I) Every Resolution of the Legislative Assembly declaring that it is expedient to carry out the work specified or mentioned in such resolution shall be sufficient authority for the Minister to introduce a Bill into the said Assembly to sanction the carrying out of such work. Provided always that no such contracts to be entered into by the Constructing Authority for carrying out of such work shall exceed in the aggregate by more than ten per cent. the estimate for the same as submitted to Parliament.

Resolution to be sufficient authority for execution of Works.

55 (II) All such contracts may be made as follows (that is to say),—

60 With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, the Constructing Authority may make such contract in writing and under its seal and in the same manner may vary or discharge the same.

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5 With respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, the Constructing Authority may make such contract in writing and in the same manner may vary or discharge the same.

10 With respect to any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, the Constructing Authority may make such contract by parol only without writing, and in the same manner may vary or discharge the same.

15 And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Constructing Authority on behalf of Her Majesty, and all other parties thereto, their heirs executors or administrators as the case may be; and on any default in the execution of any such contract either by the said Authority or any other party thereto, such actions or suits may be brought either by or against the said Authority as might be brought had the same contracts been made between private parties.

20 16. (i) Every Resolution of the Legislative Assembly declaring that it is expedient to carry out the work specified or mentioned in such resolution shall be deemed to impose a statutory duty on the Minister to introduce a Bill into the said Assembly to sanction the carrying out of such work, upon the passing whereof by Parliament and in such form as Parliament may think fit, the authorization of
 25 such work shall become absolute, and the Constructing Authority shall thereupon carry out such work, enter into such contracts, and take all such necessary steps for the proper execution thereof as such Authority may think proper. Provided always that no such contracts shall exceed in the aggregate by more than ten per centum the estimate for the same submitted as hereinbefore provided.

Resolution when to be sufficient authority for execution of Works, &c.

30 (ii) All such contracts may be made as follows (that is to say),—

35 With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, the Constructing Authority may make such contract in writing and under its seal, and in the same manner may vary or discharge the same.

40 With respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, the Constructing Authority may make such contract in writing, and in the same manner may vary or discharge the same.

45 With respect to any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, the Constructing Authority may make such contract by parol only without writing, and in the same manner may vary or discharge the same.

50 And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Constructing Authority on behalf of Her Majesty, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default in the execution of any such contract either by the said Authority or any other party thereto, such actions or suits may be brought either by or against the said Authority as might be brought
 55 had the same contracts been made between private parties.

17. The Governor, on the recommendation of the Committee, may frame regulations for giving effect to this Act. Such regulations when published in the *Gazette* shall have the full force of law; and copies thereof shall be laid before Parliament within fourteen days
 60 after such publication, if Parliament be then in Session, and, if not, then within fourteen days from the commencement of the then next Session of Parliament.

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18. Notwithstanding anything hereinbefore contained, the Governor may, with respect to any Public Work estimated to cost less than the estimated cost of which does not exceed Twenty Thousand Pounds, direct that the same may be carried out under the "Public Works Act of 1888," in which case all the powers and provisions contained in Parts II and III of this Act shall be applicable to such work and the same shall, for all purposes of the said Parts, be deemed to be an "authorized work," and the Commissioners of Railways or Minister on whom the carrying out of such work devolves shall for the like purposes, be deemed a "constructing authority."

Provisions of Act may be extended to certain Public Works.

PART II.

General and Special Provisions in respect to the taking or acquisition of Lands for authorized Works, &c.

19. The Governor may direct that any land required, in his opinion, for any authorized work may be acquired, either by taking the same under the "Lands for Public Purposes Acquisition Acts," as adopted by this Act, or under the provisions contained in Part III hereof. Thereupon, subject to the provisions of this Act, the land so required may be taken or acquired in the manner directed, and the compensation for such land shall be ascertained and dealt with in all respects pursuant to the said Acts as so adopted, or the said Part, as the case may be.

As to taking of lands after resolution.

20. For the purpose of carrying out any authorized work if the Governor directs that any land required for such work shall be taken under the "Lands for Public Purposes Acquisition Acts," he may by notification to be published in the *Gazette* and in one or more newspapers published or circulated in the Police District wherein is situated the land the subject of such notification declare that the land described in such notification has been appropriated (if Crown Land) or resumed (if private property) for the public purpose therein expressed. And an abstract of the land so appropriated or resumed together with the purpose for which the same is required shall, in every case, be laid before Parliament (if in Session at the date of such notification) within seven days after its publication in the *Gazette*; and if not, then within fourteen days after the commencement of the next ensuing Session.

As to lands taken for authorized works, under "Lands for Public Purposes Acquisition Acts."

21. Upon the publication of such notification in the *Gazette* the lands described or referred to in such notification shall forthwith be vested in the Constructing Authority on behalf of Her Majesty for the purposes of this Act for an estate in fee simple in possession, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way, or other easements whatsoever, and to the intent that the legal estate therein, together with all powers incident thereto, or conferred by this Act, shall be vested in such Authority as a trustee. And for the purpose of facilitating the acquisition and disposal of land under this Act the said Authority when a Minister is hereby declared to be a Corporation sole under the name of "the Minister"; and, by that name, shall have perpetual succession and an official seal, sue and be sued, and take all legal proceedings in all Courts and places whatsoever, with power to purchase, take and hold lands to him and his successors for the purposes of this Act, and also to sell and dispose of any superfluous lands if necessary, and to give effectual discharges in respect thereof to any purchaser.

Vesting &c. of land upon publication of notification in *Gazette*.

22. Where the land taken is Crown Land at the date of such publication, or is vested in any corporation or person on behalf of Her Majesty, or for public purposes, by virtue of any statute, or is within the limits with reference to centres of population prescribed by the "Crown Lands Act" in force for the time being, the effect of such publication shall be to withdraw the said land (to the extent taken) from

Effect of publication upon Crown Lands.

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from any lease or license, or promise thereof, and to cancel, to the like extent, any dedication or reservation of the said land made under the authority of any such Act, or to divest the estate of such corporation or person, and to vest the said land to the extent aforesaid in the Constructing Authority for the purposes mentioned and for the estate limited in the last preceding section.

23. For the purpose of ascertaining and dealing with the compensation to be paid for the taking of such lands, the provisions of the "Lands for Public Purposes Acquisition Acts" (as by this Act adopted) shall be applied, and shall govern both the party taking such lands, and the party from whom such lands are taken, and all persons claiming through or on behalf of such parties. And for such and all other subsidiary purposes, the tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-third and twenty-fourth sections of the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six shall be incorporated with this Act. Provided that, in the application of the said provisions, the expression "the Minister" or "Minister for Public Works," as and when used in any of such incorporated sections, shall mean "the Constructing Authority" as defined by this Act; and the expression "this Act" when so used in any of such sections shall mean the "Public Works Act of 1888" and the enactments incorporated therewith. Provided further that in lieu of the provisions of the "Government Railways Act" ~~twenty-two~~ ~~twenty-second~~ Victoria number nineteen, incorporated in the Act ~~forty-four~~ ~~forty-fourth~~ Victoria number ~~twenty-six, sixteen,~~ the corresponding provisions as re-enacted in Part III hereof, and indicated in the margin by references to the sections of the said "Government Railways Act," shall be substituted in applying the said "Lands for Public Purposes Acquisition Acts."

Incorporation of provision of Lands for Public Purposes Acquisition Acts.

24. For the purpose of ascertaining the purchase money or compensation to be paid by the Constructing Authority regard shall in every case after the passing of this Act be had by the magistrates, arbitrators, surveyors, valuers or jury (as the case may be) not only to the value of the land to be purchased or taken, 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 other lands of such owner or otherwise injuriously affecting such other lands by the exercise of any statutory powers by such Authority; and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time notice was given of such lands being required or having been taken. Provided always that the said magistrates, arbitrators, surveyors, valuers, and jury in ascertaining such purchase money or compensation shall take into consideration and give effect to by way of set-off or abatement any enhancement in the value of any land belonging to such owner adjoining the land taken or severed therefrom, ~~as well as any other benefit or advantage which such owner may or shall obtain~~ by the construction of the authorized work. But in no case shall this proviso operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement of value ~~or benefit or advantage~~ as aforesaid.

General provision as to compensation for land howsoever taken or acquired.

25. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken for Railway or Tramway purposes under this Act, at any time within five years from the time when such land was alienated in fee by the Crown, whether absolutely or conditionally, shall be a sum of money, for each acre or portion of an acre of such land, equal to the amount of purchase money paid per acre by the grantee, or to the amount of deposit per acre paid by the conditional purchaser for such land (as the case may be), together with a sum not exceeding one hundred per centum on the amount of such purchase money or deposit; and, in addition

Compensation where land alienated by the Crown when taken &c. for Railway or Tramway.

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addition thereto, the value of any improvements, of whatever value the same may be, then being upon such land, such value ~~to be ascertained by appraisement under the provisions of the Crown Lands Act in force for the time being~~ **together with compensation for damage if any by severance to be determined under the provisions of this Act.**

26. All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Colonial Treasurer; and, in all cases where compensation or costs shall be awarded or adjudged to be paid by the Constructing Authority, the amount thereof shall be paid to the party lawfully entitled thereto, or to his agent duly authorized in his behalf, within one month next after the amount of the said compensation or costs shall have been determined. But in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein to the satisfaction of the Constructing Authority.

Compensation to be paid within one month.

22 Vic. No. 19 s. 46.

Title to be made out.

PART III.

As to the Acquisition of Land, and ascertaining and assuring the payment therefor, and of compensation for injuries in respect thereof, &c. (~~“The Lands Clauses Consolidation Act” provisions.~~)

Power to enter upon and take lands,

22 Vic. No. 19 s. 10.

27. For the carrying out of any authorized work it shall be lawful for the Constructing Authority and all persons acting under such Authority,—

- (I) To enter into and upon the lands and grounds of any person whomsoever, and to survey and take levels of the same, and to ascertain and stake or set out, take and appropriate, for the purposes herein mentioned, such parts thereof as may be necessary and proper for the laying out, making and using any authorized work, and all other works, matters and conveniences connected therewith.
- (II) In or upon such lands or any lands adjoining or contiguous thereto, to bore, dig, cut, trench, embank and sough, remove or lay, take, carry away and use any earth, stone, timber, gravel or sand or any other materials or things which may be dug, raised or obtained therein in constructing such authorized work and other works, out of any lands contiguous or adjoining thereto, and which may be proper or necessary for making, maintaining, altering, repairing or using any such authorized work, or which may hinder, prevent or obstruct the constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending or using the same respectively.
- (III) To make or construct in, upon, across, under or over any lands, streets, roads, rivers, streams or other waters, within the lands described in the plans or mentioned in the books of reference of any authorized work, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, fences, as shall be considered necessary.
- (IV) To alter the course of any rivers (not navigable), streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under the same, or for any other necessary purpose; and also to divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or to raise or sink the level of any such rivers or streams, streets, roads or ways, in order the more conveniently to carry the same over, or under, or by the side of, any such authorized work, as may be thought proper.

remove materials,

construct inclined planes, tunnels, &c.,

alter the course of rivers, &c.,

and of roads, &c., the level of any such rivers or streams,

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- (v) To make drains or conduits into, through, or under any lands adjoining any authorized work, for the purpose of conveying water from or to the same. to make drains, &c.
- 5 (vi) In or upon any such authorized work or any lands adjoining or near thereto, to erect and construct such houses, warehouses, offices and other buildings, yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as shall be thought requisite. to erect toll-houses, warehouses, &c.
- 10 (vii) From time to time to alter or to repair or to discontinue the before-mentioned works or any of them and substitute others in their stead. alterations and repairs.
- 15 (viii) Where any authorized work shall be constructed in or shall pass through any wood lands or forest,—To fell or remove any trees standing thereon, within the distance of fifty yards from either or every side of such work. Where work is in forest lands, &c.
- (ix) And generally, to do all other acts necessary for constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending and using such authorized work. General power.
- 20 28. The Constructing Authority may, in the prescribed manner, with the consent of the Governor, dedicate any portion of land vested in such authority as a public highway, or to be an addition to, or extension of, an existing public highway. Provided that no highway so dedicated shall exceed one chain in width. Constructing Authority may dedicate highway.
- 25 29. (i) When any authorized work is a Railway or Tramway the Constructing Authority shall before commencing any such Railway or Tramway cause to be made and taken levels and surveys of the country and lands through which such Railway or Tramway is to be carried, together with a map or plan of the line, and of the lands through which it is to pass, and also a book of reference in which shall be set forth a description of the said several lands, and the names of the owners and proprietors thereof so far as the same shall be known or can with reasonable diligence be ascertained, with a description of the said lands setting forth the bearings of such Railway or Tramway as the case may require, and the nature and quality, state of cultivation, the inclosures (if any), and the quantity of such land which may be required for the purpose of making such Railway or Tramway. Map or plan and book of reference to be made in certain cases. 22 Vic. No. 19, s. 12.
- 30 (ii) Notice of such map or plan and book of reference shall be given by the Constructing Authority by advertisement in the *Gazette* which notice shall set forth generally the extent and direction of the intended line of Railway or Tramway and shall refer to such map or plan and book of reference to be seen at the office of the said authority at Sydney; and shall call upon all persons interested in the lands to be affected by the said intended Railway or Tramway, to set forth in writing to the said authority, within one month from the first publication of such notice, any well-grounded objection that may appear to them to exist to the adoption of the said line of Railway or Tramway or any part thereof, or of any works proposed in connection therewith; and if any such objection shall be made the same shall be considered by the Governor, who shall, after due consideration thereof, confirm or alter the said map or plan and book of reference as to the said Governor shall seem meet, and thereupon notice shall be given by the **Commissioner Constructing Authority** in the *Gazette* of such confirmation with or without alterations as the case may be. Notice and objection *Ib.* s. 13.
- 40 45 50 55 (iii) The said map or plan and book of reference as so altered or confirmed shall be kept in the office of the Constructing Authority at Sydney, and true copies thereof signed by the said authority shall be deposited with the Clerk of Petty Sessions of the districts into or through which such Railway or Tramway shall be intended to be carried; and such map or plan and book of reference, and

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and such copies thereof respectively shall be exhibited at all convenient times for public examination from the day of the date on which the notice of intention to make such Railway or Tramway hereafter mentioned shall be first published: And all persons shall
5 have free liberty and permission, at all proper and convenient times, to view and examine the said map or plan and book of reference or copies as aforesaid.

(iv) If any omission, misstatement, or erroneous description shall have been made of any lands, or of the owners, lessees, or
10 occupiers of any lands described in the plan or book of reference the Constructing Authority, after having given ten day's notice to the owners of the lands affected by such proposed correction, may lodge an amended plan and book of reference, in the same manner as the
15 reference shall be deemed to be so corrected; and the Constructing Authority may carry out the authorized work in accordance therewith.

Errors and omissions to be corrected.
16 s. 15.

(v) The Constructing Authority shall, by advertisement in
the *Gazette* and in one or more of the Sydney newspapers, forty days
20 before commencing any Railway or Tramway give notice that it is intended to make the said Railway or Tramway between certain
places therein to be specified according to a map or plan or and book of
reference to be seen in the office of the said Authority at Sydney, and
at the offices of the said Clerks of Petty Sessions; and, in case any
25 shall at any time afterwards be deemed by the Governor to be desirable, the like notices shall be given by the said Authority relative to the proposed deviation.

Authority to give notice of intention to make Railway or Tramway between certain places.
16 s. 16.

30. When the map or plan and book of reference in the cases
aforesaid of a Railway or Tramway or the plan in case of any other
30 authorized work shall have been confirmed by the Governor, the constructing authority shall give notice of the lands taken or required for the said work to all the parties interested in such land, or to the parties enabled by this Act to sell and convey or release the same, or to such of the said parties as shall after diligent inquiry be known to
35 the constructing authority. Every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the constructing authority is willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or that may be sustained by them by the exercise
40 of the powers conferred by this Act. Such authority in the said notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the said constructing authority, the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and such other particulars
45 and in such form as may be prescribed, together with an abstract of their title to such land; and, if they claim in respect of damage, the nature of the damage which they have sustained or will sustain by reason of the taking of such lands.

Notice of lands taken.
22 Vic. No. 19 s. 22.

31. It shall be lawful for the Constructing Authority to agree
50 with the owners of any lands by this Act authorized to be taken, and which shall be required for the purposes of this Act, and with all parties having any estate or interest in such lands, or by this Act enabled to sell and convey the same, for the absolute purchase for and on behalf of Her Majesty, for a consideration in money, of any
55 such lands or such parts thereof as shall be thought proper, and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.
8 Vic. c. 18 s. 6.
22 Vic. No. 19 s. 17.

32. (1) It shall be lawful for the Constructing Authority in
addition to the lands authorized to be compulsorily taken by such
authority as aforesaid to contract, with any party willing to sell
the

In certain cases power to purchase or take lands for additional accommodation.
22 Vic. No. 19 s. 20.

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the same, for the purchase for and on behalf of Her Majesty, for Railway or Tramway purposes of any lands for the purpose of making and providing additional stations, yards, wharfs, stappings, and places for the accommodation of passengers, and for receiving depositing and
 5 loading or unloading goods or cattle to be conveyed upon any Railway or Tramway; and for the erection of weighing machines toll-houses and other buildings and conveniences, and for any other purpose that may be deemed requisite or convenient for the use of the Railways or Tramways; and it shall be lawful for all parties who, under the
 10 provisions hereinbefore contained would be enabled to sell and convey lands, to sell and convey the same under and for the purposes of this section.

(II) Instead of exercising the power of acquiring such lands so required for additional accommodation hereinbefore conferred, the
 15 constructing authority may acquire such lands compulsorily, pursuant to the provisions for compulsorily taking land hereinbefore contained.

33. The aforesaid powers of taking or acquiring or purchasing
 land may be exercised by the constructing authority from time to
 time; and whether the particular work, for which lands may have
 20 been taken, acquired or purchased, has been actually constructed or not.

Powers exercisable
 from time to time, &c.

34. In the exercise of the powers granted by this Act the
 constructing authority and all other persons shall do as little damage
 as possible; and, if required, full satisfaction shall be made in manner
 25 herein provided, to all persons interested in any lands or hereditaments which shall have been taken, used, injured or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

As to Damages.
 22 Vic. No. 19, s. 10.

35. Nothing herein contained shall empower the constructing
 authority or any person, in the exercise of the powers granted by this
 Act, to take, injure or damage any messuage, dwelling-house or other
 permanent building or the immediate appurtenances thereof, without
 the consent in writing of the owner and occupier thereof respectively,
 until after the expiration of three calendar months from the time the
 35 constructing authority shall have given notice to the owner thereof that the same is required under this Act.

As to injuries to
 houses, &c.
 22 Vic. No. 19, s. 11.

36. (I) It shall be lawful for all parties being seised, possessed
 of or entitled to any such lands or any estate or interest therein, to sell
 and convey or release the same to the constructing authority for and
 40 on behalf of Her Majesty, and to enter into all necessary agreements for that purpose.

Parties enabled
 to sell and convey
 and exercise other
 powers.
 8 Vic. c. 18 s. 7.
 22 Vic. No. 19 s. 18.

(II) It shall be lawful for all or any of the following parties,
 so seised, possessed or entitled as aforesaid, so to sell, convey or
 release, (that is to say) all corporations, tenants in tail or for life,
 45 married women seised in their own right or entitled to dower,
 guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors, administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in
 50 dower, or to any lease for life, or for lives and years, or for years, or any less interest.

(III) The power so to sell and convey or release may lawfully be exercised by all such parties (other than married women entitled to dower, or lessees for life, or for lives and years, or for
 55 years, or for any less interest), not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties; and as to such married women, whether they be of full age

or

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or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively, could have exercised the same power under the authority of this Act, if they had been under no disability; and as to such trustees, executors or administrators, on behalf of their *cestui que* trusts whether infants, issue unborn, lunatics, *femes covert* or other persons, and that to the same extent as such *cestui que* trusts respectively could have exercised the same powers under the authority of this Act, if they had been under no disability.

(iv) The power hereinafter given to release lands from any rent-charge or encumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands.

(v) The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell or convey such lands except under the provisions of this Act, and the compensation to be paid for any permanent damage or injury to any such lands shall not (except where the same shall have been determined by a surveyor appointed under the provisions hereinafter contained), be less than shall be determined by two Justices or by arbitrators appointed in the manner hereinafter provided.

37. The constructing authority may sell and convey any lands so acquired, or any part thereof, in such manner and for such considerations and to such persons as such authority may think fit; and may purchase other lands for the like purposes, and afterwards sell and convey the same, and so from time to time.

38. All notices required to be served or given by the constructing authority upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found). In case any such parties shall be absent from the Colony, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there be no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

39. If, for twenty-one days after the service of such notice, any such party shall

- (i) Omit to state the particulars of his claim in respect of any such land or to treat with the constructing authority in respect thereof; or
- (ii) Fail to agree with the constructing authority as to the amount of the compensation to be paid by the constructing authority, for the interest in such lands belonging to such party or which he is by this Act enabled to sell; or for any damage that may be sustained by him by reason of the execution of the authorized work;—

The amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

But the owner or party claiming compensation shall not be at liberty to institute any proceeding for the recovery of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished to him. Provided that if no claim be made within ~~twelve months~~ two years after such notice as aforesaid by the party entitled to make such claim, the same shall be deemed to have been waived and abandoned.

Amount of compensation to be ascertained by arbitration in case of parties under disability.
22 Vic. No. 19 s. 19.

Authority to sell such lands and to purchase others.
8 Vic. c. 18 s. 13.
22 Vic. No. 19 s. 21.

Service of notices on owners and occupiers of lands.
8 Vic. c. 18 s. 19.
22 Vic. No. 19 s. 23.

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

8 Vic. c. 18 s. 21.
22 Vic. No. 19 s. 24.

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40. If no agreement be come to between the constructing authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands taken or required for any authorized work, or injuriously affected by the exercise of any of the powers hereby granted, 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, the compensation claimed shall be settled (I) by two Justices where such claim shall not exceed one hundred pounds, (II) by arbitrators as hereinafter provided where such claim shall exceed one hundred pounds.

How disputes as to compensation to be settled.

8 Vic. c. 18 s. 22.
22 Vic. No. 19 s. 25.

41. Any Justice may, upon the application of either party, with respect to any question of disputed compensation by this Act authorized to be settled by two Justices, 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, such Justices may hear and determine such question, and for that purpose examine such parties or any of them and their witnesses upon oath. The costs of every such inquiry shall be in the discretion of such Justices, and they shall settle the amount thereof. Provided always that, if the amount awarded by the Justices shall be ~~one-fourth~~ **one-third** less than the amount claimed, the owner of the land or person claiming compensation shall pay to the constructing authority the costs of and occasioned by the inquiry, unless the constructing authority shall have offered a less amount than the sum awarded.

Method of proceeding before Justices for settling disputes as to compensation.

8 Vic. c. 18 s. 24.
22 Vic. No. 19 s. 26.

Compensation by Arbitration.—Jury, Surveyor, &c.

42. (I) When any question of disputed compensation or any dispute or other matter authorized or directed by this Act 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 or other matter shall be referred.

Appointment of arbitrators.

8 Vic. c. 18 s. 25.
22 Vic. No. 19 s. 27.

(II) Every appointment of an arbitrator shall be made, on the part of the constructing authority under his hand and official seal, and on the part of any other party under the hand of such party, or if such party be a corporation, under the common seal of such corporation.

(III) Such appointment shall be delivered to the arbitrator or arbitrators 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 to such submission operate as a revocation thereof.

(IV) If, after any such dispute or other matter shall have arisen, and after a request in writing setting forth 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 within fourteen days to appoint such arbitrator, then, upon such failure, the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters in dispute, and in such case, except as hereinafter provided, the award or determination of such single arbitrator shall be final and conclusive.

43. If, before the matter so referred shall be determined, any arbitrator appointed by either party die, or become incapable to act as arbitrator, or refuse, or for fourteen days neglect to act as arbitrator, 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

Vacancy of arbitrator to be supplied.

8 Vic. c. 18 s. 26.
22 Vic. No. 19 s. 28.

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for that purpose, he fail to do so, the remaining or other arbitrator may proceed alone; and every arbitrator so to be substituted as aforesaid shall have the powers and authorities of the former arbitrator at the time of such death, refusal, neglect, or disability as aforesaid.

- 5 44. Where more than one arbitrator shall have been appointed the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ, or which shall be referred to him. If such umpire shall die or become incapable to act, 10 or refuse, or for seven days neglect to act after being called upon to do so by the arbitrators, they shall forthwith, after such death, incapacity, refusal or neglect, appoint another umpire in his place. The decision of every such umpire on the matters so referred to him shall, except as hereinafter provided, be final.
- 15 45. If, in either of the cases aforesaid, the arbitrators shall refuse or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to appoint an umpire; and the decision of such 20 umpire, on the matters on which the arbitrators shall differ, or which shall be referred to him shall, except as hereinafter provided, be final.
- 25 46. 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, or shall refuse, or for fourteen days neglect to act, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.
- 30 47. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven fourteen days neglect to act, and where no substituted arbitrator shall have been appointed under section forty-three hereof, the other arbitrator may proceed alone; and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.
- 35 48. 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 (if any), not being greater in the whole than six months, as shall have been appointed for that purpose by 40 both of such arbitrators, under their hands, the matters referred to them shall be determined by the umpire appointed as aforesaid.
- 45 49. 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.
- 50 50. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a Justice of the Peace, make and subscribe the following declaration, that is to say:—
- I do solemnly and sincerely declare that I have no interest, either directly or indirectly, in the property in question, and 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 Public Works Act of 1888."
- 55 A.B.

Made and subscribed in the presence of
Such declaration shall be annexed to the award when made, and if any arbitrator or umpire having made such declaration shall wilfully act 60 contrary thereto he shall be guilty of a misdemeanour.

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51. (I) All the costs of and incident to any such arbitration as settled by the arbitrators shall be borne by the constructing authority, unless the sum awarded by the arbitrators shall be the same or a less sum than shall have been offered by the constructing authority, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.
- (II) If the sum awarded shall be ~~one-fourth~~ **one-third** less than the amount claimed, the whole costs of and incident to the arbitration and award shall be borne by the claimant, and the arbitrators shall direct the payment of the same accordingly.
- (III) If either party be dissatisfied with the costs allowed by the arbitrators as aforesaid, the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court, and the amount allowed by such officer shall be the amount to be paid.
52. The arbitrators shall deliver their award in writing to the constructing authority who shall retain the same, and shall forthwith, on demand, furnish a copy thereof to the other party; 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.
53. The submission to any such arbitration may, on the application of either of the parties, be made a rule of the Supreme Court.
54. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.
55. In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge thereof shall have power at any time and from time to time, to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.
56. If the compensation awarded by the arbitrators shall exceed the sum of three hundred pounds, and either party shall be dissatisfied with the award and shall desire to have the compensation settled by a jury, and shall, within fourteen days after the making of the award and notice thereof, signify such desire by notice in writing to the other party, then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall proceed by action in the Supreme Court, in the usual manner, to recover from the constructing authority the compensation to which he may be entitled under the provisions of this Act.
- If, upon the trial of the said action, the verdict shall be—
- (I) For a greater sum than the sum previously offered by the constructing authority and awarded by the arbitrators, All the costs of the said action and of the arbitration and award shall be borne by the said constructing authority.
- (II) For a less sum than the sum so awarded, All the costs of the said action and of the arbitration and award shall be borne by the claimant.
- (III) For the sum awarded by the arbitrators, All the costs of the said action and of the arbitration and award shall be paid by the party requiring the same to be referred to a jury. In every such case the costs of the arbitration and award shall be added to, and be recoverable as, the costs of the action.
57. The purchase-money or compensation to be paid for any lands to be purchased or taken by the Constructing Authority from any party who, by reason of absence from the Colony, is prevented from treating, or who cannot after diligent inquiry be found, and the compensation

Cost of arbitration how to be borne.
8 Vic. c. 18 s. 34.
22 Vic. No. 19 s. 36.

Award to be delivered to the constructing authority.
8 Vic. c. 18 s. 35.
22 Vic. No. 19 s. 37.

Submission may be made a rule of Court.
8 Vic. c. 18 s. 36.
22 Vic. No. 19 s. 38.

Award not void through error in form.
8 Vic. c. 18 s. 37.
22 Vic. No. 19 s. 39.
Power to refer back award.
22 Vic. No. 19 s. 40.

Questions of compensation in certain cases to be decided by jury.
22 Vic. No. 19 s. 41.

Compensation to absent parties to be determined by a surveyor appointed by two Justices.
8 Vic. c. 18 s. 58.
22 Vic. No. 19 s. 42.

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compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned.

58. Upon application by the constructing authority to two Justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Colony, prevented from treating, or cannot after diligent inquiry be found, such Justices shall, by writing under their hands, nominate a competent surveyor and valuator, for determining such compensation, who shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Two Justices to nominate a surveyor.
8 Vic. c. 18 s. 50.
22 Vic. No. 19 s. 43.

59. Before such surveyor and valuator 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 following declaration at the foot of such nomination, that is to say:—

Surveyor to make a declaration.
8 Vic. c. 18 s. 60.
22 Vic. No. 19 s. 44.

I A.B. do solemnly and sincerely declare that I have no interest, directly or indirectly, in the property in question and 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.

Made and subscribed in the presence of } A.B.

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

60. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor and valuator; and shall be delivered to the constructing authority to be kept for the purpose and in the manner hereinbefore provided in case of awards.

Valuation to be delivered to Constructing Authority.
8 Vic. c. 18 s. 61.
22 Vic. No. 19 s. 44.

61. All the expenses of and incident to every such valuation shall be borne by the constructing authority.

Expenses to be borne by authority.

Application of purchase money, &c.

62. If the purchase money or compensation payable in respect of any lands or any interest therein purchased or taken by the constructing authority 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, administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same, except under the provisions of this Act, or the compensation to be paid for any permanent damage to such lands amount to or exceed the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity, to be by him deposited to the account of such Master in Equity *ex parte* the constructing authority in the matter of A or B (the party entitled) pursuant to the method prescribed by any Act or by any rules, for the time being in force, for regulating moneys paid into the Supreme Court in its Equitable Jurisdiction; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes, (that is to say)—

Purchase money payable to parties under disability amounting to £200 to be deposited with Master in Equity.
8 Vic. c. 18 s. 69.
22 Vic. No. 19 s. 47.

- (i) In the redemption of the quit rent, or 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 and purposes; or
- (ii) In the purchase of other lands or of Government debentures or other stock, 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

Applications of moneys deposited.

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(III) If such money shall be paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorized work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Primary Judge in Equity shall direct; or

(IV) In payment to any party becoming absolutely entitled to such money.

63. Such money may be so applied as aforesaid upon an order of the said Court or Judge 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 by the said Master in Equity in the purchase of Government Debentures or real securities, and the interest, dividends and annual proceeds thereof may be 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.
8 Vic. c. 18 s. 70.
22 Vic., No. 19 s. 48.

64. (I) 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 to the Master in Equity to be by him deposited and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees.

Sums from £20 to £200 to be deposited or paid to trustees.
8 Vic. c. 18 s. 71.
22 Vic. No. 19 s. 49.

(II) Such trustees shall 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. In case of the coverture, infancy, lunacy or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees.

(III) Payment of such moneys shall not be made to such trustees as aforesaid unless the constructing authority approve thereof and of the trustees named for the purpose.

(IV) The money so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money deposited to the account of the Master in Equity; but it shall not be necessary to obtain any order of the Court for that purpose.

65. 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, lunacy or other incapacity of such parties, 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.
8 Vic. c. 18 s. 72.
22 Vic. No. 19, s. 49.

66. All sums of money exceeding twenty pounds which may be payable by the constructing authority 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 to the Master in Equity or to trustees, in manner aforesaid. 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 accommodation works, or for assenting to or not opposing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession

All sums payable under contract with persons not absolutely entitled to be paid to Master in Equity or trustees.
8 Vic. c. 18 s. 73.
22 Vic. No. 19 s. 50.

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as in remainder, reversion or expectancy. Provided always that it shall be in the discretion of the Judges of the Supreme Court, or the Primary Judge in Equity, 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 deposited or so paid 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.

67. All payments which shall be made in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the constructing authority; and such authority shall not be bound or required to see to the application of any of the moneys paid to the Master in Equity or other person by virtue hereof, or to see to the performance of any trusts.

Payments made under this Act sufficient discharge to the Constructing Authority.

22 Vic. No. 19 s. 51.

68. Where any purchase money or compensation paid or deposited pursuant to this 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, the said Court or Judge may, on the petition of any party interested in such money, order that the same shall be laid out, invested, accumulated and paid, in such manner as the said Court or Judge 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 deposited, or as near thereto as may be.

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

8 Vic. c. 18 s. 74.

22 Vic. No. 19 s. 52.

69. If the owner of any lands taken or purchased under the authority of this Act, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof,

Purchase money or compensation may in certain cases be paid to the Master in Equity.

8 Vic. c. 18 s. 76.

22 Vic. No. 19 s. 53.

- (I) Refuse to accept the same ;
- (II) Neglect or fail to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the constructing authority ;
- (III) Refuse to convey or release such lands as directed by the constructing authority ;
- (IV) Be absent from the Colony or cannot after diligent inquiry be found ;

The constructing authority may, if it shall think fit, deposit the purchase money or compensation payable in respect of such lands or any interest therein in the hands of the Master in Equity, to be by him deposited as aforesaid to his account to the credit of the parties interested in such lands, (describing them so far as he can do) subject to the control and disposition of the said Court.

70. 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 Court or Judge may in a summary way, as to such Court or Judge shall seem fit, order such money to be laid out or invested in the purchase of Government Debentures or real securities; or may order distribution thereof or payment of the dividends thereof, according to the respective estates, titles or interest 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 or Judge shall seem fit.

Application of moneys so deposited.

8 Vic. c. 18 s. 78.

22 Vic. No. 19 s. 54.

71. If any question arise respecting the title to the lands, in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands as being the

Party in possession to be deemed the owner.

8 Vic. c. 18 s. 79.

22 Vic. No. 19 s. 55.

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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, upon
 5 such inquiry as the Court shall think fit to direct, 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 dividend or interest of the securities purchased therewith, and the same shall be paid and
 10 applied accordingly.

72. In all cases of moneys deposited under the provisions of this Act, except where such moneys 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
 15 shall be payable, or by reason of the neglect of any party to make out a good title to the land required, the said Court or Judge may order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the constructing authority (that is to say) the costs of—

- 20 (I) 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;
- (II) The investment of such moneys in Government Debentures or real securities and of the re-investment thereof in the
 25 purchase of other lands;
- (III) Obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of
 30 such moneys or of the securities whereon the same shall be invested;
- (IV) All proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided always that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the said
 35 Court or Judge that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times; in which case the Court may, if it think fit, order the costs of any such investments to be paid by
 40 the constructing authority.

Conveyances, &c.

73. (I) Conveyances of lands to be purchased or taken under the provisions of this Act may be according to the form in the
 45 ~~Second~~ **Third** Schedule to this Act or as near thereto as the circumstances of the case will admit, or by deed in any other form which the constructing authority may think fit.

(II) All conveyances made according to the form in the said Schedule or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the
 50 constructing authority for and on behalf of Her Majesty; and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interests so thereby conveyed, and to bar and to destroy all such estates tail and all other estates, rights, titles, remainders, reversions, limitations, trusts, and
 55 interests whatsoever of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned.

(III)

Costs in case of
 money deposited.
 8 Vic. c. 18 s. 80.
 22 Vic. No. 19 s. 56.

Form of Conveyances.
 8 Vic. c. 18 s. 81.
 22 Vic. No. 19 s. 57.

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(III) 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 constructing authority to attend the reversion and inheritance.

- 5 74. The costs of all such conveyances shall be borne by the constructing authority; 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 interest therein, and of deducing, 10 evidencing and verifying the title to such lands, terms or interests, and of making out and furnishing such abstracts and attested copies as the constructing authority may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title.
- 15 75. (I) If the constructing authority and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court, upon the application of either party; 20
- (II) The constructing authority shall pay what the said Master or other proper officer shall certify to be due in respect of such costs to the party entitled thereto; or, in default thereof, any Judge of the Supreme Court may make an order for the payment of the same; and the said costs may be recovered in the same way as any other costs payable under any order of the said Court or a Judge 25 thereof.
- (III) The expense of taxing such costs shall be borne by the constructing authority, 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 30 costs shall be so taxed, and the amount thereof shall be ascertained by the said Master or other proper officer and deducted by him accordingly in his certificate of such taxation.
- 35 76. Provided always that after any lands, which the constructing authority is by this Act authorized to take, shall have been set out, ascertained and finally appropriated for any of the purposes 40 authorized by this Act, such lands and the fee simple and inheritance thereof, together with the yearly profits thereof and all the estate, use, trust and interest of every person therein, shall thenceforth be vested in the constructing authority, for and on behalf of Her Majesty, to and for the purposes of this Act, for ever, as fully and effectually, to all intents and purposes, as if the same had been conveyed by the persons legally entitled to sell and convey the said lands; but nevertheless the constructing authority may, if he think fit, in any case demand such conveyance.
- 45 77. If, in any case in which, according to the provisions of this Act, the constructing authority is authorized to enter upon and take possession of any lands required for the purpose of the authorized work, the owner or occupier of any such lands or any other person refuse to give up the possession thereof or hinder the Con- 50 structing Authority from entering upon or taking possession of the same, it shall be lawful for such authority to issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same. Upon the receipt of such warrant the Sheriff shall deliver possession of any such lands 55 accordingly, and the cost 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 constructing authority from the compensation, if any, then payable to such party, or if no 60 such compensation be payable to such party or if the same be less than

Costs of conveyances.
8 Vic. c. 18 s. 82.
22 Vic. No. 19 s. 58.

Taxation of costs
of conveyances.
8 Vic. c. 18 s. 83.
22 Vic. No. 19 s. 59.

Lands taken in pur-
suance of this Act to
vest without con-
veyance.
22 Vic. No. 19 s. 60.

Proceeding in case of
refusal to deliver
possession of lands.
8 Vic. c. 18 s. 91.
22 Vic. No. 19 s. 61.

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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.

5 78. No party shall, at any time, be required to sell or convey to the constructing authority 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.

Parties not to be required to sell part of a house.
8 Vic. c. 18 s. 92.
22 Vic. No. 19 s. 62.

10 79. If any lands not being situated in a town or built upon shall be so cut through and divided by the authorized work 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 constructing authority to purchase the same along with the other land required for the purposes of this Act, the constructing authority 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 constructing authority shall, if so required by the owner, throw the piece of land so left into the adjoining land, by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

Owners of intersected lands may insist on sale.
8 Vic. c. 18 s. 93.
22 Vic. No. 19 s. 63.

25 80. 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 constructing authority is, under the provisions of this Act compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the constructing authority to make such communication, then the constructing authority may require such owner to sell to him 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 in cases of disputed compensation. On the occasion of ascertaining the value of the ~~such land so required to be taken~~, the Justices or the arbitrators or jury, as the case may be, shall, if required by either party, ascertain by their award or verdict the value of any such severed piece of land and also what would be the expense of making such communication.

Constructing Authority may insist on purchase where expense of bridges &c. exceed the value.
8 Vic. c. 18 s. 94.
22 Vic. No. 19 s. 64.

Mortgages, Rent Charges, &c.

40 81. (I) The constructing authority may purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of this Act; and that whether he 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 this Act.

Power to redeem mortgages.
8 Vic. c. 18 s. 108.
22 Vic. No. 19 s. 65.

50 (II) In order thereto, the constructing authority may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his cost 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 constructing authority or as he shall direct.

55 (III) The constructing authority may give notice in writing to such mortgagee that he 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 he shall have given any such notice, or if the

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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 constructing authority to the mortgagee of the principal money due on such mortgage and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the constructing authority, or as he shall direct.

82. 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 constructing authority, or if he fail to adduce a good title thereto to his satisfaction, then it shall be lawful for the constructing authority to pay into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the cases of moneys required to be paid to such Master in Equity, the principal and interest, together with the costs, if any, due on such mortgage; and if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at the time become due; and also, if such authority think fit, to execute a deed poll, containing a description of the lands in respect whereof such deposit shall have been made and describing the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be duly registered by the constructing authority. 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 said authority, and such authority shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession.

83. (I) If any of 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 constructing authority 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 constructing authority on the other part.

(II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the constructing authority 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 constructing authority or as he shall direct.

84. If, upon such payment or tender as aforesaid being made, any such mortgagee fail to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the constructing authority, it shall be lawful for the said authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him, in the manner provided by this Act in like case of moneys required to be paid to such Master in Equity; 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 the said authority may if it think fit, execute a deed poll in manner hereinbefore provided. And thereupon such lands, as to all such estate and interest as were then vested in the mortgagee or any person

Deposit of mortgage money on refusal to accept.

8 Vic. c. 18 s. 109.

22 Vic. No. 19 s. 66.

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

8 Vic. c. 18 s. 110.

22 Vic. No. 19 s. 67.

Deposit of money when refused on tender.

8 Vic. c. 18 s. 111.

22 Vic. No. 19 s. 68.

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person in trust for him, shall become absolutely vested in the constructing authority and such authority shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

5 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.

10 85. (I) If a part only of any such mortgaged lands be required for the purposes of this 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
15 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 constructing authority on the other part.

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

8 Vic. c. 18 s. 112.
22 Vic. No. 19 s. 69.

20 (II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the constructing authority
25 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 the constructing authority or as it 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
30 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 constructing authority at the expense of such authority, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

35 86. If, upon any 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 constructing authority or as it shall direct, his interest in the lands, in respect of which such compensation shall so have been paid or tendered, or if
40 he shall fail to adduce a good title thereto to the satisfaction of the constructing authority, it shall be lawful for such authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the case of moneys required to be paid to such Master in
45 Equity; 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 also if he think fit, to execute a deed poll in the manner hereinbefore provided. And there-
50 upon such lands shall become absolutely vested in the constructing authority, 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 he shall be entitled to immediate possession thereof.

Deposit of money when refused on tender.

8 Vic. c. 18 s. 113.
22 Vic. No. 19 s. 70.

55 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 this Act,
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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.

5 87. If any difference shall arise between the constructing authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or incumbrance not hereinbefore provided for upon any lands taken for the purposes of this Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for
10 the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of lands
from rent charges.
8 Vic. c. 18 s. 115.
22 Vic. No. 19 s. 71.

15 88. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance, be taken for the purposes of this Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the constructing authority on the other part: and, if such apportionment be not so settled by agreement, the same shall be settled by two Justices. But
20 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.

Release of part of
lands from rent-
charge.
8 Vic. c. 18 s. 116.
22 Vic. No. 19 s. 72.

25 89. 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 constructing authority a release of such charge. If he fail so to do, or if he fail to adduce a good title to such charge to the satisfaction of the constructing authority, it shall be lawful for such
30 authority to pay the amount of such compensation into the hands of the Master in Equity to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to such Master in Equity; and also if such authority think fit to execute a deed poll, in the manner herein provided for in the case of the purchase of
35 lands by him. And thereupon the rent-service, rent-charge, chief or other rent, payment 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.
8 Vic. c. 18 s. 117.
22 Vic. No. 19 s. 73.

40 90. If any such lands or portion thereof be so released from any such charge or incumbrance 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
45 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. 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 constructing authority for the purpose, he shall affix
50 his seal to a memorandum of such release, indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of this 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
55 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. Such memorandum shall be made and executed at the expense of the

Charge to continue
on lands not taken.
8 Vic. c. 18 s. 118.
22 Vic. No. 19 s. 74.

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constructing authority, 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.

Leases.

- 5 91. (I) If any lands shall be comprised in a lease for a term of years unexpired part only of which lands shall be required for the purposes of this 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. Where part only of lands under lease taken the rent to be apportioned. 8 Vic. c. 18 s. 119. 22 Vic. No. 19 s. 75.
- 10 (II) Such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the constructing authority 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.
- 15 (III) 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 this Act; and, as to the lands not so required, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as, previously to such apportionment, he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force, with regard to that part of the land which shall not be required for the purposes of this Act, in the same manner as they would have done in case such part only of the land had been included in the lease.
- 20 92. Every such lessee as last aforesaid shall be entitled to receive from the constructing authority 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, for the purposes of the authorized work. Tenants to be compensated. 8 Vic. c. 18 s. 120. 22 Vic. No. 19 s. 76.
- 30 93. (I) 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 land 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 any incoming tenant, and for any loss or injury he may sustain: or, if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same. Compensation to be made to tenants from year to year. 8 Vic. c. 18 s. 121. 22 Vic. No. 19 s. 77.
- 40 (II) The amount of such compensation shall be determined by two Justices in case the parties differ about the same,
- 45 (III) Upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up to the constructing authority or to the person appointed by such authority to take possession thereof, any such lands in their possession required for the purposes of this Act.
- 50 94. If any party having a greater interest than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the constructing authority may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the constructing authority, such lease or grant or such best evidence thereof be not produced Where greater interest claimed than at will lease to be produced. 8 Vic. c. 18 s. 122. 22 Vic. No. 19 s. 78.
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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.

Superfluous Lands.

- 5 95. In case any of the lands taken by the constructing authority under the provisions of this Act be not required for the purposes of any authorized work, such authority shall absolutely sell and dispose of all such superfluous lands and apply the purchase money arising from such sales in such manner as the Governor shall direct. Lands not wanted to be sold.
22 Vic. No. 19 s. 79.
- 10 96. Upon payment or tender to the constructing authority of the purchase money so agreed upon or determined as aforesaid, such authority shall convey such lands for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered; and a deed so executed and registered shall be effectual to vest the lands comprised therein in Lands to be conveyed to the purchasers.
8 Vic. c. 18 s. 131.
22 Vic. No. 19 s. 83.
- 15 the said purchaser for the estate which shall so have been purchased by him, and a receipt under the hand and seal of the constructing authority shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Temporary possession of lands, &c.

- 20 97. It shall be lawful for the constructing authority and all persons by it authorized to enter, from time to time, upon any lands being within a distance of not more than two hundred yards from the nearest boundary of the authorized work as delineated on the plans thereof and not being a garden, orchard or plantation attached or belonging Power to take temporary possession of land.
22 Vic. No. 19 s. 84.
- 25 to a house, nor a park, planted walk, avenue or ground ornamentally planted, and not being nearer to the dwelling house of the owner of any such lands than a distance of five hundred yards, and to occupy the said lands, as long as may be necessary for the construction, re-construction, repair, alteration, addition to or extension of the authorized
- 30 work or the works connected therewith, and to use the same for any of the following purposes (that is to say),—
- (I) For the purpose of taking earth or soil by side cuttings therefrom.
- (II) For the purpose of depositing soil thereon.
- 35 (III) For the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorized work or such other works as aforesaid.
- (IV) For the purpose of forming roads thereon to, or from, or by
- 40 the side of the authorized work.

And in exercise of the powers aforesaid it shall be lawful for the constructing authority and all other persons employed therein to deposit, and also to manufacture and work upon such lands materials of every kind used in constructing the authorized work, and also to take from any

45 such lands any timber, and also to dig and take from or out thereof any clay, stone, gravel, sand or other things that may be found therein, useful or proper for constructing the authorized work or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds and other buildings of a temporary nature. Provided always

50 that nothing in this Act contained shall exempt the constructing authority from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid. Provided also that no stone

55 or slate quarry, brickfield or other like place which, at the time of the passing

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passing of this Act, shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the constructing authority, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

5 98. If any such lands shall be used for any of the purposes aforesaid, the constructing authority shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be necessary for the convenient occupation of such lands; and in case of any difference
10 between the owners or occupiers of such lands and the constructing authority as to the necessity for such fences and gates, then with such fences and gates as the Governor shall deem necessary for the purposes aforesaid.

Authority to separate the lands before using them.
22 Vic. No. 19 s. 85.

15 99. In any of the cases aforesaid, where the constructing authority shall take temporary possession of lands by virtue of the powers herein granted, such authority shall

Compensation to be made for temporary occupat.on.
22 Vic. No. 19 s. 86.

(I) Within one month after his entry upon such lands, upon being required so to do, pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well
20 as full compensation for any other damage of a temporary nature which he may sustain by reason of the constructing authority so taking possession of his lands.

(II) From time to time, during such occupation of the said lands, pay half-yearly or quarterly to such occupier or the owner
25 of the lands, as the case may require, a rent, to be fixed by two Justices in case the parties differ.

(III) Within six months after he shall have ceased to occupy the said lands, pay to such owner and occupier or deposit with the Master in Equity, in manner aforesaid, for the benefit of
30 all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury that may have been sustained by them, by reason of the exercise as regards the said lands of the powers herein granted, including the full value of all such clay, stone, gravel, sand and other
35 things taken from such land.

100. The amount and application of the compensation payable by the constructing authority in any of the cases aforesaid shall be determined in the manner provided by this Act for determining the amount and application of the compensation to be paid for lands
40 taken under the provisions hereof.

Compensation to be ascertained under the clauses in this Act relating to lands taken and injuries.
22 Vic. No. 19 s. 87.

101. If the authorized work cross any public highway or carriage road, then such authorized work shall not be carried across,
over or under such road, unless the proposed place and mode of such crossing and the immediate approaches thereto, and all other necessary
45 works connected therewith, and the provisions to be adopted for the protection of the public using the same, shall have been previously notified, and shall have been approved of by the Governor.

Crossing of roads.
22 Vic. No. 19 s. 88

102. If, in the exercise of the powers hereby granted, it be found necessary to cross, cut through, raise, sink or use any part of any
50 road, whether carriage road, horse road, tram road or railway, either public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or carriages or to the persons entitled to the use thereof, the constructing authority shall, before the commencement of any such operations, cause a sufficient
55 road to be made instead of the road to be interfered with and shall, at the public expense, maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be.

Before roads interfered with others to be substituted.
22 Vic. No. 19 s. 89.

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103. If any party entitled to a right of way over any road so interfered with by the constructing authority shall suffer any special damage because such authority shall fail to cause another sufficient road to be made before it interferes with the existing road, it shall be lawful for such party to recover the amount of such special damage from the constructing authority, with costs, by action in the Supreme Court.

Party suffering damage from interruption of road to recover in an action on the case.
22 Vic. No. 19 s. 90.

104. (I) If the road so interfered with can be restored compatibly with the formation and use of the authorized work, the same shall be restored to as good a condition as it was in, at the time when the same was first interfered with by the constructing authority or as near thereto as may be.

Period for restoration of roads interfered with.
22 Vic. No. 19 s. 91.

(II) If such road cannot be restored compatibly with the formation and use of the authorized work, the constructing authority shall cause the new or substituted road or some other sufficient substituted road to be put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

And the former road shall be restored or the substituted road put into such condition as aforesaid, as the case may be, with all reasonable expedition.

105. If the authorized work shall cross any highway (other than a public carriage-way) on the level, the constructing authority shall make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails or other fences; and shall, if such highway be a bridle-way, erect and at all times maintain good and sufficient gates, and if the same be a footway, good and sufficient gates or stiles on each side of the authorized work where the highway shall communicate therewith.

Constructing authority to make sufficient approaches and fences to bridle-ways and foot-ways crossing the line.
22 Vic. No. 19 s. 92.

106. The constructing authority shall make, and at all times maintain, the following works, for the accommodation of the owners and occupiers of lands adjoining any authorized work, that is to say,—

Works for benefit of owners.
22 Vic. No. 19 s. 93.

(I) Such and so many convenient gates, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the authorized work as shall be necessary for the purpose of making good any interruptions caused by the authorized work to the use of the lands through, in, or upon which such authorized work shall be made or constructed; and such work shall be made forthwith after such authorized work or part of it passing over such lands shall have been laid out or formed or during the formation thereof.

Gates, bridges, &c.

(II) Sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land, taken for or for the use of the authorized work, from the adjoining lands not taken and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, in consequence of such authorized work; together with all necessary gates made to open towards such adjoining lands and not towards the authorized work. All necessary stiles, and such posts, rails and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and such other works as soon as conveniently may be.

Fences, &c.

(III) All necessary arches, tunnels, culverts, drains or other passages either over or under, or by the sides of the authorized work, of such dimensions as will be sufficient, at all times, to convey the water as clearly from the lands lying near or affected by such authorized work as before the making of the authorized work or as nearly so as may be; and such works shall be made from time to time as the authorized work proceeds.

Drains.

Provided

Public Works.

Provided always that the constructing authority shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the authorized work ; nor to make any accommodation works with respect to which the owners and occupiers
5 of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

107. If any difference arise, respecting the kind or number of any such accommodation works or the dimensions or sufficiency thereof or respecting the maintaining thereof, the same shall be determined by
10 the Governor who shall also appoint the time within which such works shall be commenced and executed.

Differences as to accommodation works to be settled by Governor.

22 Vic. No. 19 s. 94.

108. If any of the owners or occupiers of lands affected by such authorized work shall consider the accommodation works made
15 by the constructing authority or directed by the Governor to be made by the constructing authority insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the constructing authority.

Power to owners of lands to make additional accommodation works.

22 Vic. No. 19 s. 95.

109. If the constructing authority so desire, all such last-
20 mentioned accommodation works shall be constructed under the superintendence of the Engineer or other officer superintending the making or construction of any authorized work, and according to plans and specifications to be submitted to and approved by the
25 constructing authority. Nevertheless, the constructing authority shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by such authority, or that the plans selected should be executed in a more expensive manner than that adopted in similar
30 cases by such authority.

Such works to be constructed under the superintendence of the constructing authority's Engineer.

22 Vic. No. 19 s. 96.

110. Until the constructing authority shall have made the bridges
or other proper communications which it shall, under the provisions herein contained, have been required to make between lands intersected
35 by the authorized work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way shall be affected by the want of such communication, and their respective servants may, at all times, freely pass and repass with carriages, horses and other animals directly (but not otherwise) across the part of the authorized work constructed or made through, in, or upon their respective lands,
40 solely for the purpose of occupying the same lands or for the exercise of such right-of-way, and so as not to obstruct the passage along such authorized work or to damage the same. Nevertheless, if the owner or occupier of any such lands have, in his arrangements with the constructing authority, received or agreed to receive compensation for
45 or on account of any such communications, instead of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the authorized work.

Owners to be allowed to cross until accommodation works are made.

22 Vic. No. 19 s. 97.

111. If any person omit to shut and fasten any gate, set up at
50 either side of the authorized work for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriages, cattle or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds, to be recovered in a summary way before any Stipendiary or Police Magistrate, or any two Justices at the suit of any person
55 authorized by the Constructing Authority.

Penalty on persons omitting to fasten gates.

22 Vic. No. 19 s. 98.

112. (1) This Act shall not prevent the owners or occupiers of
lands adjoining any authorized work, when such authorized work is a Railway, or any other persons from laying down, either upon their own lands or upon the lands of other persons with the consent of
such

Power to parties to make private branch railways communicating with the railway.

22 Vic. No. 19, s. 99.

Public Works.

such persons, any collateral branches of Railway to communicate with any Railway to be made under this Act, for the purpose of bringing carriages to or from or upon such Railway, but under and subject to the prescribed provisions and restrictions and to the provisions of this Act 5 and the "Government Railways Act of 1883."

(II) The Constructing Authority shall, if required, at the expense of such owners and occupiers and other persons, make openings in the rails and such additional lines of rail, as may be necessary for effecting such communication, in places where the 10 communication can be made with safety to the public and without injury to the Railway and without inconvenience to the traffic thereon.

(III) The Constructing Authority shall not take any rate or toll or other moneys for the passing of any passengers, goods or other things along any branch so to be made by any such owner or 15 occupier or other person; but this enactment shall be subject to the following restrictions and conditions (that is to say)—

- (a) No such branch Railway shall run parallel to the authorized 20 Railway. Restrictions and conditions.
- (b) The Constructing Authority shall not be bound to make any such openings in any place which ~~they~~ such Authority shall have set apart for any specific purpose with which such communication would interfere, or upon any inclined plane or bridge, or in any tunnel.
- (c) The persons making or using such branch Railways shall 25 be subject to all by-laws and regulations of the Railway Commissioners, from time to time made with respect to passing upon or crossing the Railway and otherwise; and the persons making or using such branch Railways shall be bound to construct, and, from time to time, as need may require, to renew 30 the rails, crossings, switches and sleepers according to the most approved plan adopted by the Constructing Authority and under the direction of the Engineer of the Railway.

113. The lands to be taken or used for any authorized work, 35 where such authorized work is a Railway, shall not exceed one hundred yards in width except where a greater width shall be judged necessary for an approach to the Railway or for waggons and other carriages to turn, remain, stand in, lie or pass each other, or for raising embankments for crossing valleys or low grounds, or in cutting through high 40 ground, or for the erection or establishment of any fixed or permanent machinery, tollhouses, warehouses, wharf or other erections and buildings or for excavating, removing, or depositing earth or other materials. Breadth of land to be taken for Railway. 22 Vic. No. 19 s. 11.

Provisions as to Lands containing minerals, &c.

114. Notwithstanding anything hereinbefore in this Act con- 45 tained, or in any other Act incorporated, or made applicable by this Act, the constructing authority shall not be entitled to any mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under any land taken or purchased by such authority after the passing of this Act, except only such portions thereof as shall be 50 necessary to be dug or carried away or used in the construction of the works; unless the same shall have been expressly taken or purchased. And all such mines and deposits, except as aforesaid, shall be deemed to be excepted on the taking or out of the conveyance of such lands, unless they shall have been expressly taken or conveyed. Constructing authority not to be entitled to minerals. 8 Vic. c. 20 s. 77.

115. If the owner, lessee or occupier of any mines or minerals 55 lying under any authorized work or any of the works connected therewith or within forty yards from the boundary thereof be desirous of working the same, such owner, lessee or occupier shall give to the constructing authority notice in writing of his intention so to do, thirty days Mines lying near the railway not to be worked if the constructing authority willing to take or purchase them. 8 Vic. c. 20 s. 78.

Public Works.

days before the commencement of working. And upon the receipt of such notice it shall be lawful for the constructing authority to cause such mines to be inspected by any person appointed by him for the purpose; and if it appear to the constructing authority that
 5 the working of such mines or minerals is likely to damage the authorized work, and if the constructing authority be willing to make compensation for such mines or any part thereof to such owner, lessee or occupier, then he shall not work or get such minerals and if the
 10 constructing authority and such owner, lessee or occupier do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation as hereinbefore provided.

116. (I) If before the expiration of such thirty days the constructing authority do not state his its willingness to treat with such owner, lessee or occupier for the payment of such compensation, it shall
 15 be lawful for him to work the said mines or any part thereof for which the constructing authority shall not have agreed to give compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate.

If constructing authority unwilling to purchase owner may work the mines.

8 Vic. c. 20 s. 79.

20 (II) If any damage or obstruction be occasioned to the authorized work by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee or occupier of such mines or minerals and at his own expense.

25 (III) It shall be lawful for the constructing authority, if such repair or removal be not forthwith carried out by, or, if he such **Authority** think fit, without waiting for the same to be carried out by such owner, lessee, or occupier, to carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by
 30 action in the Supreme Court.

117. If the working of any such mines under the authorized work or within the abovementioned distance therefrom be prevented as aforesaid, by reason of apprehended injury to such authorized work,
 35 it shall be lawful for the respective owners, lessees and occupiers of such mines and whose mines shall extend so as to lie on both sides of the authorized work to cut and make so many air ways, headways, gateways or water-levels through the mines, measures or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain and work their said mines. But no such air-
 40 way, headway, gateway or water-level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be prescribed, not greater than eight feet wide and eight feet high, or of such a nature as to injure or to impede the passage on, to, through or over the same.

Mining communications.
 8 Vic. c. 20 s. 80.

45 118. The constructing authority shall from time to time pay to the owner, lessee or occupier of any such mines, lying on both sides of the authorized work, all such additional expenses and losses as shall be incurred by such owner, lessee or occupier by reason of the severance of the lands lying over such mines by the authorized work, or of
 50 the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions, as not to prejudice or injure the railway, and for any minerals not taken or purchased by the constructing authority which cannot be obtained by reason of making or constructing and main-
 55 taining the authorized work. And if any dispute or question shall arise between the constructing authority and such owner, lessee or occupier as aforesaid touching the amount of such losses or expenses the same shall be settled by arbitration as hereinbefore mentioned.

Constructing authority to make compensation for injury done to mines,
 8 Vic. c. 20 s. 81.

Public Works.

119. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines, the working whereof shall have been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the constructing authority shall make full compensation to such owner or occupier for the loss or damage so sustained by him, if he is not also the owner, lessee or occupier of any mine under such lands, in connection with which such airway or other work has been made.

And also for any airway or other work made necessary by the railway.
8 Vic. c. 20 s. 82.

120. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorized work it shall be lawful for the constructing authority, after giving twenty-four hours' notice in writing, to enter upon any lands, through, in, on or near which the authorized work is constructed, and wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for ~~them~~ **such Authority** to make use of any apparatus or machinery belonging to the owner, lessee or occupier of such mines and to use all necessary means for discovering the distance from the railway to the parts of such mines, which are being worked or about so to be.

Power to constructing authority to enter and inspect the working of mines.
8 Vic. c. 20 s. 83.

121. If any such owner, lessee or occupier of any such mine shall refuse to allow any person, appointed by the constructing authority for that purpose, to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the constructing authority a sum not exceeding twenty pounds.

Penalty for refusal to inspect.
8 Vic. c. 20 s. 84.

122. If it appear that any such mines have been worked contrary to the provisions of this Act, the constructing authority may, if ~~they~~ **such Authority** think fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the authorized work and preventing injury thereto. And if, after such notice, any such owner, lessee or occupier do not forthwith proceed to construct the works necessary for making safe such authorized work, the constructing authority may himself construct such works and recover the expense thereof from such owner, lessee or occupier, by action in the Supreme Court.

If mines improperly worked the constructing authority may require means to be adopted for the safety of the railway
8 Vic. c. 20 s. 85.

Public Works.

SCHEDULES.

FIRST SCHEDULE.

I, A. B., do solemnly and sincerely promise and declare, that, according to the best of my skill and ability, I will faithfully, impartially, and truly execute the office and perform the duties of a Member of the Parliamentary Standing Committee on Public Works.

(Signed) A. B.

SECOND SCHEDULE.

Form of Conveyance.

10 I of in consideration of the sum of paid to me (or as the case may be, into the hands of the Master in Equity of the Supreme Court or to of and of two trustees appointed to receive the same pursuant to the "Public Works Act of 1888" by the [here name the constructing authority] do hereby convey to the said constructing authority his successors and assigns for and 15 on behalf of Her Majesty All &c. (describing the premises to be conveyed) together with all ways, rights and appurtenances thereto belonging and all such estate, right, title and interest in and to the same as I am or shall become seised or possessed of or am by the said Act empowered to convey, to hold the premises to the said constructing authority his successors and assigns for ever according to the true intent and meaning of the said 20 Act.

In witness whereof I have hereunto set my hand and seal the in the year of our Lord

THIRD SCHEDULE.

Notice of claim and abstract.

25 To the [here name the constructing authority] In pursuance of the "Public Works Act of 1888" I of (or we) hereby give you notice that I (or we) claim compensation in respect of the land hereunder described which has been taken under the said Act The amount of such claim and other the particulars required by the said Act are stated in the subjoined abstract [If the claim is not for 30 land taken this form may be modified in accordance with the nature of the claim.]

Abstract.

35 Names and descriptions of parties claiming and nature of their interests whether tenants for life in tail or otherwise.	Situation and description of property.	Quit rents payable if leasehold name of landlord term of lease and rent reserved.	Names of occupiers distinguishing whether tenants-at-will or under lease rent reserved terms &c.	Particulars of claim specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected and name of claimant's solicitor or agent.

40

(Signature)
(Address)
(Date)

FOURTH

Public Works.

FOURTH SCHEDULE.

RAILWAY.

Extension from _____ to _____

I HEREBY offer to accept from the Constructing Authority, as purchase money for the
 5 land (including buildings and fences erected thereon) of which I am*
 delineated on the tracing plan attached to the notice of land taken, and numbered
 _____, which I hereby acknowledge to have received, containing _____ acres
 roads and _____ perches, more or less, and as compensation for damage by severance, by
 the Railway, or otherwise caused by the execution of the Railway Works, as particularly
 10 set forth in the subjoined Schedule of Claim, the sum of £ _____, which sum I
 declare to be my full claim in respect of the matters aforesaid.

Dated this _____ day of _____ 188 .

[Name and Address of Claimant.]

To the Constructing Authority, Sydney.

15 *Schedule of Claim.*

Land Resumed.	Reference No.	Area.		Character.	Estimated Value.		Total Value.		
		a.	r. p.		Per acre £	or per foot £	£	s.	d.
20				Building ...	£	.....		
				Cultivation..	£	.....		
				Pasture .....	£	.....		
				Mineral .....	£	.....		
25 Improvements taken.	Nature and Description of Improvements taken.								
	Buildings								
	Fences.....								
Other improvements.....									
Damage by severance or otherwise									
Total amount of Claim £									

[Signature of Claimant.]

- 30
- * (1) "the owner in fee simple,"
 - (2) "the owner of an estate for life,"
 - (3) "mortgagee with power of sale,"
 - (4) "I have a leasehold interest for _____ year,"
- (as the case may be).

FIRST SCHEDULE.

35 I, A.B., do solemnly and sincerely promise and declare, that, according to
 the best of my skill and ability, I will faithfully, impartially, and truly execute
 the office and perform the duties of a Member of the Parliamentary Standing
 Committee on Public Works.

(Signed) A.B.

40 SECOND SCHEDULE.

(A.)

To the Sheriff of New South Wales, his Deputy and all Officers of the Police
 Force of the said Colony, and to the Keeper of the Gaol at _____

45 These are to command you the said Sheriff and all Officers as aforesaid, to
 apprehend A.B., and to convey him to the said gaol, and to deliver him to the
 said Keeper thereof together with this warrant; and you the said Keeper are
 hereby required to receive him into your custody in the said gaol, and him there
 safely to keep for the term of _____ [or unless the sum of _____

50 _____ of the _____ shall be sooner paid], I the undersigned
 here adjudged the said A.B. [to pay a fine of _____ (or _____) having now
 immediate payment thereof] to be imprisoned for the said term, for that he the
 said A.B.

[Here state the offence to the following effect as the case may require.]

That

Public Works.

That A.B. having been duly summoned as a witness, and having had his expenses paid or tendered, neglected to appear before the Parliamentary Standing Committee on Public Works, (or) that A.B. wilfully insulted the said Committee, (or) C.D. one of the members of the said Committee, (or) that A.B. interrupted
 5 the proceedings of the said Committee, (or) that A.B. misbehaved himself before the said Committee, (or) that A.B. having been summoned or being examined as a witness in a certain inquiry or matter pending before the said Committee refused to be sworn, or to produce a certain document mentioned in the summons served on him, viz., (or) that A.B. having been so summoned
 10 refused to be sworn or to make a solemn declaration pursuant to the "Public Works Act of 1888," (or) that A.B. was guilty of prevarication in his evidence or refused to answer a certain lawful question.

Given under my hand this day of

C.D.,

15 Chairman (or Vice-Chairman) of the Parliamentary
 Standing Committee on Public Works.

(B.)

Form of Warrant.

In the matter of the "Public Works Act of 1888" and

20 To the Sheriff of New South Wales, his Deputy and Assistants, and to all
 Officers of the Police Force of the said Colony.

WHEREAS pursuant to the provisions of sub-section (f) of section 10 of the said Act it has this day been proved to me that of has been duly summoned to attend and give evidence before the Parliamentary Standing
 25 Committee on Public Works pursuant to the "Public Works Act of 1888," but has failed to appear.

This is to require you forthwith to apprehend the said , and to detain him in custody and bring him before the said Committee to give evidence.

30 Given under my hand and seal at aforesaid, this day of
 in the year of our Lord one thousand eight hundred and

A.B.,

Chairman (or Vice-Chairman) of the said Committee.

THIRD SCHEDULE.

Form of Conveyance.

35 I of in consideration of the sum of paid to me (or as the case may be) into the hands of the Master in Equity of the Supreme Court or to of and of two trustees appointed to receive the same pursuant to the "Public Works Act of 1888" by the [here name the
 40 Constructing Authority] do hereby convey to the said Constructing Authority, his successors and assigns for and on behalf of her Majesty. All, &c. (describing the premises to be conveyed), together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title and interest in and to the same as I am or shall become seized or possessed of or am by the said Act
 45 empowered to convey, to hold the premises to the said Constructing Authority his successors and assigns for ever according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal, the
 in the year of our Lord

50

FOURTH SCHEDULE.

(A.)

Notice of claim and abstract.

To the [here name the Constructing Authority.]

IN pursuance of the "Public Works Act of 1888" I of (or we) hereby give
 55 you notice that I (or we) claim compensation in respect of the land hereunder described which has been taken under the said Act. The amount of such claim
 and

Public Works.

and other the particulars required by the said Act are stated in the subjoined abstract. [If the claim is not for land taken this form may be modified in accordance with the nature of the claim.]

Abstract.

5 10 Names and descriptions of parties claiming and nature of their interests whether tenants for life in tail or otherwise.	Situation and description of property.	Quit rents payable if leasehold name of landlord term of lease and rent reserved.	Names of occupiers distinguishing whether tenants-at-will or under lease rent reserved terms &c.	Particulars of claim specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected and name of claimant's solicitor or agent.

15

(Signature)
(Address)
(Date)

(B.)

Notice of Valuation.

20 To A.B., claimant in respect of the land hereunder described, taken under the "Public Works Act of 1888."

Take notice that the land hereunder described, being that in respect of the taking whereof, under the authority of the aforesaid Act, your claim for compensation lodged has been valued at the sum of £

25

A.B. (Constructing Authority.)

Description of land or damage in respect of which claim has been made.

All that piece or parcel of land, &c., &c.

* Forms (A) and (B) in this Schedule, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Part II of the Act aforesaid

30

FIFTH SCHEDULE.

"PUBLIC WORKS ACT OF 1888."

Offer and particulars of claim where land is taken for Railway or Tramway purposes.

To

35 I hereby offer to accept from the Constructing Authority as purchase money for the land (including buildings and fences erected thereon) of which I am
* delineated on the tracing plan attached to the notice of land taken, and numbered , which I hereby acknowledge to have received, containing acres roods and perches, more or less,
40 and as compensation for damage by severance, by the , or otherwise caused by the execution of the works, as particularly set forth in the subjoined Schedule of Claim, the sum of £ , which sum I declare to be my full claim in respect of the matters aforesaid.

Dated this day of 188 .

45

[Name and Address of Claimant.]

To the Constructing Authority, Sydney.

Schedule

Public Works.

Schedule of Claim.

5 Land Resumed.	Reference No.	Area.	Character.	Estimated Value.		Total Value.
		a. r. p.	Building ... Cultivation ... Pasture ... Mineral ...	Per acre £	or per foot £	£ s. d.
10 Improvements taken.	Nature and Description of Improvements taken.					
	Buildings					
	Fences					
	Other improvements					
Damage by severance or otherwise						
Total amount of Claim£						

[Signature of Claimant.]

- 15
- * (1) "the owner in fee simple,"
 - (2) "the owner of an estate for life,"
 - (3) "mortgagee with power of sale,"
 - (4) "I have a leasehold interest for years,"
(as the case may be).

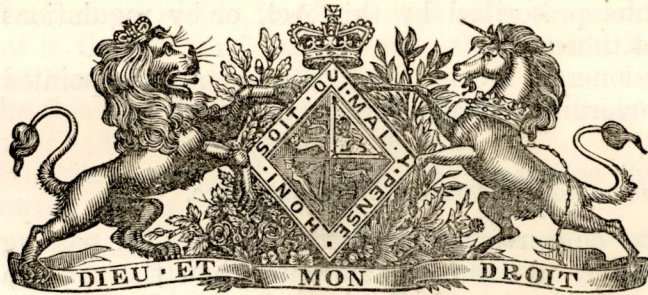
Note.—This form varied, so as to suit the particular circumstances of the case, may be used for land taken for railway or tramway purposes.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
Sydney, 12 April, 1888. }

F. W. WEBB,
Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. .

An Act to provide for the constitution of an Authority to investigate and report upon proposals for Public Works submitted to Parliament, to make better provision for the acquisition of land for carrying out such Works, and for other purposes in connection therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

5

PART I.

Constitution and Powers of Parliamentary Standing Committee on Public Works.

1. This Act may be cited as the "Public Works Act of 1888." Short title.
 2. In this Act the expression Interpretation of terms.
- 10 "Authorized Work" means any work the carrying out of which has been declared expedient by Resolution of the Legislative Assembly pursuant to this Act.
- "Committee" means the Parliamentary Standing Committee on Public Works as constituted under the provisions of this Act.
- 15 "Constructing authority" means the responsible Minister of the Crown empowered to undertake any public work after resolution of the Legislative Assembly authorizing the carrying out of such work, and the said expression includes the "Railway Commissioners," for the purpose of giving effect
- 20 to any powers or duties conferred or imposed on them by this Act, or by the "Government Railways Act of 1888."

21—A

"Government"

Public Works.

“Government Debentures” includes, in addition to such Debentures, any Government Stock issued by the Government of this Colony pursuant to any statutory power.

5 “Governor” means the Governor with the advice of the Executive Council.

“Justice” means any Justice of the Peace.

“Lands for Public Purposes Acquisition Act” means the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six.

10 “Prescribed” means prescribed by this Act, or by regulations made pursuant thereto.

“Railway Commissioners” means the Commissioners appointed under the “Government Railways Act of 1888.”

Constitution and Powers of the Committee.

15 3. As soon as may be conveniently practicable after the passing of this Act, and thereafter, on some day not later than the seventh day after the commencement of each Session of every Parliament, a Joint Committee of Members of the Legislative Council and Legislative Assembly, to be called the “Parliamentary Standing Committee on Public Works,” shall be appointed, according to the practice regulating the selection of Members to serve on Select Committees of the said Council and Assembly respectively. Five of the persons so to be appointed shall be Members of the Legislative Council, and eight shall be Members of the Legislative Assembly. Such thirteen persons shall hold office as a Joint Committee (subject to the provisions in the next following section contained) for the Session for which they were appointed, and during the interval between the prorogation of Parliament and the next ensuing Session thereof; and shall have and may exercise such powers and authorities, perform such duties, and be liable to such obligations, as are by this Act vested in or imposed upon such Committee. The names of the persons from time to time appointed to be members of such Committee shall be notified in the *Gazette* with all convenient despatch.

Constitution of
Parliamentary
Committee on
Public Works.

4. Any member of the Committee may resign his seat on such Committee by writing under his hand addressed to the Governor. The seat of any such member shall also be deemed to have become vacant

Extraordinary
vacancies.

(i) For any reason which would vacate his seat as a Member of the Assembly or Council (as the case may be);

(ii) By his acceptance of any office of profit under the Crown; On the occurrence of any such vacancy the same shall be filled upon motion in the usual manner, provided that the respective proportions in respect to the representation on the Committee of Members of the Legislative Council, and Members of the Assembly hereinbefore prescribed shall be observed in the filling up of all such vacancies.

45 5. (i) There shall be a Chairman and Vice-Chairman of the Committee who shall be elected by the members of the Committee at their first meeting, or as soon after such meeting as may be practicable. The Chairman or, in case of his absence or other disability, the Vice-Chairman shall preside at all meetings of the Committee.

Chairman and Vice-
Chairman.

50 (ii) Any seven members of the Committee (of whom the Chairman or Vice-Chairman shall be one) shall form a quorum competent to exercise all powers and authorities and to incur all obligations conferred or imposed by this Act upon the Committee.

Quorum.

6. Every member of the Committee, before entering on the duties of his office or sitting at any meeting of such Committee, shall make and subscribe a declaration in the form of the First Schedule hereto.

Declaration of
members of Com-
mittee.

Public Works.

7. The Committee shall have power to sit and transact business during any adjournment or recess as well as during the Session for which they shall have been appointed, and may sit at such times and in such places, and conduct their proceedings in such manner as may seem most convenient for the proper and speedy dispatch of business, and such Committee shall sit in open Court.

Power to sit during recess, and in open Court.

8. The Committee shall, before the commencement of each Session of Parliament, make a report to the Governor of their proceedings under this Act; and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and, if not, then within fourteen days after the next Session.

Report.

9. The Committee shall keep full minutes of their proceedings in such manner as the Governor may direct.

Minutes.

10. For the purposes of this Act the Committee shall have the following powers that is to say—

Powers of Committee.

(a) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any land, building, place or material the entry or inspection of which appears to them requisite, upon the prescribed notice being given to the owners or occupiers of such land, building, place or material.

(b) They may require, by summons under the hand of the Chairman or Vice-Chairman, the attendance of all such persons as they may think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make.

(c) They may, in the prescribed manner, require and compel the production of all books, maps, plans, papers and documents relating to the matters before them.

(d) They may, by their Chairman or Vice-Chairman, examine witnesses on oath; or where a witness, if examined before a Superior Court of Record, would be permitted to make a solemn declaration, or to give evidence in any other way than upon oath, then by such declaration or otherwise as the case may be.

(e) They may, when sitting in open Court, by their Chairman or Vice-Chairman, punish for contempt in like manner as if they were a superior Court of record, and with the like effect in all respects.

Every person required by the Committee to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a superior Court of record, and, in case of dispute as to the amount to be allowed, the same shall be referred to the Prothonotary of the Supreme Court who, on request under the hand of the Chairman of the Committee, shall ascertain and certify the proper amount of such expenses.

11. The Committee may, from time to time, in the exercise of any powers by this Act conferred on them, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge, or possessing special local knowledge or experience. There shall be paid to such assessors such remuneration as the Governor may appoint and as Parliament may provide.

Assessors.

12. The Committee shall, subject to the provisions contained in the next following section, consider and report upon all Public Works (except Fortifications and Works connected with the Military or Naval Defence of the Colony) to be executed after the passing of this Act, (and whether such works are continuations, completions, repairs, reconstructions, extensions or new works), in all cases where the estimated cost of completing such work exceeds twenty thousand pounds.

Functions of Committee.

Public Works.

pounds. And, in considering and reporting on any such work as aforesaid, the Committee shall have regard to the stated purpose thereof, and to the necessity or advisability of carrying it out; and, where such work purports to be of a reproductive or revenue producing character, the Committee shall have regard to the amount of revenue which such work may reasonably be expected to produce, and to the present and prospective public value of such work; and generally the Committee shall, in all cases, take such measures and procure such information as may enable them to inform or satisfy the Legislative Assembly as to the expediency of carrying out the work in question.

13. After the first gazetting of the Parliamentary Committee of Public Works pursuant to this Act no Public Work of any kind whatsoever, (except as excepted in the last preceding section, and except such works as the Railway Commissioners are authorized to carry out pursuant to the "Government Railways Act of 1888"), the estimated cost of completing which shall exceed twenty thousand pounds, and whether such work be a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless a resolution of the Legislative Assembly affirming the expediency of executing such work shall first have been carried in accordance with the procedure and provisions hereinafter set forth;

Conditions precedent to commencing Public Works.

(I) Every such proposed work shall, in the first place, be submitted and explained in the Legislative Assembly by some Member of the Executive Council having a seat in such Assembly (hereafter termed "the Minister"). The explanation shall comprise an estimate of the cost of such work when completed, together with such plans and specifications or other descriptions as the Minister shall deem proper and, in the case of a proposed Railway or Tramway, a map or plan of the line and Book of Reference, together with a report by the Railway Commissioners on the probable cost of construction and maintenance of such railway or tramway, and an estimate of the probable revenue to be derived therefrom; And such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner;

(II) Upon motion, in the usual manner, made by the Minister or by any Member of the Assembly such proposed work shall be referred to the Parliamentary Committee on Public Works for their report thereon.

(III) The Committee shall, with all convenient dispatch, deal with the matter so referred to them, and, for that purpose may exercise all powers by this Act conferred on such Committee.

(IV) The Committee shall, as soon as conveniently practicable, (regard being had to the nature and importance of the proposed work) report to the Legislative Assembly the result of their inquiries.

(V) After the receipt of such report the said Assembly shall, by resolution, declare, either that it is expedient to carry out the proposed work, or that it is not expedient to carry out the same.

Provided always that the said Assembly, instead of declaring affirmatively or negatively as aforesaid, may resolve that the report of the Committee shall, for reasons or purposes to be stated in the resolution, be remitted for their further consideration and report to the said Committee; in which case such Committee shall consider the matter of such new reference, and report thereon accordingly.

14. Every resolution of the Legislative Assembly declaring that it is expedient or not expedient to carry out any such proposed work as aforesaid shall be notified in the *Gazette*, and, upon such notification as aforesaid (if in the affirmative), the work so proposed may be proceeded with, as hereinafter provided.

Notification of resolution.

Public Works.

15. If any such resolution declares that it is not expedient to carry out any proposed work no proposal for a public work in substance identical with the work referred to in such resolution shall be submitted to the Legislative Assembly until after the expiration of one year from the notification of such resolution as aforesaid, unless the Governor, by writing under his hand addressed to the said Committee, declares that, in his opinion and in view of the public interest, it is desirable that any such proposal should be re-submitted to the said Assembly.

Under what circumstances negatived proposals may be re-submitted.

16. (I) Every Resolution of the Legislative Assembly declaring that it is expedient to carry out the work specified or mentioned in such resolution shall be sufficient authority for the Minister to introduce a Bill into the said Assembly to sanction the carrying out of such work. Provided always that no such contracts to be entered into by the Constructing Authority for carrying out of such work shall exceed in the aggregate by more than ten per cent. the estimate for the same as submitted to Parliament.

Resolution to be sufficient authority for execution of Works.

(II) All such contracts may be made as follows (that is to say),—

20 With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, the Constructing Authority may make such contract in writing and under its seal and in the same manner may vary or discharge the same.

25 With respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, the Constructing Authority may make such contract in writing and in the same manner may vary or discharge the same.

30 With respect to any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, the Constructing Authority may make such contract by parol only without writing, and in the same manner may vary or discharge the same.

35 And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Constructing Authority on behalf of Her Majesty, and all other parties thereto, their heirs executors or administrators as the case may be; and on any default in the execution of any such contract either by the said Authority or any other party thereto, such actions or suits may be brought either by or against the said Authority as might be brought had the same contracts been made between private parties.

17. The Governor, on the recommendation of the Committee, may frame regulations for giving effect to this Act. Such regulations when published in the *Gazette* shall have the full force of law; and copies thereof shall be laid before Parliament within fourteen days after such publication, if Parliament be then in Session, and, if not, then within fourteen days from the commencement of the then next Session of Parliament.

Regulations.

18. Notwithstanding anything hereinbefore contained, the Governor may, with respect to any Public Work estimated to cost less than Twenty Thousand Pounds, direct that the same may be carried out under the "Public Works Act of 1888," in which case all the powers and provisions contained in Parts II and III of this Act shall be applicable to such work and the same shall, for all purposes of the said Parts, be deemed to be an "authorized work," and the Commissioners of Railways or Minister on whom the carrying out of such work devolves shall for the like purposes, be deemed a "constructing authority."

Provisions of Act may be extended to certain Public Works.

Public Works.

PART II.

General and Special Provisions in respect to the taking or acquisition of Lands for authorized Works, &c.

19. The Governor may direct that any land required, in his
 5 opinion, for any authorized work may be acquired, either by taking the
 same under the "Lands for Public Purposes Acquisition Acts," as
 adopted by this Act, or under the provisions contained in Part III
 hereof. Thereupon, subject to the provisions of this Act, the land so
 required may be taken or acquired in the manner directed, and the
 10 compensation for such land shall be ascertained and dealt with in all
 respects pursuant to the said Acts as so adopted, or the said Part, as
 the case may be.

As to taking of lands
 after resolution.

20. For the purpose of carrying out any authorized work if the
 Governor directs that any land required for such work shall be taken
 15 under the "Lands for Public Purposes Acquisition Acts," he may by
 notification to be published in the *Gazette* and in one or more news-
 papers published or circulated in the Police District wherein is
 situated the land the subject of such notification declare that the
 land described in such notification has been appropriated (if Crown
 20 Land) or resumed (if private property) for the public purpose therein
 expressed. And an abstract of the land so appropriated or resumed
 together with the purpose for which the same is required shall, in
 every case, be laid before Parliament (if in Session at the date of such
 notification) within seven days after its publication in the *Gazette*; and
 25 if not, then within fourteen days after the commencement of the next
 ensuing Session.

As to lands taken for
 authorized works,
 under "Lands for
 Public Purposes
 Acquisition Acts."

21. Upon the publication of such notification in the *Gazette*
 the lands described or referred to in such notification shall forthwith
 be vested in the Constructing Authority on behalf of Her Majesty
 30 for the purposes of this Act for an estate in fee simple in possession,
 freed and discharged from all trusts, obligations, estates, interests, con-
 tracts, charges, rates, rights-of-way, or other easements whatsoever, and
 to the intent that the legal estate therein, together with all powers
 incident thereto, or conferred by this Act, shall be vested in such
 35 Authority as a trustee. And for the purpose of facilitating the acqui-
 sition and disposal of land under this Act the said Authority when
 a Minister is hereby declared to be a Corporation sole under the name
 of "the Minister"; and, by that name, shall have perpetual succession
 and an official seal, sue and be sued, and take all legal proceedings in
 40 all Courts and places whatsoever, with power to purchase, take and
 hold lands to him and his successors for the purposes of this Act, and
 also to sell and dispose of any superfluous lands if necessary, and to
 give effectual discharges in respect thereof to any purchaser.

Vesting &c. of land
 upon publication of
 notification in
Gazette.

22. Where the land taken is Crown Land at the date of such
 45 publication, or is vested in any corporation or person on behalf of Her
 Majesty, or for public purposes, by virtue of any statute, or is within
 the limits with reference to centres of population prescribed by the
 "Crown Lands Act" in force for the time being, the effect of such
 publication shall be to withdraw the said land (to the extent taken)
 50 from any lease or license, or promise thereof, and to cancel, to the
 like extent, any dedication or reservation of the said land made
 under the authority of any such Act, or to divest the estate of such
 corporation or person, and to vest the said land to the extent aforesaid
 in the Constructing Authority for the purposes mentioned and for the
 55 estate limited in the last preceding section.

Effect of publication
 upon Crown Lands.

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23. For the purpose of ascertaining and dealing with the compensation to be paid for the taking of such lands, the provisions of the "Lands for Public Purposes Acquisition Acts" (as by this Act adopted) shall be applied, and shall govern both the party taking such lands, and the party from whom such lands are taken, and all persons claiming through or on behalf of such parties. And for such and all other subsidiary purposes, the tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-third and twenty-fourth sections of the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six shall be incorporated with this Act. Provided that, in the application of the said provisions, the expression "the Minister" or "Minister for Public Works," as and when used in any of such incorporated sections, shall mean "the Constructing Authority" as defined by this Act; and the expression "this Act" when so used in any of such sections shall mean the "Public Works Act of 1888" and the enactments incorporated therewith. Provided further that in lieu of the provisions of the "Government Railways Act" twenty-two Victoria number nineteen, incorporated in the Act forty-four Victoria number twenty-six, the corresponding provisions as re-enacted in Part III hereof, and indicated in the margin by references to the sections of the said "Government Railways Act," shall be substituted in applying the said "Lands for Public Purposes Acquisition Acts."

Incorporation of provision of Lands for Public Purposes Acquisition Acts.

24. For the purpose of ascertaining the purchase money or compensation to be paid by the Constructing Authority regard shall in every case after the passing of this Act be had by the magistrates, arbitrators, surveyors, valuers or jury (as the case may be) not only to the value of the land to be purchased or taken, 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 other lands of such owner or otherwise injuriously affecting such other lands by the exercise of any statutory powers by such Authority; and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time notice was given of such lands being required or having been taken. Provided always that the said magistrates, arbitrators, surveyors, valuers, and jury in ascertaining such purchase money or compensation shall take into consideration and give effect to by way of set-off or abatement any enhancement in the value of any land belonging to such owner adjoining the land taken or severed therefrom, as well as any other benefit or advantage which such owner may or shall obtain by the construction of the authorized work. But in no case shall this proviso operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement of value or benefit or advantage as aforesaid.

General provision as to compensation for land howsoever taken or acquired.

25. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken for Railway or Tramway purposes under this Act, at any time within five years from the time when such land was alienated in fee by the Crown, whether absolutely or conditionally, shall be a sum of money, for each acre or portion of an acre of such land, equal to the amount of purchase money paid per acre by the grantee, or to the amount of deposit per acre paid by the conditional purchaser for such land (as the case may be), together with a sum not exceeding one hundred per centum on the amount of such purchase money or deposit; and, in addition thereto, the value of any improvements, of whatever value the same may be, then being upon such land, such value to be ascertained by appraisalment under the provisions of the Crown Lands Act in force for the time being.

Compensation where land alienated by the Crown when taken &c. for Railway or Tramway.

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26. All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Colonial Treasurer; and, in all cases where compensation or costs shall be awarded or adjudged to be paid by the Constructing Authority, the amount thereof shall be paid to the party lawfully entitled thereto, or to his agent duly authorized in his behalf, within one month next after the amount of the said compensation or costs shall have been determined. But in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein to the satisfaction of the Constructing Authority.

Compensation to be paid within one month.
22 Vic. No. 19 s. 46.

Title to be made out.

PART III.

As to the Acquisition of Land, and ascertaining and assuring the payment therefor, and of compensation for injuries in respect thereof, &c. ("The Lands Clauses Consolidation Act" provisions.

27. For the carrying out of any authorized work it shall be lawful for the Constructing Authority and all persons acting under such Authority,—

Power to enter upon and take lands,
22 Vic. No. 19 s. 10.

- 20 (I) To enter into and upon the lands and grounds of any person whomsoever, and to survey and take levels of the same, and to ascertain and stake or set out, take and appropriate, for the purposes herein mentioned, such parts thereof as may be necessary and proper for the laying out, making and using any authorized work, and all other works, matters and conveniences connected therewith.
- 25
- (II) In or upon such lands or any lands adjoining or contiguous thereto, to bore, dig, cut, trench, embank and sough, remove or lay, take, carry away and use any earth, stone, timber, gravel or sand or any other materials or things which may be dug, raised or obtained therein in constructing such authorized work and other works, out of any lands contiguous or adjoining thereto, and which may be proper or necessary for making, maintaining, altering, repairing or using any such authorized work, or which may hinder, prevent or obstruct the constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending or using the same respectively.
- 30
- (III) To make or construct in, upon, across, under or over any lands, streets, roads, rivers, streams or other waters, within the lands described in the plans or mentioned in the books of reference of any authorized work, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, fences, as shall be considered necessary.
- 35
- (IV) To alter the course of any rivers (not navigable), streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under the same, or for any other necessary purpose; and also to divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or to raise or sink the level of any such rivers or streams, streets, roads or ways, in order the more conveniently to carry the same over, or under, or by the side of, any such authorized work, as may be thought proper.
- 40
- 45
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- 55

remove materials,

construct inclined planes, tunnels, &c.,

alter the course of rivers, &c.,

and of roads, &c.,

the level of any such rivers or streams,

(v)

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- (v) To make drains or conduits into, through, or under any lands adjoining any authorized work, for the purpose of conveying water from or to the same. to make drains, &c.
- 5 (vi) In or upon any such authorized work or any lands adjoining or near thereto, to erect and construct such houses, warehouses, offices and other buildings, yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as shall be thought requisite. to erect toll-houses, warehouses, &c.
- 10 (vii) From time to time to alter or to repair or to discontinue the before-mentioned works or any of them and substitute others in their stead. alterations and repairs.
- 15 (viii) Where any authorized work shall be constructed in or shall pass through any wood lands or forest,—To fell or remove any trees standing thereon, within the distance of fifty yards from either or every side of such work. Where work is in forest lands, &c.
- (ix) And generally, to do all other acts necessary for constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending and using such authorized work. General power.
- 20 28. The Constructing Authority may, in the prescribed manner, with the consent of the Governor, dedicate any portion of land vested in such authority as a public highway, or to be an addition to, or extension of, an existing public highway. Provided that no highway so dedicated shall exceed one chain in width. Constructing Authority may dedicate highway.
- 25 29. (i) When any authorized work is a Railway or Tramway the Constructing Authority shall before commencing any such Railway or Tramway cause to be made and taken levels and surveys of the country and lands through which such Railway or Tramway is to be carried, together with a map or plan of the line, and of the lands through which it is to pass, and also a book of reference in which shall be set forth a description of the said several lands, and the names of the owners and proprietors thereof so far as the same shall be known or can with reasonable diligence be ascertained, with a description of the said lands setting forth the bearings of such Railway or Tramway as the case may require, and the nature and quality, state of cultivation, the inclosures (if any), and the quantity of such land which may be required for the purpose of making such Railway or Tramway. Map or plan and book of reference to be made in certain cases. 22 Vic. No. 19, s. 12.
- 30 (ii) Notice of such map or plan and book of reference shall be given by the Constructing Authority by advertisement in the *Gazette* which notice shall set forth generally the extent and direction of the intended line of Railway or Tramway and shall refer to such map or plan and book of reference to be seen at the office of the said authority at Sydney; and shall call upon all persons interested in the lands to be affected by the said intended Railway or Tramway, to set forth in writing to the said authority, within one month from the first publication of such notice, any well-grounded objection that may appear to them to exist to the adoption of the said line of Railway or Tramway or any part thereof, or of any works proposed in connection therewith; and if any such objection shall be made the same shall be considered by the Governor, who shall, after due consideration thereof, confirm or alter the said map or plan and book of reference as to the said Governor shall seem meet, and thereupon notice shall be given by the Commissioner in the *Gazette* of such confirmation with or without alterations as the case may be. Notice and objections. *Ib.* s. 13.
- 40 (iii) The said map or plan and book of reference as so altered or confirmed shall be kept in the office of the Constructing Authority at Sydney, and true copies thereof signed by the said authority shall be deposited with the Clerk of Petty Sessions of the districts into or through which such Railway or Tramway shall be intended to be carried; and such map or plan and book of reference, Deposit with Clerks of Petty Sessions. *Ib.* s. 14.

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and such copies thereof respectively shall be exhibited at all convenient times for public examination from the day of the date on which the notice of intention to make such Railway or Tramway hereafter mentioned shall be first published: And all persons shall have free liberty and permission, at all proper and convenient times, to view and examine the said map or plan and book of reference or copies as aforesaid.

(iv) If any omission, misstatement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the plan or book of reference the Constructing Authority, after having given ten day's notice to the owners of the lands affected by such proposed correction, may lodge an amended plan and book of reference, in the same manner as the original book of reference; and thereupon such original plan or book of reference shall be deemed to be so corrected; and the Constructing Authority may carry out the authorized work in accordance therewith.

Errors and omissions to be corrected.
17 s. 15.

(v) The Constructing Authority shall, by advertisement in the *Gazette* and in one or more of the Sydney newspapers, forty days before commencing any Railway or Tramway give notice that it is intended to make the said Railway or Tramway between certain places therein to be specified according to a map or plan or book of reference to be seen in the office of the said Authority at Sydney, and at the offices of the said Clerks of Petty Sessions; and, in case any material deviation from the said line indicated in such map or plan shall at any time afterwards be deemed by the Governor to be desirable, the like notices shall be given by the said Authority relative to the proposed deviation.

Authority to give notice of intention to make Railway or Tramway between certain places.
17 s. 16.

30. When the map or plan and book of reference in the cases aforesaid or the plan in case of any other authorized work shall have been confirmed by the Governor, the constructing authority shall give notice of the lands taken or required for the said work to all the parties interested in such land, or to the parties enabled by this Act to sell and convey or release the same, or to such of the said parties as shall after diligent inquiry be known to the constructing authority. Every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the constructing authority is willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the damage sustained or that may be sustained by them by the exercise of the powers conferred by this Act. Such authority in the said notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the said constructing authority, the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and such other particulars and in such form as may be prescribed, together with an abstract of their title to such land; and, if they claim in respect of damage, the nature of the damage which they have sustained or will sustain by reason of the taking of such lands.

Notice of lands taken.
22 Vic. No. 19 s. 22.

31. It shall be lawful for the Constructing Authority to agree with the owners of any lands by this Act authorized to be taken, and which shall be required for the purposes of this Act, and with all parties having any estate or interest in such lands, or by this Act enabled to sell and convey the same, for the absolute purchase for and on behalf of Her Majesty, for a consideration in money, of any such lands or such parts thereof as shall be thought proper, and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.
8 Vic. c. 18 s. 6.
22 Vic. No. 19 s. 17.

32. (1) It shall be lawful for the Constructing Authority in addition to the lands authorized to be compulsorily taken by such authority as aforesaid to contract, with any party willing to sell the

In certain cases power to purchase or take lands for additional accommodation.
22 Vic. No. 19 s. 20.

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the same, for the purchase for and on behalf of Her Majesty, for Railway or Tramway purposes of any lands for the purpose of making and providing additional stations, yards, wharfs, stelling, and places for the accommodation of passengers, and for receiving depositing and
 5 loading or unloading goods or cattle to be conveyed upon any Railway or Tramway; and for the erection of weighing machines toll-houses and other buildings and conveniences, and for any other purpose that may be deemed requisite or convenient for the use of the Railways or Tramways; and it shall be lawful for all parties who, under the
 10 provisions hereinbefore contained would be enabled to sell and convey lands, to sell and convey the same under and for the purposes of this section.

(II) Instead of exercising the power of acquiring such lands so required for additional accommodation hereinbefore conferred, the
 15 constructing authority may acquire such lands compulsorily, pursuant to the provisions for compulsorily taking land hereinbefore contained.

33. The aforesaid powers of taking or acquiring or purchasing
 land may be exercised by the constructing authority from time to
 time; and whether the particular work, for which lands may have
 20 been taken, acquired or purchased, has been actually constructed or not.

Powers exercisable from time to time, &c.

34. In the exercise of the powers granted by this Act the
 constructing authority and all other persons shall do as little damage
 as possible; and, if required, full satisfaction shall be made in manner
 25 herein provided, to all persons interested in any lands or hereditaments which shall have been taken, used, injured or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

As to Damages. 22 Vic. No. 19, s. 10.

35. Nothing herein contained shall empower the constructing
 30 authority or any person, in the exercise of the powers granted by this Act, to take, injure or damage any messuage, dwelling-house or other permanent building or the immediate appurtenances thereof, without the consent in writing of the owner and occupier thereof respectively, until after the expiration of three calendar months from the time the
 35 constructing authority shall have given notice to the owner thereof that the same is required under this Act.

As to injuries to houses, &c. 22 Vic. No. 19, s. 11.

36. (I) It shall be lawful for all parties being seised, possessed
 of or entitled to any such lands or any estate or interest therein, to sell
 and convey or release the same to the constructing authority for and
 40 on behalf of Her Majesty, and to enter into all necessary agreements for that purpose.

Parties enabled to sell and convey and exercise other powers.

8 Vic. c. 18 s. 7. 22 Vic. No. 19 s. 18.

(II) It shall be lawful for all or any of the following parties, so seised, possessed or entitled as aforesaid, so to sell, convey or
 release, (that is to say) all corporations, tenants in tail or for life,
 45 married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors, administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in
 50 dower, or to any lease for life, or for lives and years, or for years, or any less interest.

(III) The power so to sell and convey or release may lawfully be exercised by all such parties (other than married women entitled to dower, or lessees for life, or for lives and years, or for
 55 years, or for any less interest), not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties; and as to such married women, whether they be of full age

or

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or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively, could have exercised the same power under the authority of this Act, if they had been under no disability; and as to such trustees, executors or administrators, on behalf of their *cestui que* trusts whether infants, issue unborn, lunatics, femmes covert or other persons, and that to the same extent as such *cestui que* trusts respectively could have exercised the same powers under the authority of this Act, if they had been under no disability.

(iv) The power hereinafter given to release lands from any rent-charge or encumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands.

(v) The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell or convey such lands except under the provisions of this Act, and the compensation to be paid for any permanent damage or injury to any such lands shall not (except where the same shall have been determined by a surveyor appointed under the provisions hereinafter contained), be less than shall be determined by two Justices or by arbitrators appointed in the manner hereinafter provided.

Amount of compensation to be ascertained by arbitration in case of parties under disability.
22 Vic. No. 19 s. 19.

37. The constructing authority may sell and convey any lands so acquired, or any part thereof, in such manner and for such considerations and to such persons as such authority may think fit; and may purchase other lands for the like purposes, and afterwards sell and convey the same, and so from time to time.

Authority to sell such lands and to purchase others.
8 Vic. c. 18 s. 13.
22 Vic. No. 19 s. 21.

38. All notices required to be served by the constructing authority upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found). In case any such parties shall be absent from the Colony, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there be no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

Service of notices on owners and occupiers of lands.
8 Vic. c. 18 s. 19.
22 Vic. No. 19 s. 23.

39. If, for twenty-one days after the service of such notice, any such party shall

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

(I) Omit to state the particulars of his claim in respect of any such land or to treat with the constructing authority in respect thereof; or

(II) Fail to agree with the constructing authority as to the amount of the compensation to be paid by the constructing authority, for the interest in such lands belonging to such party or which he is by this Act enabled to sell; or for any damage that may be sustained by him by reason of the execution of the authorized work;—

8 Vic. c. 18 s. 21.
22 Vic. No. 19 s. 24.

The amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

But the owner or party claiming compensation shall not be at liberty to institute any proceeding for the recovery of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished to him. Provided that if no claim be made within twelve months after such notice as aforesaid by the party entitled to make such claim, the same shall be deemed to have been waived and abandoned.

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40. If no agreement be come to between the constructing authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands taken or required for any authorized work, or injuriously affected by the exercise of any of the powers hereby granted, 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, the compensation claimed shall be settled (I) by two Justices where such claim shall not exceed one hundred pounds, (II) by arbitrators as hereinafter provided where such claim shall exceed one hundred pounds.

How disputes as to compensation to be settled.

8 Vic. c. 18 s. 22.
22 Vic. No. 19 s. 25.

41. Any Justice may, upon the application of either party, with respect to any question of disputed compensation by this Act authorized to be settled by two Justices, 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, such Justices may hear and determine such question, and for that purpose examine such parties or any of them and their witnesses upon oath. The costs of every such inquiry shall be in the discretion of such Justices, and they shall settle the amount thereof. Provided always that, if the amount awarded by the Justices shall be one-fourth less than the amount claimed, the owner of the land or person claiming compensation shall pay to the constructing authority the costs of and occasioned by the inquiry.

Method of proceeding before Justices for settling disputes as to compensation.

8 Vic. c. 18 s. 24.
22 Vic. No. 19 s. 26.

25 *Compensation by Arbitration.—Jury, Surveyor, &c.*

42. (I) When any question of disputed compensation or any dispute or other matter authorized or directed by this Act 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 or other matter shall be referred.

Appointment of arbitrators.

8 Vic. c. 18 s. 25.
22 Vic. No. 19 s. 27.

(II) Every appointment of an arbitrator shall be made, on the part of the constructing authority under his hand and official seal, and on the part of any other party under the hand of such party, or if such party be a corporation, under the common seal of such corporation.

(III) Such appointment shall be delivered to the arbitrator or arbitrators 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 to such submission operate as a revocation thereof.

(IV) If, after any such dispute or other matter shall have arisen, and after a request in writing setting forth 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 within fourteen days to appoint such arbitrator, then, upon such failure, the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters in dispute, and in such case, except as hereinafter provided, the award or determination of such single arbitrator shall be final and conclusive.

43. If, before the matter so referred shall be determined, any arbitrator appointed by either party die, or become incapable to act as arbitrator, 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

Vacancy of arbitrator to be supplied.

8 Vic. c. 18 s. 26.
22 Vic. No. 19 s. 28.

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other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed alone; and every arbitrator so to be substituted as aforesaid shall have the powers and authorities of the former arbitrator at the time of such death or disability as aforesaid.

- 5 44. Where more than one arbitrator shall have been appointed the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ, or which shall be referred to him. If such umpire shall die or become incapable to act, or refuse, or for seven days neglect to act after being called upon to do so by the arbitrators, they shall forthwith, after such death, incapacity, refusal or neglect, appoint another umpire in his place. The decision of every such umpire on the matters so referred to him shall, except as hereinafter provided, be final.
- 10
- 15 45. If, in either of the cases aforesaid, the arbitrators shall refuse or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to 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 shall, except as hereinafter provided, be final.
- 20
- 25 46. 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, or shall refuse, or for fourteen days neglect to act, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.
- 30 47. 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 alone; and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.
- 35 48. 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 (if any), not being greater in the whole than six months, as shall have been appointed for that purpose by both of such arbitrators, under their hands, the matters referred to them shall be determined by the umpire appointed as aforesaid.
- 40 49. 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.
- 45 50. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a Justice of the Peace, make and subscribe the following declaration, that is to say :—
- 50 I do solemnly and sincerely declare that I have no interest, either directly or indirectly, in the property in question, and 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 Public Works Act of 1888."
- 55 A.B.

Made and subscribed in the presence of
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 misdemeanour.

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51. (I) All the costs of and incident to any such arbitration as settled by the arbitrators shall be borne by the constructing authority, unless the sum awarded by the arbitrators shall be the same or a less sum than shall have been offered by the constructing authority, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Cost of arbitration how to be borne.
8 Vic. c. 18 s. 34.
22 Vic. No. 19 s. 36.

(II) If the sum awarded shall be one-fourth less than the amount claimed, the whole costs of and incident to the arbitration and award shall be borne by the claimant, and the arbitrators shall direct the payment of the same accordingly.

(III) If either party be dissatisfied with the costs allowed by the arbitrators as aforesaid, the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court, and the amount allowed by such officer shall be the amount to be paid.

52. The arbitrators shall deliver their award in writing to the constructing authority who shall retain the same, and shall forthwith, on demand, furnish a copy thereof to the other party; 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 constructing authority.
8 Vic. c. 18 s. 35.
22 Vic. No. 19 s. 37.

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

Submission may be made a rule of Court.
8 Vic. c. 18 s. 36.
22 Vic. No. 19 s. 38.

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

Award not void through error in form.

55. In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge thereof shall have power at any time and from time to time, to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.

8 Vic. c. 18 s. 37.
22 Vic. No. 19 s. 39.
Power to refer back award.
22 Vic. No. 19 s. 40.

56. If the compensation awarded by the arbitrators shall exceed the sum of three hundred pounds, and either party shall be dissatisfied with the award and shall desire to have the compensation settled by a jury, and shall, within fourteen days after the making of the award and notice thereof, signify such desire by notice in writing to the other party, then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall proceed by action in the Supreme Court, in the usual manner, to recover from the constructing authority the compensation to which he may be entitled under the provisions of this Act.

Questions of compensation in certain cases to be decided by jury.
22 Vic. No. 19 s. 41.

If, upon the trial of the said action, the verdict shall be—

(I) For a greater sum than the sum previously offered by the constructing authority and awarded by the arbitrators,

All the costs of the said action and of the arbitration and award shall be borne by the said constructing authority.

(II) For a less sum than the sum so awarded,

All the costs of the said action and of the arbitration and award shall be borne by the claimant.

(III) For the sum awarded by the arbitrators,

All the costs of the said action and of the arbitration and award shall be paid by the party requiring the same to be referred to a jury.

In every such case the costs of the arbitration and award shall be added to, and be recoverable as, the costs of the action.

57. The purchase-money or compensation to be paid for any lands to be purchased or taken by the Constructing Authority from any party who, by reason of absence from the Colony, is prevented from treating, or who cannot after diligent inquiry be found, and the compensation

Compensation to absent parties to be determined by a surveyor appointed by two Justices.
8 Vic. c. 18 s. 58.
22 Vic. No. 19 s. 42

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compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned.

58. Upon application by the constructing authority to two Justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Colony, prevented from treating, or cannot after diligent inquiry be found, such Justices shall, by writing under their hands, nominate a competent surveyor and valuator, for determining such compensation, who shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Two Justices to nominate a surveyor.
8 Vic. c. 18 s. 50.
22 Vic. No. 19 s. 43.

59. Before such surveyor and valuator 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 following declaration at the foot of such nomination, that is to say:—

Surveyor to make a declaration.
8 Vic. c. 18 s. 60.
22 Vic. No. 19 s. 44.

I A.B. do solemnly and sincerely declare that I have no interest, directly or indirectly, in the property in question and 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.

Made and subscribed in the presence of } A.B.

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

60. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor and valuator; and shall be delivered to the constructing authority to be kept for the purpose and in the manner hereinbefore provided in case of awards.

Valuation to be delivered to Constructing Authority.
8 Vic. c. 18 s. 61.
22 Vic. No. 19 s. 44.

61. All the expenses of and incident to every such valuation shall be borne by the constructing authority.

Expenses to be borne by authority.

Application of purchase money, &c.

62. If the purchase money or compensation payable in respect of any lands or any interest therein purchased or taken by the constructing authority 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, administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same, except under the provisions of this Act, or the compensation to be paid for any permanent damage to such lands amount to or exceed the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity, to be by him deposited to the account of such Master in Equity *ex parte* the constructing authority in the matter of A or B (the party entitled) pursuant to the method prescribed by any Act or by any rules, for the time being in force, for regulating moneys paid into the Supreme Court in its Equitable Jurisdiction; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes, (that is to say)—

Purchase money payable to parties under disability amounting to £200 to be deposited with Master in Equity.
8 Vic. c. 18 s. 69.
22 Vic. No. 19 s. 47.

(I) In the redemption of the quit rent, or 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 and purposes; or

Applications of moneys deposited.

(II) In the purchase of other lands or of Government debentures or other stock, 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

(III)

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(III) If such money shall be paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorized work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Primary Judge in Equity shall direct; or

(iv) In payment to any party becoming absolutely entitled to such money.

63. Such money may be so applied as aforesaid upon an order of the said Court or Judge 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 by the said Master in Equity in the purchase of Government Debentures or real securities, and the interest, dividends and annual proceeds thereof may be paid to the party who would, for the time being, have been entitled to the rents and profits of the lands.

64. (i) 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 to the Master in Equity to be by him deposited and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees.

(ii) Such trustees shall 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. In case of the coverture, infancy, lunacy or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees.

(iii) Payment of such moneys shall not be made to such trustees as aforesaid unless the constructing authority approve thereof and of the trustees named for the purpose.

(iv) The money so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money deposited to the account of the Master in Equity; but it shall not be necessary to obtain any order of the Court for that purpose.

65. 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, lunacy or other incapacity of such parties, such money shall be paid for their use to the respective husbands, guardians, committees or trustees of such persons.

66. All sums of money exceeding twenty pounds which may be payable by the constructing authority 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 to the Master in Equity or to trustees, in manner aforesaid. 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 accommodation works, or for assenting to or not opposing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession

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as in remainder, reversion or expectancy. Provided always that it shall be in the discretion of the Judges of the Supreme Court, or the Primary Judge in Equity, 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 deposited or so paid 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.

67. All payments which shall be made in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the constructing authority; and such authority shall not be bound or required to see to the application of any of the moneys paid to the Master in Equity or other person by virtue hereof, or to see to the performance of any trusts.

Payments made under this Act sufficient discharge to the Constructing Authority.

22 Vic. No. 19 s. 51.

68. Where any purchase money or compensation paid or deposited pursuant to this 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, the said Court or Judge may, on the petition of any party interested in such money, order that the same shall be laid out, invested, accumulated and paid, in such manner as the said Court or Judge 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.

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

8 Vic. c. 18 s. 74.

22 Vic. No. 19 s. 52.

69. If the owner of any lands taken or purchased under the authority of this Act, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof,

Purchase money or compensation may in certain cases be paid to the Master in Equity.

8 Vic. c. 18 s. 76.

22 Vic. No. 19 s. 53.

- (I) Refuse to accept the same;
- (II) Neglect or fail to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the constructing authority;
- (III) Refuse to convey or release such lands as directed by the constructing authority;
- (IV) Be absent from the Colony or cannot after diligent inquiry be found;

The constructing authority may, if it shall think fit, deposit the purchase money or compensation payable in respect of such lands or any interest therein in the hands of the Master in Equity, to be by him deposited as aforesaid to his account to the credit of the parties interested in such lands, (describing them so far as he can do) subject to the control and disposition of the said Court.

70. 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 Court or Judge may in a summary way, as to such Court or Judge shall seem fit, order such money to be laid out or invested in the purchase of Government Debentures or real securities; or may order distribution thereof or payment of the dividends thereof, according to the respective estates, titles or interest 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 or Judge shall seem fit.

Application of moneys so deposited.

8 Vic. c. 18 s. 78.

22 Vic. No. 19 s. 54.

71. If any question arise respecting the title to the lands, in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands as being

Party in possession to be deemed the owner.

8 Vic. c. 18 s. 79.

the 22 Vic. No. 19 s. 55.

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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, upon
 5 such inquiry as the Court shall think fit to direct, 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 dividend or interest of the securities purchased therewith, and the same shall be paid and
 10 applied accordingly.

72. In all cases of moneys deposited under the provisions of this Act, except where such moneys 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
 15 shall be payable, or by reason of the neglect of any party to make out a good title to the land required, the said Court or Judge may order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the constructing authority (that is to say) the costs of—

- 20 (I) 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;
- (II) The investment of such moneys in Government Debentures or real securities and of the re-investment thereof in the
 25 purchase of other lands;
- (III) Obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of
 30 such moneys or of the securities whereon the same shall be invested;
- (IV) All proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided always that the costs of one application only for re-invest-
 35 ment in land shall be allowed, unless it shall appear to the said Court or Judge that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times; in which case the Court may, if it think fit, order the costs of any such investments to be paid by
 40 the constructing authority.

Conveyances, &c.

73. (I) Conveyances of lands to be purchased or taken under the provisions of this Act may be according to the form in the
 45 Second Schedule to this Act or as near thereto as the circumstances of the case will admit, or by deed in any other form which the constructing authority may think fit.

(II) All conveyances made according to the form in the said Schedule or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the
 50 constructing authority for and on behalf of Her Majesty; and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interests so thereby conveyed, and to bar and to destroy all such estates tail and all other estates, rights, titles, remainders, reversions, limitations, trusts, and
 55 interests whatsoever of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned.

(III)

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(III) 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 constructing authority to attend the reversion and inheritance.

5 74. The costs of all such conveyances shall be borne by the constructing authority; 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 interest therein, and of deducing, 10 evidencing and verifying the title to such lands, terms or interests, and of making out and furnishing such abstracts and attested copies as the constructing authority may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title.

Costs of conveyances
8 Vic. c. 18 s. 82.
22 Vic. No. 19 s. 58.

15 75. (i) If the constructing authority and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court, upon the application of either party;

Taxation of costs
of conveyances.
8 Vic. c. 18 s. 83.
22 Vic. No. 19 s. 59.

(ii) The constructing authority shall pay what the said 20 Master or other proper officer shall certify to be due in respect of such costs to the party entitled thereto; or, in default thereof, any Judge of the Supreme Court may make an order for the payment of the same; and the said costs may be recovered in the same way as any other costs payable under any order of the said Court or a Judge 25 thereof.

(iii) The expense of taxing such costs shall be borne by the constructing authority, 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 30 costs shall be so taxed, and the amount thereof shall be ascertained by the said Master or other proper officer and deducted by him accordingly in his certificate of such taxation.

76. Provided always that after any lands, which the constructing authority is by this Act authorized to take, shall have been set 35 out, ascertained and finally appropriated for any of the purposes authorized by this Act, such lands and the fee simple and inheritance thereof, together with the yearly profits thereof and all the estate, use, trust and interest of every person therein, shall thenceforth be vested in the constructing authority, for and on behalf of Her Majesty, 40 to and for the purposes of this Act, for ever, as fully and effectually, to all intents and purposes, as if the same had been conveyed by the persons legally entitled to sell and convey the said lands; but nevertheless the constructing authority may, if he think fit, in any case demand such conveyance.

Lands taken in pur-
suance of this Act to
vest without con-
veyance.
22 Vic. No. 19 s. 60.

45 77. If, in any case in which, according to the provisions of this Act, the constructing authority is authorized to enter upon and take possession of any lands required for the purpose of the authorized work, the owner or occupier of any such lands or any other person refuse to give up the possession thereof or hinder the Con- 50 structing Authority from entering upon or taking possession of the same, it shall be lawful for such authority to issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same. Upon the receipt of such warrant the Sheriff shall deliver possession of any such lands 55 accordingly, and the cost 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 constructing authority from the compensation, if any, then payable to such party, or if no 60 such compensation be payable to such party or if the same be less than

Proceeding in case of
refusal to deliver
possession of lands.
8 Vic. c. 18 s. 91.
22 Vic. No. 19 s. 61.

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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.

5 78. No party shall, at any time, be required to sell or convey to the constructing authority 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.

Parties not to be required to sell part of a house.
8 Vic. c. 18 s. 92.
22 Vic. No. 19 s. 62.

10 79. If any lands not being situated in a town or built upon shall be so cut through and divided by the authorized work 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 constructing authority to purchase the same along with the other land required for the purposes of this Act, the constructing authority
15 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 constructing authority shall, if so required by the owner, throw the piece of land so left into the
20 adjoining land, by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

Owners of intersected lands may insist on sale.
8 Vic. c. 18 s. 93.
22 Vic. No. 19 s. 63.

25 80. 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 constructing authority is, under the provisions of this Act compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the constructing authority to make such communication, then the constructing authority
30 may require such owner to sell to him 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 in cases of disputed compensation. On the occasion of ascertaining the value of the land so required to be taken,
35 the Justices or the arbitrators or jury, as the case may be, shall, if required by either party, ascertain by their award or verdict the value of any such severed piece of land and also what would be the expense of making such communication.

Constructing Authority may insist on purchase where expense of bridges &c. exceed the value.
8 Vic. c. 18 s. 94.
22 Vic. No. 19 s. 64.

Mortgages, Rent Charges, &c.

40 81. (I) The constructing authority may purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of this Act; and that whether he 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
45 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 this Act.

Power to redeem mortgages.
8 Vic. c. 18 s. 108.
22 Vic. No. 19 s. 65.

50 (II) In order thereto, the constructing authority may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his cost 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 constructing authority or as he shall direct.

55 (III) The constructing authority may give notice in writing to such mortgagee that he 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 he shall have given any such notice, or if the

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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 constructing authority to the mortgagee of the principal money due on such mortgage and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the constructing authority, or as he shall direct.

82. 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 constructing authority, or if he fail to adduce a good title thereto to his satisfaction, then it shall be lawful for the constructing authority to pay into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the cases of moneys required to be paid to such Master in Equity, the principal and interest, together with the costs, if any, due on such mortgage; and if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at the time become due; and also, if such authority think fit, to execute a deed poll, containing a description of the lands in respect whereof such deposit shall have been made and describing the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be duly registered by the constructing authority. 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 said authority, and such authority shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession.

83. (I) If any of 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 constructing authority 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 constructing authority on the other part.

(II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the constructing authority 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 constructing authority or as he shall direct.

84. 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 constructing authority, it shall be lawful for the said authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him, in the manner provided by this Act in like case of moneys required to be paid to such Master in Equity; 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 the said authority may if it think fit, execute a deed poll in manner hereinbefore provided. And thereupon such lands, as to all such estate and interest as were then vested in the mortgagee or any person

Deposit of mortgage money on refusal to accept.

8 Vic. c. 18 s. 109.

22 Vic. No. 19 s. 66.

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

8 Vic. c. 18 s. 110.

22 Vic. No. 19 s. 67.

Deposit of money when refused on tender.

8 Vic. c. 18 s. 111.

22 Vic. No. 19 s. 68.

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person in trust for him, shall become absolutely vested in the constructing authority and such authority shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

5 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.

10 85. (I) If a part only of any such mortgaged lands be required for the purposes of this 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
15 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 constructing authority on the other part.

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

8 Vic. c. 18 s. 112.
22 Vic. No. 19 s. 69.

20 (II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the constructing authority
25 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 the constructing authority or as it 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
30 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 constructing authority at the expense of such authority, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

35 86. If, upon any 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 constructing authority or as it shall direct, his interest in the lands, in respect of which such compensation shall so have been paid or tendered, or if
40 he shall fail to adduce a good title thereto to the satisfaction of the constructing authority, it shall be lawful for such authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the case of moneys required to be paid to such Master in
45 Equity; 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 also if he think fit, to execute a deed poll in the manner hereinbefore provided. And there-
50 upon such lands shall become absolutely vested in the constructing authority, 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 he shall be entitled to immediate possession thereof.

Deposit of money when refused on tender.

8 Vic. c. 18 s. 113.
22 Vic. No. 19 s. 70.

55 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 this Act,

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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.

5 87. If any difference shall arise between the constructing authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or incumbrance not hereinbefore provided for upon any lands taken for the purposes of this Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for
10 the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of lands
from rent charges.
8 Vic. c. 18 s. 115.
22 Vic. No. 19 s. 71.

15 88. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance, be taken for the purposes of this Act, the apportionment of any such
20 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 constructing authority 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
25 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.

Release of part of
lands from rent-
charge.
8 Vic. c. 18 s. 116.
22 Vic. No. 19 s. 72.

25 89. 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 constructing authority a release of such charge. If he fail so to do, or if he fail to adduce a good title to such charge to the satisfaction of the constructing authority, it shall be lawful for such
30 authority to pay the amount of such compensation into the hands of the Master in Equity to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to such Master in Equity; and also if such authority think fit to execute a deed poll, in the manner herein provided for in the case of the purchase of
35 lands by him. And thereupon the rent-service, rent-charge, chief or other rent, payment 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.
8 Vic. c. 18 s. 117.
22 Vic. No. 19 s. 73.

40 90. If any such lands or portion thereof be so released from any such charge or incumbrance 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
45 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. 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 constructing authority for the purpose, he shall affix
50 his seal to a memorandum of such release, indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of this 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
55 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. Such memorandum shall be made and executed at the expense of the constructing

Charge to continue
on lands not taken.
8 Vic. c. 18 s. 118.
22 Vic. No. 19 s. 74.

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constructing authority, 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.

Leases.

- 5 91. (I) If any lands shall be comprised in a lease for a term of years unexpired part only of which lands shall be required for the purposes of this 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. Where part only of lands under lease taken the rent to be apportioned. 8 Vic. c. 18 s. 119. 22 Vic. No. 19 s. 75.
- 10 (II) Such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the constructing authority 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.
- 15 (III) 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 this Act; and, as to the lands not so required, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as, previously to such apportionment, he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force, with regard to that part of the land which shall not be required for the purposes of this Act, in the same manner as they would have done in case such part only of the land had been included in the lease.
- 20 92. Every such lessee as last aforesaid shall be entitled to receive from the constructing authority 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, for the purposes of the authorized work. Tenants to be compensated. 8 Vic. c. 18 s. 120. 22 Vic. No. 19 s. 76.
- 25 93. (I) 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 land 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 any incoming tenant, and for any loss or injury he may sustain: or, if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same. Compensation to be made to tenants from year to year. 8 Vic. c. 18 s. 121. 22 Vic. No. 19 s. 77.
- 35 (II) The amount of such compensation shall be determined by two Justices in case the parties differ about the same,
- 40 (III) Upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up to the constructing authority or to the person appointed by such authority to take possession thereof, any such lands in their possession required for the purposes of this Act.
- 45 94. If any party having a greater interest than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the constructing authority may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the constructing authority, such lease or grant or such best evidence thereof be not produced Where greater interest claimed than at will lease to be produced. 8 Vic. c. 18 s. 122. 22 Vic. No. 19 s. 78.
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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.

Superfluous Lands.

- 5 95. In case any of the lands taken by the constructing authority under the provisions of this Act be not required for the purposes of any authorized work, such authority shall absolutely sell and dispose of all such superfluous lands and apply the purchase money arising from such sales in such manner as the Governor shall direct. Lands not wanted to be sold.
22 Vic. No. 19 s. 70.
- 10 96. Upon payment or tender to the constructing authority of the purchase money so agreed upon or determined as aforesaid, such authority shall convey such lands for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered; and a deed so executed and registered shall be effectual to vest the lands comprised therein in Lands to be conveyed to the purchasers.
8 Vic. c. 18 s. 131.
22 Vic. No. 19 s. 83.
- 15 the said purchaser for the estate which shall so have been purchased by him, and a receipt under the hand and seal of the constructing authority shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Temporary possession of lands, &c.

- 20 97. It shall be lawful for the constructing authority and all persons by it authorized to enter, from time to time, upon any lands being within a distance of not more than two hundred yards from the nearest boundary of the authorized work as delineated on the plans thereof and not being a garden, orchard or plantation attached or belonging Power to take temporary possession of land.
22 Vic. No. 19 s. 84.
- 25 to a house, nor a park, planted walk, avenue or ground ornamentally planted, and not being nearer to the dwelling house of the owner of any such lands than a distance of five hundred yards, and to occupy the said lands, as long as may be necessary for the construction, re-construction, repair, alteration, addition to or extension of the authorized
- 30 work or the works connected therewith, and to use the same for any of the following purposes (that is to say),—
- (I) For the purpose of taking earth or soil by side cuttings therefrom.
- (II) For the purpose of depositing soil thereon.
- 35 (III) For the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorized work or such other works as aforesaid.
- (IV) For the purpose of forming roads thereon to, or from, or by
- 40 the side of the authorized work.

And in exercise of the powers aforesaid it shall be lawful for the constructing authority and all other persons employed therein to deposit, and also to manufacture and work upon such lands materials of every kind used in constructing the authorized work, and also to take from any

45 such lands any timber, and also to dig and take from or out thereof any clay, stone, gravel, sand or other things that may be found therein, useful or proper for constructing the authorized work or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds and other buildings of a temporary nature. Provided always

50 that nothing in this Act contained shall exempt the constructing authority from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid. Provided also that no stone

55 or slate quarry, brickfield or other like place which, at the time of the passing

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passing of this Act, shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the constructing authority, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

5 98. If any such lands shall be used for any of the purposes aforesaid, the constructing authority shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be necessary for the convenient occupation of such lands; and in case of any difference
10 between the owners or occupiers of such lands and the constructing authority as to the necessity for such fences and gates, then with such fences and gates as the Governor shall deem necessary for the purposes aforesaid.

Authority to separate the lands before using them.
22 Vic. No. 19 s. 85.

15 99. In any of the cases aforesaid, where the constructing authority shall take temporary possession of lands by virtue of the powers herein granted, such authority shall

Compensation to be made for temporary occupation.
22 Vic. No. 19 s. 86.

(I) Within one month after his entry upon such lands, upon being required so to do, pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well
20 as full compensation for any other damage of a temporary nature which he may sustain by reason of the constructing authority so taking possession of his lands.

(II) From time to time, during such occupation of the said lands, pay half-yearly or quarterly to such occupier or the owner
25 of the lands, as the case may require, a rent, to be fixed by two Justices in case the parties differ.

(III) Within six months after he shall have ceased to occupy the said lands, pay to such owner and occupier or deposit with the Master in Equity, in manner aforesaid, for the benefit of
30 all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury that may have been sustained by them, by reason of the exercise as regards the said lands of the powers herein granted, including the full value of all such clay, stone, gravel, sand and other
35 things taken from such land.

100. The amount and application of the compensation payable by the constructing authority in any of the cases aforesaid shall be determined in the manner provided by this Act for determining the amount and application of the compensation to be paid for lands
40 taken under the provisions hereof.

Compensation to be ascertained under the clauses in this Act relating to lands taken and injuries.
22 Vic. No. 19 s. 87.

101. If the authorized work cross any public highway or carriage road, then such authorized work shall not be carried across,
over or under such road, unless the proposed place and mode of such crossing and the immediate approaches thereto, and all other necessary
45 works connected therewith, and the provisions to be adopted for the protection of the public using the same, shall have been previously notified, and shall have been approved of by the Governor.

Crossing of roads.
22 Vic. No. 19 s. 83

102. If, in the exercise of the powers hereby granted, it be found necessary to cross, cut through, raise, sink or use any part of any
50 road, whether carriage road, horse road, tram road or railway, either public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or carriages or to the persons entitled to the use thereof, the constructing authority shall, before the commencement of any such operations, cause a sufficient
55 road to be made instead of the road to be interfered with and shall, at the public expense, maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be.

Before roads interfered with others to be substituted.
22 Vic. No. 19 s. 89.

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103. If any party entitled to a right of way over any road so interfered with by the constructing authority shall suffer any special damage because such authority shall fail to cause another sufficient road to be made before it interferes with the existing road, it shall be lawful for such party to recover the amount of such special damage from the constructing authority, with costs, by action in the Supreme Court.

Party suffering damage from interruption of road to recover in an action on the case.
22 Vic. No. 19 s. 90.

104. (I) If the road so interfered with can be restored compatibly with the formation and use of the authorized work, the same shall be restored to as good a condition as it was in, at the time when the same was first interfered with by the constructing authority or as near thereto as may be.

Period for restoration of roads interfered with.
22 Vic. No. 19 s. 91.

(II) If such road cannot be restored compatibly with the formation and use of the authorized work, the constructing authority shall cause the new or substituted road or some other sufficient substituted road to be put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

And the former road shall be restored or the substituted road put into such condition as aforesaid, as the case may be, with all reasonable expedition.

105. If the authorized work shall cross any highway (other than a public carriage-way) on the level, the constructing authority shall make and at all times maintain convenient ascents and descents and other convenient approaches with hand-rails or other fences; and shall, if such highway be a bridle-way, erect and at all times maintain good and sufficient gates, and if the same be a footway, good and sufficient gates or stiles on each side of the authorized work where the highway shall communicate therewith.

Constructing authority to make sufficient approaches and fences to bridle-ways and foot-ways crossing the line.
22 Vic. No. 19 s. 92.

106. The constructing authority shall make, and at all times maintain, the following works, for the accommodation of the owners and occupiers of lands adjoining any authorized work, that is to say,—

Works for benefit of owners.
22 Vic. No. 19 s. 93.

(I) Such and so many convenient gates, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the authorized work as shall be necessary for the purpose of making good any interruptions caused by the authorized work to the use of the lands through, in, or upon which such authorized work shall be made or constructed; and such work shall be made forthwith after such authorized work or part of it passing over such lands shall have been laid out or formed or during the formation thereof.

Gates, bridges, &c.

(II) Sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land, taken for or for the use of the authorized work, from the adjoining lands not taken and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, in consequence of such authorized work; together with all necessary gates made to open towards such adjoining lands and not towards the authorized work. All necessary stiles, and such posts, rails and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and such other works as soon as conveniently may be.

Fences, &c.

(III) All necessary arches, tunnels, culverts, drains or other passages either over or under, or by the sides of the authorized work, of such dimensions as will be sufficient, at all times, to convey the water as clearly from the lands lying near or affected by such authorized work as before the making of the authorized work or as nearly so as may be; and such works shall be made from time to time as the authorized work proceeds.

Drains.

Provided

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Provided always that the constructing authority shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the authorized work ; nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

107. If any difference arise, respecting the kind or number of any such accommodation works or the dimensions or sufficiency thereof or respecting the maintaining thereof, the same shall be determined by the Governor who shall also appoint the time within which such works shall be commenced and executed.

Differences as to accommodation works to be settled by Governor.

22 Vic. No. 19 s. 94.

108. If any of the owners or occupiers of lands affected by such authorized work shall consider the accommodation works made by the constructing authority or directed by the Governor to be made by the constructing authority insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the constructing authority.

Power to owners of lands to make additional accommodation works.

22 Vic. No. 19 s. 95.

109. If the constructing authority so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of the Engineer or other officer superintending the making or construction of any authorized work, and according to plans and specifications to be submitted to and approved by the constructing authority. Nevertheless, the constructing authority shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by such authority, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by such authority.

Such works to be constructed under the superintendence of the constructing authority's Engineer.

22 Vic. No. 19 s. 96.

110. Until the constructing authority shall have made the bridges or other proper communications which it shall, under the provisions herein contained, have been required to make between lands intersected by the authorized work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way shall be affected by the want of such communication, and their respective servants may, at all times, freely pass and repass with carriages, horses and other animals directly (but not otherwise) across the part of the authorized work constructed or made through, in, or upon their respective lands, solely for the purpose of occupying the same lands or for the exercise of such right-of-way, and so as not to obstruct the passage along such authorized work or to damage the same. Nevertheless, if the owner or occupier of any such lands have, in his arrangements with the constructing authority, received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the authorized work.

Owners to be allowed to cross until accommodation works are made.

22 Vic. No. 19 s. 97.

111. If any person omit to shut and fasten any gate, set up at either side of the authorized work for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriages, cattle or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds, to be recovered in a summary way before any Stipendiary or Police Magistrate, or any two Justices at the suit of any person authorized by the Constructing Authority.

Penalty on persons omitting to fasten gates.

22 Vic. No. 19 s. 98.

112. (1) This Act shall not prevent the owners or occupiers of lands adjoining any authorized work, when such authorized work is a Railway, or any other persons from laying down, either upon their own lands or upon the lands of other persons with the consent of

Power to parties to make private branch railways communicating with the railway.

22 Vic. No. 19, s. 99.

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such persons, any collateral branches of Railway to communicate with any Railway to be made under this Act, for the purpose of bringing carriages to or from or upon such Railway, but under and subject to the prescribed provisions and restrictions and to the provisions of this Act 5 and the "Government Railways Act of 1885."

(II) The Constructing Authority shall, if required, at the expense of such owners and occupiers and other persons, make openings in the rails and such additional lines of rail, as may be necessary for effecting such communication, in places where the 10 communication can be made with safety to the public and without injury to the Railway and without inconvenience to the traffic thereon.

(III) The Constructing Authority shall not take any rate or toll or other moneys for the passing of any passengers, goods or other things along any branch so to be made by any such owner or 15 occupier or other person; but this enactment shall be subject to the following restrictions and conditions (that is to say)—

(a) No such branch Railway shall run parallel to the authorized 20 Railway. Restrictions and conditions.

(b) The Constructing Authority shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, or upon any inclined plane or bridge, or in any tunnel.

(c) The persons making or using such branch Railways shall be subject to all by-laws and regulations of the Railway Commissioners, from time to time made with respect to passing upon or crossing the Railway and otherwise; and the persons making or using such branch Railways shall be bound to construct, and, from time to time, as need may require, to renew 25 the rails, crossings, switches and sleepers according to the most approved plan adopted by the Constructing Authority and under the direction of the Engineer of the Railway.

113. The lands to be taken or used for any authorized work, where such authorized work is a Railway, shall not exceed one hundred 35 yards in width except where a greater width shall be judged necessary for an approach to the Railway or for waggons and other carriages to turn, remain, stand in, lie or pass each other, or for raising embankments for crossing valleys or low grounds, or in cutting through high ground, or for the erection or establishment of any fixed or permanent 40 machinery, tollhouses, warehouses, wharf or other erections and buildings or for excavating, removing, or depositing earth or other materials. Breadth of land to be taken for Railway. 22 Vic. No. 19 s. 11.

Provisions as to Lands containing minerals, &c.

114. Notwithstanding anything hereinbefore in this Act contained, or in any other Act incorporated, or made applicable by this 45 Act, the constructing authority shall not be entitled to any mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under any land taken or purchased by such authority after the passing of this Act, except only such portions thereof as shall be necessary to be dug or carried away or used in the construction of the 50 works; unless the same shall have been expressly taken or purchased. And all such mines and deposits, except as aforesaid, shall be deemed to be excepted on the taking or out of the conveyance of such lands, unless they shall have been expressly taken or conveyed. Constructing authority not to be entitled to minerals. 8 Vic. c. 2 s. 77.

115. If the owner, lessee or occupier of any mines or minerals 55 lying under any authorized work or any of the works connected therewith or within forty yards from the boundary thereof be desirous of working the same, such owner, lessee or occupier shall give to the constructing authority notice in writing of his intention so to do, thirty 60 days Mines lying near the railway not to be worked if the constructing authority willing to take or purchase them. 8 Vic. c. 2 s. 78.

Public Works.

days before the commencement of working. And upon the receipt of such notice it shall be lawful for the constructing authority to cause such mines to be inspected by any person appointed by him for the purpose; and if it appear to the constructing authority that
 5 the working of such mines or minerals is likely to damage the authorized work, and if the constructing authority be willing to make compensation for such mines or any part thereof to such owner, lessee or occupier, then he shall not work or get such minerals and if the
 10 constructing authority and such owner, lessee or occupier do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation as hereinbefore provided.

116. (I) If before the expiration of thirty days the constructing authority do not state his willingness to treat with such owner, lessee or occupier for the payment of such compensation, it shall be lawful
 15 for him to work the said mines or any part thereof for which the constructing authority shall not have agreed to give compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate.

20 (II) If any damage or obstruction be occasioned to the authorized work by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee or occupier of such mines or minerals and at his own expense.

25 (III) It shall be lawful for the constructing authority, if such repair or removal be not forthwith carried out by, or, if he think fit, without waiting for the same to be carried out by, such owner, lessee, or occupier, to carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by action
 30 in the Supreme Court.

117. If the working of any such mines under the authorized work or within the abovementioned distance therefrom be prevented as aforesaid, by reason of apprehended injury to such authorized work,
 35 it shall be lawful for the respective owners, lessees and occupiers of such mines and whose mines shall extend so as to lie on both sides of the authorized work to cut and make so many air ways, headways, gateways or water-levels through the mines, measures or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain and work their said mines. But no such air-
 40 way, headway, gateway or water-level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be prescribed, not greater than eight feet wide and eight feet high, or of such a nature as to injure or to impede the passage on, to, through or over the same.

45 118. The constructing authority shall from time to time pay to the owner, lessee or occupier of any such mines, lying on both sides of the authorized work, all such additional expenses and losses as shall
 50 be incurred by such owner, lessee or occupier by reason of the severance of the lands lying over such mines by the authorized work, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions, as not to prejudice or injure the railway, and for any
 55 minerals not taken or purchased by the constructing authority which cannot be obtained by reason of making or constructing and maintaining the authorized work. And if any dispute or question shall arise between the constructing authority and such owner, lessee or occupier as aforesaid touching the amount of such losses or expenses the same shall be settled by arbitration as hereinbefore mentioned.

If constructing authority unwilling to purchase owner may work the mines.

8 Vic. c. 2 s. 79.

Mining communications.
 8 Vic. c. 2 s. 80.

Constructing authority to make compensation for injury done to mines.
 8 Vic. c. 2 s. 81.

Public Works.

119. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines, the working whereof shall have been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the constructing authority shall make full compensation to such owner or occupier for the loss or damage so sustained by him, if he is not also the owner, lessee or occupier of any mine under such lands, in connection with which such airway or other work has been made. And also for any airway or other work made necessary by the railway. 8 Vic. c. 2 s. 82.
120. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorized work it shall be lawful for the constructing authority, after giving twenty-four hours' notice in writing, to enter upon any lands, through, in, on or near which the authorized work is constructed, and wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee or occupier of such mines and to use all necessary means for discovering the distance from the railway to the parts of such mines, which are being worked or about so to be. Power to constructing authority to enter and inspect the working of mines. 8 Vic. c. 2 s. 83.
121. If any such owner, lessee or occupier of any such mine shall refuse to allow any person, appointed by the constructing authority for that purpose, to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the constructing authority a sum not exceeding twenty pounds. Penalty for refusal to inspect. 8 Vic. c. 2 s. 84.
122. If it appear that any such mines have been worked contrary to the provisions of this Act, the constructing authority may, if they think fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the authorized work and preventing injury thereto. And if, after such notice, any such owner, lessee or occupier do not forthwith proceed to construct the works necessary for making safe such authorized work, the constructing authority may himself construct such works and recover the expense thereof from such owner, lessee or occupier, by action in the Supreme Court. If mines improperly worked the constructing authority may require means to be adopted for the safety of the railway 8 Vic. c. 2 s. 85.

Public Works.

SCHEDULES.

FIRST SCHEDULE.

I, A. B., do solemnly and sincerely promise and declare, that, according to the best of my skill and ability, I will faithfully, impartially, and truly execute the office and perform the duties of a Member of the Parliamentary Standing Committee on Public Works.

(Signed) A. B.

SECOND SCHEDULE.

Form of Conveyance.

I of in consideration of the sum of paid to me (or as the case may be, into the hands of the Master in Equity of the Supreme Court or to of and of two trustees appointed to receive the same pursuant to the "Public Works Act of 1888" by the [here name the constructing authority] do hereby convey to the said constructing authority his successors and assigns for and on behalf of Her Majesty All &c. (describing the premises to be conveyed) together with all ways, rights and appurtenances thereto belonging and all such estate, right, title and interest in and to the same as I am or shall become seised or possessed of or am by the said Act empowered to convey, to hold the premises to the said constructing authority his successors and assigns for ever according to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal the in the year of our Lord

THIRD SCHEDULE.

Notice of claim and abstract.

To the [here name the constructing authority] IN pursuance of the "Public Works Act of 1888" I of (or we) hereby give you notice that I (or we) claim compensation in respect of the land hereunder described which has been taken under the said Act The amount of such claim and other the particulars required by the said Act are stated in the subjoined abstract [If the claim is not for land taken this form may be modified in accordance with the nature of the claim.]

Abstract.

35 Names and descriptions of parties claiming and nature of their interests whether tenants for life in tail or otherwise.	Situation and description of property.	Quit rents payable if leasehold name of landlord term of lease and rent reserved.	Names of occupiers distinguishing whether tenants-at-will or under lease rent reserved terms &c.	Particulars of claim specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected and name of claimant's solicitor or agent.

(Signature)
(Address)
(Date)

40

Public Works.

FOURTH SCHEDULE.

RAILWAY.

Extension from _____ to _____

I HEREBY offer to accept from the Constructing Authority, as purchase money for the
 5 land (including buildings and fences erected thereon) of which I am*
 delineated on the tracing plan attached to the notice of land taken, and numbered
 _____, which I hereby acknowledge to have received, containing _____ acres
 roads and _____ perches, more or less, and as compensation for damage by severance, by
 the Railway, or otherwise caused by the execution of the Railway Works, as particularly
 10 set forth in the subjoined Schedule of Claim, the sum of £ _____, which sum I
 declare to be my full claim in respect of the matters aforesaid.

Dated this _____ day of _____ 188 .

[Name and Address of Claimant.]

To the Constructing Authority, Sydney.

15 *Schedule of Claim.*

20	Land Resumed.	Reference No.	Area.	Character.	Estimated Value.		Total Value.
			a. r. p.		Per acre £	or per foot £	£ s. d.
				Building ...	£	.....
				Cultivation...	£	.....
				Pasture .....	£	.....
				Mineral .....	£	.....
25	Improvements taken.	Nature and Description of Improvements taken.					
		Buildings					
		Fences					
		Other improvements					
Damage by severance or otherwise							
Total amount of Claim.....£							

[Signature of Claimant.]

30

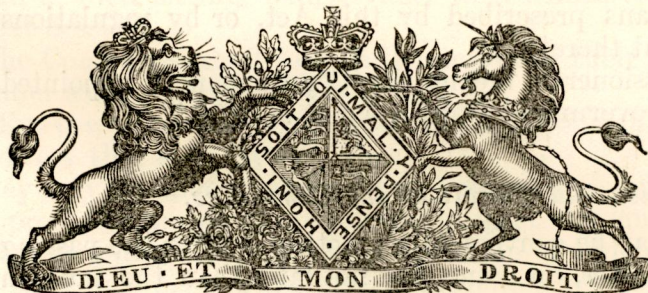
- * (1) "the owner in fee simple,"
 - (2) "the owner of an estate for life,"
 - (3) "mortgagee with power of sale,"
 - (4) "I have a leasehold interest for _____ years,"
- (as the case may be).

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
Sydney, 12 April, 1888. }

F. W. WEBB,
Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO PRIMO

VICTORIÆ REGINÆ.

No.

An Act to provide for the constitution of an Authority to investigate and report upon proposals for Public Works submitted to Parliament, to make better provision for the acquisition of land for carrying out such Works, and for other purposes in connection therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

5

PART I.

Constitution and Powers of Parliamentary Standing Committee on Public Works.

- 1. This Act may be cited as the "Public Works Act of 1888." Short title.
- 2. In this Act the expression Interpretation of terms.
- 10 "Authorized Work" means any work the carrying out of which has been declared expedient by Resolution of the Legislative Assembly pursuant to this Act.
- "Committee" means the Parliamentary Standing Committee on Public Works as constituted under the provisions of this Act.
- 15 "Constructing authority" means the responsible Minister of the Crown empowered to undertake any public work after resolution of the Legislative Assembly authorizing the carrying out of such work, and the said expression includes the "Railway Commissioners," for the purpose of giving effect
- 20 to any powers or duties conferred or imposed on them by this Act, or by the "Government Railways Act of 1888."

Public Works.

“Government Debentures” includes, in addition to such Debentures, any Government Stock issued by the Government of this Colony pursuant to any statutory power.

5 “Governor” means the Governor with the advice of the Executive Council.

“Justice” means any Justice of the Peace.

“Lands for Public Purposes Acquisition Act” means the Act forty-fourth Victoria number sixteen as amended by the Act forty-fifth Victoria number twenty-six.

10 “Prescribed” means prescribed by this Act, or by regulations made pursuant thereto.

“Railway Commissioners” means the Commissioners appointed under the “Government Railways Act of 1888.”

Constitution and Powers of the Committee.

15 3. As soon as may be conveniently practicable after the passing of this Act, and thereafter, on some day not later than the seventh day after the commencement of each Session of every Parliament, a Joint Committee of Members of the Legislative Council and Legislative Assembly, to be called the “Parliamentary Standing Committee on Public Works,” shall be appointed, according to the practice regulating the selection of Members to serve on Select Committees of the said Council and Assembly respectively. Five of the persons so to be appointed shall be Members of the Legislative Council, and eight shall be Members of the Legislative Assembly. Such thirteen persons shall
20 hold office as a Joint Committee (subject to the provisions in the next following section contained) for the Session for which they were appointed, and during the interval between the prorogation of Parliament and the next ensuing Session thereof; and shall have and may exercise such powers and authorities, perform such duties, and
25 be liable to such obligations, as are by this Act vested in or imposed upon such Committee. The names of the persons from time to time appointed to be members of such Committee shall be notified in the *Gazette* with all convenient despatch.

Constitution of
Parliamentary
Committee on
Public Works.

35 4. Any member of the Committee may resign his seat on such Committee by writing under his hand addressed to the Governor. The seat of any such member shall also be deemed to have become vacant

Extraordinary
vacancies.

(I) For any reason which would vacate his seat as a Member of the Assembly or Council (as the case may be);

(II) By his acceptance of any office of profit under the Crown;

40 On the occurrence of any such vacancy the same shall be filled upon motion in the usual manner, provided that the respective proportions in respect to the representation on the Committee of Members of the Legislative Council, and Members of the Assembly hereinbefore prescribed shall be observed in the filling up of all such vacancies.

45 5. (I) There shall be a Chairman and Vice-Chairman of the Committee who shall be elected by the members of the Committee at their first meeting, or as soon after such meeting as may be practicable. The Chairman or, in case of his absence or other disability, the Vice-Chairman shall preside at all meetings of the Committee.

Chairman and Vice-
Chairman.

50 (II) Any seven members of the Committee (of whom the Chairman or Vice-Chairman shall be one) shall form a quorum competent to exercise all powers and authorities and to incur all obligations conferred or imposed by this Act upon the Committee.

Quorum.

55 6. Every member of the Committee, before entering on the duties of his office or sitting at any meeting of such Committee, shall make and subscribe a declaration in the form of the First Schedule hereto.

Declaration of
members of Com-
mittee.

Public Works.

7. The Committee shall have power to sit and transact business during any adjournment or recess as well as during the Session for which they shall have been appointed, and may sit at such times and in such places, and conduct their proceedings in such manner as may seem most convenient for the proper and speedy dispatch of business, and such Committee shall sit in open Court.

Power to sit during recess, and in open Court.

8. The Committee shall, before the commencement of each Session of Parliament, make a report to the Governor of their proceedings under this Act; and such report shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and, if not, then within fourteen days after the next Session.

Report.

9. The Committee shall keep full minutes of their proceedings in such manner as the Governor may direct.

Minutes.

10. For the purposes of this Act the Committee shall have the following powers that is to say—

Powers of Committee.

(a) They may, by themselves or by any person appointed by them to prosecute an inquiry, enter and inspect any land, building, place or material the entry or inspection of which appears to them requisite, upon the prescribed notice being given to the owners or occupiers of such land, building, place or material.

(b) They may require, by summons under the hand of the Chairman or Vice-Chairman, the attendance of all such persons as they may think fit to call before them and examine, and may require answers or returns to such inquiries as they think fit to make.

(c) They may, in the prescribed manner, require and compel the production of all books, maps, plans, papers and documents relating to the matters before them.

(d) They may, by their Chairman or Vice-Chairman, examine witnesses on oath; or where a witness, if examined before a Superior Court of Record, would be permitted to make a solemn declaration, or to give evidence in any other way than upon oath, then by such declaration or otherwise as the case may be.

(e) They may, when sitting in open Court, by their Chairman or Vice-Chairman, punish for contempt in like manner as if they were a superior Court of record, and with the like effect in all respects.

Every person required by the Committee to attend as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena before a superior Court of record, and, in case of dispute as to the amount to be allowed, the same shall be referred to the Prothonotary of the Supreme Court who, on request under the hand of the Chairman of the Committee, shall ascertain and certify the proper amount of such expenses.

11. The Committee may, from time to time, in the exercise of any powers by this Act conferred on them, call in the aid of one or more assessors, who shall be persons of engineering or other technical knowledge, or possessing special local knowledge or experience. There shall be paid to such assessors such remuneration as the Governor may appoint and as Parliament may provide.

Assessors.

12. The Committee shall, subject to the provisions contained in the next following section, consider and report upon all Public Works (except Fortifications and Works connected with the Military or Naval Defence of the Colony) to be executed after the passing of this Act, (and whether such works are continuations, completions, repairs, reconstructions, extensions or new works), in all cases where the estimated cost of completing such work exceeds twenty thousand pounds.

Functions of Committee.

Public Works.

pounds. And, in considering and reporting on any such work as aforesaid, the Committee shall have regard to the stated purpose thereof, and to the necessity or advisability of carrying it out; and, where such work purports to be of a reproductive or revenue producing character, the Committee shall have regard to the amount of revenue which such work may reasonably be expected to produce, and to the present and prospective public value of such work; and generally the Committee shall, in all cases, take such measures and procure such information as may enable them to inform or satisfy the Legislative Assembly as to the expediency of carrying out the work in question.

13. After the first gazetting of the Parliamentary Committee of Public Works pursuant to this Act no Public Work of any kind whatsoever, (except as excepted in the last preceding section, and except such works as the Railway Commissioners are authorized to carry out pursuant to the "Government Railways Act of 1888"), the estimated cost of completing which shall exceed twenty thousand pounds, and whether such work be a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless a resolution of the Legislative Assembly affirming the expediency of executing such work shall first have been carried in accordance with the procedure and provisions hereinafter set forth;

Conditions precedent
to commencing
Public Works.

(I) Every such proposed work shall, in the first place, be submitted and explained in the Legislative Assembly by some Member of the Executive Council having a seat in such Assembly (hereafter termed "the Minister"). The explanation shall comprise an estimate of the cost of such work when completed, together with such plans and specifications or other descriptions as the Minister shall deem proper and, in the case of a proposed Railway or Tramway, a map or plan of the line and Book of Reference, together with a report by the Railway Commissioners on the probable cost of construction and maintenance of such railway or tramway, and an estimate of the probable revenue to be derived therefrom; And such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner;

(II) Upon motion, in the usual manner, made by the Minister or by any Member of the Assembly such proposed work shall be referred to the Parliamentary Committee on Public Works for their report thereon.

(III) The Committee shall, with all convenient dispatch, deal with the matter so referred to them, and, for that purpose may exercise all powers by this Act conferred on such Committee.

(IV) The Committee shall, as soon as conveniently practicable, (regard being had to the nature and importance of the proposed work) report to the Legislative Assembly the result of their inquiries.

(V) After the receipt of such report the said Assembly shall, by resolution, declare, either that it is expedient to carry out the proposed work, or that it is not expedient to carry out the same.

Provided always that the said Assembly, instead of declaring affirmatively or negatively as aforesaid, may resolve that the report of the Committee shall, for reasons or purposes to be stated in the resolution, be remitted for their further consideration and report to the said Committee; in which case such Committee shall consider the matter of such new reference, and report thereon accordingly.

14. Every resolution of the Legislative Assembly declaring that it is expedient or not expedient to carry out any such proposed work as aforesaid shall be notified in the *Gazette*, and, upon such notification as aforesaid (if in the affirmative), the work so proposed may be proceeded with, as hereinafter provided.

Notification of
resolution.

Public Works.

15. If any such resolution declares that it is not expedient to carry out any proposed work no proposal for a public work in substance identical with the work referred to in such resolution shall be submitted to the Legislative Assembly until after the expiration of one year from the notification of such resolution as aforesaid, unless the Governor, by writing under his hand addressed to the said Committee, declares that, in his opinion and in view of the public interest, it is desirable that any such proposal should be re-submitted to the said Assembly.
- 10 16. (I) Every Resolution of the Legislative Assembly declaring that it is expedient to carry out the work specified or mentioned in such resolution shall be sufficient authority for the Minister to introduce a Bill into the said Assembly to sanction the carrying out of such work. Provided always that no such contracts to be entered into by
15 the Constructing Authority for carrying out of such work shall exceed in the aggregate by more than ten per cent. the estimate for the same as submitted to Parliament.
- (II) All such contracts may be made as follows (that is to say),—
- 20 With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, the Constructing Authority may make such contract in writing and under its seal and in the same manner may vary or discharge the same.
- 25 With respect to any contract which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, the Constructing Authority may make such contract in writing and in the same manner may vary or discharge the same.
- 30 With respect to any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, the Constructing Authority may make such contract by parol only without writing, and in the same manner may vary or discharge the same.
- 35 And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Constructing Authority on behalf of Her Majesty, and all other parties thereto, their heirs executors or administrators as the case may be; and on any default in the execution of any such contract either by the said
40 Authority or any other party thereto, such actions or suits may be brought either by or against the said Authority as might be brought had the same contracts been made between private parties.
17. The Governor, on the recommendation of the Committee, may frame regulations for giving effect to this Act. Such regulations
45 when published in the *Gazette* shall have the full force of law; and copies thereof shall be laid before Parliament within fourteen days after such publication, if Parliament be then in Session, and, if not, then within fourteen days from the commencement of the then next Session of Parliament.
- 50 18. Notwithstanding anything hereinbefore contained, the Governor may, with respect to any Public Work estimated to cost less than Twenty Thousand Pounds, direct that the same may be carried out under the "Public Works Act of 1888," in which case all the powers and provisions contained in Parts II and III of this Act
55 shall be applicable to such work and the same shall, for all purposes of the said Parts, be deemed to be an "authorized work," and the Commissioners of Railways or Minister on whom the carrying out of such work devolves shall for the like purposes, be deemed a "constructing authority."

Under what circumstances negatived proposals may be re-submitted.

Resolution to be sufficient authority for execution of Works.

Regulations.

Provisions of Act may be extended to certain Public Works.

Public Works.

PART II.

General and Special Provisions in respect to the taking or acquisition of Lands for authorized Works, &c.

19. The Governor may direct that any land required, in his
 5 opinion, for any authorized work may be acquired, either by taking the
 same under the "Lands for Public Purposes Acquisition Acts," as
 adopted by this Act, or under the provisions contained in Part III
 hereof. Thereupon, subject to the provisions of this Act, the land so
 required may be taken or acquired in the manner directed, and the
 10 compensation for such land shall be ascertained and dealt with in all
 respects pursuant to the said Acts as so adopted, or the said Part, as
 the case may be.

As to taking of lands
 after resolution.

20. For the purpose of carrying out any authorized work if the
 Governor directs that any land required for such work shall be taken
 15 under the "Lands for Public Purposes Acquisition Acts," he may by
 notification to be published in the *Gazette* and in one or more news-
 papers published or circulated in the Police District wherein is
 situated the land the subject of such notification declare that the
 land described in such notification has been appropriated (if Crown
 20 Land) or resumed (if private property) for the public purpose therein
 expressed. And an abstract of the land so appropriated or resumed
 together with the purpose for which the same is required shall, in
 every case, be laid before Parliament (if in Session at the date of such
 notification) within seven days after its publication in the *Gazette*; and
 25 if not, then within fourteen days after the commencement of the next
 ensuing Session.

As to lands taken for
 authorized works,
 under "Lands for
 Public Purposes
 Acquisition Acts."

21. Upon the publication of such notification in the *Gazette*
 the lands described or referred to in such notification shall forthwith
 be vested in the Constructing Authority on behalf of Her Majesty
 30 for the purposes of this Act for an estate in fee simple in possession,
 freed and discharged from all trusts, obligations, estates, interests, con-
 tracts, charges, rates, rights-of-way, or other easements whatsoever, and
 to the intent that the legal estate therein, together with all powers
 incident thereto, or conferred by this Act, shall be vested in such
 35 Authority as a trustee. And for the purpose of facilitating the acqui-
 sition and disposal of land under this Act the said Authority when
 a Minister is hereby declared to be a Corporation sole under the name
 of "the Minister"; and, by that name, shall have perpetual succession
 and an official seal, sue and be sued, and take all legal proceedings in
 40 all Courts and places whatsoever, with power to purchase, take and
 hold lands to him and his successors for the purposes of this Act, and
 also to sell and dispose of any superfluous lands if necessary, and to
 give effectual discharges in respect thereof to any purchaser.

Vesting &c. of land
 upon publication of
 notification in
Gazette.

22. Where the land taken is Crown Land at the date of such
 45 publication, or is vested in any corporation or person on behalf of Her
 Majesty, or for public purposes, by virtue of any statute, or is within
 the limits with reference to centres of population prescribed by the
 "Crown Lands Act" in force for the time being, the effect of such
 publication shall be to withdraw the said land (to the extent taken)
 50 from any lease or license, or promise thereof, and to cancel, to the
 like extent, any dedication or reservation of the said land made
 under the authority of any such Act, or to divest the estate of such
 corporation or person, and to vest the said land to the extent aforesaid
 in the Constructing Authority for the purposes mentioned and for the
 55 estate limited in the last preceding section.

Effect of publication
 upon Crown Lands.

Public Works.

23. For the purpose of ascertaining and dealing with the compensation to be paid for the taking of such lands, the provisions of the "Lands for Public Purposes Acquisition Acts" (as by this Act adopted) shall be applied, and shall govern both the party taking such lands, 5 and the party from whom such lands are taken, and all persons claiming through or on behalf of such parties. And for such and all other subsidiary purposes, the tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-third and twenty-fourth sections of the Act forty-fourth Victoria number 10 sixteen as amended by the Act forty-fifth Victoria number twenty-six shall be incorporated with this Act. Provided that, in the application of the said provisions, the expression "the Minister" or "Minister for Public Works," as and when used in any of such incorporated sections, shall mean "the Constructing Authority" as 15 defined by this Act; and the expression "this Act" when so used in any of such sections shall mean the "Public Works Act of 1888" and the enactments incorporated therewith. Provided further that in lieu of the provisions of the "Government Railways Act" twenty-two Victoria number nineteen, incorporated in the Act forty-four 20 Victoria number twenty-six, the corresponding provisions as re-enacted in Part III hereof, and indicated in the margin by references to the sections of the said "Government Railways Act," shall be substituted in applying the said "Lands for Public Purposes Acquisition Acts."

Incorporation of provision of Lands for Public Purposes Acquisition Acts.

24. For the purpose of ascertaining the purchase money or com- 25 pensation to be paid by the Constructing Authority regard shall in every case after the passing of this Act be had by the magistrates, arbitrators, surveyors, valuers or jury (as the case may be) not only to the value of the land to be purchased or taken, but also to the damage (if any) to be sustained by the owner of the lands by reason of the 30 severing of the lands taken from other lands of such owner or otherwise injuriously affecting such other lands by the exercise of any statutory powers by such Authority; and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time notice was given of such lands being 35 required or having been taken. Provided always that the said magistrates, arbitrators, surveyors, valuers, and jury in ascertaining such purchase money or compensation shall take into consideration and give effect to by way of set-off or abatement any enhancement in the value of any land belonging to such owner adjoining the land 40 taken or severed therefrom, as well as any other benefit or advantage which such owner may or shall obtain by the construction of the authorized work. But in no case shall this proviso operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement of value or benefit 45 or advantage as aforesaid.

General provision as to compensation for land howsoever taken or acquired.

25. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken for Railway or Tramway purposes under this Act, at any time within five years from the time when such land was alienated in fee by 50 the Crown, whether absolutely or conditionally, shall be a sum of money, for each acre or portion of an acre of such land, equal to the amount of purchase money paid per acre by the grantee, or to the amount of deposit per acre paid by the conditional purchaser for such land (as the case may be), together with a sum not exceeding one hundred per 55 centum on the amount of such purchase money or deposit; and, in addition thereto, the value of any improvements, of whatever value the same may be, then being upon such land, such value to be ascertained by appraisalment under the provisions of the Crown Lands Act in force for the time being.

Compensation where land alienated by the Crown when taken &c. for Railway or Tramway.

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26. All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Colonial Treasurer; and, in all cases where compensation or costs shall be awarded or adjudged to be paid by the Constructing Authority, the amount thereof shall be paid to the party lawfully entitled thereto, or to his agent duly authorized in his behalf, within one month next after the amount of the said compensation or costs shall have been determined. But in every such case the party claiming payment shall be bound to make out a title to the said lands, or to the interest claimed by him therein to the satisfaction of the Constructing Authority.

Compensation to be paid within one month.

22 Vic. No. 19 s. 46.

Title to be made out.

PART III.

As to the Acquisition of Land, and ascertaining and assuring the payment therefor, and of compensation for injuries in respect thereof, &c. ("The Lands Clauses Consolidation Act" provisions.

27. For the carrying out of any authorized work it shall be lawful for the Constructing Authority and all persons acting under such Authority,—

Power to enter upon and take lands,

22 Vic. No. 19 s. 10.

(I) To enter into and upon the lands and grounds of any person whomsoever, and to survey and take levels of the same, and to ascertain and stake or set out, take and appropriate, for the purposes herein mentioned, such parts thereof as may be necessary and proper for the laying out, making and using any authorized work, and all other works, matters and conveniences connected therewith.

(II) In or upon such lands or any lands adjoining or contiguous thereto, to bore, dig, cut, trench, embank and sough, remove or lay, take, carry away and use any earth, stone, timber, gravel or sand or any other materials or things which may be dug, raised or obtained therein in constructing such authorized work and other works, out of any lands contiguous or adjoining thereto, and which may be proper or necessary for making, maintaining, altering, repairing or using any such authorized work, or which may hinder, prevent or obstruct the constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending or using the same respectively.

remove materials,

(III) To make or construct in, upon, across, under or over any lands, streets, roads, rivers, streams or other waters, within the lands described in the plans or mentioned in the books of reference of any authorized work, or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, fences, as shall be considered necessary.

construct inclined planes, tunnels, &c.,

(IV) To alter the course of any rivers (not navigable), streams or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under the same, or for any other necessary purpose; and also to divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or to raise or sink the level of any such rivers or streams, streets, roads or ways, in order the more conveniently to carry the same over, or under, or by the side of, any such authorized work, as may be thought proper.

alter the course of rivers, &c.,

and of roads, &c.,

the level of any such rivers or streams,

(v)

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- (v) To make drains or conduits into, through, or under any lands adjoining any authorized work, for the purpose of conveying water from or to the same. to make drains, &c.
- 5 (vi) In or upon any such authorized work or any lands adjoining or near thereto, to erect and construct such houses, warehouses, offices and other buildings, yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as shall be thought requisite. to erect toll-houses, warehouses, &c.
- 10 (vii) From time to time to alter or to repair or to discontinue the before-mentioned works or any of them and substitute others in their stead. alterations and repairs.
- 15 (viii) Where any authorized work shall be constructed in or shall pass through any wood lands or forest,—To fell or remove any trees standing thereon, within the distance of fifty yards from either or every side of such work. Where work is in forest lands, &c.
- (ix) And generally, to do all other acts necessary for constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending and using such authorized work. General power.
- 20 28. The Constructing Authority may, in the prescribed manner, with the consent of the Governor, dedicate any portion of land vested in such authority as a public highway, or to be an addition to, or extension of, an existing public highway. Provided that no highway so dedicated shall exceed one chain in width. Constructing Authority may dedicate highway.
- 25 29. (i) When any authorized work is a Railway or Tramway or Tramway cause to be made and taken levels and surveys of the country and lands through which such Railway or Tramway is to be carried, together with a map or plan of the line, and of the lands through which it is to pass, and also a book of reference in which shall be set forth a description of the said several lands, and the names of the owners and proprietors thereof so far as the same shall be known or can with reasonable diligence be ascertained, with a description of the said lands setting forth the bearings of such Railway or Tramway as the case may require, and the nature and quality, state of cultivation, the inclosures (if any), and the quantity of such land which may be required for the purpose of making such Railway or Tramway. Map or plan and book of reference to be made in certain cases. 22 Vic. No. 19, s. 12.
- 30 (ii) Notice of such map or plan and book of reference shall be given by the Constructing Authority by advertisement in the *Gazette* which notice shall set forth generally the extent and direction of the intended line of Railway or Tramway and shall refer to such map or plan and book of reference to be seen at the office of the said authority at Sydney; and shall call upon all persons interested in the lands to be affected by the said intended Railway or Tramway, to set forth in writing to the said authority, within one month from the first publication of such notice, any well-grounded objection that may appear to them to exist to the adoption of the said line of Railway or Tramway or any part thereof, or of any works proposed in connection therewith; and if any such objection shall be made the same shall be considered by the Governor, who shall, after due consideration thereof, confirm or alter the said map or plan and book of reference as to the said Governor shall seem meet, and thereupon notice shall be given by the Commissioner in the *Gazette* of such confirmation with or without alterations as the case may be. Notice and objections Ib. s. 13.
- 40 (iii) The said map or plan and book of reference as so altered or confirmed shall be kept in the office of the Constructing Authority at Sydney, and true copies thereof signed by the said authority shall be deposited with the Clerk of Petty Sessions of the districts into or through which such Railway or Tramway shall be intended to be carried; and such map or plan and book of reference, Deposit with Clerks of Petty Sessions. Ib. s. 14.
- 55 and

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and such copies thereof respectively shall be exhibited at all convenient times for public examination from the day of the date on which the notice of intention to make such Railway or Tramway hereafter mentioned shall be first published: And all persons shall
5 have free liberty and permission, at all proper and convenient times, to view and examine the said map or plan and book of reference or copies as aforesaid.

(iv) If any omission, misstatement, or erroneous description shall have been made of any lands, or of the owners, lessees, or
10 occupiers of any lands described in the plan or book of reference the Constructing Authority, after having given ten day's notice to the owners of the lands affected by such proposed correction, may lodge an amended plan and book of reference, in the same manner as the
15 original book of reference; and thereupon such original plan or book of reference shall be deemed to be so corrected; and the Constructing Authority may carry out the authorized work in accordance therewith.

Errors and omissions to be corrected.
17 s. 15.

(v) The Constructing Authority shall, by advertisement in the *Gazette* and in one or more of the Sydney newspapers, forty days
20 before commencing any Railway or Tramway give notice that it is intended to make the said Railway or Tramway between certain places therein to be specified according to a map or plan or book of
reference to be seen in the office of the said Authority at Sydney, and at the offices of the said Clerks of Petty Sessions; and, in case any
25 material deviation from the said line indicated in such map or plan shall at any time afterwards be deemed by the Governor to be desirable, the like notices shall be given by the said Authority relative to the proposed deviation.

Authority to give notice of intention to make Railway or Tramway between certain places.
17 s. 16.

30. When the map or plan and book of reference in the cases
aforesaid or the plan in case of any other authorized work shall
30 have been confirmed by the Governor, the constructing authority shall give notice of the lands taken or required for the said work to all the parties interested in such land, or to the parties enabled by this Act to sell and convey or release the same, or to
35 such of the said parties as shall after diligent inquiry be known to the constructing authority. Every such notice shall state the particulars of the lands so taken or required as aforesaid, and that the constructing authority is willing to treat as to the compensation to be made to all parties for the lands taken or to be taken, and the
40 damage sustained or that may be sustained by them by the exercise of the powers conferred by this Act. Such authority in the said notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the said constructing authority, the particulars of their estate and interest in such lands and of the
45 claims made by them in respect thereof and such other particulars and in such form as may be prescribed, together with an abstract of their title to such land; and, if they claim in respect of damage, the nature of the damage which they have sustained or will sustain by reason of the taking of such lands.

Notice of lands taken.
22 Vic. No. 19 s. 22.

31. It shall be lawful for the Constructing Authority to agree
50 with the owners of any lands by this Act authorized to be taken, and which shall be required for the purposes of this Act, and with all parties having any estate or interest in such lands, or by this Act enabled to sell and convey the same, for the absolute purchase for and on behalf of Her Majesty, for a consideration in money, of any
55 such lands or such parts thereof as shall be thought proper, and of all estates and interests in such lands of what kind soever.

Power to purchase lands by agreement.
8 Vic. c. 18 s. 6.
22 Vic. No. 19 s. 17.

32. (1) It shall be lawful for the Constructing Authority in
addition to the lands authorized to be compulsorily taken by such
authority as aforesaid to contract, with any party willing to sell
the
In certain cases power to purchase or take lands for additional accommodation.
22 Vic. No. 19 s. 20.

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the same, for the purchase for and on behalf of Her Majesty, for Railway or Tramway purposes of any lands for the purpose of making and providing additional stations, yards, wharfs, stelling, and places for the accommodation of passengers, and for receiving depositing and loading or unloading goods or cattle to be conveyed upon any Railway or Tramway; and for the erection of weighing machines toll-houses and other buildings and conveniences, and for any other purpose that may be deemed requisite or convenient for the use of the Railways or Tramways; and it shall be lawful for all parties who, under the provisions hereinbefore contained would be enabled to sell and convey lands, to sell and convey the same under and for the purposes of this section.

(II) Instead of exercising the power of acquiring such lands so required for additional accommodation hereinbefore conferred, the constructing authority may acquire such lands compulsorily, pursuant to the provisions for compulsorily taking land hereinbefore contained.

33. The aforesaid powers of taking or acquiring or purchasing land may be exercised by the constructing authority from time to time; and whether the particular work, for which lands may have been taken, acquired or purchased, has been actually constructed or not.

Powers exercisable from time to time, &c.

34. In the exercise of the powers granted by this Act the constructing authority and all other persons shall do as little damage as possible; and, if required, full satisfaction shall be made in manner herein provided, to all persons interested in any lands or hereditaments which shall have been taken, used, injured or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

As to Damages. 22 Vic. No. 19, s. 10.

35. Nothing herein contained shall empower the constructing authority or any person, in the exercise of the powers granted by this Act, to take, injure or damage any messuage, dwelling-house or other permanent building or the immediate appurtenances thereof, without the consent in writing of the owner and occupier thereof respectively, until after the expiration of three calendar months from the time the constructing authority shall have given notice to the owner thereof that the same is required under this Act.

As to injuries to houses, &c. 22 Vic. No. 19, s. 11.

36. (I) It shall be lawful for all parties being seised, possessed of or entitled to any such lands or any estate or interest therein, to sell and convey or release the same to the constructing authority for and on behalf of Her Majesty, and to enter into all necessary agreements for that purpose.

Parties enabled to sell and convey and exercise other powers.

8 Vic. c. 18 s. 7. 22 Vic. No. 19 s. 18.

(II) It shall be lawful for all or any of the following parties, so seised, possessed or entitled as aforesaid, so to sell, convey or release, (that is to say) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors, administrators and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest.

(III) The power so to sell and convey or release may lawfully be exercised by all such parties (other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest), not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties; and as to such married women, whether they be of full age

or

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or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively, could have exercised the same power under the authority of this Act, if they had been under no disability; and as to such trustees, executors or administrators, on behalf of their *cestui que* trusts whether infants, issue unborn, lunatics, *femes covert* or other persons, and that to the same extent as such *cestui que* trusts respectively could have exercised the same powers under the authority of this Act, if they had been under no disability.

(iv) The power hereinafter given to release lands from any rent-charge or encumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands.

(v) The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell or convey such lands except under the provisions of this Act, and the compensation to be paid for any permanent damage or injury to any such lands shall not (except where the same shall have been determined by a surveyor appointed under the provisions hereinafter contained), be less than shall be determined by two Justices or by arbitrators appointed in the manner hereinafter provided.

37. The constructing authority may sell and convey any lands so acquired, or any part thereof, in such manner and for such considerations and to such persons as such authority may think fit; and may purchase other lands for the like purposes, and afterwards sell and convey the same, and so from time to time.

38. All notices required to be served by the constructing authority upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found). In case any such parties shall be absent from the Colony, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there be no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

39. If, for twenty-one days after the service of such notice, any such party shall

- (i) Omit to state the particulars of his claim in respect of any such land or to treat with the constructing authority in respect thereof; or
- (ii) Fail to agree with the constructing authority as to the amount of the compensation to be paid by the constructing authority, for the interest in such lands belonging to such party or which he is by this Act enabled to sell; or for any damage that may be sustained by him by reason of the execution of the authorized work;—

The amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

But the owner or party claiming compensation shall not be at liberty to institute any proceeding for the recovery of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished to him. Provided that if no claim be made within twelve months after such notice as aforesaid by the party entitled to make such claim, the same shall be deemed to have been waived and abandoned.

Amount of compensation to be ascertained by arbitration in case of parties under disability.
22 Vic. No. 19 s. 19.

Authority to sell such lands and to purchase others.
8 Vic. c. 18 s. 13.
22 Vic. No. 19 s. 21.

Service of notices on owners and occupiers of lands.
8 Vic. c. 18 s. 19.
22 Vic. No. 19 s. 23.

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

8 Vic. c. 18 s. 21.
22 Vic. No. 19 s. 24.

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40. If no agreement be come to between the constructing authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands taken or required for any authorized work, or injuriously affected by the exercise of any of the powers hereby granted, 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, the compensation claimed shall be settled (I) by two Justices where such claim shall not exceed one hundred pounds, (II) by arbitrators as hereinafter provided where such claim shall exceed one hundred pounds.

How disputes as to compensation to be settled.

8 Vic. c. 18 s. 22.
22 Vic. No. 19 s. 25.

41. Any Justice may, upon the application of either party, with respect to any question of disputed compensation by this Act authorized to be settled by two Justices, 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, such Justices may hear and determine such question, and for that purpose examine such parties or any of them and their witnesses upon oath. The costs of every such inquiry shall be in the discretion of such Justices, and they shall settle the amount thereof. Provided always that, if the amount awarded by the Justices shall be one-fourth less than the amount claimed, the owner of the land or person claiming compensation shall pay to the constructing authority the costs of and occasioned by the inquiry.

Method of proceeding before Justices for settling disputes as to compensation.

8 Vic. c. 18 s. 24.
22 Vic. No. 19 s. 26.

25 *Compensation by Arbitration.—Jury, Surveyor, &c.*

42. (I) When any question of disputed compensation or any dispute or other matter authorized or directed by this Act 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 or other matter shall be referred.

Appointment of arbitrators.

8 Vic. c. 18 s. 25.
22 Vic. No. 19 s. 27.

(II) Every appointment of an arbitrator shall be made, on the part of the constructing authority under his hand and official seal, and on the part of any other party under the hand of such party, or if such party be a corporation, under the common seal of such corporation.

(III) Such appointment shall be delivered to the arbitrator or arbitrators 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 to such submission operate as a revocation thereof.

(IV) If, after any such dispute or other matter shall have arisen, and after a request in writing setting forth 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 within fourteen days to appoint such arbitrator, then, upon such failure, the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters in dispute, and in such case, except as hereinafter provided, the award or determination of such single arbitrator shall be final and conclusive.

43. If, before the matter so referred shall be determined, any arbitrator appointed by either party die, or become incapable to act as arbitrator, 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

Vacancy of arbitrator to be supplied.

8 Vic. c. 18 s. 26.
22 Vic. No. 19 s. 28.

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other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed alone; and every arbitrator so to be substituted as aforesaid shall have the powers and authorities of the former arbitrator at the time of such death or disability as aforesaid.

5 44. Where more than one arbitrator shall have been appointed the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ, or which shall be referred to him. If such umpire shall die or become incapable to act, 10 or refuse, or for seven days neglect to act after being called upon to do so by the arbitrators, they shall forthwith, after such death, incapacity, refusal or neglect, appoint another umpire in his place. The decision of every such umpire on the matters so referred to him shall, except as hereinafter provided, be final.

Appointment of umpire.
8 Vic. c. 18 s. 27.
22 Vic. No. 19 s. 29.

15 45. If, in either of the cases aforesaid, the arbitrators shall refuse or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to appoint an umpire; and the decision of such 20 umpire, on the matters on which the arbitrators shall differ, or which shall be referred to him shall, except as hereinafter provided, be final.

One of the Judges of the Supreme Court to appoint umpire on neglect.
8 Vic. c. 18 s. 28.
22 Vic. No. 19 s. 30.

46. 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, or shall refuse, or for fourteen days neglect to 25 act, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to be begun *de novo*.
8 Vic. c. 18 s. 29.
22 Vic. No. 19 s. 31.

30 47. 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 alone; and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.
8 Vic. c. 18 s. 30.
22 Vic. No. 19 s. 32.

35 48. 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 (if any), not being greater in the whole than six months, as shall have been appointed for that purpose by 40 both of such arbitrators, under their hands, the matters referred to them shall be determined by the umpire appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.
8 Vic. c. 18 s. 31.
22 Vic. No. 19 s. 33.

45 49. 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.
8 Vic. c. 18 s. 32.
22 Vic. c. 19 s. 34.

50 50. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a Justice of the Peace, make and subscribe the following declaration, that is to say:—

Arbitrator or umpire to make a declaration.
8 Vic. c. 18 s. 33.
22 Vic. No. 19 s. 35.

55 I do solemnly and sincerely declare that I have no interest, either directly or indirectly, in the property in question, and 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 Public Works Act of 1888." A.B.

Made and subscribed in the presence of
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 misdemeanour.

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51. (I) All the costs of and incident to any such arbitration as settled by the arbitrators shall be borne by the constructing authority, unless the sum awarded by the arbitrators shall be the same or a less sum than shall have been offered by the constructing authority, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.
- (II) If the sum awarded shall be one-fourth less than the amount claimed, the whole costs of and incident to the arbitration and award shall be borne by the claimant, and the arbitrators shall direct the payment of the same accordingly.
- (III) If either party be dissatisfied with the costs allowed by the arbitrators as aforesaid, the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court, and the amount allowed by such officer shall be the amount to be paid.
52. The arbitrators shall deliver their award in writing to the constructing authority who shall retain the same, and shall forthwith, on demand, furnish a copy thereof to the other party; 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.
53. The submission to any such arbitration may, on the application of either of the parties, be made a rule of the Supreme Court.
54. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.
55. In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge thereof shall have power at any time and from time to time, to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper.
56. If the compensation awarded by the arbitrators shall exceed the sum of three hundred pounds, and either party shall be dissatisfied with the award and shall desire to have the compensation settled by a jury, and shall, within fourteen days after the making of the award and notice thereof, signify such desire by notice in writing to the other party, then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall proceed by action in the Supreme Court, in the usual manner, to recover from the constructing authority the compensation to which he may be entitled under the provisions of this Act.
- If, upon the trial of the said action, the verdict shall be—
- (I) For a greater sum than the sum previously offered by the constructing authority and awarded by the arbitrators, All the costs of the said action and of the arbitration and award shall be borne by the said constructing authority.
- (II) For a less sum than the sum so awarded, All the costs of the said action and of the arbitration and award shall be borne by the claimant.
- (III) For the sum awarded by the arbitrators, All the costs of the said action and of the arbitration and award shall be paid by the party requiring the same to be referred to a jury. In every such case the costs of the arbitration and award shall be added to, and be recoverable as, the costs of the action.
57. The purchase-money or compensation to be paid for any lands to be purchased or taken by the Constructing Authority from any party who, by reason of absence from the Colony, is prevented from treating, or who cannot after diligent inquiry be found, and the compensation

Cost of arbitration how to be borne.
8 Vic. c. 18 s. 34.
22 Vic. No. 19 s. 36.

Award to be delivered to the constructing authority.
8 Vic. c. 18 s. 35.
22 Vic. No. 19 s. 37.

Submission may be made a rule of Court.
8 Vic. c. 18 s. 36.
22 Vic. No. 19 s. 38.

Award not void through error in form.
8 Vic. c. 18 s. 37.
22 Vic. No. 19 s. 39.
Power to refer back award.
22 Vic. No. 19 s. 40.

Questions of compensation in certain cases to be decided by jury.
22 Vic. No. 19 s. 41.

Compensation to absent parties to be determined by a surveyor appointed by two Justices.
8 Vic. c. 18 s. 58.
22 Vic. No. 19 s. 42.

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compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned.

58. Upon application by the constructing authority to two Justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Colony, prevented from treating, or cannot after diligent inquiry be found, such Justices shall, by writing under their hands, nominate a competent surveyor and valuator, for determining such compensation, who shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Two Justices to nominate a surveyor.
8 Vic. c. 18 s. 50.
22 Vic. No. 19 s. 43.

59. Before such surveyor and valuator 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 following declaration at the foot of such nomination, that is to say:—

Surveyor to make a declaration.
8 Vic. c. 18 s. 60.
22 Vic. No. 19 s. 44.

I A.B. do solemnly and sincerely declare that I have no interest, directly or indirectly, in the property in question and 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.

Made and subscribed in the presence of } A.B.

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

60. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor and valuator; and shall be delivered to the constructing authority to be kept for the purpose and in the manner hereinbefore provided in case of awards.

Valuation to be delivered to Constructing Authority.
8 Vic. c. 18 s. 61.
22 Vic. No. 19 s. 44.

61. All the expenses of and incident to every such valuation shall be borne by the constructing authority.

Expenses to be borne by authority.

Application of purchase money, &c.

62. If the purchase money or compensation payable in respect of any lands or any interest therein purchased or taken by the constructing authority 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, administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same, except under the provisions of this Act, or the compensation to be paid for any permanent damage to such lands amount to or exceed the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity, to be by him deposited to the account of such Master in Equity *ex parte* the constructing authority in the matter of A or B (the party entitled) pursuant to the method prescribed by any Act or by any rules, for the time being in force, for regulating moneys paid into the Supreme Court in its Equitable Jurisdiction; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes, (that is to say)—

Purchase money payable to parties under disability amounting to £200 to be deposited with Master in Equity.
8 Vic. c. 18 s. 69.
22 Vic. No. 19 s. 47.

(I) In the redemption of the quit rent, or 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 and purposes; or

Applications of moneys deposited.

(II) In the purchase of other lands or of Government debentures or other stock, 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

(III)

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(III) If such money shall be paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorized work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Primary Judge in Equity shall direct; or

(IV) In payment to any party becoming absolutely entitled to such money.

63. Such money may be so applied as aforesaid upon an order of the said Court or Judge 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 by the said Master in Equity in the purchase of Government Debentures or real securities, and the interest, dividends and annual proceeds thereof may be 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.

8 Vic. c. 18 s. 70.
22 Vic., No. 19 s. 48.

64. (I) 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 to the Master in Equity to be by him deposited and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees.

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

8 Vic. c. 18 s. 71.
22 Vic. No. 19 s. 49.

(II) Such trustees shall 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. In case of the coverture, infancy, lunacy or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees.

(III) Payment of such moneys shall not be made to such trustees as aforesaid unless the constructing authority approve thereof and of the trustees named for the purpose.

(IV) The money so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money deposited to the account of the Master in Equity; but it shall not be necessary to obtain any order of the Court for that purpose.

65. 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, lunacy or other incapacity of such parties, 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.

8 Vic. c. 18 s. 72.
22 Vic. No. 19, s. 49.

66. All sums of money exceeding twenty pounds which may be payable by the constructing authority 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 to the Master in Equity or to trustees, in manner aforesaid. 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 accommodation works, or for assenting to or not opposing the taking of such lands; but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession

All sums payable under contract with persons not absolutely entitled to be paid to Master in Equity or trustees.

8 Vic. c. 18 s. 73.
22 Vic. No. 19 s. 50.

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as in remainder, reversion or expectancy. Provided always that it shall be in the discretion of the Judges of the Supreme Court, or the Primary Judge in Equity, or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified
 5 estate, for his own use, a portion of the sum so deposited or so paid 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
 10 lands and the making of the works.

67. All payments which shall be made in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the constructing authority; and such authority shall not be bound or required to see to the appli-
 15 cation of any of the moneys paid to the Master in Equity or other person by virtue hereof, or to see to the performance of any trusts.

Payments made under this Act sufficient discharge to the Constructing Authority.

22 Vic. No. 19 s. 51.

68. Where any purchase money or compensation paid or deposited pursuant to this 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,
 20 or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, the said Court or Judge may, on the petition of any party interested in such money, order that the same shall be laid out, invested, accumulated and paid, in such manner as the said Court or Judge may consider will give
 25 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.

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

8 Vic. c. 18 s. 74.

22 Vic. No. 19 s. 52.

69. If the owner of any lands taken or purchased under the
 30 authority of this Act, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof,

Purchase money or compensation may in certain cases be paid to the Master in Equity.

8 Vic. c. 18 s. 76.

22 Vic. No. 19 s. 53.

(I) Refuse to accept the same;
 35 (II) Neglect or fail to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the constructing authority;
 (III) Refuse to convey or release such lands as directed by the constructing authority;
 40 (IV) Be absent from the Colony or cannot after diligent inquiry be found;

The constructing authority may, if it shall think fit, deposit the purchase money or compensation payable in respect of such lands or any interest therein in the hands of the Master in Equity, to be by him deposited as aforesaid to his account to the credit of the parties
 45 interested in such lands, (describing them so far as he can do) subject to the control and disposition of the said Court.

70. 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
 50 any part of such lands, or any interest in the same, the said Court or Judge may in a summary way, as to such Court or Judge shall seem fit, order such money to be laid out or invested in the purchase of Government Debentures or real securities; or may order distribution thereof or payment of the dividends thereof, according to the respective
 55 estates, titles or interest 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 or Judge shall seem fit.

Application of moneys so deposited.

8 Vic. c. 18 s. 78.

22 Vic. No. 19 s. 54.

71. If any question arise respecting the title to the lands, in respect whereof such moneys shall have been so paid or deposited as
 60 aforesaid, the parties respectively in possession of such lands as being the

Party in possession to be deemed the owner.

8 Vic. c. 18 s. 79.

22 Vic. No. 19 s. 55.

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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, upon
5 such inquiry as the Court shall think fit to direct, 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 dividend or interest of the securities purchased therewith, and the same shall be paid and
10 applied accordingly.

72. In all cases of moneys deposited under the provisions of this Act, except where such moneys 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
15 shall be payable, or by reason of the neglect of any party to make out a good title to the land required, the said Court or Judge may order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the constructing authority (that is to say) the costs of—

- 20 (I) 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;
- (II) The investment of such moneys in Government Debentures or real securities and of the re-investment thereof in the
25 purchase of other lands;
- (III) Obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of
30 such moneys or of the securities whereon the same shall be invested;
- (IV) All proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided always that the costs of one application only for re-invest-
35 ment in land shall be allowed, unless it shall appear to the said Court or Judge that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times; in which case the Court may, if it think fit, order the costs of any such investments to be paid by
40 the constructing authority.

Conveyances, &c.

73. (I) Conveyances of lands to be purchased or taken under the provisions of this Act may be according to the form in the
45 Second Schedule to this Act or as near thereto as the circumstances of the case will admit, or by deed in any other form which the constructing authority may think fit.

(II) All conveyances made according to the form in the said Schedule or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the
50 constructing authority for and on behalf of Her Majesty; and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interests so thereby conveyed, and to bar and to destroy all such estates tail and all other estates, rights, titles, remainders, reversions, limitations, trusts, and
55 interests whatsoever of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned.

(III)

Costs in case of
money deposited.
8 Vic. c. 18 s. 80.
22 Vic. No. 19 s. 56.

Form of Conveyances.
8 Vic. c. 18 s. 81.
22 Vic. No. 19 s. 57.

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(III) 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 constructing authority to attend the reversion and inheritance.

5 . 74. The costs of all such conveyances shall be borne by the constructing authority; 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 interest therein, and of deducing, 10 evidencing and verifying the title to such lands, terms or interests, and of making out and furnishing such abstracts and attested copies as the constructing authority may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title.

Costs of conveyances
8 Vic. c. 18 s. 82.
22 Vic. No. 19 s. 58.

15 75. (I) If the constructing authority and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by the Master in Equity or other proper officer of the Supreme Court, upon the application of either party;

Taxation of costs
of conveyances.
8 Vic. c. 18 s. 83.
22 Vic. No. 19 s. 59.

(II) The constructing authority shall pay what the said 20 Master or other proper officer shall certify to be due in respect of such costs to the party entitled thereto; or, in default thereof, any Judge of the Supreme Court may make an order for the payment of the same; and the said costs may be recovered in the same way as any other costs payable under any order of the said Court or a Judge 25 thereof.

(III) The expense of taxing such costs shall be borne by the constructing authority, 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 30 costs shall be so taxed, and the amount thereof shall be ascertained by the said Master or other proper officer and deducted by him accordingly in his certificate of such taxation.

76. Provided always that after any lands, which the con- 35 structing authority is by this Act authorized to take, shall have been set out, ascertained and finally appropriated for any of the purposes authorized by this Act, such lands and the fee simple and inheritance thereof, together with the yearly profits thereof and all the estate, use, trust and interest of every person therein, shall thenceforth be vested in the constructing authority, for and on behalf of Her Majesty, 40 to and for the purposes of this Act, for ever, as fully and effectually, to all intents and purposes, as if the same had been conveyed by the persons legally entitled to sell and convey the said lands; but nevertheless the constructing authority may, if he think fit, in any case demand such conveyance.

Lands taken in pur-
suance of this Act to
vest without con-
veyance.
22 Vic. No. 19 s. 60.

45 77. If, in any case in which, according to the provisions of this Act, the constructing authority is authorized to enter upon and take possession of any lands required for the purpose of the authorized work, the owner or occupier of any such lands or any other person refuse to give up the possession thereof or hinder the Con- 50 structing Authority from entering upon or taking possession of the same, it shall be lawful for such authority to issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same. Upon the receipt of such warrant the Sheriff shall deliver possession of any such lands 55 accordingly, and the cost 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 constructing authority from the compensation, if any, then payable to such party, or if no 60 such compensation be payable to such party or if the same be less than

Proceeding in case of
refusal to deliver
possession of lands.
8 Vic. c. 18 s. 91.
22 Vic. No. 19 s. 61.

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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.

5 78. No party shall, at any time, be required to sell or convey to the constructing authority 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.

Parties not to be required to sell part of a house.
8 Vic. c. 18 s. 92.
22 Vic. No. 19 s. 62.

10 79. If any lands not being situated in a town or built upon shall be so cut through and divided by the authorized work 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 constructing authority to purchase the same along with the other land required for the purposes of this Act, the constructing authority
15 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 constructing authority shall, if
20 so required by the owner, throw the piece of land so left into the adjoining land, by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

Owners of intersected lands may insist on sale.
8 Vic. c. 18 s. 93.
22 Vic. No. 19 s. 63.

25 80. 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
30 divided as the constructing authority is, under the provisions of this Act compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the constructing authority to make such communication, then the constructing authority
35 may require such owner to sell to him 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 in cases of disputed compensation. On the occasion of ascertaining the value of the land so required to be taken,
40 the Justices or the arbitrators or jury, as the case may be, shall, if required by either party, ascertain by their award or verdict the value of any such severed piece of land and also what would be the expense of making such communication.

Constructing Authority may insist on purchase where expense of bridges &c. exceed the value.
8 Vic. c. 18 s. 94.
22 Vic. No. 19 s. 64.

Mortgages, Rent Charges, &c.

40 81. (I) The constructing authority may purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of this Act; and that whether he 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
45 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 this Act.

Power to redeem mortgages.
8 Vic. c. 18 s. 108.
22 Vic. No. 19 s. 65.

50 (II) In order thereto, the constructing authority may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his cost 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 constructing authority or as he shall direct.

55 (III) The constructing authority may give notice in writing to such mortgagee that he 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 he shall have given any such notice, or if
the

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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 constructing authority to the mortgagee of the principal money due on such mortgage and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the constructing authority, or as he shall direct.

82. 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 constructing authority, or if he fail to adduce a good title thereto to his satisfaction, then it shall be lawful for the constructing authority to pay into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the cases of moneys required to be paid to such Master in Equity, the principal and interest, together with the costs, if any, due on such mortgage; and if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at the time become due; and also, if such authority think fit, to execute a deed poll, containing a description of the lands in respect whereof such deposit shall have been made and describing the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be duly registered by the constructing authority. 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 said authority, and such authority shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession.

83. (I) If any of 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 constructing authority 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 constructing authority on the other part.

(II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the constructing authority 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 constructing authority or as he shall direct.

84. 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 constructing authority, it shall be lawful for the said authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him, in the manner provided by this Act in like case of moneys required to be paid to such Master in Equity; 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 the said authority may if it think fit, execute a deed poll in manner hereinbefore provided. And thereupon such lands, as to all such estate and interest as were then vested in the mortgagee or any person

Deposit of mortgage money on refusal to accept.

8 Vic. c. 18 s. 109.

22 Vic. No. 19 s. 66.

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

8 Vic. c. 18 s. 110.

22 Vic. No. 19 s. 67.

Deposit of money when refused on tender.

8 Vic. c. 18 s. 111.

22 Vic. No. 19 s. 68.

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person in trust for him, shall become absolutely vested in the constructing authority and such authority shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

5 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.

10 85. (I) If a part only of any such mortgaged lands be required for the purposes of this 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
 15 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 constructing authority on the other part.

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

8 Vic. c. 18 s. 112.
22 Vic. No. 19 s. 69.

20 (II) 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.

(III) The amount of such value or compensation being so agreed upon or determined shall be paid by the constructing authority
 25 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 the constructing authority or as it 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
 30 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 constructing authority at the expense of such authority, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

35 86. If, upon any 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 constructing authority or as it shall direct, his interest in the lands, in respect of which such compensation shall so have been paid or tendered, or if
 40 he shall fail to adduce a good title thereto to the satisfaction of the constructing authority, it shall be lawful for such authority to pay the amount of such value or compensation into the hands of the Master in Equity, to be dealt with by him in the manner provided by this Act in the case of moneys required to be paid to such Master in
 45 Equity; 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 also if he think fit, to execute a deed poll in the manner hereinbefore provided. And there-
 50 upon such lands shall become absolutely vested in the constructing authority, 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 he shall be entitled to immediate possession thereof.

Deposit of money when refused on tender.

8 Vic. c. 18 s. 113.
22 Vic. No. 19 s. 70.

55 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 this Act,

as

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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.

5 87. If any difference shall arise between the constructing authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or incumbrance not hereinbefore provided for upon any lands taken for the purposes of this Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for
10 the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of lands
from rent charges.
8 Vic. c. 18 s. 115.
22 Vic. No. 19 s. 71.

15 88. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance, be taken for the purposes of this Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the constructing authority on the other part: and, if such apportionment be not so settled by agreement, the same shall be settled by two Justices. But
20 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.

Release of part of
lands from rent-
charge.
8 Vic. c. 18 s. 116.
22 Vic. No. 19 s. 72.

25 89. 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 constructing authority a release of such charge. If he fail so to do, or if he fail to adduce a good title to such charge to the satisfaction of the constructing authority, it shall be lawful for such
30 authority to pay the amount of such compensation into the hands of the Master in Equity to be dealt with by him in the manner hereinbefore provided in the case of moneys required to be paid to such Master in Equity; and also if such authority think fit to execute a deed poll, in the manner herein provided for in the case of the purchase of
35 lands by him. And thereupon the rent-service, rent-charge, chief or other rent, payment 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.
8 Vic. c. 18 s. 117.
22 Vic. No. 19 s. 73.

40 90. If any such lands or portion thereof be so released from any such charge or incumbrance 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
45 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. 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 constructing authority for the purpose, he shall affix
50 his seal to a memorandum of such release, indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of this 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
55 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. Such memorandum shall be made and executed at the expense of the constructing

Charge to continue
on lands not taken.
8 Vic. c. 18 s. 118.
22 Vic. No. 19 s. 74.

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constructing authority, 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.

Leases.

- 5 91. (I) If any lands shall be comprised in a lease for a term of years unexpired part only of which lands shall be required for the purposes of this 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. Where part only of lands under lease taken the rent to be apportioned.
8 Vic. c. 18 s. 119.
22 Vic. No. 19 s. 75.
- 10 (II) Such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the constructing authority 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.
- 15 (III) 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 this Act; and, as to the lands not so required, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as, previously to such apportionment, he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force, with regard to that part of the land which shall not be required for the purposes of this Act, in the same manner as they would have done in case such part only of the land had been included in the lease.
- 20 92. Every such lessee as last aforesaid shall be entitled to receive from the constructing authority 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, for the purposes of the authorized work. Tenants to be compensated.
8 Vic. c. 18 s. 120.
22 Vic. No. 19 s. 76.
- 30 93. (I) 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 land 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 any incoming tenant, and for any loss or injury he may sustain: or, if a part only of such lands be required, compensation for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same. Compensation to be made to tenants from year to year.
8 Vic. c. 18 s. 121.
22 Vic. No. 19 s. 77.
- 40 (II) The amount of such compensation shall be determined by two Justices in case the parties differ about the same,
- 45 (III) Upon payment or tender of the amount of such compensation, all such persons shall respectively deliver up to the constructing authority or to the person appointed by such authority to take possession thereof, any such lands in their possession required for the purposes of this Act.
- 50 94. If any party having a greater interest than as tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the constructing authority may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the constructing authority, such lease or grant or such best evidence thereof be not produced Where greater interest claimed than at will lease to be produced.
8 Vic. c. 18 s. 122.
22 Vic. No. 19 s. 78.
- 55

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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.

Superfluous Lands.

- 5 95. In case any of the lands taken by the constructing authority under the provisions of this Act be not required for the purposes of any authorized work, such authority shall absolutely sell and dispose of all such superfluous lands and apply the purchase money arising from such sales in such manner as the Governor shall direct.
- 10 96. Upon payment or tender to the constructing authority of the purchase money so agreed upon or determined as aforesaid, such authority shall convey such lands for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered; and a deed so executed and registered shall be effectual to vest the lands comprised therein in
- 15 the said purchaser for the estate which shall so have been purchased by him, and a receipt under the hand and seal of the constructing authority shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Lands not wanted to be sold.
22 Vic. No. 19 s. 79.

Lands to be conveyed to the purchasers.
8 Vic. c. 18 s. 131.
22 Vic. No. 19 s. 83.

Temporary possession of lands, &c.

- 20 97. It shall be lawful for the constructing authority and all persons by it authorized to enter, from time to time, upon any lands being within a distance of not more than two hundred yards from the nearest boundary of the authorized work as delineated on the plans thereof and not being a garden, orchard or plantation attached or belonging
- 25 to a house, nor a park, planted walk, avenue or ground ornamentally planted, and not being nearer to the dwelling house of the owner of any such lands than a distance of five hundred yards, and to occupy the said lands, as long as may be necessary for the construction, re-construction, repair, alteration, addition to or extension of the authorized
- 30 work or the works connected therewith, and to use the same for any of the following purposes (that is to say),—
- (I) For the purpose of taking earth or soil by side cuttings therefrom.
- (II) For the purpose of depositing soil thereon.
- 35 (III) For the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorized work or such other works as aforesaid.
- (IV) For the purpose of forming roads thereon to, or from, or by
- 40 the side of the authorized work.

Power to take temporary possession of land.
22 Vic. No. 19 s. 84.

And in exercise of the powers aforesaid it shall be lawful for the constructing authority and all other persons employed therein to deposit, and also to manufacture and work upon such lands materials of every kind used in constructing the authorized work, and also to take from any

45 such lands any timber, and also to dig and take from or out thereof any clay, stone, gravel, sand or other things that may be found therein, useful or proper for constructing the authorized work or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds and other buildings of a temporary nature. Provided always

50 that nothing in this Act contained shall exempt the constructing authority from an action for nuisance or other injury, if any, done in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid. Provided also that no stone

55 or slate quarry, brickfield or other like place which, at the time of the passing

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passing of this Act, shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the constructing authority, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

5 98. If any such lands shall be used for any of the purposes aforesaid, the constructing authority shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be necessary for the convenient occupation of such lands; and in case of any difference
10 between the owners or occupiers of such lands and the constructing authority as to the necessity for such fences and gates, then with such fences and gates as the Governor shall deem necessary for the purposes aforesaid.

Authority to separate the lands before using them.
22 Vic. No. 19 s. 85.

15 99. In any of the cases aforesaid, where the constructing authority shall take temporary possession of lands by virtue of the powers herein granted, such authority shall

Compensation to be made for temporary occupation.
22 Vic. No. 19 s. 86.

(I) Within one month after his entry upon such lands, upon being required so to do, pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well
20 as full compensation for any other damage of a temporary nature which he may sustain by reason of the constructing authority so taking possession of his lands.

(II) From time to time, during such occupation of the said lands, pay half-yearly or quarterly to such occupier or the owner
25 of the lands, as the case may require, a rent, to be fixed by two Justices in case the parties differ.

(III) Within six months after he shall have ceased to occupy the said lands, pay to such owner and occupier or deposit with the Master in Equity, in manner aforesaid, for the benefit of
30 all parties interested, as the case may require, compensation for all permanent or other loss, damage or injury that may have been sustained by them, by reason of the exercise as regards the said lands of the powers herein granted, including the full value of all such clay, stone, gravel, sand and other
35 things taken from such land.

100. The amount and application of the compensation payable by the constructing authority in any of the cases aforesaid shall be determined in the manner provided by this Act for determining the amount and application of the compensation to be paid for lands
40 taken under the provisions hereof.

Compensation to be ascertained under the clauses in this Act relating to lands taken and injuries.
22 Vic. No. 19 s. 87.

101. If the authorized work cross any public highway or carriage road, then such authorized work shall not be carried across,
over or under such road, unless the proposed place and mode of such crossing and the immediate approaches thereto, and all other necessary
45 works connected therewith, and the provisions to be adopted for the protection of the public using the same, shall have been previously notified, and shall have been approved of by the Governor.

Crossing of roads.
22 Vic. No. 19 s. 88

102. If, in the exercise of the powers hereby granted, it be found necessary to cross, cut through, raise, sink or use any part of any
50 road, whether carriage road, horse road, tram road or railway, either public or private, so as to render it impassable for, or dangerous, or extraordinarily inconvenient to passengers or carriages or to the persons entitled to the use thereof, the constructing authority shall, before the commencement of any such operations, cause a sufficient
55 road to be made instead of the road to be interfered with and shall, at the public expense, maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with or as nearly so as may be.

Before roads interfered with others to be substituted.
22 Vic. No. 19 s. 89.

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103. If any party entitled to a right of way over any road so interfered with by the constructing authority shall suffer any special damage because such authority shall fail to cause another sufficient road to be made before it interferes with the existing road, it shall
 5 be lawful for such party to recover the amount of such special damage from the constructing authority, with costs, by action in the Supreme Court.

Party suffering damage from interruption of road to recover in an action on the case.
 22 Vic. No. 19 s. 90.

104. (I) If the road so interfered with can be restored compatibly with the formation and use of the authorized work, the same
 10 shall be restored to as good a condition as it was in, at the time when the same was first interfered with by the constructing authority or as near thereto as may be.

Period for restoration of roads interfered with.
 22 Vic. No. 19 s. 91.

(II) If such road cannot be restored compatibly with the formation and use of the authorized work, the constructing authority
 15 shall cause the new or substituted road or some other sufficient substituted road to be put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

And the former road shall be restored or the substituted road
 20 put into such condition as aforesaid, as the case may be, with all reasonable expedition.

105. If the authorized work shall cross any highway (other than a public carriage-way) on the level, the constructing authority shall make and at all times maintain convenient ascents and descents and
 25 other convenient approaches with hand-rails or other fences; and shall, if such highway be a bridle-way, erect and at all times maintain good and sufficient gates, and if the same be a footway, good and sufficient gates or stiles on each side of the authorized work where the highway shall communicate therewith.

Constructing authority to make sufficient approaches and fences to bridle-ways and foot-ways crossing the line.
 22 Vic. No. 19 s. 92.

30 106. The constructing authority shall make, and at all times maintain, the following works, for the accommodation of the owners and occupiers of lands adjoining any authorized work, that is to say,—

Works for benefit of owners.
 22 Vic. No. 19 s. 93.

(I) Such and so many convenient gates, bridges, arches, culverts
 35 and passages over, under or by the sides of or leading to or from the authorized work as shall be necessary for the purpose of making good any interruptions caused by the authorized work to the use of the lands through, in, or upon which such authorized work shall be made or constructed; and
 40 such work shall be made forthwith after such authorized work or part of it passing over such lands shall have been laid out or formed or during the formation thereof.

Gates, bridges, &c.

(II) Sufficient posts, rails, hedges, ditches, mounds or other fences
 45 for separating the land, taken for or for the use of the authorized work, from the adjoining lands not taken and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, in consequence of such authorized work; together with all necessary gates made to open towards such adjoining lands and not towards the authorized work. All necessary stiles, and such posts,
 50 rails and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and such other works as soon as conveniently may be.

Fences, &c.

(III) All necessary arches, tunnels, culverts, drains or other passages
 55 either over or under, or by the sides of the authorized work, of such dimensions as will be sufficient, at all times, to convey the water as clearly from the lands lying near or affected by such authorized work as before the making of the authorized work or as nearly so as may be; and such works shall be
 60 made from time to time as the authorized work proceeds.

Drains.

Provided

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Provided always that the constructing authority shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the authorized work ; nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

107. If any difference arise, respecting the kind or number of any such accommodation works or the dimensions or sufficiency thereof or respecting the maintaining thereof, the same shall be determined by the Governor who shall also appoint the time within which such works shall be commenced and executed.

Differences as to accommodation works to be settled by Governor.

22 Vic. No. 19 s. 94.

108. If any of the owners or occupiers of lands affected by such authorized work shall consider the accommodation works made by the constructing authority or directed by the Governor to be made by the constructing authority insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the constructing authority.

Power to owners of lands to make additional accommodation works.

22 Vic. No. 19 s. 95.

109. If the constructing authority so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of the Engineer or other officer superintending the making or construction of any authorized work, and according to plans and specifications to be submitted to and approved by the constructing authority. Nevertheless, the constructing authority shall not be entitled to require either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by such authority, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by such authority.

Such works to be constructed under the superintendence of the constructing authority's Engineer.

22 Vic. No. 19 s. 96.

110. Until the constructing authority shall have made the bridges or other proper communications which it shall, under the provisions herein contained, have been required to make between lands intersected by the authorized work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way shall be affected by the want of such communication, and their respective servants may, at all times, freely pass and repass with carriages, horses and other animals directly (but not otherwise) across the part of the authorized work constructed or made through, in, or upon their respective lands, solely for the purpose of occupying the same lands or for the exercise of such right-of-way, and so as not to obstruct the passage along such authorized work or to damage the same. Nevertheless, if the owner or occupier of any such lands have, in his arrangements with the constructing authority, received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier or those claiming under him shall not be entitled so to cross the authorized work.

Owners to be allowed to cross until accommodation works are made.

22 Vic. No. 19 s. 97.

111. If any person omit to shut and fasten any gate, set up at either side of the authorized work for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriages, cattle or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding ten pounds, to be recovered in a summary way before any Stipendiary or Police Magistrate, or any two Justices at the suit of any person authorized by the Constructing Authority.

Penalty on persons omitting to fasten gates.

22 Vic. No. 19 s. 98.

112. (1) This Act shall not prevent the owners or occupiers of lands adjoining any authorized work, when such authorized work is a Railway, or any other persons from laying down, either upon their own lands or upon the lands of other persons with the consent of such

Power to parties to make private branch railways communicating with the railway.

22 Vic. No. 19, s. 99.

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such persons, any collateral branches of Railway to communicate with any Railway to be made under this Act, for the purpose of bringing carriages to or from or upon such Railway, but under and subject to the prescribed provisions and restrictions and to the provisions of this Act 5 and the "Government Railways Act of 1888."

(II) The Constructing Authority shall, if required, at the expense of such owners and occupiers and other persons, make openings in the rails and such additional lines of rail, as may be necessary for effecting such communication, in places where the 10 communication can be made with safety to the public and without injury to the Railway and without inconvenience to the traffic thereon.

(III) The Constructing Authority shall not take any rate or toll or other moneys for the passing of any passengers, goods or other things along any branch so to be made by any such owner or 15 occupier or other person; but this enactment shall be subject to the following restrictions and conditions (that is to say)—

- (a) No such branch Railway shall run parallel to the authorized Railway. Restrictions and conditions.
- (b) The Constructing Authority shall not be bound to make any 20 such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, or upon any inclined plane or bridge, or in any tunnel.
- (c) The persons making or using such branch Railways shall 25 be subject to all by-laws and regulations of the Railway Commissioners, from time to time made with respect to passing upon or crossing the Railway and otherwise; and the persons making or using such branch Railways shall be bound to construct, and, from time to time, as need may require, to renew 30 the rails, crossings, switches and sleepers according to the most approved plan adopted by the Constructing Authority and under the direction of the Engineer of the Railway.

113. The lands to be taken or used for any authorized work, 35 where such authorized work is a Railway, shall not exceed one hundred yards in width except where a greater width shall be judged necessary for an approach to the Railway or for waggons and other carriages to turn, remain, stand in, lie or pass each other, or for raising embankments for crossing valleys or low grounds, or in cutting through high 40 ground, or for the erection or establishment of any fixed or permanent machinery, tollhouses, warehouses, wharf or other erections and buildings or for excavating, removing, or depositing earth or other materials. Breadth of land to be taken for Railway. 22 Vic. No. 19 s. 11.

Provisions as to Lands containing minerals, &c.

114. Notwithstanding anything hereinbefore in this Act contained, or in any other Act incorporated, or made applicable by this 45 Act, the constructing authority shall not be entitled to any mines or deposits of coal, ironstone, kerosene shale, limestone, slate or other minerals under any land taken or purchased by such authority after the passing of this Act, except only such portions thereof as shall be necessary to be dug or carried away or used in the construction of the 50 works; unless the same shall have been expressly taken or purchased. And all such mines and deposits, except as aforesaid, shall be deemed to be excepted on the taking or out of the conveyance of such lands, unless they shall have been expressly taken or conveyed.

115. If the owner, lessee or occupier of any mines or minerals 55 lying under any authorized work or any of the works connected therewith or within forty yards from the boundary thereof be desirous of working the same, such owner, lessee or occupier shall give to the constructing authority notice in writing of his intention so to do, thirty days Mines lying near the railway not to be worked if the constructing authority willing to take or purchase them. 8 Vic. c. 2 s. 78.

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days before the commencement of working. And upon the receipt of such notice it shall be lawful for the constructing authority to cause such mines to be inspected by any person appointed by him for the purpose; and if it appear to the constructing authority that
 5 the working of such mines or minerals is likely to damage the authorized work, and if the constructing authority be willing to make compensation for such mines or any part thereof to such owner, lessee or occupier, then he shall not work or get such minerals and if the constructing authority and such owner, lessee or occupier do not agree
 10 as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation as hereinbefore provided.

116. (I) If before the expiration of thirty days the constructing authority do not state his willingness to treat with such owner, lessee or occupier for the payment of such compensation, it shall be lawful
 15 for him to work the said mines or any part thereof for which the constructing authority shall not have agreed to give compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate.

If constructing authority unwilling to purchase owner may work the mines.

8 Vic. c. 2 s. 79.

20 (II) If any damage or obstruction be occasioned to the authorized work by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good by the owner, lessee or occupier of such mines or minerals and at his own expense.

25 (III) It shall be lawful for the constructing authority, if such repair or removal be not forthwith carried out by, or, if he think fit, without waiting for the same to be carried out by, such owner, lessee, or occupier, to carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by action
 30 in the Supreme Court.

117. If the working of any such mines under the authorized work or within the abovementioned distance therefrom be prevented as aforesaid, by reason of apprehended injury to such authorized work,
 35 it shall be lawful for the respective owners, lessees and occupiers of such mines and whose mines shall extend so as to lie on both sides of the authorized work to cut and make so many air ways, headways, gateways or water-levels through the mines, measures or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain and work their said mines. But no such air-
 40 way, headway, gateway or water-level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be prescribed, not greater than eight feet wide and eight feet high, or of such a nature as to injure or to impede the passage on, to, through or over the same.

Mining communications.
 8 Vic. c. 2 s. 80.

45 118. The constructing authority shall from time to time pay to the owner, lessee or occupier of any such mines, lying on both sides of the authorized work, all such additional expenses and losses as shall be incurred by such owner, lessee or occupier by reason of the severance of the lands lying over such mines by the authorized work, or of
 50 the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions, as not to prejudice or injure the railway, and for any minerals not taken or purchased by the constructing authority which cannot be obtained by reason of making or constructing and main-
 55 taining the authorized work. And if any dispute or question shall arise between the constructing authority and such owner, lessee or occupier as aforesaid touching the amount of such losses or expenses the same shall be settled by arbitration as hereinbefore mentioned.

Constructing authority to make compensation for injury done to mines.
 8 Vic. c. 2 s. 81.

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119. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines, the working whereof shall have been so prevented as aforesaid, by reason of the making of any such airway or other work as aforesaid, which or any like work would
 5 not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the constructing authority shall make full compensation to such owner or occupier for the loss or damage so sustained by him, if he is not also the owner, lessee or occupier of any mine under such lands, in connection with which such
 10 airway or other work has been made. And also for any airway or other work made necessary by the railway. 8 Vic. c. 2 s. 82.
120. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorized work it shall be lawful for the constructing authority, after giving twenty-four
 15 hours' notice in writing, to enter upon any lands, through, in, on or near which the authorized work is constructed, and wherein any such mines are being worked or are supposed so to be and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee or occupier of
 20 such mines and to use all necessary means for discovering the distance from the railway to the parts of such mines, which are being worked or about so to be. Power to constructing authority to enter and inspect the working of mines. 8 Vic. c. 2 s. 83.
121. If any such owner, lessee or occupier of any such mine shall refuse to allow any person, appointed by the constructing authority
 25 for that purpose, to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the constructing authority a sum not exceeding twenty pounds. Penalty for refusal to inspect. 8 Vic. c. 2 s. 84.
122. If it appear that any such mines have been worked con-
 30 trary to the provisions of this Act, the constructing authority may, if they think fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the authorized work and preventing injury
 35 thereto. And if, after such notice, any such owner, lessee or occupier do not forthwith proceed to construct the works necessary for making safe such authorized work, the constructing authority may himself construct such works and recover the expense thereof from such owner, lessee or occupier, by action in the Supreme Court. If mines improperly worked the constructing authority may require means to be adopted for the safety of the railway. 8 Vic. c. 2 s. 85.

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SCHEDULES.

FIRST SCHEDULE.

I, A. B., do solemnly and sincerely promise and declare, that, according to the best of my skill and ability, I will faithfully, impartially, and truly execute the office and perform the duties of a Member of the Parliamentary Standing Committee on Public Works.

(Signed) A. B.

SECOND SCHEDULE.

Form of Conveyance.

10 I of in consideration of the sum of paid to me (or as the case may be, into the hands of the Master in Equity of the Supreme Court or to of and of two trustees appointed to receive the same pursuant to the "Public Works Act of 1888" by the [*here name the constructing authority*] do hereby convey to the said constructing authority his successors and assigns for and 15 on behalf of Her Majesty All &c. (describing the premises to be conveyed) together with all ways, rights and appurtenances thereto belonging and all such estate, right, title and interest in and to the same as I am or shall become seised or possessed of or am by the said Act empowered to convey, to hold the premises to the said constructing authority his successors and assigns for ever according to the true intent and meaning of the said 20 Act.

In witness whereof I have hereunto set my hand and seal the in the year of our Lord

THIRD SCHEDULE.

Notice of claim and abstract.

25 To the [*here name the constructing authority*] In pursuance of the "Public Works Act of 1888" I of (*or we*) hereby give you notice that I (*or we*) claim compensation in respect of the land hereunder described which has been taken under the said Act The amount of such claim and other the particulars required by the said Act are stated in the subjoined abstract [If the claim is not for 30 land taken this form may be modified in accordance with the nature of the claim.]

Abstract.

35 Names and descriptions of parties claiming and nature of their interests whether tenants for life in tail or otherwise.	Situation and description of property.	Quit rents payable if leasehold name of landlord term of lease and rent reserved.	Names of occupiers distinguishing whether tenants-at-will or under lease rent reserved terms &c.	Particulars of claim specifying separately the amount claimed for value of property and for compensation.	Dates and other short particulars of documents of title.	Names of persons having the custody of documents and place or places where the same may be inspected and name of claimant's solicitor or agent.

40

(Signature)
(Address)
(Date)

Public Works.

FOURTH SCHEDULE.

RAILWAY.

Extension from _____ to _____

I HEREBY offer to accept from the Constructing Authority, as purchase money for the land (including buildings and fences erected thereon) of which I am* delineated on the tracing plan attached to the notice of land taken, and numbered _____, which I hereby acknowledge to have received, containing _____ acres _____ roods and _____ perches, more or less, and as compensation for damage by severance, by the Railway, or otherwise caused by the execution of the Railway Works, as particularly set forth in the subjoined Schedule of Claim, the sum of £ _____, which sum I declare to be my full claim in respect of the matters aforesaid.

Dated this _____ day of _____ 188 .

[Name and Address of Claimant.]

To the Constructing Authority, Sydney.

15 *Schedule of Claim.*

Land Resumed.	Reference No.	Area.	Character.	Estimated Valuc.		Total Value.
		a. r. p.		Per acre £	or per foot £	£ s. d.
20			Building ...	£	.....
			Cultivation...	£	.....
			Pasture .....	£	.....
			Mineral .....	£	.....
25 Improvements taken.	Nature and Description of Improvements taken.					
	Buildings					
	Fences					
	Other improvements					
Damage by severance or otherwise						
Total amount of Claim.....£						

[Signature of Claimant.]

- 30 * (1) "the owner in fee simple,"
 (2) "the owner of an estate for life,"
 (3) "mortgagee with power of sale,"
 (4) "I have a leasehold interest for _____ years,"
 (as the case may be).