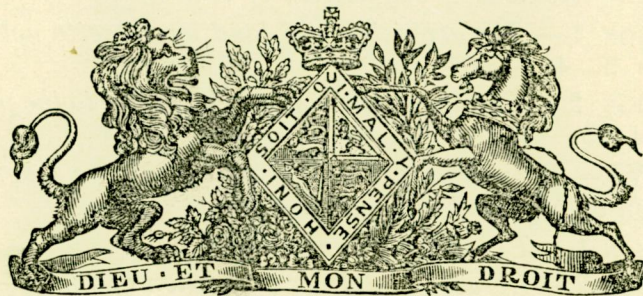


New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. 26, 1900.

An Act to consolidate the Acts relating to Public Works.
[Assented to, 22nd September, 1900.]

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.

Repeal and interpretation.

1. This Act may be cited as the "Public Works Act, 1900," Short title. and is divided into Parts and Divisions, as follows:—

PART I.—*Preliminary*—ss. 1-5.

A

PART

Public Works.

 PART II.—*The Parliamentary Standing Committee on Public Works—*

 DIVISION 1.—*Constitution of and general provisions relating to the committee—ss. 6–15.*

 DIVISION 2.—*Powers of the committee—ss. 16–19.*

 DIVISION 3.—*Sectional committees—ss. 20–23.*

 DIVISION 4.—*Committees' remuneration—ss. 24–27.*

 PART III.—*Public works, how authorised and how contracts made—ss. 28–32.*

 PART IV.—*Preliminary conditions relating to the acquisition of land—ss. 33–35.*

 PART V.—*Methods of acquisition of land—*

 DIVISION 1.—*The acquisition of land by Gazette notification—ss. 36–40.*

 DIVISION 2.—*The acquisition of land by notice to the parties—ss. 41–43.*

 PART VI.—*Provisions applicable to every case where land is taken or acquired under this Act—*

 DIVISION 1.—*Purchase of lands—ss. 44–57.*

 DIVISION 2.—*Refusal to deliver possession of lands—s. 58.*

 DIVISION 3.—*Mortgages and charges—ss. 59–68.*

 DIVISION 4.—*Leases—ss. 69–72.*

 DIVISION 5.—*Powers and duties of Constructing Authority—ss. 73–90.*

 DIVISION 6.—*Superfluous lands—ss. 91–93.*

 PART VII.—*Compensation—*

 DIVISION 1.—*Procedure where land is taken or acquired by Gazette notification—ss. 94–99.*

 DIVISION 2.—*Procedure where land is taken or acquired by notice to the parties.*

 (i) *Disputed compensation—s. 100.*

 (ii) *Proceedings before Justices—s. 101.*

 (iii) *Proceedings by arbitration—ss. 102–116.*

 DIVISION 3.—*Basis of assessment—ss. 117–118.*

 DIVISION 4.—*Payment—s. 119.*

 DIVISION 5.—*Absent owners of lands taken or acquired for authorised works—ss. 120–124.*

 PART VIII.—*Provisions applicable in every case where land is taken or acquired for authorised works—*

 DIVISION 1.—*Exercise of powers by Constructing Authority—ss. 125, 126.*

DIVISION

Public Works.

DIVISION 2.—*Conveyances*—ss. 127–130.

DIVISION 3.—*Compulsory Purchases*.—ss. 131–133.

DIVISION 4.—*Lands containing minerals*—ss. 134–142.

DIVISION 5.—*Penalty*—s. 143.

PART IX.—*Special provisions relating to railways*—ss. 114–147.

2. (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.

Repeal.
Schedule.

(2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.

Officers under Acts
hereby repealed.

(3) All regulations made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act; and any references in any such regulation to any enactments hereby repealed shall be construed as references to the corresponding enactments contained in this Act.

Regulations under
Acts hereby repealed.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.
51 Vic. No. 37, s. 2.

“Authorised work” means any work the carrying out of which has been authorised in manner herein provided, and includes any work so authorised under any Act hereby repealed.

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

“Constructing authority” means the Minister of the Crown empowered to carry out any authorised work; and 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 any Government stock issued by the Government of New South Wales pursuant to any statutory power.

“Justice” means any justice of the peace.

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

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

4. For the purpose of facilitating the acquisition and disposal of land under this Act the Constructing 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, 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.

Incorporation of
Constructing
Authority.
44 Vic. No. 16, s. 8.
51 Vic. No. 37, s. 21.

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Regulations.

51 Vic. No. 37, s. 17.

5. 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 force of law and copies thereof shall be laid before Parliament within fourteen days after such publication if Parliament is then in session, and if not, then within fourteen days after the commencement of the next session of Parliament.

PART II.

*The Parliamentary Standing Committee on Public Works.*DIVISION 1.—*Constitution of and general provisions relating to the committee.*Constitution of
Parliamentary
Committee on Public
Works.*Ibid.* s. 3.
52 Vic. No. 26,
ss. 2 and 3.
No. 6 of 1897, s. 2.

6. (1) As soon as practicable after the commencement of the first session of every Parliament, a joint committee of Members of the 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. Three of the persons so to be appointed shall be members of the Legislative Council, and four shall be Members of the Legislative Assembly.

Term of office.

(2) Such seven persons shall hold office as a joint committee (subject to the provisions in the next following section contained) for the duration of the Parliament for the time being, but shall cease to hold office as soon as such Parliament expires by dissolution or effluxion of time; 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.

Names of members
to be notified.

(3) 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.

51 Vic. No. 37, s. 4.

7. (1) 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—

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

(b) by his acceptance of any office of profit under the Crown.

How filled.

(2) On the occurrence of any such vacancy the same shall be filled upon motion in the usual manner.

Provided

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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.

8. Any three members of the committee 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.

51 Vic. No. 37,
s. 5 (II).52 Vic. No. 26, s. 4.
No. 6 of 1897, s. 3.

Provided that no quorum shall consist exclusively of members of the Legislative Council or of the Legislative Assembly.

9. 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.

51 Vic. No. 37,
s. 5 (I).

Provided that at any meeting of the committee at which a quorum is present, the members in attendance, may, in the absence of the chairman and vice-chairman, appoint one of their number then present to be temporary chairman, and such temporary chairman shall have, during the absence of the chairman and vice-chairman, all the powers given by this Act to the chairman or vice-chairman of the committee.

Provision for absence
of chairman and
vice-chairman.

52 Vic. No. 26, s. 5.

10. (1) All questions which arise in any committee shall be decided by a majority of votes of the members present, and when the votes are equal the chairman shall have a second or casting vote.

Division—Casting
vote.
Ibid. s. 6.

(2) In all cases of divisions the names of the persons voting shall be stated on the minutes and in the report.

Record of votes.

11. 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 Second Schedule hereto.

Declaration of
members of com-
mittee.

Second Schedule.

51 Vic. No. 37, s. 6.

12. The committee may sit and transact business during any adjournment or recess as well as during the session, 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.*Ibid.* s. 7.

13. 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.

Reports.

Ibid. s. 8.

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

Minutes.

Ibid. s. 9.

15. Where any public work is referred to any committee, and such committee lapses or ceases to have legal existence, before it reports

Evidence taken
before previous
committees.

52 Vic. No. 26, s. 11.

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reports on such public work, the evidence taken before such committee and before any sectional committee shall, nevertheless, be considered by any subsequent committee to whom the same public work may be referred for report pursuant to this Act as if such evidence had been given before and for the information and guidance of such subsequent committee.

DIVISION 2.—*Powers of the committee.*

16. For the purposes of this Act the committee shall have the following powers, that is to say—

- (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.

17. (1) If any person—

- (a) whose expenses have been paid or tendered to him neglects to appear ; or
- (b) wilfully insults the committee or any member thereof ; or
- (c) misbehaves himself before the committee ; or
- (d) interrupts the proceedings of the committee ; or
- (e) being summoned or examined as a witness in any inquiry or matter pending before the committee, refuses to be sworn, or to produce any document mentioned in the summons served upon him, or to make a solemn declaration as aforesaid, or prevaricates in his evidence, or refuses to answer any lawful question,

the chairman or vice-chairman may commit any such offender to gaol for any time not exceeding one month, or may impose upon him

Powers of committee.
51 Vic. No. 37,
s. 10.

Powers of committee
in respect of
witnesses.
Ibid.

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him a fine not exceeding fifty pounds and in default of immediate payment thereof may commit such offender to gaol for any time not exceeding one month unless the fine is sooner paid.

In any such case of committal the chairman or vice-chairman Third Schedule. shall issue a warrant in the Form A contained in the Third Schedule Form A. hereto, and such warrant shall be good and valid 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 is addressed shall obey it.

(2) Where any person who has been duly served with a Further powers. summons to attend as a witness before the committee, and whose expenses have been paid or tendered to him fails to appear in obedience to his summons, the chairman or vice-chairman, upon proof of such person having been duly served with such summons, and 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 Form B of the Third Schedule. Third Schedule hereto to bring such person before the committee to Form B. give evidence.

(3) Every person required by the committee to attend as a Expenses. 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.

18. (1) The committee may, in the exercise of any powers by Assessors. this Act conferred on them, call in the aid of one or more assessors, 51 Vic. No. 37, s. 11. who shall be persons of engineering or other technical knowledge, or possessing special local knowledge or experience.

(2) There shall be paid to such assessors such remuneration Remuneration of assessors. as the committee may recommend and the Governor may approve and as Parliament may provide.

19. The committee shall, subject to the provisions contained Functions of committee. in the twenty-eighth section hereof, consider and report upon all Ibid. s. 12. public works (except fortifications and works connected with the military or naval defence of New South Wales) 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.

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

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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.

DIVISION 3.—*Sectional committees.*

20. (1) The committee may at any meeting constitute sectional committees of itself for all purposes of this Act by appointing three or more of its members to be a sectional committee.

(2) Every sectional committee shall have, and may exercise, for the purpose of carrying out any business or inquiry delegated to them by the committee either at or after the time of their appointment, all the powers by this Act conferred on the committee, and shall sit in open court.

(3) Every sectional committee shall appoint a chairman or temporary chairman, who shall be the person to exercise the powers conferred by this Act on, or in the name of, the chairman or vice-chairman of the committee.

21. The powers and provisions respectively conferred by and contained in the tenth, twelfth, sixteenth, seventeenth, and eighteenth sections of this Act shall be exercisable by and applicable to every sectional committee appointed as aforesaid.

22. Every such sectional committee shall make its report as soon as practicable to the committee, of and in respect to all matters delegated to it by such committee; and such report with any evidence taken by such sectional committee shall be dealt with by the committee in all respects, so far as possible, as reports of select committees are dealt with by the Legislative Assembly.

23. Not more than two sectional committees shall be appointed or shall sit at the same time; but the committee may sit at any time notwithstanding that any such sectional committee or committees may be sitting at the same time.

DIVISION 4.—*Committees' remuneration.*

24. The members of every committee shall each receive, by way of remuneration for their services as such members, a fee for each attendance at a summoned meeting of such committee at which a quorum was present, according to the following scale:—

- (a) the chairman, or member presiding at any meeting in his absence, three guineas for each sitting;
- (b) every other member, two guineas for each sitting:

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25. The fees made payable under this division shall be charged on the consolidated revenue fund, and the certificate of the chairman or vice-chairman of the committee shall be a sufficient warrant, and authority, and discharge to the Treasurer for the payment of such fees from such fund.

Fees to be a charge on consolidated revenue.
53 Vic. No. 11, s. 3.

26. (1) In addition to the sum payable to every member of the committee as a sitting fee, he shall be paid a further sum of thirty shillings per diem on account of expenses incurred by him in, and in the course of, travelling, whether by land or water, whenever such expenses and charges have been incurred bona fide in the performance of his duties as a member of such committee, whilst outside the boundaries of the county of Cumberland.

Travelling expenses.
Ibid. s. 4.

(2) Such expenses and charges shall be chargeable in the same manner, and be paid by the same person, and on the like certificate, and in other respects in like manner as in the case of fees for sittings.

How paid.

(3) In all cases in which a sectional committee of the committee is engaged in the inspection of any public works outside the county of Cumberland, each day or part of a day occupied in such inspection shall be deemed to constitute one attendance of such committee, and to entitle each member thereof to a fee of two guineas.

Meetings of sectional committees outside county of Cumberland.
Ibid. s. 5.
No. 6, A. D. 1897, s. 4.

27. Nothing in this Division of this Act shall be taken to constitute the office of any member of the said committee an office of profit, so as to render such member incapable of sitting or voting as a Member of the Legislature, or to make void the election of such member.

Office of profit.
53 Vic. No. 11, s. 2.

PART III.

Public Works how authorised and how contracts made.

28. (1) No public work of any kind whatsoever (except as excepted in the nineteenth section hereof, and except such works as the Railway Commissioners are authorised to carry out pursuant to the Government Railways Act of 1888), the estimated cost of completing which exceeds twenty thousand pounds, and whether such work is a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless sanctioned as hereinafter provided:—

Conditions precedent to commencing Public Works.
51 Vic. No. 37, s. 13.

- (a) 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

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together with such plans and specifications or other descriptions as the Minister deems 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. Such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 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.

Governor may extend Act to works to cost less than twenty thousand pounds.
51 Vic. No. 37, s. 18.

(2) Provided that the Governor may, with respect to any public work the estimated cost of which does not exceed twenty thousand pounds, direct that the same shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised works shall be applicable to such work, and the same shall for all purposes of this Act be deemed to be an "authorised work," and the Railway Commissioners or Minister on whom the carrying out of such work devolves shall for the like purposes be deemed a "Constructing Authority."

Notification of resolution.
Ibid. s. 14.

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

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30. 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 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.
51 Vic. No. 37, s. 15.

31. 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 authorisation 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.

Resolution when to be sufficient authority for execution of Works, &c.
Ibid. s. 16.

Provided that no such contracts shall exceed in the aggregate by more than ten per centum the estimate for the same submitted as hereinbefore provided.

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

Contracts how made.
Ibid. s. 16.

- (a) 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;
- (b) 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;
- (c) 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.

(2) All such contracts so made 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

Effect of contracts.

of

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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.

PART IV.

Preliminary conditions relating to the acquisition of land.

Taking of lands for
authorised works.
51 Vic. No. 37, s. 19.

33. The Governor may direct that any land required in his opinion for any authorised work may be acquired either by taking the same under the provisions contained in Division 1 of Part V of this Act or under the provisions contained in Division 2 of the said Part. Thereupon, subject to the provisions of this Act, the land so required may be acquired in the manner directed, and the compensation for such land shall be ascertained and dealt with in all respects pursuant to the provisions of this Act applicable in either case respectively.

Taking of lands for
public purposes other
than authorised
works.
44 Vic. No. 16, ss. 4, 6.

34. (1) Whenever, in the case of a work other than an authorised work—

- (a) Parliament has appropriated a sum of money out of the Consolidated Revenue Fund for or towards the construction, establishment, or carrying out of any of the public works or undertakings in the next section specified; or
- (b) the Governor has sanctioned the carrying out of any such work or undertaking for or towards the completion of which public funds are lawfully available; or
- (c) the Governor has sanctioned the acquisition of any lands for school sites;

the land required may be acquired or resumed, and the compensation therefor shall be ascertained and dealt with in all respects as if the Governor had directed under the last preceding section that such land should be acquired or resumed under the provisions contained in Division 1 of Part V of this Act, and in every such case every provision of this Act applicable upon such direction of the Governor shall, unless the same relates exclusively to authorised works, apply.

Interpretation.

(2) Provided that in the application of the said provisions of this Act to the acquisition or resumption of land under this section the expression "the Constructing Authority" as and when used in any such provision shall mean—

- (a) the Minister for Public Works with relation to lands acquired or resumed for any other purpose than the establishment of public or other schools; or
- (b) the Minister for Public Instruction as well as any other responsible Minister of the Crown charged with the administration of the Department of Public Instruction.

(3)

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(3) The provisions of section four of this Act as to incorporation shall apply in every case of subdivision (a) of the preceding subsection but shall not apply in any case of subdivision (b). Incorporation.

35. The following shall for the purposes of the last preceding section be deemed to be public works and undertakings, that is to say:— Public works, &c., specified.
44 Vic. No. 16, s. 7.

- (a) works for and in connection with the supply of water to or for the sewerage of any city, town, or district;
- (b) fortifications and all other works of defence, including depôts, stations, military roads, and any other works in connection with such fortifications;
- (c) buildings for the occupation of either or both of the Houses of Parliament or for Public Offices;
- (d) hospitals, lunatic asylums, court-houses, gaols, watch-houses, lock-ups, police barracks or quarters;
- (e) Post or Telegraph Offices, mail stations, light-houses, observatories, pilot stations, quarantine stations or grounds, and customs stations;
- (f) public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being;
- (g) public libraries, mechanics' institutes, or schools of art;
- (h) public wharves, ferries, piers, jetties, and bridges;
- (i) public parks, or grounds for public recreation, or places for bathing, and for the reclamation of land for or in connection therewith;
- (j) public cemeteries;
- (k) public wells or works for the conservation of water;
- (l) the protection and preservation of any cave or place of scientific interest;
- (m) the establishment of public abattoirs;
- (n) breakwaters, leading marks or beacons for purposes of navigation, docks, slips, the protection of river banks, the excavation of new channels, landing-places for silt, and any other works for the improvement of harbours or rivers;
- (o) quarries, or works for procuring stone, gravel, earth, or any other material required for the construction of or any purpose connected with any such public work or undertaking as aforesaid.

For the purposes of this section any such named work or undertaking shall be taken to include any extension of, or approach to, or subsidiary work, in connection with any such named work or undertaking.

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PART V.

*Methods of acquisition of land.*DIVISION 1.—*The acquisition of land by Gazette notification.*

Gazette notice.

51 Vic. No. 37, s. 20.

44 Vic. No. 16, s. 6.

36. For the purpose of carrying out any authorized work if the Governor directs that any land required for such work shall be taken under this Division of this 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 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.

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.

Effect of notification on land therein mentioned.

51 Vic. No. 37, s. 21.

44 Vic. No. 16, s. 8.

37. 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.

Effect of notification upon Crown land.

51 Vic. No. 37, s. 22.

44 Vic. No. 16, s. 9.

38. 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.

Estate of proprietor of resumed land vested in Constructing Authority.

44 Vic. No. 16, s. 11.

51 Vic. No. 37, s. 23.

39. (1) The estate and interest of every person entitled to lands resumed under this division of this Act or any portion thereof and whether to the legal or equitable estate therein shall by virtue of this Act be deemed to have been as fully and effectually conveyed to the Constructing

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Constructing Authority as if the same had been conveyed by the persons legally or equitably entitled thereto by means of the most perfect assurances in the law.

(2) Every such estate and interest shall upon the publication of such notification as aforesaid be taken to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained. And converted into claim for compensation.

(3) Every person shall upon asserting his claim as hereinafter provided and making out his title in respect of any portion of the said resumed lands be entitled to compensation on account of such resumption in manner hereinafter provided. Compensation.

40. (1) Whenever land is resumed under this Division of this Act, a copy of the Gazette notification declaring such land to be so resumed, certified under the hand of the Constructing Authority, shall in every case be lodged with the Registrar General and be registered by him in the general register of deeds, unless the land so resumed is wholly or in part comprised in a grant or a certificate of title under the Real Property Acts, in which case upon production of such notification so certified as aforesaid it shall be the duty of the Registrar General to deal with and give effect to such notification as if the same were a memorandum of transfer duly executed under the said Acts. Registration of resumption.
44 Vic. No. 16, s. 24.
51 Vic. No. 37, s. 23.

(2) A conveyance upon sale of any land authorised by subsection two of section ninety-one of this Act to be offered for sale by public auction may if the same is comprised in any memorandum of transfer under the said Acts be made by a like memorandum of transfer to be executed by the Constructing Authority as transferrer and the purchaser as transferee which shall have the like effect for all purposes of the said Acts as a memorandum of transfer thereunder. Conveyances.

(3) The Governor may make regulations prescribing the mode in which the provisions of this section shall be carried out by all persons concerned therewith. Regulations.

DIVISION 2.—*The acquisition of land by notice to the parties.*

41. (1) When in any case where the Governor has directed that any land required for any authorised work shall be acquired under this Division of this Act, and the map or plan and book of reference in the case of a railway or tramway, or the plan in case of any other authorised work, has 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 after diligent inquiry become known to the Constructing Authority. Notice of lands taken.
Ibid. s. 30.

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Terms and effect of notice.

(2) Every such notice shall state the particulars of the lands so taken or required, 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 for the damage sustained or that may be sustained by them by the exercise of the powers conferred by this Act. The notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the Constructing Authority, in the prescribed form, the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and such other particulars 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.

Service of notices.
51 Vic. No. 37, s. 38.

42. 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 are absent from New South Wales, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there is no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

Settlement of compensation on failure to treat, &c.
Ibid. s. 39.

43. (1) If, for twenty-one days after the service of such notice, any such party—

- (a) omits to state the particulars of his claim in respect of any such land, or to treat with the Constructing Authority in respect thereof; or
- (b) fails 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 authorised work;

the amount of such compensation shall be settled in the manner hereinafter provided in Division 2 of Part VII for settling cases of disputed compensation.

When proceedings may be commenced.

(2) 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.

Claim to be made within two years.

(3) If no claim is 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.

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PART VI.

Provisions applicable to every case where land is taken or acquired under this Act.

DIVISION 1.—*Purchase of lands.*

44. The Constructing Authority may agree with the owners of any lands by this Act authorised to be taken, and which are 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 are thought proper, and of all estates and interests in such lands of what kind soever.

45. All parties being seised, possessed of or entitled to any such lands or any estate or interest therein may sell and convey or release the same to the Constructing Authority for and on behalf of Her Majesty, and may enter into all necessary agreements for that purpose.

46. Any of the following parties so seised, possessed or entitled as aforesaid, that is to say—

- (a) all corporations,
- (b) tenants in tail or for life,
- (c) married women seised in their own right or entitled to dower,
- (d) guardians,
- (e) committees of lunatics and idiots,
- (f) trustees or feoffees in trust for charitable or other purposes,
- (g) executors, administrators,
- (h) 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,

may sell, convey, or release as in the preceding subsection mentioned.

(3) 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 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

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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.

Rent-charges and encumbrances.

(4) 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 encumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands.

Compensation, how ascertained.

(5) The purchase money or compensation to be paid for any lands to be purchased or taken for authorised works 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 such lands shall not (except where the same has been determined by a surveyor under the provisions hereinafter contained) be less than shall be determined by two justices or by arbitrators in the manner hereinafter provided.

Purchase money payable to parties under disability amounting to £200 to be paid to Master in Equity.

51 Vic. No. 37, s. 62.

44 Vic. No. 16, s. 23.

47. (1) 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 amounts to or exceeds the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity.

Master to deposit the money.

(2) Such Master shall deposit such money to the account of the 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.

Applications of money deposited.

(3) Such money shall remain so deposited until the same are applied to some one or more of the following purposes, (that is to say)—

- (a) in the redemption of the quit rent, or the discharge of any debt or incumbrance affecting the land in respect of which such money has been paid, or affecting other lands settled therewith to the same or the like uses trusts and purposes; or
- (b) in the purchase of other lands or of Government debentures or other stock, to be conveyed, limited, and settled upon the like

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like uses, trusts and purposes and in the same manner as the lands, in respect of which such money has been paid, were settled; or

- (c) if such money has been paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorised work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Chief Judge in Equity shall direct; or
- (d) in payment to any party becoming absolutely entitled to such money.

48. (1) 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 was deposited.

Order for application of money.

51 Vic. No. 37, s. 63.
44 Vic. No. 16, s. 23.

(2) Until the money can be so applied, it may, upon the like order, be invested by the 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 investment meanwhile.

49. (1) If such purchase money or compensation does not amount to the sum of two hundred pounds, and exceeds the sum of twenty pounds, the same shall be paid either 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 to two trustees.

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

51 Vic. No. 37, s. 64.
44 Vic. No. 16, s. 23.

(2) Such trustees shall be nominated by the parties entitled to the rents or profits of the lands in respect whereof the money is payable, such nomination to be signified by writing under the hands of the party so entitled. In case of the incapacity by coverture, infancy, lunacy, or otherwise of the parties entitled to such moneys, such nomination may be made by their respective husbands, guardians, committees or trustees.

Nomination of trustees.

(3) Payment of such moneys shall not be made to such trustees unless the Constructing Authority approves thereof and of the trustees named for the purpose.

Payment to trustees.

(4) 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.

Powers of trustees.

50. If such money does not exceed the sum of twenty pounds, it shall be paid to the parties entitled to the rents and profits of the lands in respect of which it is payable, for their own use and benefit;

Sums not exceeding £20 to be paid to parties.

51 Vic. No. 37, s. 65.

OR, 44 Vic. No. 16, s. 23.

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or, in case of the incapacity, as in the last preceding section, of such parties, such money shall be paid for their use to the respective husbands, guardians, committees or trustees of such parties.

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

51 Vic. No. 37, s. 66.

44 Vic. No. 16, s. 23.

51. (1) All sums of money exceeding twenty pounds 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 is not entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid to the Master in Equity or to trustees, in manner aforesaid.

(2) No such person shall 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 that it shall be in the discretion of the Judges of the Supreme Court, or the Chief 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.

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

51 Vic. No. 37, s. 67.

44 Vic. No. 16, s. 23.

52. Any payment 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.

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

51 Vic. No. 37, s. 68.

44 Vic. No. 16, s. 23.

53. Where any purchase money or compensation paid or deposited pursuant to this Act has been paid in respect of—

(a) any lease for a life or lives or years, or for a life or lives and years; or

(b) any estate in lands less than the whole fee simple thereof; or

(c) 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 have had from the lease, estate or reversion, in respect of which such money has been paid, or deposited, or as near thereto as may be.

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54. 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—

- (a) refuses to accept the same; or
- (b) neglects or fails to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the Constructing Authority; or
- (c) refuses to convey or release such lands as directed by the Constructing Authority; or
- (d) is absent from New South Wales, or cannot after diligent inquiry be found,

the Constructing Authority may, if he thinks 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.

55. 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 was 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 seems 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 interests of the parties making claim to such money or lands or any part thereof, and may make such other order in the premises as to such Court or Judge seems fit.

56. If any question arises respecting the title to the lands, in respect whereof such money was 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 is shown to the satisfaction of the court; and unless, upon such inquiry as the court thinks fit to direct, the contrary is 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.

57. In all cases of moneys deposited under the provisions of this Act, except where such moneys were so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same are payable,

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

51 Vic. No. 37, s. 69.

44 Vic. No. 16, s. 23.

Application of moneys so deposited.

51 Vic. No. 37, s. 70.

44 Vic. No. 16, s. 23.

Party in possession to be deemed the owner.

51 Vic. No. 37, s. 71.

44 Vic. No. 16, s. 23.

Costs in case of money deposited.

51 Vic. No. 37, s. 72.

44 Vic. No. 16, s. 23.

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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—

- (a) of the purchase or taking of the lands or which were incurred in consequence thereof, other than such costs as are herein otherwise provided for; and
- (b) of the investment of such moneys in Government debentures or real securities and of the re-investment thereof in the purchase of other lands; and
- (c) of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys are invested, and for the payment out of court of the principal of such moneys or of the securities whereon the same are invested; and
- (d) of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided that the costs of one application only for re-investment in land shall be allowed, unless it appears 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 thinks fit, order the costs of any such investments to be paid by the Constructing Authority.

DIVISION 2.—*Refusal to deliver possession of lands.*

Proceeding in case of
refusal to deliver
possession of lands.
51 Vic. No. 37, s. 77.
44 Vic. No. 16, s. 23.

58. (1) If, in any case in which, according to the provisions of this Act, the Constructing Authority is authorised to enter upon and take possession of any lands required for the purpose of the authorised work, the owner or occupier of any such lands or any other person refuses to give up possession thereof or hinders the Constructing Authority from entering upon or taking possession of the same, such Authority may issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same.

Execution of
warrant.
Costs.

(2) Upon the receipt of such warrant the Sheriff shall deliver possession of 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 is payable to such party, or if the

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the same is 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.

DIVISION 3.—*Mortgages and charges.*

59. (1) The Constructing Authority may purchase or redeem the interest of the mortgagee of any lands required for the purposes of this Act; and that whether he has previously purchased the equity of redemption of such lands or not; and whether the mortgagee is entitled thereto, in his own right or in trust for any other party; and whether he is in possession of such lands by virtue of such mortgage or not; and whether such mortgage affects such lands solely or jointly with any other lands not required for the purposes of this Act.

Power to redeem mortgages.

51 Vic. No. 37, s. 81.

44 Vic. No. 16, s. 23.

(2) 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.

Procedure.

(3) 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 has given any such notice, or if the party entitled to the equity of redemption of any such lands has 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.

Notice.

60. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee fails to convey or release his interest in such mortgage as directed by the Constructing Authority, or if he fails to adduce a good title thereto to his satisfaction, then the Constructing Authority may 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 is made before the expiration of six months' notice as aforesaid, such further interest as would at the time become due;

Deposit of mortgage money on refusal to accept.

51 Vic. No. 37, s. 82.

44 Vic. No. 16, s. 23.

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due; and such Authority may also, if he thinks fit, execute a deed poll, containing a description of the lands in respect whereof such deposit was made, and describing the circumstances under which and the names of the parties to whose credit such deposit was 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.

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

51 Vic. No. 37, s. 83.

44 Vic. No. 16, s. 23.

61. (1) If any of such mortgaged lands are of less value than the principal, interest, and costs secured thereon, the value of such lands or the compensation to be made by the 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.

Procedure when parties fail to agree.

(2) 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.

Payment and release of mortgage.

(3) 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.

Deposit of money when refused on tender.

51 Vic. No. 37, s. 84.

44 Vic. No. 16, s. 23.

62. If, upon such payment or tender as aforesaid, any such mortgagee fails so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the Constructing Authority, the said Authority may 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.

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 he thinks 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.

Provided

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Provided that 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 was not satisfied by such payment or deposit.

63. (1) If—

- (a) a part only of any such mortgaged lands is required for the purposes of this Act; and
- (b) the part so required is of less value than the principal money, interest and costs secured on such lands; and
- (c) the mortgagee does not consider the remaining part of such lands a sufficient security for the money charged thereon, or is not willing to release the part so required,

Sum to be paid where part only of mortgaged lands taken.
51 Vic. No. 37, s. 85.
44 Vic. No. 16, s. 23.

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.

(2) 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.

Procedure on failure of parties to agree.

(3) 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 debts, so far as the same will extend; and thereupon such mortgagee shall convey or release to the Constructing Authority or as he shall direct, all his interest in such mortgaged lands the value whereof has been so paid, and a memorandum of what has been so paid shall be endorsed on the deed creating such mortgage and shall be signed by the mortgagee, and a copy of such memorandum shall at the same time (if required) be furnished by the 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.

Payment and release of mortgage.

64. (1) 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 fails to convey or release to the Constructing Authority or as he shall direct, his interest in the lands, in respect of which such compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the Constructing Authority, such Authority may 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

Deposit of money when refused on tender.
51 Vic. No. 37, s. 86.
44 Vic. No. 16, s. 23.

full

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full discharge of the portion of the mortgaged lands so required from all money due thereon; and also if he thinks fit, may 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.

Provided that 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.

51 Vic. No. 37, s. 87.

44 Vic. No. 16, s. 23.

65. If any difference arises between the Constructing Authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or encumbrance 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 the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of part of
lands from rent-
charge.

51 Vic. No. 37, s. 88.

44 Vic. No. 16, s. 23.

66. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance is 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 is not so settled by agreement, the same shall be settled by two justices. But if the remaining part of the lands so jointly subject is a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, the party entitled to such charge may release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Execution of release.

51 Vic. No. 37, s. 89.

44 Vic. No. 16, s. 23.

67. (1) 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.

Failure to release or
make a good title.

(2) If he fails so to do, or if he fails to adduce a good title to such charge to the satisfaction of the Constructing Authority, such Authority may 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

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Master in Equity; and such Authority may also if he thinks fit 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 has been paid, shall cease and be extinguished.

68. (1) If any such lands or portions thereof are 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.

Charge to continue on lands not taken.
51 Vic. No. 37 s. 90.
44 Vic. No. 16 s. 23.

(2) If, upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge is 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 was purchased by virtue of this Act, and if the lands are released from part of such charge, what proportion of such charge was released, and how much thereof continues payable; or if the lands so required have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith. Such memorandum shall be made and executed at the expense of the Constructing Authority, and shall be evidence of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Constructing Authority to execute memorandum of release.

DIVISION 4.—*Leases.*

69. (1) If any lands are comprised in a lease for a term of years unexpired, and part only of such lands is 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 is taken the rent to be apportioned.

51 Vic. No. 37, s. 91.
44 Vic. No. 16, s. 23.

(2) 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 is not so settled by agreement between the parties, it shall be settled by two justices.

Apportionment, how made.

(3) 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 has been 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

Liability of lessee after apportionment is made.

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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 not 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.

51 Vic. No. 37, s. 92.

44 Vic. No. 16, s. 23.

70. 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 authorised work.

Compensation to be made to tenants from year to year.

51 Vic. No. 37, s. 93.

44 Vic. No. 16, s. 23.

71. (1) If any lands are 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 is 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—

- (a) where the whole of such lands is required 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
- (b) if a part only of such lands is required, for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same.

Compensation, how determined.

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

Effect of payment of compensation.

(3) 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.

51 Vic. No. 37, s. 94.

44 Vic. No. 16, s. 23.

72. If any party having a greater interest than as tenant at will claims 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 is 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 is 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.

DIVISION

*Public Works.*DIVISION 5.—*Powers and duties of Constructing Authority.*

73. For the carrying out of any authorised work the Constructing Authority and all persons acting under such Authority—
- (a) may enter into and upon the lands and grounds of any person whomsoever, and survey and take levels of the same, and 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 authorised work, and all other works, matters, and conveniences connected therewith; Power to enter upon and take lands. 51 Vic. No. 37, s. 27. 44 Vic. No. 16, ss. 19, 23.
- (b) may in or upon such lands, or any lands adjoining or contiguous thereto, 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 dug, raised or obtained therein in constructing such authorised 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 authorised 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,
- (c) may 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 authorised 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 are considered necessary; construct inclined planes, tunnels, &c.,
- (d) may 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 may divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or 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 authorised work, as may be thought proper; alter the course of rivers, &c., and of roads, &c., the level of any such rivers or streams,
- (e) may make drains or conduits into, through, or under any lands adjoining any authorised work, for the purpose of conveying water from or to the same; to make drains, &c.

(f)

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to erect tollhouses,
warehouses, &c.,

(f) may in or upon any such authorised work or any lands adjoining or near thereto, 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;

alterations and
repairs.

(g) may alter, or repair, or discontinue the before-mentioned works of any of them and substitute others in their stead;

Where work is in
forest lands, &c.

(h) where any authorised work is constructed in or passes through any wood lands or forest, may fell or remove any trees standing thereon, within the distance of fifty yards from either or every side of such work;

General power.

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

Constructing Authority may dedicate highway.

51 Vic. No. 37, s. 28.

74. 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 highway.

Provided that no highway so dedicated shall exceed one chain in width.

Power to take temporary possession of land.

51 Vic. No. 37, s. 97.

44 Vic. No. 16, s. 23.

75. (1) The Constructing Authority and all persons by him authorised may enter, from time to time, upon any lands—

(a) being within a distance of not more than two hundred yards from the nearest boundary of the authorised work, as delineated on the plans thereof; and

(b) not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted; and

(c) not being nearer to the dwelling-house of the owner of any such lands than a distance of five hundred yards,

and may occupy the said lands, as long as may be necessary for the construction, reconstruction, repair, alteration, addition to or extension of the authorised works or the works connected therewith, and may use the same for any of the following purposes (that is to say),—

(a) for the purpose of taking earth or soil by side cuttings therefrom;

(b) for the purpose of depositing soil thereon;

(c) for the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorised work or such other works as aforesaid;

(d) for the purpose of forming roads thereon to, or from, or by the side of the authorised work.

Further powers.

(2) In exercise of the powers aforesaid the Constructing Authority and all such persons may deposit, and also manufacture and

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and work upon such lands materials of every kind used in constructing the authorised work, and also may take from any such lands any timber, and also dig and take from or out thereof any clay, stone, gravel, sand, or other things found therein, useful or proper for constructing the authorised work or any such roads as aforesaid, and for the purposes aforesaid may erect thereon workshops, sheds, and other buildings of a temporary nature.

(3) 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. Action for nuisance.

(4) Provided that no stone or slate quarry, brickfield, or other like place which, at the time of the passing of this Act is 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. Proviso.

76. If any such lands are 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 deems necessary for the purposes aforesaid. Authority to separate the lands before using them.
51 Vic. No. 37, s. 98.
44 Vic. No. 16, s. 23.

77. In any of the cases aforesaid, where the Constructing Authority takes temporary possession of lands by virtue of the powers herein granted, such Authority shall— Compensation to be made for temporary occupation.
51 Vic. No. 37, s. 99.
44 Vic. No. 16, s. 23.

- (a) within one month after his entry upon such lands, upon being required to do so, 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;
- (b) 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 agreed upon by the parties, or, if they cannot agree, to be fixed by two justices;
- (c) within six months after he has 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

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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, how ascertained.

51 Vic. No. 37, s. 100.

44 Vic. No. 16, s. 23.

78. 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.

51 Vic. No. 37, s. 101.

44 Vic. No. 16, s. 23.

79. If the authorised work crosses any public highway or carriage road, then such authorised 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 have been previously notified, and have been approved of by the Governor.

Before roads interfered with others to be substituted.

51 Vic. No. 37, s. 102.

44 Vic. No. 16, s. 23.

80. If, in the exercise of the powers hereby granted, it is 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.

51 Vic. No. 37, s. 103.

44 Vic. No. 16, s. 23.

81. If any party entitled to a right of way over any road so interfered with by the Constructing Authority suffers any special damage because such Authority fails to cause another sufficient road to be made before it interferes with the existing road, such party may 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.

51 Vic. No. 37, s. 104.

44 Vic. No. 16, s. 23.

82. (1) If the road so interfered with can be restored compatibly with the formation and use of the authorised work, the same shall, with all reasonable expedition, be restored to as good a condition as it was in at the time when it was first interfered with by the Constructing Authority or as near thereto as may be.

(2) If such a road cannot be restored compatibly with the formation and use of the authorised work, the Constructing Authority shall cause the new or substituted road or some other sufficient substituted road to be, with all reasonable expedition, put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

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83. If the authorised work crosses 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 is a bridle-way, erect and at all times maintain good and sufficient gates, and if the same is a footway, good and sufficient gates or stiles on each side of the authorised work where the highway communicates therewith.

Constructing Authority to make sufficient approaches and fences to bridle-ways and footways crossing the line.

51 Vic. No. 37, s. 105.
44 Vic. No. 16, s. 23.

84. 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 authorised work, that is to say—

Works for benefit of owners.

51 Vic. No. 37, s. 106.
44 Vic. No. 16, s. 23.

- (a) such and so many convenient gates, bridges, arches, culverts, and passages over, under or by the sides of or leading to or from the authorised work as are necessary for the purpose of making good any interruptions caused by the authorised work to the use of the lands through, in, or upon which such authorised work is made or constructed; and such work shall be made forthwith after such authorised work or part of it passing over such lands has been laid out or formed or during the formation thereof;
- (b) sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land, taken for or for the use of the authorised 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 authorised work; together with all necessary gates made to open towards such adjoining lands and not towards the authorised 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 so require, and such other works as soon as conveniently may be;
- (c) all necessary arches, tunnels, culverts, drains or other passages either over or under, or by the sides of the authorised 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 authorised work as before the making of the authorised work or as nearly so as may be; and such works shall be made from time to time as the authorised work proceeds.

Provided 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 authorised work; nor to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation instead of the making them.

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Differences as to accommodation works to be settled by Governor.

51 Vic. No. 37 s. 107.
44 Vic. No. 16 s. 23.

Power to owners of lands to make additional accommodation works.

51 Vic. No. 37 s. 108.
44 Vic. No. 16 s. 23.

Such works to be constructed under the superintendence of the Constructing Authority's engineer.

51 Vic. No. 37, s. 109.
44 Vic. No. 16, s. 23.

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

51 Vic. No. 37, s. 110.
44 Vic. No. 16, s. 23.

As to damages.

51 Vic. No. 37, s. 34.

85. If any difference arises, 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.

86. If any of the owners or occupiers of lands affected by such authorised work considers 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, any such owner or occupier, at any time, at his own expense, may make such further works for that purpose as he thinks necessary, and as are agreed to by the Constructing Authority.

87. If the Constructing Authority so desires 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 authorised work, and according to plans and specifications to be submitted to and approved by the Constructing Authority.

Provided that 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.

88. Until the Constructing Authority has made the bridges or other proper communications which, under the provisions herein contained, it is required to make between lands intersected by the authorised work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way is 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 authorised 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 authorised work or to damage the same.

Provided that if the owner or occupier of any such lands has, 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 authorised work.

89. 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

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herein provided, to all persons interested in any lands or hereditaments which are taken, used, injured, or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

90. Nothing in this Act 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 months from the time the Constructing Authority has given notice to such owner that the same is required under this Act.

Injuries to houses.
51 Vic. No. 37, s. 35.

DIVISION 6.—*Superfluous lands.*

91. (1) In case any of the lands taken under the provisions of this Act for authorised works are not required for the purposes of any authorised work, the Constructing 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 for authorised works to be sold.
Ibid. s. 95.

(2) In case any of the lands acquired or taken under the provisions of this Act for public purposes other than authorised works, are not required for such purposes, the Governor may cause such lands to be offered for sale by public auction, and may convey the same to the purchasers thereof in such manner and at such times and subject to such conditions as he thinks fit. The proceeds of all such sales shall be paid by the purchasers to the Treasurer and be by him carried to the credit of the consolidated revenue fund.

Sale of superfluous lands taken for public purposes other than authorised works.
44 Vic. No. 16, s. 22.

92. (1) Upon payment or tender to the Constructing Authority of the purchase money in respect of any sale under subsection (1) of the last preceding section, such Authority shall convey the lands, for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered.

Lands to be conveyed to the purchasers.
51 Vic. No. 37, s. 96.

(2) A deed so executed and registered shall be effectual to vest the lands comprised therein in the said purchaser for the estate so purchased by him.

By deed registered.

93. 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.

Receipt.
Ibid. s. 96.

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PART VII.

Compensation.
 DIVISION 1.—*Procedure where land is taken or acquired by Gazette notification.*

Compensation for private lands taken under Division I of Part V of this Act.

44 Vic. No. 16, s. 10.
51 Vic. No. 37, s. 23.

94. (1) Where the land described in any such notification as in section thirty-six hereof mentioned consists wholly or partly of land alienated by or not the property of the Crown, or is not Crown land, the owners thereof, or the persons who, but for the provisions hereinbefore contained, would have been such owners, shall be entitled to receive such sum of money by way of compensation for the land of which they have been deprived under this Act as shall be agreed upon or otherwise ascertained under the provisions of this Division of this Act.

Interpretation.
44 Vic. No. 16, s. 4.

(2) In this section the expression "Crown land" means all lands vested in Her Majesty, whether dedicated to any public purpose or not, and which have not been granted or contracted to be granted in fee simple.

Notice of claim for compensation.
44 Vic. No. 16, s. 12.
51 Vic. No. 37, s. 23.

95. Every person claiming compensation in respect of any land resumed under any such notification, or in respect of any work or other matter done under the authority of this Act where there has been any such notification shall, within ninety days from the publication of such notification, or at any time afterwards within such time as a Judge of the Supreme Court shall, upon the application and at the cost of the claimant, appoint in that behalf, serve upon the Constructing Authority and upon the Crown Solicitor a notice in writing setting forth—

- (a) the nature of the estate or interest of the claimant in such land, together with an abstract of his title; and
- (b) if he claims in respect of damage, the nature of the damage which he has sustained or will sustain by reason of such resumption or work or matter as aforesaid.

Fifth Schedule.

Such notice may be in the form in the Fifth Schedule hereto, but with any modifications required by the nature of the claim.

Report on claim.
44 Vic. No. 16, s. 13.
51 Vic. No. 37, s. 23.

96. Within sixty days after the receipt of every such notice of claim by the Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority who shall thereupon (unless no prima facie case for compensation is disclosed) cause a valuation of the land or of the estate or interest of the claimant therein to be made in accordance with the provisions of this Act and shall inform the claimant as soon as practicable of the amount of such valuation by notice in the form of the Sixth Schedule hereto.

Sixth Schedule.

Compensation by action in Supreme Court.
44 Vic. No. 16, s. 14.
51 Vic. No. 37, s. 23.

97. (1) If within ninety days after the service of notice of claim the claimant and the Constructing Authority do not agree as to the

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the amount of compensation the claimant may institute proceedings in the Supreme Court in the form of an action for compensation against the Constructing Authority as nominal defendant.

(2) Any such action may be tried before a Judge of the said Court or in any Circuit Court and a special jury of four persons.

Provided that upon application either of the Constructing Authority or of the claimant a special jury of twelve may be summoned for the trial of such action.

(3) Provided also that with the consent in writing of the Constructing Authority and the claimant any such action may be so tried at any time [to be mentioned in such consent] before the expiration of ninety days from service of the notice of claim for compensation but not within fourteen days from service of the notice of valuation on such claimant.

98. (1) A District Court shall, notwithstanding anything contained in the District Courts Act of 1858, have jurisdiction to try any such action of compensation at the District Court holden within the district wherein any land resumed under this Act (or the greater portion of such land) is situated, in any case where the whole amount of the claim in respect to such land served in pursuance of section ninety-five of this Act does not exceed two hundred pounds, or, if exceeding that amount, in any case where the Constructing Authority and the claimant, by a memorandum signed by them, or by such claimant's attorney and the Crown Solicitor, agree thereto.

District Courts to have jurisdiction in certain cases.
44 Vic. No. 16, s. 17.
51 Vic. No. 37, s. 23.

(2) For the purposes of this section the provisions of the said District Courts Act and of any Act amending the same, together with all rules made or to be made thereunder, shall be deemed to apply to all proceedings taken in any District Court hereunder.

District Court Act and rules.

99. (1) If the verdict in any action of compensation tried under the provisions of this Division of this Act is for a sum equal to or less than the amount of the valuation notified to the claimant, such claimant shall pay the costs of such action, but if for a greater sum the Constructing Authority shall pay such costs.

Action of compensation, provisions as to costs.
45 Vic. No. 26, s. 2.

(2) The Judge before whom any such action is tried shall in no case have power to direct a reference to arbitration.

No arbitration.

(3) Either party in any such action may move for a new trial, in accordance with the practice of the Supreme Court.

Appeal.

DIVISION 2.—*Procedure where land is taken or acquired by notice to the parties.*

(i) *Disputed compensation.*

100. Where the Governor directs that any lands may be acquired under the provisions contained in Division 2 of Part V hereof, and no agreement is come to between the Constructing Authority

Disputes as to compensation, how settled.
51 Vic. No. 37, s. 40.

Authority

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Authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands so taken, or required for any authorised 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 as hereinafter provided by—

- (a) two justices where such claim does not exceed one hundred pounds; or
- (b) arbitrators where such claim exceeds one hundred pounds.

(ii) Proceedings before justices.

Method of proceeding before Justices for settling disputes as to compensation.
51 Vic. No. 37 s. 41.

101. (1) With respect to any question of disputed compensation authorised by this Act to be settled by two justices, any justice may, upon the application of either party, 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.

Costs.

(2) The costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Provided that, if the amount awarded by the justices is 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 offered a less amount than the sum awarded.

(iii) Proceedings by arbitration.

Appointment of arbitrators.
Ibid. s. 42.

102. (1) When any question of disputed compensation or any disputed or other matter authorised or directed by this Act to be settled by arbitration arises, then, unless both parties 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.

How appointments to be made.

(2) 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 is a corporation, under the common seal of such corporation.

Appointment to be deemed submission.

(3) 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 is made; and, after any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party to such submission operate as a revocation thereof.

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(4) If, after any such dispute or other matter has arisen, and after a request in writing setting forth the matter so required to be referred to arbitration has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fails 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.

Failure to appoint arbitrator.

103. (1) If, before the matter so referred is determined, any arbitrator appointed by either party dies, or becomes incapable to act as arbitrator, or refuses or for fourteen days neglects 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.

Vacancy of arbitrator to be supplied.
51 Vic. No. 37, s. 43

(2) If, for the space of seven days after notice in writing from the other party for that purpose, such party fails to appoint a new arbitrator, the remaining or other arbitrator may proceed alone.

Failure to supply such vacancy.

(3) 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.

Powers and authorities of substituted arbitrator.

104. (1) Where more than one arbitrator has 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 matter on which they may differ, or which they may refer to him.

Appointment of umpire.
Ibid. s. 44.

(2) If such umpire dies or becomes incapable to act, or refuses, or for seven days neglects 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.

Substitution of umpire.

(3) The decision of every such umpire on the matter so referred to him shall, except as hereinafter provided, be final.

Decision of umpire.

105. If, in either of the cases aforesaid, the arbitrators refuse, or for seven days after request of either party to such arbitration neglect, to appoint an umpire, any Judge of the Supreme Court, on the application of either party to such arbitration, may appoint an umpire; and the decision of such umpire, on the matters on which the arbitrators differ, or which are referred to him shall, except as hereinafter provided, be final.

Appointment of umpire on refusal, &c., of arbitrators.
Ibid. s. 45.

106. If, when a single arbitrator has been appointed, such arbitrator dies or becomes incapable to act before he has made his award, or refuses or for fourteen days neglects 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.

Death of single arbitrator.
Ibid. s. 46.

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When one arbitrator
may proceed alone.
51 Vic. No. 37 s. 47.

107. If, where more than one arbitrator has been appointed, either of the arbitrators refuses, or for fourteen days neglects to act, and where no substituted arbitrator has been appointed as hereinbefore provided, the other arbitrator may proceed alone. The decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Arbitrators to make
award within twenty-
one days.
Ibid. s. 48.

108. Where more than one arbitrator has been appointed, and where neither arbitrator has refused or neglected to act as aforesaid, then if such arbitrators fail to make their award within twenty-one days after the day on which the last of such arbitrators was appointed, or within such extended time (if any), not being greater in the whole than six months, as has 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.

Powers of arbitrators.
Ibid. s. 49.

109. 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.

Arbitrator or umpire
to make declaration.
Ibid. s. 50.

110. (1) Before any arbitrator or umpire enters 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, 1900. A.B.

Made and subscribed in the presence of
Such declaration shall be annexed to the award when made.

Breach of
dclaration.

(2) If any arbitrator or umpire having made such declaration wilfully acts contrary thereto he shall be guilty of a misdemeanour.

Costs of arbitration.
Ibid. s. 51.

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

Where award is less
than one-third of
claim.

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

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(3) If either party is 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. Taxation.

112. The arbitrators shall deliver their award in writing to the Constructing Authority. Award to be delivered to the Constructing Authority.
51 Vic. No. 37, s. 52.

The Constructing Authority 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.

113. 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.
Ibid. s. 53.

114. 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.
Ibid. s. 54.

115. In any case where reference is 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. Power to refer back award.
Ibid. s. 55.

116. (1) If the compensation awarded by the arbitrators exceeds the sum of three hundred pounds, and either party is dissatisfied with the award and desires to have the compensation settled by a jury, and, within fourteen days after the making of the award and notice thereof, signifies 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.
Ibid. s. 56.

(2) Upon the trial of the said action, if the verdict is— Costs.

- (a) 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;
- (b) 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;
- (c) 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.

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Costs of arbitration to be added to costs of action.

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

DIVISION 3.—*Basis of assessment.*

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

44 Vic. No. 16, s. 18.

45 Vic. No. 26, s. 2.

51 Vic. No. 37, ss. 23 and 24.

117. For the purpose of ascertaining the purchase money or compensation to be paid regard shall in every case 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) caused by the severing of the lands taken from other lands of the owner, or by the exercise of any statutory powers by the Constructing Authority otherwise injuriously affecting such other lands; and they shall assess the same according to what they find to have been the value of such lands, estate, or interest at the time notice was given, or notification published, as the case may be, and without being bound in any way by the amount of the valuation notified to such claimant, and without reference to any alteration in such value arising from the establishment of railway or other public works upon or for which such land was resumed.

Provided 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 the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of the authorised 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.

Proviso as to underground land resumed by Gazette notice for tunnel purposes.

44 Vic. No. 16, s. 18.

Provided also that in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel for water supply or sewerage or railway transit, no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed; or
- (b) the support to such surface is destroyed or injuriously affected by the construction of such tunnel; or
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.

Compensation where land alienated by the Crown.

44 Vic. No. 16, s. 10.

51 Vic. No. 37, ss. 23 and 25.

118. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken 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

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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 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.

DIVISION 4.—*Payment.*

119. (1) In all cases where compensation or costs are 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 authorised in that behalf, within one month after such amount was determined. Compensation to be paid within one month.
44 Vic. No. 16, s. 16.
51 Vic. No. 37,
ss. 23, 26.

Provided that in every such case the party claiming payment shall be bound to make out a title to the lands or interest in lands in respect of which he claims to the satisfaction of the Constructing Authority.

(2) If such compensation is payable in respect of land taken or acquired by notification in the Gazette, it shall bear interest at the rate of six per cent. per annum from the time of such notification. Interest.

(3) All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Treasurer. Payment, how made.

DIVISION 5.—*Absent owners of lands taken or acquired for authorised works.*

120. 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 New South Wales, 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 determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned. Compensation to absent parties to be determined by a surveyor appointed by two Justices.
51 Vic. No. 37, s. 57.

121. (1) Upon application by the Constructing Authority to two justices, and upon such proof as satisfies them that any such party is, by reason of absence from New South Wales, 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. Two justices to nominate a surveyor.
Ibid. s. 58.

(2) Such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof. Duties of surveyor.

122. (1) Before such surveyor and valuator enters upon the duty of making such valuation as aforesaid, he shall, in the presence of Surveyor to make declaration.
Ibid. s. 59.

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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.

Breach of
declaration.

(2) If any such surveyor corruptly makes such declaration, or, having made such declaration, wilfully acts contrary thereto, he shall be guilty of a misdemeanour.

Declaration to be
annexed.

51 Vic. No. 37, s. 60.

123. 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.

Costs of valuation.
Ibid. s. 61.

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

 PART VIII

Provisions applicable in every case where land is taken or acquired for authorised works.

DIVISION 1.—*Exercise of powers by Constructing Authority.*

Powers of taking
lands exercisable
from time to time.
Ibid. s. 33.

125. The powers of taking, acquiring, or purchasing lands for authorised works by this Act conferred upon the Constructing Authority may be exercised by such Authority from time to time, and whether the particular work for which lands may have been taken, acquired, or purchased has actually been constructed or not.

Powers of sale and
purchase of lands.
Ibid. s. 37.

126. 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.

DIVISION 2.—*Conveyances.*

Form of conveyances.
Ibid. s. 73.
Seventh Schedule.

127. (1) Conveyances of lands to be purchased or taken for authorised works under the provisions of this Act may be according to the form in the Seventh 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. (2)

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(2) 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 have been purchased or compensated for by the consideration therein mentioned Effect of conveyance.

(3) Although terms of years are 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. Terms of years.

128. (1) The costs of all such conveyances shall be borne by the Constructing Authority. Costs of conveyances.
51 Vic. No. 37, s. 74.

(2) Such cost shall include all charges and expenses incurred on the part as well of the seller as of the purchaser Charges and expenses to be included in such costs.

(a) of all conveyances and assurances of any such lands and of any outstanding terms or interest therein; and

(b) of deducing, evidencing and verifying the title to such lands, terms and interests; and

(c) of making out and furnishing such abstracts and attested copies as the Constructing Authority may require; and

(d) all other reasonable expenses incident to the investigation, deduction and verification of such title.

129. (1) If the Constructing Authority and the party entitled to any such costs do 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 conveyance.
Ibid., s. 75.

(2) The Constructing Authority shall pay to the party entitled thereto the amount the said Master or other officer certifies to be due to such party in respect of such costs. In default of such payment any Judge of the Supreme Court may make an order for payment of the said amount of such costs which may then be recovered in the same way as any other costs payable under any order of the Supreme Court or a Judge thereof. Payment.

(3) 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 is disallowed. In the latter case the costs of such taxation shall be borne by the party whose costs are so taxed; and the amount of such costs of taxation shall be ascertained by the said Master or other officer, and deducted by him in his certificate of taxation. Costs of taxation.

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Lands taken in
pursuance of this
Act to vest without
conveyance.

51 Vic. No. 37, s. 76.

130. Notwithstanding the provisions of section one hundred and twenty-seven, or of any other section of this Act, after any lands which the Constructing Authority is by this Act authorised to take have been set out, ascertained, and finally appropriated for any of the purposes authorised 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.

Provided that the Constructing Authority may, if he thinks fit in any case, demand such conveyance.

DIVISION 3.—*Compulsory purchases.*

Parties not to be
required to sell part
only of a building.

Ibid. s. 78.

131. 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 is willing and able to sell and convey the whole thereof.

Owners of intersected
lands may insist on
sale.

Ibid. s. 79.

132. (1) Whenever any lands, not being situated in a town or built upon, are so cut through and divided by an authorised work as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, then if the owner of such small parcel of land requires 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 has other land adjoining to that so left, into which the same can be thrown so as to be conveniently occupied therewith.

Or on land being
thrown into
adjoining land.

(2) If such owner has 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.

Ibid. s. 80.

133. (1) Whenever any such land is so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert or such other communication between the land so divided as the Constructing Authority is, under the provisions of this Act compellable to make, then if

(a) the owner of such lands has not other lands adjoining such piece of land; and

(b) such owner requires the Constructing Authority to make such communication,

the Constructing Authority may require such owner to sell to him such piece of land.

(2)

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(2) 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 provided for in Division 2 of Part VII of this Act 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.

DIVISION 4.—*Lands containing minerals.*

134. (1) Notwithstanding anything hereinbefore contained, 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 since the fifth day of June, one thousand eight hundred and eighty-eight, being the date of the passing of the Act fifty-one Victoria number thirty-seven, or under this Act, except only such portions thereof as are necessary to be dug or carried away or used in the construction of the works, unless the same have been expressly taken or purchased.

(2) 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.

135. (1) If the owner, lessee or occupier of any mines or minerals lying under any authorised work or any work connected therewith, or within forty yards from the boundary thereof, is 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.

(2) Upon the receipt of such notice the Constructing Authority may cause such mines to be inspected by any person appointed by him for the purpose.

(3) If it appears to the Constructing Authority that the working of such mines or minerals is likely to damage the authorised work, and if the Constructing Authority is 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.

(4) 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 provided in Division 2 of Part VII hereof.

136. (1) If before the expiration of such thirty days the Constructing Authority does not state his willingness to treat with such owner, lessee or occupier for the payment of such compensation, he may work the said mines or any part thereof for which the Constructing Authority has not agreed to give compensation.

Provided

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Provided that such work shall be done in a manner proper and necessary for the beneficial working of the mine, and according to the usual manner of working such mines in the district where the same are situate.

Damage or obstruction to authorised work by improper working of mines.

(2) If any damage or obstruction is occasioned to the authorised 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.

Powers of Constructing Authority.

(3) If such repair or removal is not forthwith carried out by such owner, lessee or occupier, or, if the Constructing Authority thinks fit, without waiting for the same to be so carried out the Constructing Authority may carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by action in the Supreme Court.

Mining communications.
51 Vic. No. 37, s. 117.

137. (1) If the working of any such mines under the authorised work or within the abovementioned distance therefrom is prevented as aforesaid, by reason of apprehended injury to such authorised work, the respective owners, lessees and occupiers of such mines and whose mines extend so as to lie on both sides of the authorised work may cut and make so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is so prevented, as may be requisite to enable them to ventilate, drain and work their said mines.

Dimensions of communications.

(2) 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 are 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.
Ibid. s. 118.

138. (1) 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 authorised work—

(a) all such additional expenses and losses as such owner, lessee or occupier incurs by reason of the severance of the lands lying over such mines by the authorised 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

(b) for any minerals not taken or purchased by the Constructing Authority which cannot be obtained by reason of making or constructing and maintaining the authorised work.

Disputes as to amount of injury.

(2) If any dispute or question arises 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.

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139. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has 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.
51 Vic. No. 37, s. 119.

140. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorised work the Constructing Authority, after giving twenty-four hours' notice in writing, may enter upon any lands, through, in, on or near which the authorised work is constructed, and wherein any such mines are being worked or are supposed so to be, and may enter into and return from any such mines or the works connected therewith. For that purpose such Authority may make use of any apparatus or machinery belonging to the owner, lessee or occupier of such mines, and may use all necessary means for discovering the distance from the authorised work 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.
Ibid. s. 120.

141. If any such owner, lessee or occupier of any such mine refuses 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.
Ibid. s. 121.

142. (1) If it appears that any such mines have been worked contrary to the provisions of this Act, or any Act hereby repealed, the Constructing Authority may 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 authorised work and preventing injury thereto.

Mines worked contrary to this Act.
Ibid. s. 122.

(2) If, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe such authorised 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.

Powers of Constructing Authority.

DIVISION 5.—*Penalty.*

143. (1) If any person omits to shut and fasten any gate set up at either side of any authorised work for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the

Penalty on persons omitting to fasten gates.
Ibid. s. 111.

D

carriages

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carriages or cattle or other animals under his care have passed through the same, he shall be liable for every such offence to a penalty not exceeding ten pounds.

Procedure.

(2) Every such penalty may be recovered in a summary way before any stipendiary or police magistrate or any two justices at the suit of any person authorised by the Constructing Authority.

PART IX.

Special provisions relating to railways.

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

51 Vic. No. 37, s. 29.

144. (1) When any authorised work is a railway or tramway the Constructing Authority shall, before commencing such work, 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 are 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.

(2) The Constructing Authority shall, by advertisement in the Gazette, give notice of such map or plan and book of reference, 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. If any such objection is 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 the Constructing Authority shall thereupon give notice in the Gazette of such confirmation with or without alterations as the case may be.

Deposit with clerks of petty sessions.

(3) 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

Public Works.

Authority shall be deposited with the clerk of petty sessions of the districts into or through which such railway or tramway is intended to be carried.

Such map or plan and book of reference, and such copies 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 is first published.

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.

(4) If any omission, misstatement, or erroneous description is 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 days' 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 authorised work in accordance therewith.

Errors and omission to be corrected.

(5) 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 is at any time afterwards 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.

145. (1) This Act shall not prevent the owners or occupiers of lands adjoining any authorised work, when such authorised 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.

Power to parties to make private branch railways communicating with the railway.
51 Vic. No. 37, s. 112.

(2) 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.

Constructing Authority to make communications if so required.

(3)

Public Works.

Constructing
Authority not to
take tolls on private
branches.

(3) 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 occupier or other person; but this enactment shall be subject to the following restrictions and conditions—

- (a) no such branch railway shall run parallel to the authorised railway;
- (b) the Constructing Authority shall not be bound to make any such openings in any place which such Authority has 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.

Breadth of land to be
taken for railway.
51 Vic. No. 37, s. 113.

146. When any authorised work is a railway the lands to be taken or used for such authorised work shall not exceed one hundred yards in width except where a greater width is 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.

In certain cases
power to purchase
or take lands for
additional
accommodation.
Ibid. s. 32.

147. (1) The Constructing Authority in addition to the lands authorised to be compulsorily taken by such Authority may 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, 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.

All parties who, under the provisions hereinbefore contained would be enabled to sell and convey lands, may sell and convey the same under and for the purposes of this section.

Public Works.

(2) 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 herein contained. Constructing Authority may take such lands compulsorily.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
44 Vic. No. 16 ...	Lands for Public Purposes Acquisition Act.	The whole.
45 Vic. No. 26 ...	Lands for Public Purposes Acquisition Act Amendment Act.	The whole.
51 Vic. No. 37 ...	Public Works Act of 1888	The whole.
52 Vic. No. 26 ...	Public Works Act Amendment Act of 1889.	The whole.
53 Vic. No. 11 ...	Public Works (Committees' Remuneration) Act of 1889.	The whole.
Act No. 6, 1897 ...	Public Works Act Further Amendment Act of 1897.	The whole.

SECOND SCHEDULE.

Section 11.

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.

THIRD SCHEDULE.

Section 17.

(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

Public Works.

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 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, 1900, (*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, 1900, 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 section seventeen 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, 1900, 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.

Section 41.

FOURTH SCHEDULE.
PUBLIC WORKS ACT, 1900.

Offer and particulars of claim where land is 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

Public Works.

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 _____ pounds, which sum I declare to be my full claim in respect of the matters aforesaid.

Dated this _____ day of _____, 18 ____ . [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.

FIFTH SCHEDULE.

Section 95.

Notice of claim and abstract.

To the [here name the Constructing Authority or Crown Solicitor].

In pursuance of the Public Works Act, 1900, 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.

*Public Works.**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 place where the same may be inspected, and name of claimant's solicitor or agent.

(Signature)
(Address)
(Date)

This form, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Division 1 of Part V of this Act.

Section 96.

SIXTH SCHEDULE.

Notice of valuation.

To A.B., claimant in respect of the land hereunder described, taken under the Public Works Act, 1900.

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 _____ pounds.

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.

This form, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Division 1 of Part V of this Act.

Section 127.

SEVENTH 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, 1900, 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 _____

By Authority : WILLIAM APPEGATE GULLICK, Government Printer, Sydney, 1900.

[2s.]

Memo. and Certificate to accompany the Public Works Bill.

THIS Bill consolidates the following Acts:—

44 Vic. No. 16;
45 Vic. No. 26;
51 Vic. No. 37;
52 Vic. No. 26;
53 Vic. No. 11;
No. 6, 1897.

Clause 46 (5). This appears to be quite unintelligible, and has been left untouched for explanation some day by the Supreme Court.

Clause 117. The reconciliation of the sections here dealt with has been found very troublesome, but the clause in its present form, after careful consideration, is considered to give effect to the intention of the Legislature. Some words have been added in consequence of the judgment in *Harris v. Lee*.

Clause 118. It was possibly open to argument, under the original section, that a small class of lands, *i.e.*, lands recently granted or recently conditionally purchased, and resumed for any other purpose than railway construction, did not come under these provisions, but there can be no doubt that the intention of the Legislature was that the operation of the sections should be general.

Clause 119. An inconsistency, which in all probability was never designed by the Legislature, has been left untouched, as to remove it might be going beyond the powers of the Commission. The result is that interest at six per cent. is payable by the Government on the amount of compensation where the land has been acquired by Gazette notification, but no interest is payable where the land has been acquired by notice to the parties.

Clause 140. The word "railway" in the last line but one was a mistake for "authorised work."

I certify that save as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Public Works Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
44 VICTORIA No. 16.		
1	.....	Short title.
2	.....	Repeal.
3	.....	Repeal.
4	34, 94 (2)	
5	.....	Operation exhausted and obsolete.
6	34, 36	
7	35	
8	4, 34, 37	
9	38	
10	94 (1)	
11	39	
12	95	
13	96	
14	97	
15	.....	Repealed, 45 Vic. No. 26, s. 1.
16	119	
17	98	
18	117	
19	73	
20	44	
21	45, 46	
22	91 (2)	
23	47-73, 75-88	
24	40	
45 VICTORIA No. 26.		
1	.....	Repeal.
2	99, 117	
3	Fifth Schedule.	
4	.....	Short title.
51 VICTORIA No. 37.		
1	.....	Short title.
2	3	
3	6	
4	7	
5	8, 9	
6	11	
7	12	
8	13	
9	14	
10	16, 17	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
51 VICTORIA No. 37— <i>continued.</i>		
11	18	
12	19	
13	28	
14	29	
15	30	
16	31, 32	
17	5	
18	28 (2)	
19	33	
20	36	
21	4, 37	
22	38	
23	39, 40, 75, 94-98, 117, 118, 119	
24	117	
25	118	
26	119	
27	73	
28	74	
29	144	
30	41	
31	44	
32	147	
33	125	
34	89	
35	90	
36	45	
37	126	
38	42	
39	43	
40	100	
41	101	
42	102	
43	103	
44	104	
45	105	
46	106	
47	107	
48	108	
49	109	
50	110	
51	111	
52	112	
53	113	
54	114	
55	115	
56	116	
57	120	
58	121	
59	122	
60	123	
61	124	
62	47	
63	48	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
51 VICTORIA No. 37— <i>continued.</i>		
64	49	
65	50	
66	51	
67	52	
68	53	
69	54	
70	55	
71	56	
72	57	
73	125	
74	128	
75	129	
76	130	
77	53	
78	131	
79	132	
80	133	
81	59	
82	60	
83	61	
84	62	
85	63	
86	64	
87	65	
88	66	
89	67	
90	68	
91	69	
92	70	
93	71	
94	72	
95	91	
96	92, 93	
97	75	
98	76	
99	77	
100	78	
101	79	
102	80	
103	81	
104	82	
105	83	
106	84	
107	85	
108	86	
109	87	
110	88	
111	143	
112	145	
113	146	
114	134	
115	135	
116	136	

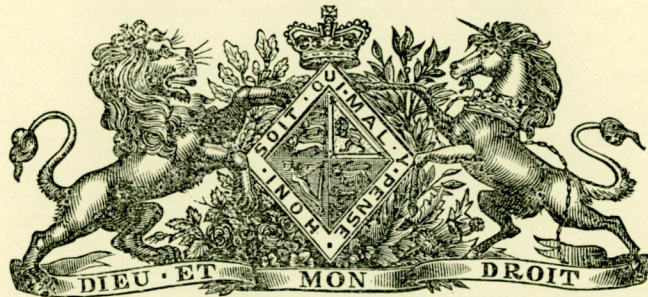
Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
51 VICTORIA No. 37— <i>continued.</i>		
117	137	
118	138	
119	139	
120	140	
121	141	
122	142	
52 VICTORIA No. 26.		
1	.....	Short title.
2	6	
3	6	
4	8	
5	9	
6	10	
7	20	
8	21	
9	22	
10	23	
11	15	
53 VICTORIA No. 11.		
1	.....	Short title.
2	24, 27	
3	25	
4	26 (1) (2)	
5	26 (3)	
Act No. 6, 1897.		
1	.....	Short title.
2	6	
3	8	
4	24, 26 (3)	
5	.....	Operation exhausted.

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

*Legislative Council Chamber,
Sydney, 30th August, 1900. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to consolidate the Acts relating to Public Works.

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.

Repeal and interpretation.

1. This Act may be cited as the "Public Works Act, 1900," Short title. and is divided into Parts and Divisions, as follows:—

PART I.—*Preliminary*—ss. 1-5.

c 70—A

PART

Public Works.

- PART II.—*The Parliamentary Standing Committee on Public Works—*
- DIVISION 1.—*Constitution of and general provisions relating to the committee—ss. 6–15.*
- DIVISION 2.—*Powers of the committee—ss. 16–19.*
- DIVISION 3.—*Sectional committees—ss. 20–23.*
- DIVISION 4.—*Committees' remuneration—ss. 24–27.*
- PART III.—*Public works, how authorised and how contracts made—ss. 28–32.*
- PART IV.—*Preliminary conditions relating to the acquisition of land—ss. 33–35.*
- PART V.—*Methods of acquisition of land—*
- DIVISION 1.—*The acquisition of land by Gazette notification—ss. 36–40.*
- DIVISION 2.—*The acquisition of land by notice to the parties—ss. 41–43.*
- PART VI.—*Provisions applicable to every case where land is taken or acquired under this Act—*
- DIVISION 1.—*Purchase of lands—ss. 44–57.*
- DIVISION 2.—*Refusal to deliver possession of lands—s. 58.*
- DIVISION 3.—*Mortgages and charges—ss. 59–68.*
- DIVISION 4.—*Leases—ss. 69–72.*
- DIVISION 5.—*Powers and duties of Constructing Authority—ss. 73–90.*
- DIVISION 6.—*Superfluous lands—ss. 91–93.*
- PART VII.—*Compensation—*
- DIVISION 1.—*Procedure where land is taken or acquired by Gazette notification—ss. 94–99.*
- DIVISION 2.—*Procedure where land is taken or acquired by notice to the parties.*
- (i) *Disputed compensation—s. 100.*
- (ii) *Proceedings before Justices—s. 101.*
- (iii) *Proceedings by arbitration—ss. 102–116.*
- DIVISION 3.—*Basis of assessment—ss. 117–118.*
- DIVISION 4.—*Payment—s. 119.*
- DIVISION 5.—*Absent owners of lands taken or acquired for authorised works—ss. 120–124.*
- PART VIII.—*Provisions applicable in every case where land is taken or acquired for authorised works—*
- DIVISION 1.—*Exercise of powers by Constructing Authority—ss. 125, 126.*
- DIVISION

Public Works.

DIVISION 2.—*Conveyances*—ss. 127–130.

DIVISION 3.—*Compulsory Purchases*.—ss. 131–133.

DIVISION 4.—*Lands containing minerals*—ss. 134–142.

DIVISION 5.—*Penalty*—s. 143.

PART IX.—*Special provisions relating to railways*—ss. 144–147.

2. (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.

Repeal.
Schedule.

(2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.

Officers under Acts
hereby repealed.

(3) All regulations made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act; and any references in any such regulation to any enactments hereby repealed shall be construed as references to the corresponding enactments contained in this Act.

Regulations under
Acts hereby repealed.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.
51 Vic. No. 37, s. 2.

“Authorised work” means any work the carrying out of which has been authorised in manner herein provided, and includes any work so authorised under any Act hereby repealed.

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

“Constructing authority” means the Minister of the Crown empowered to carry out any authorised work; and 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 any Government stock issued by the Government of New South Wales pursuant to any statutory power.

“Justice” means any justice of the peace.

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

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

4. For the purpose of facilitating the acquisition and disposal of land under this Act the Constructing 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, 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.

Incorporation of
Constructing
Authority.
44 Vic. No. 16, s. 8.
51 Vic. No. 37, s. 21.

5.

Public Works.

5. The Governor on the recommendation of the committee may Regulations. frame regulations for giving effect to this Act. Such regulations 51 Vic. No. 37, s 17. when published in the Gazette shall have the force of law and copies thereof shall be laid before Parliament within fourteen days after such publication if Parliament is then in session, and if not, then within fourteen days after the commencement of the next session of Parliament.

PART II.

The Parliamentary Standing Committee on Public Works.

DIVISION 1.—*Constitution of and general provisions relating to the committee.*

6. (1) As soon as practicable after the commencement of the Constitution of first session of every Parliament, a joint committee of Members of the Parliamentary Committee on Public Works. the Legislative Council and Legislative Assembly, to be called the Works. "Parliamentary Standing Committee on Public Works," shall be *Ibid.* s. 3. appointed, according to the practice regulating the selection of Members 52 Vic. No. 26, ss. 2 and 3. to serve on Select Committees of the said Council and Assembly No. 6 of 1897, s. 2. respectively. Three of the persons so to be appointed shall be members of the Legislative Council, and four shall be Members of the Legislative Assembly.

(2) Such seven persons shall hold office as a joint committee Term of office. (subject to the provisions in the next following section contained) for the duration of the Parliament for the time being, but shall cease to hold office as soon as such Parliament expires by dissolution or effluxion of time; 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.

(3) The names of the persons from time to time appointed Names of members to be notified. to be members of such committee shall be notified in the Gazette with all convenient despatch.

7. (1) Any member of the committee may resign his seat on Extraordinary vacancies. such committee by writing under his hand addressed to the Governor. 51 Vic. No. 37, s. 4. The seat of any such member shall also be deemed to have become vacant—

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

(b) by his acceptance of any office of profit under the Crown.

(2) On the occurrence of any such vacancy the same shall How filled. be filled upon motion in the usual manner.

Provided

Public Works.

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.

8. Any three members of the committee 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.
51 Vic. No. 37,
s. 5 (ii).
52 Vic. No. 26, s. 4.
No. 6 of 1897, s. 3.

Provided that no quorum shall consist exclusively of members of the Legislative Council or of the Legislative Assembly.

9. 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.
51 Vic. No. 37,
s. 5 (i).

Provided that at any meeting of the committee at which a quorum is present, the members in attendance, may, in the absence of the chairman and vice-chairman, appoint one of their number then present to be temporary chairman, and such temporary chairman shall have, during the absence of the chairman and vice-chairman, all the powers given by this Act to the chairman or vice-chairman of the committee.

Provision for absence of chairman and vice-chairman.
52 Vic. No. 26, s. 5.

10. (1) All questions which arise in any committee shall be decided by a majority of votes of the members present, and when the votes are equal the chairman shall have a second or casting vote.

Division—Casting vote.
Ibid. s. 6.

(2) In all cases of divisions the names of the persons voting shall be stated on the minutes and in the report.

Record of votes.

11. 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 Second Schedule hereto.

Declaration of members of committee.
Second Schedule.
51 Vic. No. 37, s. 6.

12. The committee may sit and transact business during any adjournment or recess as well as during the session, 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.
Ibid. s. 7.

13. 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.

Reports.
Ibid. s. 8.

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

Minutes.
Ibid. s. 9.

15. Where any public work is referred to any committee, and such committee lapses or ceases to have legal existence, before it reports

Evidence taken before previous committees.
52 Vic. No. 26, s. 11.

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reports on such public work, the evidence taken before such committee and before any sectional committee shall, nevertheless, be considered by any subsequent committee to whom the same public work may be referred for report pursuant to this Act as if such evidence had been given before and for the information and guidance of such subsequent committee.

DIVISION 2.—*Powers of the committee.*

16. For the purposes of this Act the committee shall have the following powers, that is to say—

- Powers of committee.*
51 Vic. No. 37,
s. 10.
- (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.

17. (1) If any person—

- Powers of committee in respect of witnesses.*
Ibid.
- (a) whose expenses have been paid or tendered to him neglects to appear ; or
 - (b) wilfully insults the committee or any member thereof ; or
 - (c) misbehaves himself before the committee ; or
 - (d) interrupts the proceedings of the committee ; or
 - (e) being summoned or examined as a witness in any inquiry or matter pending before the committee, refuses to be sworn, or to produce any document mentioned in the summons served upon him, or to make a solemn declaration as aforesaid, or prevaricates in his evidence, or refuses to answer any lawful question,

the chairman or vice-chairman may commit any such offender to gaol for any time not exceeding one month, or may impose upon him

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him a fine not exceeding fifty pounds and in default of immediate payment thereof may commit such offender to gaol for any time not exceeding one month unless the fine is sooner paid.

In any such case of committal the chairman or vice-chairman shall issue a warrant in the Form A contained in the Third Schedule hereto, and such warrant shall be good and valid 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 is addressed shall obey it.

(2) 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 fails to appear in obedience to his summons, the chairman or vice-chairman, upon proof of such person having been duly served with such summons, and 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 Form B of the Third Schedule hereto to bring such person before the committee to give evidence.

(3) 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.

18. (1) The committee may, 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.

(2) There shall be paid to such assessors such remuneration as the committee may recommend and the Governor may approve and as Parliament may provide.

19. The committee shall, subject to the provisions contained in the twenty-eighth section hereof, consider and report upon all public works (except fortifications and works connected with the military or naval defence of New South Wales) 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.

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

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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.

DIVISION 3.—*Sectional committees.*

20. (1) The committee may at any meeting constitute sectional committees of itself for all purposes of this Act by appointing three or more of its members to be a sectional committee. Sectional committees may be appointed. 52 Vic. No. 26, s. 7.

(2) Every sectional committee shall have, and may exercise, for the purpose of carrying out any business or inquiry delegated to them by the committee either at or after the time of their appointment, all the powers by this Act conferred on the committee, and shall sit in open court. Powers of sectional committee.

(3) Every sectional committee shall appoint a chairman or temporary chairman, who shall be the person to exercise the powers conferred by this Act on, or in the name of, the chairman or vice-chairman of the committee. Chairman.

21. The powers and provisions respectively conferred by and contained in the tenth, twelfth, sixteenth, seventeenth, and eighteenth sections of this Act shall be exercisable by and applicable to every sectional committee appointed as aforesaid. Further powers of sectional committee. Ibid. ss. 6, 8.

22. Every such sectional committee shall make its report as soon as practicable to the committee, of and in respect to all matters delegated to it by such committee; and such report with any evidence taken by such sectional committee shall be dealt with by the committee in all respects, so far as possible, as reports of select committees are dealt with by the Legislative Assembly. Reports of sectional committee. Ibid. s. 9.

23. Not more than two sectional committees shall be appointed or shall sit at the same time; but the committee may sit at any time notwithstanding that any such sectional committee or committees may be sitting at the same time. Limit of number of sectional committees, &c. Ibid. s. 10.

DIVISION 4.—*Committees' remuneration.*

24. The members of every committee shall each receive, by way of remuneration for their services as such members, a fee for each attendance at a summoned meeting of such committee at which a quorum was present, according to the following scale:— Fees to be paid to members of the committee. 53 Vic. No. 11, s. 2. No. 6, A.D. 1897, s. 4.

- (a) the chairman, or member presiding at any meeting in his absence, three guineas for each sitting;
- (b) every other member, two guineas for each sitting:

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25. The fees made payable under this division shall be charged on the consolidated revenue fund, and the certificate of the chairman or vice-chairman of the committee shall be a sufficient warrant, and authority, and discharge to the Treasurer for the payment of such fees from such fund.

Fees to be a charge on consolidated revenue.
53 Vic. No. 11, s. 3.

26. (1) In addition to the sum payable to every member of the committee as a sitting fee, he shall be paid a further sum of thirty shillings per diem on account of expenses incurred by him in, and in the course of, travelling, whether by land or water, whenever such expenses and charges have been incurred bona fide in the performance of his duties as a member of such committee, whilst outside the boundaries of the county of Cumberland.

Travelling expenses.
Ibid. s. 4.

(2) Such expenses and charges shall be chargeable in the same manner, and be paid by the same person, and on the like certificate, and in other respects in like manner as in the case of fees for sittings.

How paid.

(3) In all cases in which a sectional committee of the committee is engaged in the inspection of any public works outside the county of Cumberland, each day or part of a day occupied in such inspection shall be deemed to constitute one attendance of such committee, and to entitle each member thereof to a fee of two guineas.

Meetings of sectional committees outside county of Cumberland.
Ibid. s. 5.
No. 6, A.D. 1897, s. 4.

27. Nothing in this Division of this Act shall be taken to constitute the office of any member of the said committee an office of profit, so as to render such member incapable of sitting or voting as a Member of the Legislature, or to make void the election of such member.

Office of profit.
53 Vic. No. 11, s. 2.

PART III.

Public Works how authorised and how contracts made.

28. (1) No public work of any kind whatsoever (except as excepted in the nineteenth section hereof, and except such works as the Railway Commissioners are authorised to carry out pursuant to the Government Railways Act of 1888), the estimated cost of completing which exceeds twenty thousand pounds, and whether such work is a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless sanctioned as hereinafter provided:—

Conditions precedent to commencing Public Works.
51 Vic. No. 37, s. 13.

- (a) 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

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together with such plans and specifications or other descriptions as the Minister deems 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. Such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 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.

(2) Provided that the Governor may, with respect to any public work the estimated cost of which does not exceed twenty thousand pounds, direct that the same shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised works shall be applicable to such work, and the same shall for all purposes of this Act be deemed to be an "authorised work," and the Railway Commissioners or Minister on whom the carrying out of such work devolves shall for the like purposes be deemed a "Constructing Authority."

Governor may extend Act to works to cost less than twenty thousand pounds.

51 Vic. No. 37, s. 18.

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

Notification of resolution.
Ibid. s. 14.

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30. 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 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.
51 Vic. No. 37, s. 15.

31. 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 authorisation 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.

Resolution when to be sufficient authority for execution of Works, &c.
Ibid. s. 16.

Provided that no such contracts shall exceed in the aggregate by more than ten per centum the estimate for the same submitted as hereinbefore provided.

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

Contracts how made.
Ibid. s. 16.

- (a) 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;
- (b) 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;
- (c) 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.

(2) All such contracts so made 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

Effect of contracts;

of

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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.

PART IV.

Preliminary conditions relating to the acquisition of land.

33. The Governor may direct that any land required in his opinion for any authorised work may be acquired either by taking the same under the provisions contained in Division 1 of Part V of this Act or under the provisions contained in Division 2 of the said Part. Thereupon, subject to the provisions of this Act, the land so required may be acquired in the manner directed, and the compensation for such land shall be ascertained and dealt with in all respects pursuant to the provisions of this Act applicable in either case respectively.

Taking of lands for authorised works.
51 Vic. No. 37, s. 19.

34. (1) Whenever, in the case of a work other than an authorised work—

Taking of lands for public purposes other than authorised works.
44 Vic. No. 16, ss. 4, 6.

- (a) Parliament has appropriated a sum of money out of the Consolidated Revenue Fund for or towards the construction, establishment, or carrying out of any of the public works or undertakings in the next section specified; or
- (b) the Governor has sanctioned the carrying out of any such work or undertaking for or towards the completion of which public funds are lawfully available; or
- (c) the Governor has sanctioned the acquisition of any lands for school sites;

the land required may be acquired or resumed, and the compensation therefor shall be ascertained and dealt with in all respects as if the Governor had directed under the last preceding section that such land should be acquired or resumed under the provisions contained in Division 1 of Part V of this Act, and in every such case every provision of this Act applicable upon such direction of the Governor shall, unless the same relates exclusively to authorised works, apply.

(2) Provided that in the application of the said provisions of this Act to the acquisition or resumption of land under this section the expression "the Constructing Authority" as and when used in any such provision shall mean—

Interpretation.

- (a) the Minister for Public Works with relation to lands acquired or resumed for any other purpose than the establishment of public or other schools; or
- (b) the Minister for Public Instruction as well as any other responsible Minister of the Crown charged with the administration of the Department of Public Instruction.

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(3) The provisions of section four of this Act as to incorporation shall apply in every case of subdivision (a) of the preceding subsection but shall not apply in any case of subdivision (b). Incorporation.

35. The following shall for the purposes of the last preceding section be deemed to be public works and undertakings, that is to say:— Public works, &c., specified.
44 Vic. No. 16, s. 7.

- (a) works for and in connection with the supply of water to or for the sewerage of any city, town, or district;
- (b) fortifications and all other works of defence, including depôts, stations, military roads, and any other works in connection with such fortifications;
- (c) buildings for the occupation of either or both of the Houses of Parliament or for Public Offices;
- (d) hospitals, lunatic asylums, court-houses, gaols, watch-houses, lock-ups, police barracks or quarters;
- (e) Post or Telegraph Offices, mail stations, light-houses, observatories, pilot stations, quarantine stations or grounds, and customs stations;
- (f) public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being;
- (g) public libraries, mechanics' institutes, or schools of art;
- (h) public wharves, ferries, piers, jetties, and bridges;
- (i) public parks, or grounds for public recreation, or places for bathing, and for the reclamation of land for or in connection therewith;
- (j) public cemeteries;
- (k) public wells or works for the conservation of water;
- (l) the protection and preservation of any cave or place of scientific interest;
- (m) the establishment of public abattoirs;
- (n) breakwaters, leading marks or beacons for purposes of navigation, docks, slips, the protection of river banks, the excavation of new channels, landing-places for silt, and any other works for the improvement of harbours or rivers;
- (o) quarries, or works for procuring stone, gravel, earth, or any other material required for the construction of or any purpose connected with any such public work or undertaking as aforesaid.

For the purposes of this section any such named work or undertaking shall be taken to include any extension of, or approach to, or subsidiary work, in connection with any such named work or undertaking.

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PART V.

*Methods of acquisition of land.*DIVISION 1.—*The acquisition of land by Gazette notification.*

36. For the purpose of carrying out any authorized work if the Governor directs that any land required for such work shall be taken under this Division of this 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 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.

Gazette notice.
51 Vic. No. 37, s. 20.
44 Vic. No. 16, s. 6.

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.

37. 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.

Effect of notification
on land therein men-
tioned.
51 Vic. No. 37, s. 21.
44 Vic. No. 16, s. 8.

38. 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 notification
upon Crown land.
51 Vic. No. 37, s. 22.
44 Vic. No. 16, s. 9.

39. (1) The estate and interest of every person entitled to lands resumed under this division of this Act or any portion thereof and whether to the legal or equitable estate therein shall by virtue of this Act be deemed to have been as fully and effectually conveyed to the

Estate of proprietor
of resumed land
vested in
Constructing
Authority.
44 Vic. No. 16, s. 11.
51 Vic. No. 37, s. 23.

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Constructing Authority as if the same had been conveyed by the persons legally or equitably entitled thereto by means of the most perfect assurances in the law.

(2) Every such estate and interest shall upon the publication of such notification as aforesaid be taken to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained. And converted into claim for compensation.

(3) Every person shall upon asserting his claim as herein- after provided and making out his title in respect of any portion of the said resumed lands be entitled to compensation on account of such resumption in manner hereinafter provided. Compensation.

40. (1) Whenever land is resumed under this Division of this Act, a copy of the Gazette notification declaring such land to be so resumed, certified under the hand of the Constructing Authority, shall in every case be lodged with the Registrar General and be registered by him in the general register of deeds, unless the land so resumed is wholly or in part comprised in a grant or a certificate of title under the Real Property Acts, in which case upon production of such notification so certified as aforesaid it shall be the duty of the Registrar General to deal with and give effect to such notification as if the same were a memorandum of transfer duly executed under the said Acts. Registration of resumption.
44 Vic. No. 16, s. 24.
51 Vic. No. 37, s. 23.

(2) A conveyance upon sale of any land authorised by subsection two of section ninety-one of this Act to be offered for sale by public auction may if the same is comprised in any memorandum of transfer under the said Acts be made by a like memorandum of transfer to be executed by the Constructing Authority as transferrer and the purchaser as transferee which shall have the like effect for all purposes of the said Acts as a memorandum of transfer thereunder. Conveyances.

(3) The Governor may make regulations prescribing the mode in which the provisions of this section shall be carried out by all persons concerned therewith. Regulations.

DIVISION 2.—The acquisition of land by notice to the parties.

41. (1) When in any case where the Governor has directed that any land required for any authorised work shall be acquired under this Division of this Act, and the map or plan and book of reference in the case of a railway or tramway, or the plan in case of any other authorised work, has 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 after diligent inquiry become known to the Constructing Authority. Notice of lands taken.
Ibid. s. 30.

(2)

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(2) Every such notice shall state the particulars of the lands so taken or required, 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 for the damage sustained or that may be sustained by them by the exercise of the powers conferred by this Act. The notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the Constructing Authority, in the prescribed form, the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and such other particulars 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.

Terms and effect of notice.

42. 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 are absent from New South Wales, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there is no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

Service of notices.

51 Vic. No. 37, s. 38.

43. (1) If, for twenty-one days after the service of such notice, any such party—

Settlement of compensation on failure to treat, &c.

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

Ibid. s. 33.

(b) fails 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 authorised work;

the amount of such compensation shall be settled in the manner hereinafter provided in Division 2 of Part VII for settling cases of disputed compensation.

(2) 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.

When proceedings may be commenced.

(3) If no claim is 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.

Claim to be made within two years.

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PART VI.

Provisions applicable to every case where land is taken or acquired under this Act.

DIVISION 1.—*Purchase of lands.*

44. The Constructing Authority may agree with the owners of any lands by this Act authorised to be taken, and which are 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 are thought proper, and of all estates and interests in such lands of what kind soever.

45. All parties being seised, possessed of or entitled to any such lands or any estate or interest therein may sell and convey or release the same to the Constructing Authority for and on behalf of Her Majesty, and may enter into all necessary agreements for that purpose.

46. Any of the following parties so seised, possessed or entitled as aforesaid, that is to say—

- (a) all corporations,
- (b) tenants in tail or for life,
- (c) married women seised in their own right or entitled to dower,
- (d) guardians,
- (e) committees of lunatics and idiots,
- (f) trustees or feoffees in trust for charitable or other purposes,
- (g) executors, administrators,
- (h) 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,

may sell, convey, or release as in the preceding subsection mentioned.

(3) 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 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

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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.

(4) 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 encumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands. Rent-charges and encumbrances.

(5) The purchase money or compensation to be paid for any lands to be purchased or taken for authorised works 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 such lands shall not (except where the same has been determined by a surveyor under the provisions hereinafter contained) be less than shall be determined by two justices or by arbitrators in the manner hereinafter provided. Compensation, how ascertained.

47. (1) 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 amounts to or exceeds the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity. Purchase money payable to parties under disability amounting to £200 to be paid to Master in Equity. 51 Vic. No. 37, s. 62. 44 Vic. No. 16, s. 23.

(2) Such Master shall deposit such money to the account of the 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. Master to deposit the money.

(3) Such money shall remain so deposited until the same are applied to some one or more of the following purposes, (that is to say)— Applications of money deposited.

- (a) in the redemption of the quit rent, or the discharge of any debt or incumbrance affecting the land in respect of which such money has been paid, or affecting other lands settled therewith to the same or the like uses trusts and purposes; or
- (b) in the purchase of other lands or of Government debentures or other stock, to be conveyed, limited, and settled upon the like

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like uses, trusts and purposes and in the same manner as the lands, in respect of which such money has been paid, were settled; or

- (c) if such money has been paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorised work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Chief Judge in Equity shall direct; or
- (d) in payment to any party becoming absolutely entitled to such money.

48. (1) 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 was deposited.

Order for application of money.

51 Vic. No. 37, s. 63.
44 Vic. No. 16, s. 23.

(2) Until the money can be so applied, it may, upon the like order, be invested by the 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 investment meanwhile.

49. (1) If such purchase money or compensation does not amount to the sum of two hundred pounds, and exceeds the sum of twenty pounds, the same shall be paid either 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 to two trustees.

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

51 Vic. No. 37, s. 64.
44 Vic. No. 16, s. 23.

(2) Such trustees shall be nominated by the parties entitled to the rents or profits of the lands in respect whereof the money is payable, such nomination to be signified by writing under the hands of the party so entitled. In case of the incapacity by coverture, infancy, lunacy, or otherwise of the parties entitled to such moneys, such nomination may be made by their respective husbands, guardians, committees or trustees.

Nomination of trustees.

(3) Payment of such moneys shall not be made to such trustees unless the Constructing Authority approves thereof and of the trustees named for the purpose.

Payment to trustees.

(4) 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.

Powers of trustees.

50. If such money does not exceed the sum of twenty pounds, it shall be paid to the parties entitled to the rents and profits of the lands in respect of which it is payable, for their own use and benefit;

Sums not exceeding £20 to be paid to parties.

51 Vic. No. 37, s. 65.

OR, 44 Vic. No. 16, s. 23.

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or, in case of the incapacity, as in the last preceding section, of such parties, such money shall be paid for their use to the respective husbands, guardians, committees or trustees of such parties.

51. (1) All sums of money exceeding twenty pounds 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 is not entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid to the Master in Equity or to trustees, in manner aforesaid.

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

51 Vic. No. 37, s. 66.

44 Vic. No. 16, s. 23.

(2) No such person shall 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 that it shall be in the discretion of the Judges of the Supreme Court, or the Chief 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.

52. Any payment 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.

51 Vic. No. 37, s. 67.

44 Vic. No. 16, s. 23.

53. Where any purchase money or compensation paid or deposited pursuant to this Act has been paid in respect of—

- (a) any lease for a life or lives or years, or for a life or lives and years; or
- (b) any estate in lands less than the whole fee simple thereof; or
- (c) any reversion dependent on any such lease or estate,

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

51 Vic. No. 37, s. 68.

44 Vic. No. 16, s. 23.

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 have had from the lease, estate or reversion, in respect of which such money has been paid, or deposited, or as near thereto as may be.

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54. 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—

- (a) refuses to accept the same; or
- (b) neglects or fails to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the Constructing Authority; or
- (c) refuses to convey or release such lands as directed by the Constructing Authority; or
- (d) is absent from New South Wales, or cannot after diligent inquiry be found,

the Constructing Authority may, if he thinks 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.

55. 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 was 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 seems 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 interests of the parties making claim to such money or lands or any part thereof, and may make such other order in the premises as to such Court or Judge seems fit.

56. If any question arises respecting the title to the lands, in respect whereof such money was 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 is shown to the satisfaction of the court; and unless, upon such inquiry as the court thinks fit to direct, the contrary is 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.

57. In all cases of moneys deposited under the provisions of this Act, except where such moneys were so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same are payable,

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

51 Vic. No. 37, s. 69.

44 Vic. No. 16, s. 23.

Application of moneys so deposited.

51 Vic. No. 37, s. 70.

44 Vic. No. 16, s. 23.

Party in possession to be deemed the owner.

51 Vic. No. 37, s. 71.

44 Vic. No. 16, s. 23.

Costs in case of money deposited.

51 Vic. No. 37, s. 72.

44 Vic. No. 16, s. 23.

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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—

- (a) of the purchase or taking of the lands or which were incurred in consequence thereof, other than such costs as are herein otherwise provided for; and
- (b) of the investment of such moneys in Government debentures or real securities and of the re-investment thereof in the purchase of other lands; and
- (c) of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys are invested, and for the payment out of court of the principal of such moneys or of the securities whereon the same are invested; and
- (d) of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided that the costs of one application only for re-investment in land shall be allowed, unless it appears 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 thinks fit, order the costs of any such investments to be paid by the Constructing Authority.

DIVISION 2.—*Refusal to deliver possession of lands.*

58. (1) If, in any case in which, according to the provisions of this Act, the Constructing Authority is authorised to enter upon and take possession of any lands required for the purpose of the authorised work, the owner or occupier of any such lands or any other person refuses to give up possession thereof or hinders the Constructing Authority from entering upon or taking possession of the same, such Authority may issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same.

(2) Upon the receipt of such warrant the Sheriff shall deliver possession of 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 is payable to such party, or if the

Proceeding in case of refusal to deliver possession of lands.

51 Vic. No. 37, s. 77.

44 Vic. No. 16, s. 23.

Execution of warrant.

Costs.

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the same is 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.

DIVISION 3.—*Mortgages and charges.*

59. (1) The Constructing Authority may purchase or redeem the interest of the mortgagee of any lands required for the purposes of this Act; and that whether he has previously purchased the equity of redemption of such lands or not; and whether the mortgagee is entitled thereto, in his own right or in trust for any other party; and whether he is in possession of such lands by virtue of such mortgage or not; and whether such mortgage affects such lands solely or jointly with any other lands not required for the purposes of this Act.

Power to redeem mortgages.
51 Vic. No. 37, s. 81.
44 Vic. No. 16, s. 23.

(2) 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.

Procedure.

(3) 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 has given any such notice, or if the party entitled to the equity of redemption of any such lands has 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.

Notice.

60. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee fails to convey or release his interest in such mortgage as directed by the Constructing Authority, or if he fails to adduce a good title thereto to his satisfaction, then the Constructing Authority may 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 is made before the expiration of six months' notice as aforesaid, such further interest as would at the time become due;

Deposit of mortgage money on refusal to accept.
51 Vic. No. 37, s. 82.
44 Vic. No. 16, s. 23.

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due; and such Authority may also, if he thinks fit, execute a deed poll, containing a description of the lands in respect whereof such deposit was made, and describing the circumstances under which and the names of the parties to whose credit such deposit was 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.

61. (1) If any of such mortgaged lands are of less value than the principal, interest, and costs secured thereon, the value of such lands or the compensation to be made by the 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.

51 Vic. No. 37, s. 83.

44 Vic. No. 16, s. 23.

(2) 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.

Procedure when parties fail to agree.

(3) 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.

Payment and release of mortgage.

62. If, upon such payment or tender as aforesaid, any such mortgagee fails so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the Constructing Authority, the said Authority may 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.

Deposit of money when refused on tender.

51 Vic. No. 37, s. 84.

44 Vic. No. 16, s. 23.

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 he thinks 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.

Provided

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Provided that 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 was not satisfied by such payment or deposit.

63. (1) If—

- (a) a part only of any such mortgaged lands is required for the purposes of this Act; and
- (b) the part so required is of less value than the principal money, interest and costs secured on such lands; and
- (c) the mortgagee does not consider the remaining part of such lands a sufficient security for the money charged thereon, or is not willing to release the part so required,

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

51 Vic. No. 37, s. 85.
44 Vic. No. 16, s. 23.

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.

(2) 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.

Procedures on failure of parties to agree.

(3) 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 debts, so far as the same will extend; and thereupon such mortgagee shall convey or release to the Constructing Authority or as he shall direct, all his interest in such mortgaged lands the value whereof has been so paid, and a memorandum of what has been so paid shall be endorsed on the deed creating such mortgage and shall be signed by the mortgagee, and a copy of such memorandum shall at the same time (if required) be furnished by the 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.

Payment and release of mortgage.

64. (1) 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 fails to convey or release to the Constructing Authority or as he shall direct, his interest in the lands, in respect of which such compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the Constructing Authority, such Authority may 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

Deposit of money when refused on tender.

51 Vic. No. 37, s. 86.
44 Vic. No. 16, s. 23.

full

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full discharge of the portion of the mortgaged lands so required from all money due thereon; and also if he thinks fit, may 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.

Provided that 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.

65. If any difference arises between the Constructing Authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or encumbrance 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 the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of lands
from rent-charges.
51 Vic. No. 37, s. 87.
44 Vic. No. 16, s. 23.

66. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance is 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 is not so settled by agreement, the same shall be settled by two justices. But if the remaining part of the lands so jointly subject is a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, the party entitled to such charge may 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.
51 Vic. No. 37, s. 88.
44 Vic. No. 16, s. 23.

67. (1) 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.

Execution of release.
51 Vic. No. 37, s. 89.
44 Vic. No. 16, s. 23.

(2) If he fails so to do, or if he fails to adduce a good title to such charge to the satisfaction of the Constructing Authority, such Authority may 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

Failure to release or
make a good title.

Master

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Master in Equity; and such Authority may also if he thinks fit 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 has been paid, shall cease and be extinguished.

68. (1) If any such lands or portions thereof are 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.

Charge to continue on lands not taken.
51 Vic. No. 37 s. 90.
44 Vic. No. 16 s. 23.

(2) If, upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge is 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 was purchased by virtue of this Act, and if the lands are released from part of such charge, what proportion of such charge was released, and how much thereof continues payable; or if the lands so required have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith. Such memorandum shall be made and executed at the expense of the Constructing Authority, and shall be evidence of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Constructing Authority to execute memorandum of release.

DIVISION 4.—*Leases.*

69. (1) If any lands are comprised in a lease for a term of years unexpired, and part only of such lands is 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 is taken the rent to be apportioned.
51 Vic. No. 37, s. 91.
44 Vic. No. 16, s. 23.

(2) 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 is not so settled by agreement between the parties, it shall be settled by two justices.

Apportionment, how made.

(3) 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 has been 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

Liability of lessee after apportionment is made.

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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 not 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.

70. 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 authorised work.

Tenants to be compensated.
51 Vic. No. 37, s. 92.
44 Vic. No. 16, s. 23.

71. (1) If any lands are 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 is 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—

Compensation to be made to tenants from year to year.
51 Vic. No. 37, s. 93.
44 Vic. No. 16, s. 23.

- (a) where the whole of such lands is required 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
- (b) if a part only of such lands is required, for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same.

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

Compensation, how determined.

(3) 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.

Effect of payment of compensation.

72. If any party having a greater interest than as tenant at will claims 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 is 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 is 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.

Where greater interest claimed than at will lease to be produced.
51 Vic. No. 37, s. 94.
44 Vic. No. 16, s. 23.

*Public Works.*DIVISION 5.—*Powers and duties of Constructing Authority.*

73. For the carrying out of any authorised work the Constructing Authority and all persons acting under such Authority—

- (a) may enter into and upon the lands and grounds of any person whomsoever, and survey and take levels of the same, and 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 authorised work, and all other works, matters, and conveniences connected therewith ;
- (b) may in or upon such lands, or any lands adjoining or contiguous thereto, 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 dug, raised or obtained therein in constructing such authorised 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 authorised work, or which may hinder, prevent or obstruct the constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending or using the same respectively ;
- (c) may 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 authorised 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 are considered necessary ;
- (d) may 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 may divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or 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 authorised work, as may be thought proper ;
- (e) may make drains or conduits into, through, or under any lands adjoining any authorised work, for the purpose of conveying water from or to the same ;

Power to enter upon and take lands.

51 Vic. No. 37, s. 27.

44 Vic. No. 16, ss. 19, 23.

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,

to make drains, &c.

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- (f) may in or upon any such authorised work or any lands to erect tollhouses, warehouses, &c., adjoining or near thereto, 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 ;
- (g) may alter, or repair, or discontinue the before-mentioned works of any of them and substitute others in their stead ; alterations and repairs.
- (h) where any authorised work is constructed in or passes through any wood lands or forest, may 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.
- (i) and generally may do all other acts necessary for constructing, reconstructing, making, maintaining, altering, repairing, adding to, extending and using such authorised work. General power.

74. 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 highway. Constructing Authority may dedicate highway. 51 Vic. No. 37, s. 28.

Provided that no highway so dedicated shall exceed one chain in width.

75. (1) The Constructing Authority and all persons by him authorised may enter, from time to time, upon any lands— Power to take temporary possession of land.

- (a) being within a distance of not more than two hundred yards from the nearest boundary of the authorised work, as delineated on the plans thereof ; and 51 Vic. No. 37, s. 97. 44 Vic. No. 16, s. 23.
- (b) not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted ; and
- (c) not being nearer to the dwelling-house of the owner of any such lands than a distance of five hundred yards, and may occupy the said lands, as long as may be necessary for the construction, reconstruction, repair, alteration, addition to or extension of the authorised works or the works connected therewith, and may use the same for any of the following purposes (that is to say),—
- (a) for the purpose of taking earth or soil by side cuttings therefrom ;
- (b) for the purpose of depositing soil thereon ;
- (c) for the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorised work or such other works as aforesaid ;
- (d) for the purpose of forming roads thereon to, or from, or by the side of the authorised work.

(2) In exercise of the powers aforesaid the Constructing Authority and all such persons may deposit, and also manufacture Further powers. and

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and work upon such lands materials of every kind used in constructing the authorised work, and also may take from any such lands any timber, and also dig and take from or out thereof any clay, stone, gravel, sand, or other things found therein, useful or proper for constructing the authorised work or any such roads as aforesaid, and for the purposes aforesaid may erect thereon workshops, sheds, and other buildings of a temporary nature.

(3) 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.

(4) Provided that no stone or slate quarry, brickfield, or other like place which, at the time of the passing of this Act is 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.

76. If any such lands are 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 deems necessary for the purposes aforesaid.

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

- (a) within one month after his entry upon such lands, upon being required to do so, 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;
- (b) 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 agreed upon by the parties, or, if they cannot agree, to be fixed by two justices;
- (c) within six months after he has 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

Action for nuisance.

Proviso.

Authority to separate the lands before using them.
51 Vic. No. 37, s. 98.
44 Vic. No. 16, s. 23

Compensation to be made for temporary occupation.

51 Vic. No. 37, s. 99.
44 Vic. No. 16, s. 23.

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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.

78. 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.

Compensation, how ascertained.
51 Vic. No. 37, s. 100.
44 Vic. No. 16, s. 23.

79. If the authorised work crosses any public highway or carriage road, then such authorised 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 have been previously notified, and have been approved of by the Governor.

OR Crossing of roads.
51 Vic. No. 37, s. 101.
44 Vic. No. 16, s. 23.

80. If, in the exercise of the powers hereby granted, it is 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.

Before roads interfered with others to be substituted.
51 Vic. No. 37, s. 102.
44 Vic. No. 16, s. 23.

81. If any party entitled to a right of way over any road so interfered with by the Constructing Authority suffers any special damage because such Authority fails to cause another sufficient road to be made before it interferes with the existing road, such party may 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.
51 Vic. No. 37, s. 103.
44 Vic. No. 16, s. 23.

82. (1) If the road so interfered with can be restored compatibly with the formation and use of the authorised work, the same shall, with all reasonable expedition, be restored to as good a condition as it was in at the time when it was first interfered with by the Constructing Authority or as near thereto as may be.

Period for restoration of roads interfered with.
51 Vic. No. 37, s. 104.
44 Vic. No. 16, s. 23.

(2) If such a road cannot be restored compatibly with the formation and use of the authorised work, the Constructing Authority shall cause the new or substituted road or some other sufficient substituted road to be, with all reasonable expedition, put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

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83. If the authorised work crosses 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 is a bridle-way, erect and at all times maintain good and sufficient gates, and if the same is a footway, good and sufficient gates or stiles on each side of the authorised work where the highway communicates therewith.

84. 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 authorised work, that is to say—

- (a) such and so many convenient gates, bridges, arches, culverts, and passages over, under or by the sides of or leading to or from the authorised work as are necessary for the purpose of making good any interruptions caused by the authorised work to the use of the lands through, in, or upon which such authorised work is made or constructed; and such work shall be made forthwith after such authorised work or part of it passing over such lands has been laid out or formed or during the formation thereof;
- (b) sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land, taken for or for the use of the authorised 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 authorised work; together with all necessary gates made to open towards such adjoining lands and not towards the authorised 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 so require, and such other works as soon as conveniently may be;
- (c) all necessary arches, tunnels, culverts, drains or other passages either over or under, or by the sides of the authorised 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 authorised work as before the making of the authorised work or as nearly so as may be; and such works shall be made from time to time as the authorised work proceeds.

Provided 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 authorised work; nor to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation instead of the making them.

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85. If any difference arises, 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.

51 Vic. No. 37 s. 107.
44 Vic. No. 16 s. 23.

86. If any of the owners or occupiers of lands affected by such authorised work considers 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, any such owner or occupier, at any time, at his own expense, may make such further works for that purpose as he thinks necessary, and as are agreed to by the Constructing Authority.

Power to owners of lands to make additional accommodation works.

51 Vic. No. 37 s. 108.
44 Vic. No. 16 s. 23.

87. If the Constructing Authority so desires 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 authorised work, and according to plans and specifications to be submitted to and approved by the Constructing Authority.

Such works to be constructed under the superintendence of the Constructing Authority's engineer.

51 Vic. No. 37, s. 109.
44 Vic. No. 16, s. 23.

Provided that 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.

88. Until the Constructing Authority has made the bridges or other proper communications which, under the provisions herein contained, it is required to make between lands intersected by the authorised work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way is 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 authorised 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 authorised work or to damage the same.

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

51 Vic. No. 37, s. 110.
44 Vic. No. 16, s. 23.

Provided that if the owner or occupier of any such lands has, 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 authorised work.

89. 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

As to damages.

51 Vic. No. 37, s. 34.

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herein provided, to all persons interested in any lands or hereditaments which are taken, used, injured, or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

90. Nothing in this Act 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 months from the time the Constructing Authority has given notice to such owner that the same is required under this Act.

Injuries to houses.
51 Vic. No. 37, s. 5.

DIVISION 6.—*Superfluous lands.*

91. (1) In case any of the lands taken under the provisions of this Act for authorised works are not required for the purposes of any authorised work, the Constructing 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 for authorised works to be sold.
Ibid. s. 95.

(2) In case any of the lands acquired or taken under the provisions of this Act for public purposes other than authorised works, are not required for such purposes, the Governor may cause such lands to be offered for sale by public auction, and may convey the same to the purchasers thereof in such manner and at such times and subject to such conditions as he thinks fit. The proceeds of all such sales shall be paid by the purchasers to the Treasurer and be by him carried to the credit of the consolidated revenue fund.

Sale of superfluous lands taken for public purposes other than authorised works.
44 Vic. No. 16, s. 22.

92. (1) Upon payment or tender to the Constructing Authority of the purchase money in respect of any sale under subsection (1) of the last preceding section, such Authority shall convey the lands, for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered.

Lands to be conveyed to the purchasers.
51 Vic. No. 37, s. 96.

(2) A deed so executed and registered shall be effectual to vest the lands comprised therein in the said purchaser for the estate so purchased by him.

By deed registered.

93. 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.

Receipt.
Ibid. s. 96.

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PART VII.

*Compensation.*DIVISION 1.—*Procedure where land is taken or acquired by Gazette notification.*

94. (1) Where the land described in any such notification as in section thirty-six hereof mentioned consists wholly or partly of land alienated by or not the property of the Crown, or is not Crown land, the owners thereof, or the persons who, but for the provisions hereinbefore contained, would have been such owners, shall be entitled to receive such sum of money by way of compensation for the land of which they have been deprived under this Act as shall be agreed upon or otherwise ascertained under the provisions of this Division of this Act.

Compensation for private lands taken under Division I of Part V of this Act.
44 Vic. No. 16, s. 10.
51 Vic. No. 37, s. 23.

(2) In this section the expression "Crown land" means all lands vested in Her Majesty, whether dedicated to any public purpose or not, and which have not been granted or contracted to be granted in fee simple.

Interpretation.
44 Vic. No. 16, s. 4.

95. Every person claiming compensation in respect of any land resumed under any such notification, or in respect of any work or other matter done under the authority of this Act where there has been any such notification shall, within ninety days from the publication of such notification, or at any time afterwards within such time as a Judge of the Supreme Court shall, upon the application and at the cost of the claimant, appoint in that behalf, serve upon the Constructing Authority and upon the Crown Solicitor a notice in writing setting forth—

Notice of claim for compensation.
44 Vic. No. 16, s. 12.
51 Vic. No. 37, s. 23.

- (a) the nature of the estate or interest of the claimant in such land, together with an abstract of his title; and
- (b) if he claims in respect of damage, the nature of the damage which he has sustained or will sustain by reason of such resumption or work or matter as aforesaid.

Such notice may be in the form in the Fifth Schedule hereto, but with any modifications required by the nature of the claim.

Fifth Schedule.

96. Within sixty days after the receipt of every such notice of claim by the Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority who shall thereupon (unless no prima facie case for compensation is disclosed) cause a valuation of the land or of the estate or interest of the claimant therein to be made in accordance with the provisions of this Act and shall inform the claimant as soon as practicable of the amount of such valuation by notice in the form of the Sixth Schedule hereto.

Report on claim.
44 Vic. No. 16, s. 13.
51 Vic. No. 37, s. 23.

Sixth Schedule.

97. (1) If within ninety days after the service of notice of claim the claimant and the Constructing Authority do not agree as to the

Compensation by action in Supreme Court.
44 Vic. No. 16, s. 14.
51 Vic. No. 37, s. 23.

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the amount of compensation the claimant may institute proceedings in the Supreme Court in the form of an action for compensation against the Constructing Authority as nominal defendant.

(2) Any such action may be tried before a Judge of the said Court or in any Circuit Court and a special jury of four persons.

Provided that upon application either of the Constructing Authority or of the claimant a special jury of twelve may be summoned for the trial of such action.

(3) Provided also that with the consent in writing of the Constructing Authority and the claimant any such action may be so tried at any time [to be mentioned in such consent] before the expiration of ninety days from service of the notice of claim for compensation but not within fourteen days from service of the notice of valuation on such claimant.

98. (1) A District Court shall, notwithstanding anything contained in the District Courts Act of 1858, have jurisdiction to try any such action of compensation at the District Court holden within the district wherein any land resumed under this Act (or the greater portion of such land) is situated, in any case where the whole amount of the claim in respect to such land served in pursuance of section ninety-five of this Act does not exceed two hundred pounds, or, if exceeding that amount, in any case where the Constructing Authority and the claimant, by a memorandum signed by them, or by such claimant's attorney and the Crown Solicitor, agree thereto.

(2) For the purposes of this section the provisions of the said District Courts Act and of any Act amending the same, together with all rules made or to be made thereunder, shall be deemed to apply to all proceedings taken in any District Court hereunder.

99. (1) If the verdict in any action of compensation tried under the provisions of this Division of this Act is for a sum equal to or less than the amount of the valuation notified to the claimant, such claimant shall pay the costs of such action, but if for a greater sum the Constructing Authority shall pay such costs.

(2) The Judge before whom any such action is tried shall in no case have power to direct a reference to arbitration.

(3) Either party in any such action may move for a new trial, in accordance with the practice of the Supreme Court.

DIVISION 2.—Procedure where land is taken or acquired by notice to the parties.

(i) *Disputed compensation.*

100. Where the Governor directs that any lands may be acquired under the provisions contained in Division 2 of Part V hereof, and no agreement is come to between the Constructing Authority

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Authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands so taken, or required for any authorised 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 as hereinafter provided by—

- (a) two justices where such claim does not exceed one hundred pounds; or
- (b) arbitrators where such claim exceeds one hundred pounds.

(ii) Proceedings before justices.

101. (1) With respect to any question of disputed compensation authorised by this Act to be settled by two justices, any justice may, upon the application of either party, 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.

(2) The costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Provided that, if the amount awarded by the justices is 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 offered a less amount than the sum awarded.

(iii) Proceedings by arbitration.

102. (1) When any question of disputed compensation or any disputed or other matter authorised or directed by this Act to be settled by arbitration arises, then, unless both parties 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.

(2) 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 is a corporation, under the common seal of such corporation.

(3) 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 is made; and, after any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party to such submission operate as a revocation thereof.

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(4) If, after any such dispute or other matter has arisen, and after a request in writing setting forth the matter so required to be referred to arbitration has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fails 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.

Failure to appoint arbitrator.

103. (1) If, before the matter so referred is determined, any arbitrator appointed by either party dies, or becomes incapable to act as arbitrator, or refuses or for fourteen days neglects 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.

Vacancy of arbitrator to be supplied. 51 Vic. No. 37, s. 43.

(2) If, for the space of seven days after notice in writing from the other party for that purpose, such party fails to appoint a new arbitrator, the remaining or other arbitrator may proceed alone.

Failure to supply such vacancy.

(3) 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.

Powers and authorities of substituted arbitrator.

104. (1) Where more than one arbitrator has 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 matter on which they may differ, or which they may refer to him.

Appointment of umpire. Ibid. s. 44.

(2) If such umpire dies or becomes incapable to act, or refuses, or for seven days neglects 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.

Substitution of umpire.

(3) The decision of every such umpire on the matter so referred to him shall, except as hereinafter provided, be final.

Decision of umpire.

105. If, in either of the cases aforesaid, the arbitrators refuse, or for seven days after request of either party to such arbitration neglect, to appoint an umpire, any Judge of the Supreme Court, on the application of either party to such arbitration, may appoint an umpire; and the decision of such umpire, on the matters on which the arbitrators differ, or which are referred to him shall, except as hereinafter provided, be final.

Appointment of umpire on refusal, &c., of arbitrators. Ibid. s. 45.

106. If, when a single arbitrator has been appointed, such arbitrator dies or becomes incapable to act before he has made his award, or refuses or for fourteen days neglects 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.

Death of single arbitrator. Ibid. s. 46.

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107. If, where more than one arbitrator has been appointed, either of the arbitrators refuses, or for fourteen days neglects to act, and where no substituted arbitrator has been appointed as hereinbefore provided, the other arbitrator may proceed alone. The decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

When one arbitrator may proceed alone.
51 Vic. No. 37 s. 47.

108. Where more than one arbitrator has been appointed, and where neither arbitrator has refused or neglected to act as aforesaid, then if such arbitrators fail to make their award within twenty-one days after the day on which the last of such arbitrators was appointed, or within such extended time (if any), not being greater in the whole than six months, as has 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.

Arbitrators to make award within twenty-one days.
Ibid. s. 48.

109. 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.

Powers of arbitrators.
Ibid. s. 49.

110. (1) Before any arbitrator or umpire enters 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 declaration.
Ibid. s. 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, 1900. A.B.

Made and subscribed in the presence of
Such declaration shall be annexed to the award when made.

(2) If any arbitrator or umpire having made such declaration wilfully acts contrary thereto he shall be guilty of a misdemeanour.

Breach of declaration.

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

Costs of arbitration.
Ibid. s. 51.

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

Where award is less than one-third of claim.

(3)

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(3) If either party is 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. Taxation.

112. The arbitrators shall deliver their award in writing to the Constructing Authority. Award to be delivered to the Constructing Authority.

The Constructing Authority 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. 51 Vic. No. 37, s. 52.

113. 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. *Ibid.* s. 53.

114. 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. *Ibid.* s. 54.

115. In any case where reference is 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. Power to refer back award. *Ibid.* s. 55.

116. (1) If the compensation awarded by the arbitrators exceeds the sum of three hundred pounds, and either party is dissatisfied with the award and desires to have the compensation settled by a jury, and, within fourteen days after the making of the award and notice thereof, signifies 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. *Ibid.* s. 56.

(2) Upon the trial of the said action, if the verdict is— Costs.

- (a) 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;
- (b) 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;
- (c) 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.

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

DIVISION 3.—*Basis of assessment.*

117. For the purpose of ascertaining the purchase money or compensation to be paid regard shall in every case 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) caused by the severing of the lands taken from other lands of the owner, or by the exercise of any statutory powers by the Constructing Authority otherwise injuriously affecting such other lands; and they shall assess the same according to what they find to have been the value of such lands, estate, or interest at the time notice was given, or notification published, as the case may be, and without being bound in any way by the amount of the valuation notified to such claimant, and without reference to any alteration in such value arising from the establishment of railway or other public works upon or for which such land was resumed. General provision as to compensation for land howsoever taken or acquired.
44 Vic. No. 16, s. 18.
45 Vic. No. 26, s. 2.
51 Vic. No. 37, ss. 23 and 24.

Provided 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 the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of the authorised 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.

Provided also that in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel for water supply or sewerage or railway transit, no compensation shall be allowed or awarded unless— Proviso as to underground land resumed by Gazette notice for tunnel purposes.
44 Vic. No. 16, s. 18.

- (a) the surface of the overlying soil is disturbed; or
- (b) the support to such surface is destroyed or injuriously affected by the construction of such tunnel; or
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.

118. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken 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 Compensation where land alienated by the Crown.
44 Vic. No. 16, s. 10.
51 Vic. No. 37, ss. 23, 25.
conditional

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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 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.

DIVISION 4.—*Payment.*

119. (1) In all cases where compensation or costs are 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 authorised in that behalf, within one month after such amount was determined.

Compensation to be paid within one month.
44 Vic. No. 16, s. 16.
51 Vic. No. 37, ss. 23, 26.

Provided that in every such case the party claiming payment shall be bound to make out a title to the lands or interest in lands in respect of which he claims to the satisfaction of the Constructing Authority.

(2) If such compensation is payable in respect of land taken or acquired by notification in the Gazette, it shall bear interest at the rate of six per cent. per annum from the time of such notification.

Interest.

(3) All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Treasurer.

Payment, how made.

DIVISION 5.—*Absent owners of lands taken or acquired for authorised works.*

120. 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 New South Wales, 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 determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned.

Compensation to absent parties to be determined by a surveyor appointed by two Justices.
51 Vic. No. 37, s. 57.

121. (1) Upon application by the Constructing Authority to two justices, and upon such proof as satisfies them that any such party is, by reason of absence from New South Wales, 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.

Two justices to nominate a surveyor.
Ibid. s. 58.

(2) Such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Duties of surveyor.

122. (1) Before such surveyor and valuator enters upon the duty of making such valuation as aforesaid, he shall, in the presence of

Surveyor to make declaration.
Ibid. s. 59.

of

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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.

(2) If any such surveyor corruptly makes such declaration, or, having made such declaration, wilfully acts contrary thereto, he shall be guilty of a misdemeanour. Breach of declaration.

123. 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. Declaration to be annexed. 51 Vic. No. 37, s. 60.

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

PART VIII

Provisions applicable in every case where land is taken or acquired for authorised works.

DIVISION 1.—*Exercise of powers by Constructing Authority.*

125. The powers of taking, acquiring, or purchasing lands for authorised works by this Act conferred upon the Constructing Authority may be exercised by such Authority from time to time, and whether the particular work for which lands may have been taken, acquired, or purchased has actually been constructed or not. Powers of taking lands exercisable from time to time. Ibid. s. 33.

126. 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. Powers of sale and purchase of lands. Ibid. s. 37.

DIVISION 2.—*Conveyances.*

127. (1) Conveyances of lands to be purchased or taken for authorised works under the provisions of this Act may be according to the form in the Seventh 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. Form of conveyances. Ibid. s. 73. Seventh Schedule.

(2)

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(2) 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 have been purchased or compensated for by the consideration therein mentioned Effect of conveyance.

(3) Although terms of years are 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. Terms of years.

128. (1) The costs of all such conveyances shall be borne by the Constructing Authority. Costs of conveyances. 51 Vic. No. 37, s. 74.

(2) Such cost shall include all charges and expenses incurred on the part as well of the seller as of the purchaser Charges and expenses to be included in such costs.

(a) of all conveyances and assurances of any such lands and of any outstanding terms or interest therein; and

(b) of deducing, evidencing and verifying the title to such lands, terms and interests; and

(c) of making out and furnishing such abstracts and attested copies as the Constructing Authority may require; and

(d) all other reasonable expenses incident to the investigation, deduction and verification of such title.

129. (1) If the Constructing Authority and the party entitled to any such costs do 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 conveyance. Ibid., s 75.

(2) The Constructing Authority shall pay to the party entitled thereto the amount the said Master or other officer certifies to be due to such party in respect of such costs. In default of such payment any Judge of the Supreme Court may make an order for payment of the said amount of such costs which may then be recovered in the same way as any other costs payable under any order of the Supreme Court or a Judge thereof. Payment.

(3) 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 is disallowed. In the latter case the costs of such taxation shall be borne by the party whose costs are so taxed; and the amount of such costs of taxation shall be ascertained by the said Master or other officer, and deducted by him in his certificate of taxation. Costs of taxation.

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130. Notwithstanding the provisions of section one hundred and twenty-seven, or of any other section of this Act, after any lands which the Constructing Authority is by this Act authorised to take have been set out, ascertained, and finally appropriated for any of the purposes authorised 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.

Lands taken in pursuance of this Act to vest without conveyance.
51 Vic. No. 37, s. 76.

Provided that the Constructing Authority may, if he thinks fit in any case, demand such conveyance.

DIVISION 3.—Compulsory purchases.

131. 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 is willing and able to sell and convey the whole thereof.

Parties not to be required to sell part only of a building.
Ibid. s. 78.

132. (1) Whenever any lands, not being situated in a town or built upon, are so cut through and divided by an authorised work as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, then if the owner of such small parcel of land requires 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 has other land adjoining to that so left, into which the same can be thrown so as to be conveniently occupied therewith.

Owners of intersected lands may insist on sale.
Ibid. s. 79.

(2) If such owner has 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.

Or on land being thrown into adjoining land.

133. (1) Whenever any such land is so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert or such other communication between the land so divided as the Constructing Authority is, under the provisions of this Act compellable to make, then if

Constructing Authority may insist on purchase where expense of bridges, &c., exceed the value.
Ibid. s. 80.

(a) the owner of such lands has not other lands adjoining such piece of land; and

(b) such owner requires the Constructing Authority to make such communication,

the Constructing Authority may require such owner to sell to him such piece of land.

(2)

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(2) 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 provided for in Division 2 of Part VII of this Act 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.

Disputes as to value or expense.

DIVISION 4.—*Lands containing minerals.*

134. (1) Notwithstanding anything hereinbefore contained, 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 since the fifth day of June, one thousand eight hundred and eighty-eight, being the date of the passing of the Act fifty-one Victoria number thirty-seven, or under this Act, except only such portions thereof as are necessary to be dug or carried away or used in the construction of the works, unless the same have been expressly taken or purchased.

Constructing Authority not to be entitled to minerals. 51 Vic. No. 37, s. 114.

(2) 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.

Mines and minerals excepted from conveyances.

135. (1) If the owner, lessee or occupier of any mines or minerals lying under any authorised work or any work connected therewith, or within forty yards from the boundary thereof, is 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.

Working of mines on or near authorised work. *Ibid.* s. 115.

(2) Upon the receipt of such notice the Constructing Authority may cause such mines to be inspected by any person appointed by him for the purpose.

Inspection after notice.

(3) If it appears to the Constructing Authority that the working of such mines or minerals is likely to damage the authorised work, and if the Constructing Authority is 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.

Compensation.

(4) 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 provided in Division 2 of Part VII hereof.

Disputed compensation.

136. (1) If before the expiration of such thirty days the Constructing Authority does not state his willingness to treat with such owner, lessee or occupier for the payment of such compensation, he may work the said mines or any part thereof for which the Constructing Authority has not agreed to give compensation.

If Constructing Authority unwilling to purchase owner may work the mines. *Ibid.* s. 116.

Provided

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Provided that such work shall be done in a manner proper and necessary for the beneficial working of the mine, and according to the usual manner of working such mines in the district where the same are situate.

(2) If any damage or obstruction is occasioned to the authorised 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.

Damage or obstruction to authorised work by improper working of mines.

(3) If such repair or removal is not forthwith carried out by such owner, lessee or occupier, or, if the Constructing Authority thinks fit, without waiting for the same to be so carried out the Constructing Authority may carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by action in the Supreme Court.

Powers of Constructing Authority.

137. (1) If the working of any such mines under the authorised work or within the abovementioned distance therefrom is prevented as aforesaid, by reason of apprehended injury to such authorised work, the respective owners, lessees and occupiers of such mines and whose mines extend so as to lie on both sides of the authorised work may cut and make so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is so prevented, as may be requisite to enable them to ventilate, drain and work their said mines.

Mining communications.
51 Vic. No. 37, s. 117.

(2) 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 are 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.

Dimensions of communications.

138. (1) 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 authorised work—

Constructing Authority to make compensation for injury done to mines.

(a) all such additional expenses and losses as such owner, lessee or occupier incurs by reason of the severance of the lands lying over such mines by the authorised 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

Ibid. s. 118.

(b) for any minerals not taken or purchased by the Constructing Authority which cannot be obtained by reason of making or constructing and maintaining the authorised work.

(2) If any dispute or question arises 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.

Disputes as to amount of injury.

Public Works.

139. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has 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.
51 Vic. No. 37, s. 119.

140. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorised work the Constructing Authority, after giving twenty-four hours' notice in writing, may enter upon any lands, through, in, on or near which the authorised work is constructed, and wherein any such mines are being worked or are supposed so to be, and may enter into and return from any such mines or the works connected therewith. For that purpose such Authority may make use of any apparatus or machinery belonging to the owner, lessee or occupier of such mines, and may use all necessary means for discovering the distance from the authorised work 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
Ibid. s. 120.

141. If any such owner, lessee or occupier of any such mine refuses 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.
Ibid. s. 121.

142. (1) If it appears that any such mines have been worked contrary to the provisions of this Act, or any Act hereby repealed, the Constructing Authority may 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 authorised work and preventing injury thereto.

Mines worked contrary to this Act.
Ibid. s. 122.

(2) If, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe such authorised 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.

Powers of Constructing Authority.

DIVISION 5.—*Penalty.*

143. (1) If any person omits to shut and fasten any gate set up at either side of any authorised work for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the

Penalty on persons omitting to fasten gates.
Ibid. s. 111.

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carriages or cattle or other animals under his care have passed through the same, he shall be liable for every such offence to a penalty not exceeding ten pounds.

(2) Every such penalty may be recovered in a summary Procedure. way before any stipendiary or police magistrate or any two justices at the suit of any person authorised by the Constructing Authority.

PART IX.

Special provisions relating to railways.

144. (1) When any authorised work is a railway or tramway the Constructing Authority shall, before commencing such work, 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 are 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.

51 Vic. No. 37, s. 29.

(2) The Constructing Authority shall, by advertisement in the Gazette, give notice of such map or plan and book of reference, 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. If any such objection is 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 the Constructing Authority shall thereupon give notice in the Gazette of such confirmation with or without alterations as the case may be.

Notice and objection.

(3) 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

Deposit with clerks of petty sessions.

Public Works.

Authority shall be deposited with the clerk of petty sessions of the districts into or through which such railway or tramway is intended to be carried.

Such map or plan and book of reference, and such copies 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 is first published.

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.

(4) If any omission, misstatement, or erroneous description is 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 days' 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 authorised work in accordance therewith.

(5) 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 is at any time afterwards deemed by the Governor to be desirable, the like notices shall be given by the said Authority relative to the proposed deviation.

145. (1) This Act shall not prevent the owners or occupiers of lands adjoining any authorised work, when such authorised 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.

(2) 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.

(3)

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(3) 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 occupier or other person; but this enactment shall be subject to the following restrictions and conditions—

Constructing Authority not to take tolls on private branches.

- (a) no such branch railway shall run parallel to the authorised railway;
- (b) the Constructing Authority shall not be bound to make any such openings in any place which such Authority has 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.

146. When any authorised work is a railway the lands to be taken or used for such authorised work shall not exceed one hundred yards in width except where a greater width is 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.
51 Vic. No. 37, s. 113.

147. (1) The Constructing Authority in addition to the lands authorised to be compulsorily taken by such Authority may 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, 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.

In certain cases power to purchase or take lands for additional accommodation.
Ibid. s. 32.

All parties who, under the provisions hereinbefore contained would be enabled to sell and convey lands, may sell and convey the same under and for the purposes of this section.

(2)

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(2) 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 herein contained. Constructing Authority may take such lands compulsorily.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
44 Vic. No. 16 ...	Lands for Public Purposes Acquisition Act.	The whole.
45 Vic. No. 26 ...	Lands for Public Purposes Acquisition Act Amendment Act.	The whole.
51 Vic. No. 37 ...	Public Works Act of 1888 ...	The whole.
52 Vic. No. 26 ...	Public Works Act Amendment Act of 1889.	The whole.
53 Vic. No. 11 ...	Public Works (Committees' Remuneration) Act of 1889.	The whole.
Act No. 6, 1897 ...	Public Works Act Further Amendment Act of 1897.	The whole.

SECOND SCHEDULE.

Section 11.

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.

THIRD SCHEDULE.

Section 17.

(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

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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 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, 1900, (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, 1900, 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 section seventeen 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, 1900, 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.

FOURTH SCHEDULE.
PUBLIC WORKS ACT, 1900.

Section 41.

Offer and particulars of claim where land is 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

Public Works.

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 pounds, which sum I declare to be my full claim in respect of the matters aforesaid.

Dated this day of , 18 .

[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) "mortgage 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.

FIFTH SCHEDULE.

Section 95.

Notice of claim and abstract.

To the [here name the Constructing Authority or Crown Solicitor].

IN pursuance of the Public Works Act, 1900, 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.

*Public Works.**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—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)

This form, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Division I of Part V of this Act.

SIXTH SCHEDULE.

Section 98.

Notice of valuation.

To A.B., claimant in respect of the land hereunder described, taken under the Public Works Act, 1900.

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 _____ pounds.

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.

This form, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Division I of Part V of this Act.

SEVENTH SCHEDULE.

Section 127.

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, 1900, 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 _____

Memo. and Certificate to accompany the Public Works Bill.

THIS Bill consolidates the following Acts:—

44 Vic. No. 16;

45 Vic. No. 26;

51 Vic. No. 37;

52 Vic. No. 26;

53 Vic. No. 11;

No. 6, 1897.

Clause 46 (5). This appears to be quite unintelligible, and has been left untouched for explanation some day by the Supreme Court.

Clause 117. The reconciliation of the sections here dealt with has been found very troublesome, but the clause in its present form, after careful consideration, is considered to give effect to the intention of the Legislature. Some words have been added in consequence of the judgment in *Harris v. Lee*.

Clause 118. It was possibly open to argument, under the original section, that a small class of lands, *i.e.*, lands recently granted or recently conditionally purchased, and resumed for any other purpose than railway construction, did not come under these provisions, but there can be no doubt that the intention of the Legislature was that the operation of the sections should be general.

Clause 119. An inconsistency, which in all probability was never designed by the Legislature, has been left untouched, as to remove it might be going beyond the powers of the Commission. The result is that interest at six per cent. is payable by the Government on the amount of compensation where the land has been acquired by Gazette notification, but no interest is payable where the land has been acquired by notice to the parties.

Clause 140. The word "railway" in the last line but one was a mistake for "authorised work."

I certify that save as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Table 1

Table 1. Summary of the data used in the analysis.

The data were obtained from the following sources:

1. The first source was the National Health and Medical Research Council (NH&MRC) database.

2. The second source was the Australian Bureau of Statistics (ABS) database.

3. The third source was the Australian Institute of Health and Welfare (AIHW) database.

4. The fourth source was the Australian Institute of Family Studies (AIFS) database.

5. The fifth source was the Australian Institute of Social Science (AISS) database.

6. The sixth source was the Australian Institute of Social Research (AISR) database.

7. The seventh source was the Australian Institute of Social Research (AISR) database.

8. The eighth source was the Australian Institute of Social Research (AISR) database.

9. The ninth source was the Australian Institute of Social Research (AISR) database.

10. The tenth source was the Australian Institute of Social Research (AISR) database.

11. The eleventh source was the Australian Institute of Social Research (AISR) database.

12. The twelfth source was the Australian Institute of Social Research (AISR) database.

13. The thirteenth source was the Australian Institute of Social Research (AISR) database.

14. The fourteenth source was the Australian Institute of Social Research (AISR) database.

15. The fifteenth source was the Australian Institute of Social Research (AISR) database.

16. The sixteenth source was the Australian Institute of Social Research (AISR) database.

17. The seventeenth source was the Australian Institute of Social Research (AISR) database.

18. The eighteenth source was the Australian Institute of Social Research (AISR) database.

19. The nineteenth source was the Australian Institute of Social Research (AISR) database.

20. The twentieth source was the Australian Institute of Social Research (AISR) database.

Public Works Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
44 VICTORIA No. 16.		
1	.....	Short title.
2	.....	Repeal.
3	.....	Repeal.
4	34, 94 (2)	
5	.....	Operation exhausted and obsolete.
6	34, 36	
7	35	
8	4, 34, 37	
9	38	
10	94 (1)	
11	39	
12	95	
13	96	
14	97	
15	.....	Repealed, 45 Vic. No. 26, s. 1.
16	119	
17	98	
18	117	
19	73	
20	44	
21	45, 46	
22	91 (2)	
23	47-73, 75-88	
24	40	
45 VICTORIA No. 26.		
1	.....	Repeal.
2	99, 117	
3	Fifth Schedule.	
4	.....	Short title.
51 VICTORIA No. 37.		
1	.....	Short title.
2	3	
3	6	
4	7	
5	8, 9	
6	11	
7	12	
8	13	
9	14	
10	16, 17	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
51 VICTORIA No. 37— <i>continued.</i>		
11	18	
12	19	
13	28	
14	29	
15	30	
16	31, 32	
17	5	
18	28 (2)	
19	33	
20	36	
21	4, 37	
22	38	
23	39, 40, 75, 94-98, 117, 118, 119	
24	117	
25	118	
26	119	
27	73	
28	74	
29	144	
30	41	
31	44	
32	147	
33	125	
34	89	
35	90	
36	45	
37	126	
38	42	
39	43	
40	100	
41	101	
42	102	
43	103	
44	104	
45	105	
46	106	
47	107	
48	108	
49	109	
50	110	
51	111	
52	112	
53	113	
54	114	
55	115	
56	116	
57	120	
58	121	
59	122	
60	123	
61	124	
62	47	
63	48	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
51 VICTORIA No. 37— <i>continued.</i>		
64	49	
65	50	
66	51	
67	52	
68	53	
69	54	
70	55	
71	56	
72	57	
73	125	
74	128	
75	129	
76	130	
77	58	
78	131	
79	132	
80	133	
81	59	
82	60	
83	61	
84	62	
85	63	
86	64	
87	65	
88	66	
89	67	
90	68	
91	69	
92	70	
93	71	
94	72	
95	91	
96	92, 93	
97	75	
98	76	
99	77	
100	78	
101	79	
102	80	
103	81	
104	82	
105	83	
106	84	
107	85	
108	86	
109	87	
110	88	
111	143	
112	145	
113	146	
114	134	
115	135	
116	136	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
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51 VICTORIA No. 37— *continued.*

117	137	
118	138	
119	139	
120	140	
121	141	
122	142	

52 VICTORIA No. 26.

1	.....	Short title.
2	6	
3	6	
4	8	
5	9	
6	10	
7	20	
8	21	
9	22	
10	23	
11	15	

53 VICTORIA No. 11.

1	.....	Short title.
2	24, 27	
3	25	
4	26 (1) (2)	
5	26 (3)	

ACT No. 6, 1897.

1	.....	Short title.
2	6	
3	8	
4	24, 26 (3)	
5	.....	Operation exhausted.

Legislative Council.

No. , 1900.

A BILL

To consolidate the Acts relating to Public Works.

[MR. F. B. SUTTON;—23 August, 1900.]

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.

Repeal and interpretation.

1. This Act may be cited as the "Public Works Act, 1900," Short title. and is divided into Parts and Divisions, as follows:—

PART I.—*Preliminary*—ss. 1-5.

c 70—A

PART

PART II.—*The Parliamentary Standing Committee on Public Works—*

DIVISION 1.—*Constitution of and general provisions relating to the committee—ss. 6-15.*

DIVISION 2.—*Powers of the committee—ss. 16-19.*

DIVISION 3.—*Sectional committees—ss. 20-23.*

DIVISION 4.—*Committees' remuneration—ss. 24-27.*

PART III.—*Public works, how authorised and how contracts made—ss. 28-32.*

PART IV.—*Preliminary conditions relating to the acquisition of land—ss. 33-35.*

PART V.—*Methods of acquisition of land—*

DIVISION 1.—*The acquisition of land by Gazette notification—ss. 36-40.*

DIVISION 2.—*The acquisition of land by notice to the parties—ss. 41-43.*

PART VI.—*Provisions applicable to every case where land is taken or acquired under this Act—*

DIVISION 1.—*Purchase of lands—ss. 44-57.*

DIVISION 2.—*Refusal to deliver possession of lands—s. 58.*

DIVISION 3.—*Mortgages and charges—ss. 59-68.*

DIVISION 4.—*Leases—ss. 69-72.*

DIVISION 5.—*Powers and duties of Constructing Authority—ss. 73-90.*

DIVISION 6.—*Superfluous lands—ss. 91-93.*

PART VII.—*Compensation—*

DIVISION 1.—*Procedure where land is taken or acquired by Gazette notification—ss. 94-99.*

DIVISION 2.—*Procedure where land is taken or acquired by notice to the parties.*

(i) *Disputed compensation—s. 100.*

(ii) *Proceedings before Justices—s. 101.*

(iii) *Proceedings by arbitration—ss. 102-116.*

DIVISION 3.—*Basis of assessment—ss. 117-118.*

DIVISION 4.—*Payment—s. 119.*

DIVISION 5.—*Absent owners of lands taken or acquired for authorised works—ss. 120-124.*

PART VIII.—*Provisions applicable in every case where land is taken or acquired for authorised works—*

DIVISION 1.—*Exercise of powers by Constructing Authority—ss. 125, 126.*

DIVISION

DIVISION 2.—*Conveyances*—ss. 127–130.

DIVISION 3.—*Compulsory Purchases*.—ss. 131–133.

DIVISION 4.—*Lands containing minerals*—ss. 134–142.

DIVISION 5.—*Penalty*—s. 143.

PART IX.—*Special provisions relating to railways*—ss. 144–147.

2. (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.

Repeal.
Schedule.

(2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.

Officers under Acts
hereby repealed.

(3) All regulations made under the authority of any Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to have been made under the authority of this Act; and any references in any such regulation to any enactments hereby repealed shall be construed as references to the corresponding enactments contained in this Act.

Regulations under
Acts hereby repealed.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.
51 Vic. No. 37, s. 2.

“Authorised work” means any work the carrying out of which has been authorised in manner herein provided, and includes any work so authorised under any Act hereby repealed.

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

“Constructing authority” means the Minister of the Crown empowered to carry out any authorised work; and 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 any Government stock issued by the Government of New South Wales pursuant to any statutory power.

“Justice” means any justice of the peace.

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

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

4. For the purpose of facilitating the acquisition and disposal of land under this Act the Constructing 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, 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.

Incorporation of
Constructing
Authority.
44 Vic. No. 16, s. 8.
51 Vic. No. 37, s. 21.

5.

Regulations.

51 Vic. No. 37, s 17.

5. 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 force of law and copies thereof shall be laid before Parliament within fourteen days after such publication if Parliament is then in session, and if not, then within fourteen days after the commencement of the next session of Parliament.

PART II.

*The Parliamentary Standing Committee on Public Works.*DIVISION 1.—*Constitution of and general provisions relating to the committee.*

Constitution of
Parliamentary
Committee on Public
Works.

Ibid. s. 3.52 Vic. No. 26,
ss. 2 and 3.

No. 6 of 1897, s. 2.

6. (1) As soon as practicable after the commencement of the first 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. Three of the persons so to be appointed shall be members of the Legislative Council, and four shall be Members of the Legislative Assembly.

Term of office.

(2) Such seven persons shall hold office as a joint committee (subject to the provisions in the next following section contained) for the duration of the Parliament for the time being, but shall cease to hold office as soon as such Parliament expires by dissolution or effluxion of time; 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.

Names of members
to be notified.

(3) 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.

51 Vic. No. 37, s. 4.

7. (1) 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—

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

(b) by his acceptance of any office of profit under the Crown.

How filled.

(2) On the occurrence of any such vacancy the same shall be filled upon motion in the usual manner.

Provided

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.

8. Any three members of the committee 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.

51 Vic. No. 37,
s. 5 (II).

52 Vic. No. 26, s. 4.
No. 6 of 1897, s. 3.

Provided that no quorum shall consist exclusively of members of the Legislative Council or of the Legislative Assembly.

9. 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.

51 Vic. No. 37,
s. 5 (I).

Provided that at any meeting of the committee at which a quorum is present, the members in attendance, may, in the absence of the chairman and vice-chairman, appoint one of their number then present to be temporary chairman, and such temporary chairman shall have, during the absence of the chairman and vice-chairman, all the powers given by this Act to the chairman or vice-chairman of the committee.

Provision for absence of chairman and vice-chairman.

52 Vic. No. 26, s. 5.

10. (1) All questions which arise in any committee shall be decided by a majority of votes of the members present, and when the votes are equal the chairman shall have a second or casting vote.

Division—Casting vote.

Ibid. s. 6.

(2) In all cases of divisions the names of the persons voting shall be stated on the minutes and in the report.

Record of votes.

11. 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 Second-Schedule hereto.

Declaration of members of committee.

Second Schedule.

51 Vic. No. 37, s. 6.

12. The committee may sit and transact business during any adjournment or recess as well as during the session, 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.

Ibid. s. 7.

13. 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.

Reports.

Ibid. s. 8.

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

Minutes.

Ibid. s. 9.

15. Where any public work is referred to any committee, and such committee lapses or ceases to have legal existence, before it reports

Evidence taken before previous committees.

52 Vic. No. 26, s. 11.

reports on such public work, the evidence taken before such committee and before any sectional committee shall, nevertheless, be considered by any subsequent committee to whom the same public work may be referred for report pursuant to this Act as if such evidence had been given before and for the information and guidance of such subsequent committee.

DIVISION 2.—*Powers of the committee.*

Powers of
committee.
51 Vic. No. 37,
s. 10.

16. For the purposes of this Act the committee shall have the following powers, that is to say—

- (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.

Powers of committee
in respect of
witnesses.
Ibid.

17. (1) If any person—

- (a) whose expenses have been paid or tendered to him neglects to appear ; or
- (b) wilfully insults the committee or any member thereof ; or
- (c) misbehaves himself before the committee ; or
- (d) interrupts the proceedings of the committee ; or
- (e) being summoned or examined as a witness in any inquiry or matter pending before the committee, refuses to be sworn, or to produce any document mentioned in the summons served upon him, or to make a solemn declaration as aforesaid, or prevaricates in his evidence, or refuses to answer any lawful question,

the chairman or vice-chairman may commit any such offender to gaol for any time not exceeding one month, or may impose upon him

him a fine not exceeding fifty pounds and in default of immediate payment thereof may commit such offender to gaol for any time not exceeding one month unless the fine is sooner paid.

In any such case of committal the chairman or vice-chairman shall issue a warrant in the Form A contained in the Third Schedule hereto, and such warrant shall be good and valid 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 is addressed shall obey it.

(2) 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 fails to appear in obedience to his summons, the chairman or vice-chairman, upon proof of such person having been duly served with such summons, and 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 Form B of the Third Schedule hereto to bring such person before the committee to give evidence.

(3) 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.

18. (1) The committee may, 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.

(2) There shall be paid to such assessors such remuneration as the committee may recommend and the Governor may approve and as Parliament may provide.

19. The committee shall, subject to the provisions contained in the twenty-eighth section hereof, consider and report upon all public works (except fortifications and works connected with the military or naval defence of New South Wales) 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.

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

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.

DIVISION 3.—*Sectional committees.*

Sectional committees may be appointed. 52 Vic. No. 26, s. 7. **20.** (1) The committee may at any meeting constitute sectional committees of itself for all purposes of this Act by appointing three or more of its members to be a sectional committee.

Powers of sectional committee. (2) Every sectional committee shall have, and may exercise, for the purpose of carrying out any business or inquiry delegated to them by the committee either at or after the time of their appointment, all the powers by this Act conferred on the committee, and shall sit in open court.

Chairman. (3) Every sectional committee shall appoint a chairman or temporary chairman, who shall be the person to exercise the powers conferred by this Act on, or in the name of, the chairman or vice-chairman of the committee.

Further powers of sectional committee. *Ibid.* ss. 6, 8. **21.** The powers and provisions respectively conferred by and contained in the tenth, twelfth, sixteenth, seventeenth, and eighteenth sections of this Act shall be exercisable by and applicable to every sectional committee appointed as aforesaid.

Reports of sectional committee. *Ibid.* s. 9. **22.** Every such sectional committee shall make its report as soon as practicable to the committee, of and in respect to all matters delegated to it by such committee; and such report with any evidence taken by such sectional committee shall be dealt with by the committee in all respects, so far as possible, as reports of select committees are dealt with by the Legislative Assembly.

Limit of number of sectional committees, &c. *Ibid.* s. 10. **23.** Not more than two sectional committees shall be appointed or shall sit at the same time; but the committee may sit at any time notwithstanding that any such sectional committee or committees may be sitting at the same time.

DIVISION 4.—*Committees' remuneration.*

Fees to be paid to members of the committee. 53 Vic. No. 11, s. 2. No. 6, A.D. 1897, s. 4. **24.** The members of every committee shall each receive, by way of remuneration for their services as such members, a fee for each attendance at a summoned meeting of such committee at which a quorum was present, according to the following scale:—

- (a) the chairman, or member presiding at any meeting in his absence, three guineas for each sitting;
- (b) every other member, two guineas for each sitting:

25. The fees made payable under this division shall be charged on the consolidated revenue fund, and the certificate of the chairman or vice-chairman of the committee shall be a sufficient warrant, and authority, and discharge to the Treasurer for the payment of such fees from such fund.

Fees to be a charge on consolidated revenue.
53 Vic. No. 11, s. 3.

26. (1) In addition to the sum payable to every member of the committee as a sitting fee, he shall be paid a further sum of thirty shillings per diem on account of expenses incurred by him in, and in the course of, travelling, whether by land or water, whenever such expenses and charges have been incurred bona fide in the performance of his duties as a member of such committee, whilst outside the boundaries of the county of Cumberland.

Travelling expenses.
Ibid. s. 4.

(2) Such expenses and charges shall be chargeable in the same manner, and be paid by the same person, and on the like certificate, and in other respects in like manner as in the case of fees for sittings.

How paid.

(3) In all cases in which a sectional committee of the committee is engaged in the inspection of any public works outside the county of Cumberland, each day or part of a day occupied in such inspection shall be deemed to constitute one attendance of such committee, and to entitle each member thereof to a fee of two guineas.

Meetings of sectional committee outside county of Cumberland.
Ibid. s. 5.
No. 6, A.D. 1897, s. 4.

27. Nothing in this Division of this Act shall be taken to constitute the office of any member of the said committee an office of profit, so as to render such member incapable of sitting or voting as a Member of the Legislature, or to make void the election of such member.

Office of profit.
53 Vic. No. 11, s. 2.

PART III.

Public Works how authorised and how contracts made.

28. (1) No public work of any kind whatsoever (except as excepted in the nineteenth section hereof, and except such works as the Railway Commissioners are authorised to carry out pursuant to the Government Railways Act of 1888), the estimated cost of completing which exceeds twenty thousand pounds, and whether such work is a continuation, completion, repair, reconstruction, extension, or a new work, shall be commenced, unless sanctioned as hereinafter provided:—

Conditions precedent to commencing Public Works.
51 Vic. No. 37, s. 13.

- (a) 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

together with such plans and specifications or other descriptions as the Minister deems 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. Such estimate, plans, specifications or descriptions shall be prepared and be authenticated or verified in the prescribed manner.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 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.

Governor may extend Act to works to cost less than twenty thousand pounds.

51 Vic. No. 37, s. 13.

(2) Provided that the Governor may, with respect to any public work the estimated cost of which does not exceed twenty thousand pounds, direct that the same shall be carried out under this Act, in which case all the powers and provisions of this Act relating to authorised works shall be applicable to such work, and the same shall for all purposes of this Act be deemed to be an "authorised work," and the Railway Commissioners or Minister on whom the carrying out of such work devolves shall for the like purposes be deemed a "Constructing Authority."

Notification of resolution.

Ibid. s. 14.

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

30. 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 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.

51 Vic. No. 37, s. 15.

31. 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 authorisation 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.

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

Ibid. s. 16.

Provided that no such contracts shall exceed in the aggregate by more than ten per centum the estimate for the same submitted as hereinbefore provided.

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

Contracts how made.

Ibid. s. 16.

- (a) 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;
- (b) 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;
- (c) 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.

(2) All such contracts so made 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

Effect of contracts.

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.

PART IV.

Preliminary conditions relating to the acquisition of land.

Taking of lands for
authorised works.
51 Vic. No. 37, s. 19.

33. The Governor may direct that any land required in his opinion for any authorised work may be acquired either by taking the same under the provisions contained in Division 1 of Part V of this Act or under the provisions contained in Division 2 of the said Part. Thereupon, subject to the provisions of this Act, the land so required may be acquired in the manner directed, and the compensation for such land shall be ascertained and dealt with in all respects pursuant to the provisions of this Act applicable in either case respectively.

Taking of lands for
public purposes other
than authorised
works.
44 Vic. No. 16, ss. 4, 6.

34. (1) Whenever, in the case of a work other than an authorised work—

- (a) Parliament has appropriated a sum of money out of the Consolidated Revenue Fund for or towards the construction, establishment, or carrying out of any of the public works or undertakings in the next section specified; or
- (b) the Governor has sanctioned the carrying out of any such work or undertaking for or towards the completion of which public funds are lawfully available; or
- (c) the Governor has sanctioned the acquisition of any lands for school sites;

the land required may be acquired or resumed, and the compensation therefor shall be ascertained and dealt with in all respects as if the Governor had directed under the last preceding section that such land should be acquired or resumed under the provisions contained in Division 1 of Part V of this Act, and in every such case every provision of this Act applicable upon such direction of the Governor shall, unless the same relates exclusively to authorised works, apply.

Interpretation.

(2) Provided that in the application of the said provisions of this Act to the acquisition or resumption of land under this section the expression "the Constructing Authority" as and when used in any such provision shall mean—

- (a) the Minister for Public Works with relation to lands acquired or resumed for any other purpose than the establishment of public or other schools; or
- (b) the Minister for Public Instruction as well as any other responsible Minister of the Crown charged with the administration of the Department of Public Instruction.

(3)

(3) The provisions of section four of this Act as to incorporation shall apply in every case of subdivision (a) of the preceding subsection but shall not apply in any case of subdivision (b). Incorporation.

35. The following shall for the purposes of the last preceding section be deemed to be public works and undertakings, that is to say:— Public works, &c., specified.
44 Vic. No. 16, s. 7.

- (a) works for and in connection with the supply of water to or for the sewerage of any city, town, or district;
- (b) fortifications and all other works of defence, including depôts, stations, military roads, and any other works in connection with such fortifications;
- (c) buildings for the occupation of either or both of the Houses of Parliament or for Public Offices;
- (d) hospitals, lunatic asylums, court-houses, gaols, watch-houses, lock-ups, police barracks or quarters;
- (e) Post or Telegraph Offices, mail stations, light-houses, observatories, pilot stations, quarantine stations or grounds, and customs stations;
- (f) public schools or any other schools authorised to be established wholly or in part at the public cost by any Act in force for the time being;
- (g) public libraries, mechanics' institutes, or schools of art;
- (h) public wharves, ferries, piers, jetties, and bridges;
- (i) public parks, or grounds for public recreation, or places for bathing, and for the reclamation of land for or in connection therewith;
- (j) public cemeteries;
- (k) public wells or works for the conservation of water;
- (l) the protection and preservation of any cave or place of scientific interest;
- (m) the establishment of public abattoirs;
- (n) breakwaters, leading marks or beacons for purposes of navigation, docks, slips, the protection of river banks, the excavation of new channels, landing-places for silt, and any other works for the improvement of harbours or rivers;
- (o) quarries, or works for procuring stone, gravel, earth, or any other material required for the construction of or any purpose connected with any such public work or undertaking as aforesaid.

For the purposes of this section any such named work or undertaking shall be taken to include any extension of, or approach to, or subsidiary work, in connection with any such named work or undertaking.

PART V.

*Methods of acquisition of land.*DIVISION 1.—*The acquisition of land by Gazette notification.*

Gazette notice.
51 Vic. No. 37, s. 20.
44 Vic. No. 16, s. 6.

36. For the purpose of carrying out any authorized work if the Governor directs that any land required for such work shall be taken under this Division of this 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 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.

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.

Effect of notification
on land therein men-
tioned.
51 Vic. No. 37, s. 21.
44 Vic. No. 16, s. 8.

37. 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.

Effect of notification
upon Crown land.
51 Vic. No. 37, s. 22.
44 Vic. No. 16, s. 9.

38. 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.

Estate of proprietor
of resumed land
vested in
Constructing
Authority.
44 Vic. No. 16, s. 11.
51 Vic. No. 37, s. 23.

39. (1) The estate and interest of every person entitled to lands resumed under this division of this Act or any portion thereof and whether to the legal or equitable estate therein shall by virtue of this Act be deemed to have been as fully and effectually conveyed to the Constructing

Constructing Authority as if the same had been conveyed by the persons legally or equitably entitled thereto by means of the most perfect assurances in the law.

(2) Every such estate and interest shall upon the publication of such notification as aforesaid be taken to have been converted into a claim for compensation in pursuance of the provisions hereinafter contained. And converted into claim for compensation.

(3) Every person shall upon asserting his claim as hereinafter provided and making out his title in respect of any portion of the said resumed lands be entitled to compensation on account of such resumption in manner hereinafter provided. Compensation.

40. (1) Whenever land is resumed under this Division of this Act, a copy of the Gazette notification declaring such land to be so resumed, certified under the hand of the Constructing Authority, shall in every case be lodged with the Registrar General and be registered by him in the general register of deeds, unless the land so resumed is wholly or in part comprised in a grant or a certificate of title under the Real Property Acts, in which case upon production of such notification so certified as aforesaid it shall be the duty of the Registrar General to deal with and give effect to such notification as if the same were a memorandum of transfer duly executed under the said Acts. Registration of resumption.
44 Vic. No. 16, s. 24.
51 Vic. No. 37, s. 23.

(2) A conveyance upon sale of any land authorised by subsection two of section ninety-one of this Act to be offered for sale by public auction may if the same is comprised in any memorandum of transfer under the said Acts be made by a like memorandum of transfer to be executed by the Constructing Authority as transferrer and the purchaser as transferee which shall have the like effect for all purposes of the said Acts as a memorandum of transfer thereunder. Conveyances.

(3) The Governor may make regulations prescribing the mode in which the provisions of this section shall be carried out by all persons concerned therewith. Regulations.

DIVISION 2.—*The acquisition of land by notice to the parties.*

41. (1) When in any case where the Governor has directed that any land required for any authorised work shall be acquired under this Division of this Act, and the map or plan and book of reference in the case of a railway or tramway, or the plan in case of any other authorised work, has 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 after diligent inquiry become known to the Constructing Authority. Notice of lands taken.
Ibid. s. 30.

(2)

Terms and effect of notice.

(2) Every such notice shall state the particulars of the lands so taken or required, 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 for the damage sustained or that may be sustained by them by the exercise of the powers conferred by this Act. The notice shall demand from such parties, and the said parties are hereby required to deliver forthwith to the Constructing Authority, in the prescribed form, the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and such other particulars 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.

Service of notices.
51 Vic. No. 37, s. 38.

42. 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 are absent from New South Wales, or cannot be found after diligent inquiry, such notices shall be left with the occupier of such lands, or, if there is no such occupier, shall be advertised not less than three times in one or more daily newspapers published in Sydney.

Settlement of compensation on failure to treat, &c.
Ibid. s. 39.

43. (1) If, for twenty-one days after the service of such notice, any such party—

- (a) omits to state the particulars of his claim in respect of any such land, or to treat with the Constructing Authority in respect thereof; or
- (b) fails 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 authorised work;

the amount of such compensation shall be settled in the manner hereinafter provided in Division 2 of Part VII for settling cases of disputed compensation.

When proceedings may be commenced.

(2) 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.

Claim to be made within two years.

(3) If no claim is 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.

PART VI.

Provisions applicable to every case where land is taken or acquired under this Act.

DIVISION 1.—Purchase of lands.

44. The Constructing Authority may agree with the owners of any lands by this Act authorised to be taken, and which are 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 are thought proper, and of all estates and interests in such lands of what kind soever.

45. All parties being seised, possessed of or entitled to any such lands or any estate or interest therein may sell and convey or release the same to the Constructing Authority for and on behalf of Her Majesty, and may enter into all necessary agreements for that purpose.

46. Any of the following parties so seised, possessed or entitled as aforesaid, that is to say—

- (a) all corporations,
- (b) tenants in tail or for life,
- (c) married women seised in their own right or entitled to dower,
- (d) guardians,
- (e) committees of lunatics and idiots,
- (f) trustees or feoffees in trust for charitable or other purposes,
- (g) executors, administrators,
- (h) 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,

may sell, convey, or release as in the preceding subsection mentioned.

(3) 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 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

Constructing Authority may purchase lands.

51 Vic. No. 37 s. 31.

44 Vic. No. 16. s. 20.

Parties enabled to sell and convey and exercise other powers.

51 Vic. No. 37 s. 36.

44 Vic. No. 16. s. 21.

Certain persons authorised to sell.

51 Vic. No. 37, s. 36.

44 Vic. No. 16, s. 21.

Extent of power of sale.

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.

Rent-charges and encumbrances.

(4) 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 encumbrance, shall extend to and may lawfully be exercised by every party by this Act enabled to sell and convey or release lands.

Compensation, how ascertained.

(5) The purchase money or compensation to be paid for any lands to be purchased or taken for authorised works 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 such lands shall not (except where the same has been determined by a surveyor under the provisions hereinafter contained) be less than shall be determined by two justices or by arbitrators in the manner hereinafter provided.

Purchase money payable to parties under disability amounting to £200 to be paid to Master in Equity.

51 Vic. No. 37, s. 62.

44 Vic. No. 16, s. 23.

47. (1) 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 amounts to or exceeds the sum of two hundred pounds, the same shall be paid into the hands of the Master in Equity.

Master to deposit the money.

(2) Such Master shall deposit such money to the account of the 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.

Applications of money deposited.

(3) Such money shall remain so deposited until the same are applied to some one or more of the following purposes, (that is to say)—

- (a) in the redemption of the quit rent, or the discharge of any debt or incumbrance affecting the land in respect of which such money has been paid, or affecting other lands settled therewith to the same or the like uses trusts and purposes; or
- (b) in the purchase of other lands or of Government debentures or other stock, to be conveyed, limited, and settled upon the like

like uses, trusts and purposes and in the same manner as the lands, in respect of which such money has been paid, were settled; or

- (c) if such money has been paid in respect of any buildings taken under the authority of this Act, or injured by the proximity of any authorised work,—in removing or replacing such buildings or substituting others in their stead, in such manner as the Supreme Court or the Chief Judge in Equity shall direct; or
- (d) in payment to any party becoming absolutely entitled to such money.

48. (1) 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 was deposited.

Order for application of money.

51 Vic. No. 37, s. 63.
44 Vic. No. 16, s. 23.

(2) Until the money can be so applied, it may, upon the like order, be invested by the 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 investment meanwhile.

49. (1) If such purchase money or compensation does not amount to the sum of two hundred pounds, and exceeds the sum of twenty pounds, the same shall be paid either 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 to two trustees.

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

51 Vic. No. 37, s. 64.
44 Vic. No. 16, s. 23.

(2) Such trustees shall be nominated by the parties entitled to the rents or profits of the lands in respect whereof the money is payable, such nomination to be signified by writing under the hands of the party so entitled. In case of the incapacity by coverture, infancy, lunacy, or otherwise of the parties entitled to such moneys, such nomination may be made by their respective husbands, guardians, committees or trustees.

Nomination of trustees.

(3) Payment of such moneys shall not be made to such trustees unless the Constructing Authority approves thereof and of the trustees named for the purpose.

Payment to trustees.

(4) 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.

Powers of trustees.

50. If such money does not exceed the sum of twenty pounds, it shall be paid to the parties entitled to the rents and profits of the lands in respect of which it is payable, for their own use and benefit;

Sums not exceeding £20 to be paid to parties.

51 Vic. No. 37, s. 65.

Or, 44 Vic. No. 16, s. 23.

or, in case of the incapacity, as in the last preceding section, of such parties, such money shall be paid for their use to the respective husbands, guardians, committees or trustees of such parties.

All sums payable under contract with persons not absolutely entitled to be paid to Master in Equity or trustees.
51 Vic. No. 37, s. 66.
44 Vic. No. 16, s. 23.

51. (1) All sums of money exceeding twenty pounds 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 is not entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid to the Master in Equity or to trustees, in manner aforesaid.

(2) No such person shall 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 that it shall be in the discretion of the Judges of the Supreme Court, or the Chief 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.

Payments made under this Act sufficient discharge to the Constructing Authority.
51 Vic. No. 37, s. 67.
44 Vic. No. 16, s. 23.

52. Any payment 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.

Court of Equity may direct application of money in respect of leases or reversions as they may think just.
51 Vic. No. 37, s. 68.
44 Vic. No. 16, s. 23.

53. Where any purchase money or compensation paid or deposited pursuant to this Act has been paid in respect of—

- (a) any lease for a life or lives or years, or for a life or lives and years; or
- (b) any estate in lands less than the whole fee simple thereof; or
- (c) 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 have had from the lease, estate or reversion, in respect of which such money has been paid, or deposited, or as near thereto as may be.

54. 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—

- (a) refuses to accept the same; or
- (b) neglects or fails to make out a title to such lands or to the interest therein claimed by him, to the satisfaction of the Constructing Authority; or
- (c) refuses to convey or release such lands as directed by the Constructing Authority; or
- (d) is absent from New South Wales, or cannot after diligent inquiry be found,

the Constructing Authority may, if he thinks 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.

55. 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 was 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 seems 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 interests of the parties making claim to such money or lands or any part thereof, and may make such other order in the premises as to such Court or Judge seems fit.

56. If any question arises respecting the title to the lands, in respect whereof such money was 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 is shown to the satisfaction of the court; and unless, upon such inquiry as the court thinks fit to direct, the contrary is 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.

57. In all cases of moneys deposited under the provisions of this Act, except where such moneys were so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same are payable,

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

51 Vic. No. 37, s. 69.

44 Vic. No. 16, s. 23.

Application of moneys so deposited.

51 Vic. No. 37, s. 70.

44 Vic. No. 16, s. 23.

Party in possession to be deemed the owner.

51 Vic. No. 37, s. 71.

44 Vic. No. 16, s. 23.

Costs in case of money deposited.

51 Vic. No. 37, s. 72.

44 Vic. No. 16, s. 23.

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—

- (a) of the purchase or taking of the lands or which were incurred in consequence thereof, other than such costs as are herein otherwise provided for; and
- (b) of the investment of such moneys in Government debentures or real securities and of the re-investment thereof in the purchase of other lands; and
- (c) of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys are invested, and for the payment out of court of the principal of such moneys or of the securities whereon the same are invested; and
- (d) of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

Provided that the costs of one application only for re-investment in land shall be allowed, unless it appears 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 thinks fit, order the costs of any such investments to be paid by the Constructing Authority.

DIVISION 2.—*Refusal to deliver possession of lands.*

Proceeding in case of
refusal to deliver
possession of lands.
51 Vic. No. 37, s. 77.
44 Vic. No. 16, s. 23.

58. (1) If, in any case in which, according to the provisions of this Act, the Constructing Authority is authorised to enter upon and take possession of any lands required for the purpose of the authorised work, the owner or occupier of any such lands or any other person refuses to give up possession thereof or hinders the Constructing Authority from entering upon or taking possession of the same, such Authority may issue their warrant to the Sheriff to deliver possession of the same to the person appointed in such warrant to receive the same.

(2) Upon the receipt of such warrant the Sheriff shall deliver possession of 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 is payable to such party, or if the

Execution of
warrant.
Costs.

the same is 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.

DIVISION 3.—*Mortgages and charges.*

59. (1) The Constructing Authority may purchase or redeem the interest of the mortgagee of any lands required for the purposes of this Act; and that whether he has previously purchased the equity of redemption of such lands or not; and whether the mortgagee is entitled thereto, in his own right or in trust for any other party; and whether he is in possession of such lands by virtue of such mortgage or not; and whether such mortgage affects such lands solely or jointly with any other lands not required for the purposes of this Act.

Power to redeem mortgages.
51 Vic. No. 37, s. 81.
44 Vic. No. 16, s. 23.

(2) 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.

Procedure.

(3) 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 has given any such notice, or if the party entitled to the equity of redemption of any such lands has 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.

Notice.

60. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee fails to convey or release his interest in such mortgage as directed by the Constructing Authority, or if he fails to adduce a good title thereto to his satisfaction, then the Constructing Authority may 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 is made before the expiration of six months' notice as aforesaid, such further interest as would at the time become due;

Deposit of mortgage money on refusal to accept.
51 Vic. No. 37, s. 82.
44 Vic. No. 16, s. 23.

due; and such Authority may also, if he thinks fit, execute a deed poll, containing a description of the lands in respect whereof such deposit was made, and describing the circumstances under which and the names of the parties to whose credit such deposit was 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.

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

51 Vic. No. 37, s. 83.

44 Vic. No. 16, s. 23.

61. (1) If any of such mortgaged lands are of less value than the principal, interest, and costs secured thereon, the value of such lands or the compensation to be made by the 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.

Procedure when parties fail to agree.

(2) 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.

Payment and release of mortgage.

(3) 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.

Deposit of money when refused on tender.

51 Vic. No. 37, s. 84.

44 Vic. No. 16, s. 23.

62. If, upon such payment or tender as aforesaid, any such mortgagee fails so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the Constructing Authority, the said Authority may 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.

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 he thinks 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.

Provided

Provided that 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 was not satisfied by such payment or deposit.

63. (1) If—

- (a) a part only of any such mortgaged lands is required for the purposes of this Act; and
- (b) the part so required is of less value than the principal money, interest and costs secured on such lands; and
- (c) the mortgagee does not consider the remaining part of such lands a sufficient security for the money charged thereon, or is not willing to release the part so required,

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

51 Vic. No. 37, s. 85.
44 Vic. No. 16, s. 23.

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.

(2) 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.

Procedure on failure of parties to agree.

(3) 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 debts, so far as the same will extend; and thereupon such mortgagee shall convey or release to the Constructing Authority or as he shall direct, all his interest in such mortgaged lands the value whereof has been so paid, and a memorandum of what has been so paid shall be endorsed on the deed creating such mortgage and shall be signed by the mortgagee, and a copy of such memorandum shall at the same time (if required) be furnished by the 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.

Payment and release of mortgage.

64. (1) 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 fails to convey or release to the Constructing Authority or as he shall direct, his interest in the lands, in respect of which such compensation has been so paid or tendered, or if he fails to adduce a good title thereto to the satisfaction of the Constructing Authority, such Authority may 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

Deposit of money when refused on tender.

51 Vic. No. 37, s. 86.
44 Vic. No. 16, s. 23.

full

full discharge of the portion of the mortgaged lands so required from all money due thereon; and also if he thinks fit, may 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.

Provided that 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.
51 Vic. No. 37, s. 87.
44 Vic. No. 16, s. 23.

65. If any difference arises between the Constructing Authority and the party entitled to any rent-service, rent-charge, chief or other rent or other payment or encumbrance 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 the purposes of this Act, the same shall be determined as in other cases of disputed compensation.

Release of part of
lands from rent-
charge.
51 Vic. No. 37, s. 88.
44 Vic. No. 16, s. 23.

66. If part only of the lands charged with any such rent-service, rent-charge, chief-rent or other rent-payment or incumbrance is 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 is not so settled by agreement, the same shall be settled by two justices. But if the remaining part of the lands so jointly subject is a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, the party entitled to such charge may release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Execution of release.
51 Vic. No. 37, s. 89.
44 Vic. No. 16, s. 23.

67. (1) 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.

Failure to release or
make a good title.

(2) If he fails so to do, or if he fails to adduce a good title to such charge to the satisfaction of the Constructing Authority, such Authority may 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

Master in Equity; and such Authority may also if he thinks fit 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 has been paid, shall cease and be extinguished.

68. (1) If any such lands or portions thereof are 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.

Charge to continue on lands not taken.
51 Vic. No. 57 s. 90.
44 Vic. No. 16 s. 23.

(2) If, upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge is 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 was purchased by virtue of this Act, and if the lands are released from part of such charge, what proportion of such charge was released, and how much thereof continues payable; or if the lands so required have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith. Such memorandum shall be made and executed at the expense of the Constructing Authority, and shall be evidence of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Constructing Authority to execute memorandum of release.

DIVISION 4.—Leases.

69. (1) If any lands are comprised in a lease for a term of years unexpired, and part only of such lands is 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 is taken the rent to be apportioned.
51 Vic. No. 37, s. 91.
44 Vic. No. 16, s. 23.

(2) 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 is not so settled by agreement between the parties, it shall be settled by two justices.

Apportionment, how made.

(3) 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 has been 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

Liability of lessee after apportionment is made.

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 not 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.
51 Vic. No. 37, s. 92.
44 Vic. No. 16, s. 23.

70. 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 authorised work.

Compensation to be made to tenants from year to year.
51 Vic. No. 37, s. 93.
44 Vic. No. 16, s. 23.

71. (1) If any lands are 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 is 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—

(a) where the whole of such lands is required 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

(b) if a part only of such lands is required, for the damage done to him in his tenancy, by severing the lands held by him or otherwise injuriously affecting the same.

Compensation, how determined.

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

Effect of payment of compensation.

(3) 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.
51 Vic. No. 37, s. 94.
44 Vic. No. 16, s. 23.

72. If any party having a greater interest than as tenant at will claims 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 is 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 is 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.

DIVISION

DIVISION 5.—*Powers and duties of Constructing Authority.*

- 73.** For the carrying out of any authorised work the Constructing Authority and all persons acting under such Authority—
- (a) may enter into and upon the lands and grounds of any person whomsoever, and survey and take levels of the same, and 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 authorised work, and all other works, matters, and conveniences connected therewith; Power to enter upon and take lands. 51 Vic. No. 37, s. 27. 44 Vic. No. 16, ss. 19, 23.
- (b) may in or upon such lands, or any lands adjoining or contiguous thereto, 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 dug, raised or obtained therein in constructing such authorised 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 authorised 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,
- (c) may 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 authorised 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 are considered necessary; construct inclined planes, tunnels, &c.,
- (d) may 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 may divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, streets, roads, or ways, or 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 authorised work, as may be thought proper; alter the course of rivers, &c., and of roads, &c., the level of any such rivers or streams,
- (e) may make drains or conduits into, through, or under any lands adjoining any authorised work, for the purpose of conveying water from or to the same; to make drains, &c.

(f)

to erect tollhouses,
warehouses, &c.,

alterations and
repairs.

Where work is in
forest lands, &c.

General power.

Constructing Authority may dedicate
highway.

51 Vic. No. 37, s. 28.

Power to take
temporary possession
of land.

51 Vic. No. 37, s. 97.

44 Vic. No. 16, s. 23.

Further powers.

(f) may in or upon any such authorised work or any lands adjoining or near thereto, 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;

(g) may alter, or repair, or discontinue the before-mentioned works of any of them and substitute others in their stead;

(h) where any authorised work is constructed in or passes through any wood lands or forest, may fell or remove any trees standing thereon, within the distance of fifty yards from either or every side of such work;

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

74. 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 highway.

Provided that no highway so dedicated shall exceed one chain in width.

75. (1) The Constructing Authority and all persons by him authorised may enter, from time to time, upon any lands—

(a) being within a distance of not more than two hundred yards from the nearest boundary of the authorised work, as delineated on the plans thereof; and

(b) not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted; and

(c) not being nearer to the dwelling-house of the owner of any such lands than a distance of five hundred yards,

and may occupy the said lands, as long as may be necessary for the construction, reconstruction, repair, alteration, addition to or extension of the authorised works or the works connected therewith, and may use the same for any of the following purposes (that is to say),—

(a) for the purpose of taking earth or soil by side cuttings therefrom;

(b) for the purpose of depositing soil thereon;

(c) for the purpose of obtaining materials therefrom for the construction, reconstruction, repair, alteration, addition to or extension of the authorised work or such other works as aforesaid;

(d) for the purpose of forming roads thereon to, or from, or by the side of the authorised work.

(2) In exercise of the powers aforesaid the Constructing Authority and all such persons may deposit, and also manufacture and

and work upon such lands materials of every kind used in constructing the authorised work, and also may take from any such lands any timber, and also dig and take from or out thereof any clay, stone, gravel, sand, or other things found therein, useful or proper for constructing the authorised work or any such roads as aforesaid, and for the purposes aforesaid may erect thereon workshops, sheds, and other buildings of a temporary nature.

(3) 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. Action for nuisance.

(4) Provided that no stone or slate quarry, brickfield, or other like place which, at the time of the passing of this Act is 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. Proviso.

76. If any such lands are 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 deems necessary for the purposes aforesaid. Authority to separate the lands before using them. 51 Vic. No. 37, s. 98. 44 Vic. No. 16, s. 23.

77. In any of the cases aforesaid, where the Constructing Authority takes temporary possession of lands by virtue of the powers herein granted, such Authority shall— Compensation to be made for temporary occupation. 51 Vic. No. 37, s. 99. 44 Vic. No. 16, s. 23.

- (a) within one month after his entry upon such lands, upon being required to do so, 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;
- (b) 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 agreed upon by the parties, or, if they cannot agree, to be fixed by two justices;
- (c) within six months after he has 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

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, how
ascertained.
51 Vic. No. 37, s. 100.
44 Vic. No. 16, s. 23.

78. 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.
51 Vic. No. 37, s. 101.
44 Vic. No. 16, s. 23.

79. If the authorised work crosses any public highway or carriage road, then such authorised 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 have been previously notified, and have been approved of by the Governor.

Before roads
interfered with
others to be
substituted.
51 Vic. No. 37, s. 102.
44 Vic. No. 16, s. 23.

80. If, in the exercise of the powers hereby granted, it is 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.
51 Vic. No. 37, s. 103.
44 Vic. No. 16, s. 23.

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

Period for restorat'on
of roads interfered
with.
51 Vic. No. 37, s. 104.
44 Vic. No. 16, s. 23.

82. (1) If the road so interfered with can be restored compatibly with the formation and use of the authorised work, the same shall, with all reasonable expedition, be restored to as good a condition as it was in at the time when it was first interfered with by the Constructing Authority or as near thereto as may be.

(2) If such a road cannot be restored compatibly with the formation and use of the authorised work, the Constructing Authority shall cause the new or substituted road or some other sufficient substituted road to be, with all reasonable expedition, put into a permanently substantial condition, equally convenient as the former road or as near thereto as circumstances will allow.

83. If the authorised work crosses 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 is a bridle-way, erect and at all times maintain good and sufficient gates, and if the same is a footway, good and sufficient gates or stiles on each side of the authorised work where the highway communicates therewith.

Constructing Authority to make sufficient approaches and fences to bridle-ways and footways crossing the line.
51 Vic. No. 37, s. 105.
44 Vic. No. 16, s. 23.

84. 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 authorised work, that is to say—

Works for benefit of owners.
51 Vic. No. 37, s. 106.
44 Vic. No. 16, s. 23.

- (a) such and so many convenient gates, bridges, arches, culverts, and passages over, under or by the sides of or leading to or from the authorised work as are necessary for the purpose of making good any interruptions caused by the authorised work to the use of the lands through, in, or upon which such authorised work is made or constructed; and such work shall be made forthwith after such authorised work or part of it passing over such lands has been laid out or formed or during the formation thereof;
- (b) sufficient posts, rails, hedges, ditches, mounds or other fences for separating the land, taken for or for the use of the authorised 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 authorised work; together with all necessary gates made to open towards such adjoining lands and not towards the authorised 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 so require, and such other works as soon as conveniently may be;
- (c) all necessary arches, tunnels, culverts, drains or other passages either over or under, or by the sides of the authorised 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 authorised work as before the making of the authorised work or as nearly so as may be; and such works shall be made from time to time as the authorised work proceeds.

Provided 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 authorised work; nor to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation instead of the making them.

Differences as to accommodation works to be settled by Governor.

51 Vic. No. 37 s. 107.
44 Vic. No. 16 s. 23.

Power to owners of lands to make additional accommodation works.

51 Vic. No. 37 s. 108.
44 Vic. No. 16 s. 23.

Such works to be constructed under the superintendence of the Constructing Authority's engineer.

51 Vic. No. 37, s. 109.
44 Vic. No. 16, s. 23.

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

51 Vic. No. 37, s. 110.
44 Vic. No. 16, s. 23.

As to damages.

51 Vic. No. 37, s. 34.

85. If any difference arises, 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.

86. If any of the owners or occupiers of lands affected by such authorised work considers 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, any such owner or occupier, at any time, at his own expense, may make such further works for that purpose as he thinks necessary, and as are agreed to by the Constructing Authority.

87. If the Constructing Authority so desires 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 authorised work, and according to plans and specifications to be submitted to and approved by the Constructing Authority.

Provided that 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.

88. Until the Constructing Authority has made the bridges or other proper communications which, under the provisions herein contained, it is required to make between lands intersected by the authorised work, and no longer, the owners and occupiers of such lands and any other person whose right-of-way is 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 authorised 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 authorised work or to damage the same.

Provided that if the owner or occupier of any such lands has, 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 authorised work.

89. 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

herein provided, to all persons interested in any lands or hereditaments which are taken, used, injured, or prejudicially affected, for all damages sustained by them by reason of the exercise of such powers.

90. Nothing in this Act 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 months from the time the Constructing Authority has given notice to such owner that the same is required under this Act.

Injuries to houses.
51 Vic. No. 37, s. 5.

DIVISION 6.—*Superfluous lands.*

91. (1) In case any of the lands taken under the provisions of this Act for authorised works are not required for the purposes of any authorised work, the Constructing 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 for authorised works to be sold.
Ibid. s. 95.

(2) In case any of the lands acquired or taken under the provisions of this Act for public purposes other than authorised works, are not required for such purposes, the Governor may cause such lands to be offered for sale by public auction, and may convey the same to the purchasers thereof in such manner and at such times and subject to such conditions as he thinks fit. The proceeds of all such sales shall be paid by the purchasers to the Treasurer and be by him carried to the credit of the consolidated revenue fund.

Sale of superfluous lands taken for public purposes other than authorised works.
44 Vic. No. 16, s. 22.

92. (1) Upon payment or tender to the Constructing Authority of the purchase money in respect of any sale under subsection (1) of the last preceding section, such Authority shall convey the lands, for and on behalf of Her Majesty to the purchasers thereof, by deed duly registered.

Lands to be conveyed to the purchasers.
51 Vic. No. 37, s. 96.

(2) A deed so executed and registered shall be effectual to vest the lands comprised therein in the said purchaser for the estate so purchased by him.

By deed registered.

93. 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.

Receipt.
Ibid. s. 96.

PART VII.

*Compensation.*DIVISION 1.—*Procedure where land is taken or acquired by Gazette notification.*

Compensation
for private lands
taken under Division
I of Part V of this
Act.

44 Vic. No. 16, s. 10.

51 Vic. No. 37, s. 23.

94. (1) Where the land described in any such notification as in section thirty-six hereof mentioned consists wholly or partly of land alienated by or not the property of the Crown, or is not Crown land, the owners thereof, or the persons who, but for the provisions hereinbefore contained, would have been such owners, shall be entitled to receive such sum of money by way of compensation for the land of which they have been deprived under this Act as shall be agreed upon or otherwise ascertained under the provisions of this Division of this Act.

Interpretation.
44 Vic. No. 16, s. 4.

(2) In this section the expression "Crown land" means all lands vested in Her Majesty, whether dedicated to any public purpose or not, and which have not been granted or contracted to be granted in fee simple.

Notice of claim for
compensation.

44 Vic. No. 16, s. 12.

51 Vic. No. 37, s. 23.

95. Every person claiming compensation in respect of any land resumed under any such notification, or in respect of any work or other matter done under the authority of this Act where there has been any such notification shall, within ninety days from the publication of such notification, or at any time afterwards within such time as a Judge of the Supreme Court shall, upon the application and at the cost of the claimant, appoint in that behalf, serve upon the Constructing Authority and upon the Crown Solicitor a notice in writing setting forth—

- (a) the nature of the estate or interest of the claimant in such land, together with an abstract of his title; and
- (b) if he claims in respect of damage, the nature of the damage which he has sustained or will sustain by reason of such resumption or work or matter as aforesaid.

Fifth Schedule.

Such notice may be in the form in the Fifth Schedule hereto, but with any modifications required by the nature of the claim.

Report on claim.

44 Vic. No. 16, s. 13.

51 Vic. No. 37, s. 23.

96. Within sixty days after the receipt of every such notice of claim by the Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority who shall thereupon (unless no prima facie case for compensation is disclosed) cause a valuation of the land or of the estate or interest of the claimant therein to be made in accordance with the provisions of this Act and shall inform the claimant as soon as practicable of the amount of such valuation by notice in the form of the Sixth Schedule hereto.

Sixth Schedule.

Compensation by
action in Supreme
Court.

44 Vic. No. 16, s. 14.

51 Vic. No. 37, s. 23.

97. (1) If within ninety days after the service of notice of claim the claimant and the Constructing Authority do not agree as to the

the amount of compensation the claimant may institute proceedings in the Supreme Court in the form of an action for compensation against the Constructing Authority as nominal defendant.

(2) Any such action may be tried before a Judge of the said Court or in any Circuit Court and a special jury of four persons.

Provided that upon application either of the Constructing Authority or of the claimant a special jury of twelve may be summoned for the trial of such action.

(3) Provided also that with the consent in writing of the Constructing Authority and the claimant any such action may be so tried at any time [to be mentioned in such consent] before the expiration of ninety days from service of the notice of claim for compensation but not within fourteen days from service of the notice of valuation on such claimant.

98. (1) A District Court shall, notwithstanding anything contained in the District Courts Act of 1858, have jurisdiction to try any such action of compensation at the District Court holden within the district wherein any land resumed under this Act (or the greater portion of such land) is situated, in any case where the whole amount of the claim in respect to such land served in pursuance of section ninety-five of this Act does not exceed two hundred pounds, or, if exceeding that amount, in any case where the Constructing Authority and the claimant, by a memorandum signed by them, or by such claimant's attorney and the Crown Solicitor, agree thereto.

District Courts to have jurisdiction in certain cases.
44 Vic. No. 16, s. 17.
51 Vic. No. 37, s. 23.

(2) For the purposes of this section the provisions of the said District Courts Act and of any Act amending the same, together with all rules made or to be made thereunder, shall be deemed to apply to all proceedings taken in any District Court hereunder.

District Court Act and rules.

99. (1) If the verdict in any action of compensation tried under the provisions of this Division of this Act is for a sum equal to or less than the amount of the valuation notified to the claimant, such claimant shall pay the costs of such action, but if for a greater sum the Constructing Authority shall pay such costs.

Action of compensation, provisions as to costs.
45 Vic. No. 26, s. 2.

(2) The Judge before whom any such action is tried shall in no case have power to direct a reference to arbitration.

No arbitration.

(3) Either party in any such action may move for a new trial, in accordance with the practice of the Supreme Court.

Appeal.

DIVISION 2.—Procedure where land is taken or acquired by notice to the parties.

(i) Disputed compensation.

100. Where the Governor directs that any lands may be acquired under the provisions contained in Division 2 of Part V hereof, and no agreement is come to between the Constructing Authority

Disputes as to compensation, how settled.
51 Vic. No. 37, s. 40.

Authority

Authority and the owners of, or parties by this Act enabled to sell and convey or release, any lands so taken, or required for any authorised 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 as hereinafter provided by—

- (a) two justices where such claim does not exceed one hundred pounds; or
- (b) arbitrators where such claim exceeds one hundred pounds.

(ii) *Proceedings before justices.*

Method of proceeding before Justices for settling disputes as to compensation.
51 Vic. No. 37 s. 41.

101. (1) With respect to any question of disputed compensation authorised by this Act to be settled by two justices, any justice may, upon the application of either party, 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.

Costs.

(2) The costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Provided that, if the amount awarded by the justices is 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 offered a less amount than the sum awarded.

(iii) *Proceedings by arbitration.*

Appointment of arbitrators.
Ibid. s. 42.

102. (1) When any question of disputed compensation or any disputed or other matter authorised or directed by this Act to be settled by arbitration arises, then, unless both parties 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.

How appointments to be made.

(2) 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 is a corporation, under the common seal of such corporation.

Appointment to be deemed submission.

(3) 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 is made; and, after any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party to such submission operate as a revocation thereof.

(4)

(4) If, after any such dispute or other matter has arisen, and after a request in writing setting forth the matter so required to be referred to arbitration has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fails 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.

Failure to appoint arbitrator.

103. (1) If, before the matter so referred is determined, any arbitrator appointed by either party dies, or becomes incapable to act as arbitrator, or refuses or for fourteen days neglects 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.

Vacancy of arbitrator to be supplied.
51 Vic. No. 37, s. 43.

(2) If, for the space of seven days after notice in writing from the other party for that purpose, such party fails to appoint a new arbitrator, the remaining or other arbitrator may proceed alone.

Failure to supply such vacancy.

(3) 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.

Powers and authorities of substituted arbitrator.

104. (1) Where more than one arbitrator has 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 matter on which they may differ, or which they may refer to him.

Appointment of umpire.
Ibid. s. 44.

(2) If such umpire dies or becomes incapable to act, or refuses, or for seven days neglects 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.

Substitution of umpire.

(3) The decision of every such umpire on the matter so referred to him shall, except as hereinafter provided, be final.

Decision of umpire.

105. If, in either of the cases aforesaid, the arbitrators refuse, or for seven days after request of either party to such arbitration neglect, to appoint an umpire, any Judge of the Supreme Court, on the application of either party to such arbitration, may appoint an umpire; and the decision of such umpire, on the matters on which the arbitrators differ, or which are referred to him shall, except as hereinafter provided, be final.

Appointment of umpire on refusal, &c., of arbitrators.
Ibid. s. 45.

106. If, when a single arbitrator has been appointed, such arbitrator dies or becomes incapable to act before he has made his award, or refuses or for fourteen days neglects 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.

Death of single arbitrator.
Ibid. s. 46.

When one arbitrator
may proceed alone.
51 Vic. No. 37 s. 47.

107. If, where more than one arbitrator has been appointed, either of the arbitrators refuses, or for fourteen days neglects to act, and where no substituted arbitrator has been appointed as hereinbefore provided, the other arbitrator may proceed alone. The decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Arbitrators to make
award within twenty-
one days.
Ibid. s. 48.

108. Where more than one arbitrator has been appointed, and where neither arbitrator has refused or neglected to act as aforesaid, then if such arbitrators fail to make their award within twenty-one days after the day on which the last of such arbitrators was appointed, or within such extended time (if any), not being greater in the whole than six months, as has 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.

Powers of arbitrators.
Ibid. s. 49.

109. 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.

Arbitrator or umpire
to make declaration.
Ibid. s. 50.

110. (1) Before any arbitrator or umpire enters 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, 1900. A.B.

Made and subscribed in the presence of
Such declaration shall be annexed to the award when made.

Breach of
declaration.

(2) If any arbitrator or umpire having made such declaration wilfully acts contrary thereto he shall be guilty of a misdemeanour.

Costs of arbitration.
Ibid. s. 51.

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

Where award is less
than one-third of
claim.

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

(3)

(3) If either party is 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. Taxation.

112. The arbitrators shall deliver their award in writing to the Constructing Authority. Award to be delivered to the Constructing Authority.

The Constructing Authority 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. 51 Vic. No. 37, s. 52.

113. 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. *Ibid.* s. 53.

114. 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. *Ibid.* s. 54.

115. In any case where reference is 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. Power to refer back award. *Ibid.* s. 55.

116. (1) If the compensation awarded by the arbitrators exceeds the sum of three hundred pounds, and either party is dissatisfied with the award and desires to have the compensation settled by a jury, and, within fourteen days after the making of the award and notice thereof, signifies 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. *Ibid.* s. 56.

- (2) Upon the trial of the said action, if the verdict is— Costs.
- (a) 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;
 - (b) 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;
 - (c) 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.

(3)

Costs of arbitration to be added to costs of action.

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

DIVISION 3.—*Basis of assessment.*

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

44 Vic. No. 16, s. 18.

45 Vic. No. 26, s. 2.

51 Vic. No. 37, ss. 23 and 24.

117. For the purpose of ascertaining the purchase money or compensation to be paid regard shall in every case 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) caused by the severing of the lands taken from other lands of the owner, or by the exercise of any statutory powers by the Constructing Authority otherwise injuriously affecting such other lands; and they shall assess the same according to what they find to have been the value of such lands, estate, or interest at the time notice was given, or notification published, as the case may be, and without being bound in any way by the amount of the valuation notified to such claimant, and without reference to any alteration in such value arising from the establishment of railway or other public works upon or for which such land was resumed.

Provided 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 the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of the authorised 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.

Proviso as to underground land resumed by Gazette notice for tunnel purposes.

44 Vic. No. 16, s. 18.

Provided also that in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel for water supply or sewerage or railway transit, no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed; or
- (b) the support to such surface is destroyed or injuriously affected by the construction of such tunnel; or
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.

Compensation where land alienated by the Crown.

44 Vic. No. 16, s. 10.

51 Vic. No. 37, ss. 23 and 25.

118. Notwithstanding anything in the last preceding section, the compensation to be paid for and in respect of any land acquired or taken 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

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 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.

DIVISION 4.—*Payment.*

119. (1) In all cases where compensation or costs are 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 authorised in that behalf, within one month after such amount was determined. Compensation to be paid within one month.
44 Vic. No. 16, s. 16.
51 Vic. No. 37,
ss. 23, 26.

Provided that in every such case the party claiming payment shall be bound to make out a title to the lands or interest in lands in respect of which he claims to the satisfaction of the Constructing Authority.

(2) If such compensation is payable in respect of land taken or acquired by notification in the Gazette, it shall bear interest at the rate of six per cent. per annum from the time of such notification. Interest.

(3) All moneys by this Act directed to be paid by the Constructing Authority shall be paid by warrant of the Governor addressed to the Treasurer. Payment, how made.

DIVISION 5.—*Absent owners of lands taken or acquired for authorised works.*

120. 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 New South Wales, 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 determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned. Compensation to be paid to absent parties to be determined by a surveyor appointed by two Justices.
51 Vic. No. 37, s. 57.

121. (1) Upon application by the Constructing Authority to two justices, and upon such proof as satisfies them that any such party is, by reason of absence from New South Wales, 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. Two justices to nominate a surveyor.
Ibid. s. 58.

(2) Such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof. Duties of surveyor.

122. (1) Before such surveyor and valuator enters upon the duty of making such valuation as aforesaid, he shall, in the presence of Surveyor to make declaration.
Ibid. s. 59.

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.

Breach of
declaration.

(2) If any such surveyor corruptly makes such declaration, or, having made such declaration, wilfully acts contrary thereto, he shall be guilty of a misdemeanour.

Declaration to be
annexed.

51 Vic. No. 37, s. 60.

123. 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.

Costs of valuation.

Ibid. s. 61.

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

PART VIII

Provisions applicable in every case where land is taken or acquired for authorised works.

DIVISION 1.—*Exercise of powers by Constructing Authority.*

Powers of taking
lands exercisable
from time to time.

Ibid. s. 33.

125. The powers of taking, acquiring, or purchasing lands for authorised works by this Act conferred upon the Constructing Authority may be exercised by such Authority from time to time, and whether the particular work for which lands may have been taken, acquired, or purchased has actually been constructed or not.

Powers of sale and
purchase of lands.

Ibid. s. 37.

126. 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.

DIVISION 2.—*Conveyances.*

Form of conveyances.

Ibid. s. 73.

Seventh Schedule.

127. (1) Conveyances of lands to be purchased or taken for authorised works under the provisions of this Act may be according to the form in the Seventh 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. (2)

(2) 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 have been purchased or compensated for by the consideration therein mentioned

Effect of conveyance.

(3) Although terms of years are 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.

Terms of years.

128. (1) The costs of all such conveyances shall be borne by the Constructing Authority.

Costs of conveyances.
51 Vic. No. 37, s. 74.

(2) Such cost shall include all charges and expenses incurred on the part as well of the seller as of the purchaser

(a) of all conveyances and assurances of any such lands and of any outstanding terms or interest therein; and

(b) of deducing, evidencing and verifying the title to such lands, terms and interests; and

(c) of making out and furnishing such abstracts and attested copies as the Constructing Authority may require; and

(d) all other reasonable expenses incident to the investigation, deduction and verification of such title.

Charges and expenses to be included in such costs.

129. (1) If the Constructing Authority and the party entitled to any such costs do 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 conveyance.
Ibid., s. 75.

(2) The Constructing Authority shall pay to the party entitled thereto the amount the said Master or other officer certifies to be due to such party in respect of such costs. In default of such payment any Judge of the Supreme Court may make an order for payment of the said amount of such costs which may then be recovered in the same way as any other costs payable under any order of the Supreme Court or a Judge thereof.

Payment.

(3) 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 is disallowed. In the latter case the costs of such taxation shall be borne by the party whose costs are so taxed; and the amount of such costs of taxation shall be ascertained by the said Master or other officer, and deducted by him in his certificate of taxation.

Costs of taxation.

Lands taken in
pursuance of this
Act to vest without
conveyance.

51 Vic. No. 37, s. 76.

130. Notwithstanding the provisions of section one hundred and twenty-seven, or of any other section of this Act, after any lands which the Constructing Authority is by this Act authorised to take have been set out, ascertained, and finally appropriated for any of the purposes authorised 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.

Provided that the Constructing Authority may, if he thinks fit in any case, demand such conveyance.

DIVISION 3.—*Compulsory purchases.*

Parties not to be
required to sell part
only of a building.

Ibid. s. 78.

131. 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 is willing and able to sell and convey the whole thereof.

Owners of intersected
lands may insist on
sale.

Ibid. s. 79.

132. (1) Whenever any lands, not being situated in a town or built upon, are so cut through and divided by an authorised work as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, then if the owner of such small parcel of land requires 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 has other land adjoining to that so left, into which the same can be thrown so as to be conveniently occupied therewith.

Or on land being
thrown into
adjoining land.

(2) If such owner has 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.

Ibid. s. 80.

133. (1) Whenever any such land is so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert or such other communication between the land so divided as the Constructing Authority is, under the provisions of this Act compellable to make, then if

(a) the owner of such lands has not other lands adjoining such piece of land; and

(b) such owner requires the Constructing Authority to make such communication,

the Constructing Authority may require such owner to sell to him such piece of land.

(2)

(2) 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 provided for in Division 2 of Part VII of this Act 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.

Disputes as to value or expense.

DIVISION 4.—*Lands containing minerals.*

134. (1) Notwithstanding anything hereinbefore contained, 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 since the fifth day of June, one thousand eight hundred and eighty-eight, being the date of the passing of the Act fifty-one Victoria number thirty-seven, or under this Act, except only such portions thereof as are necessary to be dug or carried away or used in the construction of the works, unless the same have been expressly taken or purchased.

Constructing Authority not to be entitled to minerals. 51 Vic. No. 37, s. 114.

(2) 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.

Mines and minerals excepted from conveyances.

135. (1) If the owner, lessee or occupier of any mines or minerals lying under any authorised work or any work connected therewith, or within forty yards from the boundary thereof, is 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.

Working of mines on or near authorised work. *Ibid.* s. 115.

(2) Upon the receipt of such notice the Constructing Authority may cause such mines to be inspected by any person appointed by him for the purpose.

Inspection after notice.

(3) If it appears to the Constructing Authority that the working of such mines or minerals is likely to damage the authorised work, and if the Constructing Authority is 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.

Compensation.

(4) 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 provided in Division 2 of Part VII hereof.

Disputed compensation.

136. (1) If before the expiration of such thirty days the Constructing Authority does not state his willingness to treat with such owner, lessee or occupier for the payment of such compensation, he may work the said mines or any part thereof for which the Constructing Authority has not agreed to give compensation.

If Constructing Authority unwilling to purchase owner may work the mines. *Ibid.* s. 116.

Provided

Provided that such work shall be done in a manner proper and necessary for the beneficial working of the mine, and according to the usual manner of working such mines in the district where the same are situate.

Damage or obstruction to authorised work by improper working of mines.

(2) If any damage or obstruction is occasioned to the authorised 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.

Powers of Constructing Authority.

(3) If such repair or removal is not forthwith carried out by such owner, lessee or occupier, or, if the Constructing Authority thinks fit, without waiting for the same to be so carried out the Constructing Authority may carry out the same and recover from such owner, lessee or occupier the expense occasioned thereby by action in the Supreme Court.

Mining communications.
51 Vic. No. 37, s. 117.

137. (1) If the working of any such mines under the authorised work or within the abovementioned distance therefrom is prevented as aforesaid, by reason of apprehended injury to such authorised work, the respective owners, lessees and occupiers of such mines and whose mines extend so as to lie on both sides of the authorised work may cut and make so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is so prevented, as may be requisite to enable them to ventilate, drain and work their said mines.

Dimensions of communications.

(2) 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 are 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.
Ibid. s. 118.

138. (1) 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 authorised work—

(a) all such additional expenses and losses as such owner, lessee or occupier incurs by reason of the severance of the lands lying over such mines by the authorised 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

(b) for any minerals not taken or purchased by the Constructing Authority which cannot be obtained by reason of making or constructing and maintaining the authorised work.

Disputes as to amount of injury.

(2) If any dispute or question arises 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.

139. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has 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.
51 Vic. No. 37, s. 119.

140. For better ascertaining whether any such mines are being worked or have been worked so as to damage the authorised work the Constructing Authority, after giving twenty-four hours' notice in writing, may enter upon any lands, through, in, on or near which the authorised work is constructed, and wherein any such mines are being worked or are supposed so to be, and may enter into and return from any such mines or the works connected therewith. For that purpose such Authority may make use of any apparatus or machinery belonging to the owner, lessee or occupier of such mines, and may use all necessary means for discovering the distance from the authorised work 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.
Ibid. s. 120.

141. If any such owner, lessee or occupier of any such mine refuses 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.
Ibid. s. 121.

142. (1) If it appears that any such mines have been worked contrary to the provisions of this Act, or any Act hereby repealed, the Constructing Authority may 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 authorised work and preventing injury thereto.

Mines worked contrary to this Act.
Ibid. s. 122.

(2) If, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe such authorised 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.

Powers of Constructing Authority.

DIVISION 5.—Penalty.

143. (1) If any person omits to shut and fasten any gate set up at either side of any authorised work for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the

Penalty on persons omitting to fasten gates.
Ibid. s. 111.

carriages or cattle or other animals under his care have passed through the same, he shall be liable for every such offence to a penalty not exceeding ten pounds.

Procedure.

(2) Every such penalty may be recovered in a summary way before any stipendiary or police magistrate or any two justices at the suit of any person authorised by the Constructing Authority.

PART IX.

Special provisions relating to railways.

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

51 Vic. No. 37, s. 29.

144. (1) When any authorised work is a railway or tramway the Constructing Authority shall, before commencing such work, 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 are 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.

(2) The Constructing Authority shall, by advertisement in the Gazette, give notice of such map or plan and book of reference, 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. If any such objection is 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 the Constructing Authority shall thereupon give notice in the Gazette of such confirmation with or without alterations as the case may be.

Deposit with clerks of petty sessions.

(3) 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

Authority shall be deposited with the clerk of petty sessions of the districts into or through which such railway or tramway is intended to be carried.

Such map or plan and book of reference, and such copies 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 is first published.

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.

(4) If any omission, misstatement, or erroneous description is 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 days' 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 authorised work in accordance therewith.

Errors and omission to be corrected.

(5) 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 is at any time afterwards 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.

145. (1) This Act shall not prevent the owners or occupiers of lands adjoining any authorised work, when such authorised 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.

Power to parties to make private branch railways communicating with the railway.
51 Vic. No. 37, s. 112.

(2) 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.

Constructing Authority to make communications if so required.

(3)

Constructing
Authority not to
take tolls on private
branches.

(3) 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 occupier or other person; but this enactment shall be subject to the following restrictions and conditions—

- (a) no such branch railway shall run parallel to the authorised railway ;
- (b) the Constructing Authority shall not be bound to make any such openings in any place which such Authority has 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.

Breadth of land to be
taken for railway.

51 Vic. No 37, s. 113.

146. When any authorised work is a railway the lands to be taken or used for such authorised work shall not exceed one hundred yards in width except where a greater width is 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.

In certain cases
power to purchase
or take lands for
additional
accommodation.

Ibid. s. 32.

147. (1) The Constructing Authority in addition to the lands authorised to be compulsorily taken by such Authority may 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, stellinges, 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.

All parties who, under the provisions hereinbefore contained would be enabled to sell and convey lands, may sell and convey the same under and for the purposes of this section.

(2)

(2) 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 herein contained.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
44 Vic. No. 16 ...	Lands for Public Purposes Acquisition Act.	The whole.
45 Vic. No. 26 ...	Lands for Public Purposes Acquisition Act Amendment Act.	The whole.
51 Vic. No. 37 ...	Public Works Act of 1888	The whole.
52 Vic. No. 26 ...	Public Works Act Amendment Act of 1889.	The whole.
53 Vic. No. 11 ...	Public Works (Committees' Remuneration) Act of 1889.	The whole.
Act No. 6, 1897 ...	Public Works Act Further Amendment Act of 1897.	The whole.

SECOND SCHEDULE.

Section 11.

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.

THIRD SCHEDULE.

Section 17.

(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

Public Works.

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 expense^s 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 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, 1900, (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, 1900, 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 section seventeen 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, 1900, 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.

Section 41

FOURTH SCHEDULE.

PUBLIC WORKS ACT, 1900.

Offer and particulars of claim where land is 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 _____

Public Works.

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 _____ pounds, which sum I declare to be my full claim in respect of the matters aforesaid.

Dated this _____ day of _____, 18 _____.

[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.

FIFTH SCHEDULE.

Section 95.

Notice of claim and abstract.

To the [here name the Constructing Authority or Crown Solicitor].

In pursuance of the Public Works Act, 1900, 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.

Public Works.

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—i leasehold, name of landlord, term of lease, and ren 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)

This form, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Division 1 of Part V of this Act.

Section 96.

SIXTH SCHEDULE.

Notice of valuation.

To A.B., claimant in respect of the land hereunder described, taken under the Public Works Act, 1900.

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 _____ pounds.

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.

This form, modified to suit the circumstances of the case, may be used in respect of lands taken or acquired under Division 1 of Part V of this Act.

Section 127.

SEVENTH 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, 1900, 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 _____