



1847.

No. 6.

---

*ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council.*

*To consolidate in one Ordinance certain provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature.*

[26th March, 1847.]

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

Be it therefore Enacted, by the Governor of South Australia, with the advice and consent of the Legislative Council thereof—That this Ordinance shall apply to every other undertaking authorized by any Ordinance which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Ordinance shall be incorporated therewith; and all the clauses and provisions hereof, save so far as they shall be expressly varied or excepted by any such Ordinance, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Ordinance which shall be incorporated with such Ordinance, form part thereof, and be construed together therewith, as forming one Act.

Ordinance to apply to all undertakings authorized by Acts hereafter to be passed.

And

And with respect to the construction hereof, and of Ordinances to be incorporated hereof: Be it Enacted as follows—

**Interpretations.**

II. The expression "Act" used herein shall be construed to mean. Ordinance enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof; the expression "the Special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the Special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the Special Act" had been used; and the expression "the works" or the "undertaking" shall mean the works or undertaking of whatever nature, which shall by the Special Act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether Company, Undertakers, Commissioners, Trustees, Corporations, or Private Persons, by the Special Act empowered to execute such works or undertaking.

**Interpretations in this  
and the Special Act.**

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

Words importing the singular number only shall include the plural number: and words importing the plural number only shall include the singular number.

Words importing the masculine gender only shall include females. The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure.

The word "lease" shall include an agreement for a lease.

The word "month" shall mean calendar month.

The expression "Superior Courts" shall mean the Supreme or Superior Courts of Record in the Province.

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath, in the case of any other persons exempted by law from the necessity of taking an oath.

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

The

The word "Justices" shall mean Justices of the Peace for the Province, who shall not be interested in the matter. And where any matter shall be authorized or required to be done by two Justices, the expression "two Justices" shall be understood to mean two Justices assembled and acting together.

The expression "the Bank" shall mean any Chartered Bank.

IV. And be it Enacted, That in citing this Act in other Acts, *Short title of the Act.* and in legal instruments, it shall be sufficient to use the expression, "The Lands Clauses Consolidation Act."

V. And whereas it may be convenient, in some cases, to incorporate with Acts hereafter to be passed, some portion only of the provisions of this Act: Be it therefore Enacted—That for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act, with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act, in the words introductory to the enactment with respect to such matters), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein, with reference to the matter to which such Act shall relate.

And with respect to the purchase of lands by agreement: Be it *Purchase of lands by agreement.*

VI. That, subject to the provisions of this and the Special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the Special Act, authorized to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the Special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

VII. That it shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly, it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid, so to sell, convey, or release, that is to say—all Corporations, tenants entail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, or all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years,

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

*Power to purchase lands by agreement.*

*Parties under disability enabled to sell and convey.*

or

*Purchase of lands  
by agreement.*

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

*Parties under disability to exercise other powers.*

VIII. That the power 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 hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

*Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the Bank.*

IX. That the purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, except under the provisions of this or the Special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two Justices under the provisions hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if two such surveyors cannot agree in the valuation, then by such third surveyor, as any two Justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not, then the surveyor nominated by the said Justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof: and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned.

*Where vendor absolutely entitled, lands may be sold on chief rents.*

X. That it shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized

authorized to be purchased for the purposes of the Special Act, to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent charge payable by [the promoters of the undertaking; but except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.]

*Purchase of lands  
by agreement.*

XI. That the yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the Special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking, as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the Superior Courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

*Payment of rents to  
be charged on tolls.*

XII. That in case the promoters of the undertaking shall be empowered by the Special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

*Power to purchase  
lands required for  
additional accommoda-  
tion.*

XIII. That it shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit; and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of lands to be held at any one time by the promoters of the undertaking for the purposes aforesaid, shall not exceed the prescribed quantity.

*Authority to sell and  
repurchase such  
lands.*

XIV. That the promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands, except under the powers of this and the Special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the lands so sold or disposed of by them.

*Restraint on purchase  
from incapacitated  
persons.*

XV. That nothing in this or the Special Act contained shall enable any Municipal Corporation to sell, for the purposes of the Special

*Municipal Corpora-  
tions not to sell with-  
out the approbation of  
the Governor.*

Special Act, without the approbation of the Governor for the time being of the said Province, any lands which they could not have sold before the passing of the Special Act, other than such lands as the company are by the powers of this or the Special Act empowered to purchase or take compulsorily.

*Purchase of lands otherwise than by agreement.*

*Capital to be subscribed before compulsory powers of purchase put in force.*

And with respect to the purchase and taking of lands otherwise than by agreement—Be it enacted as follows:

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

XVI. That where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the Special Act, or any Act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

*Notice of intention to take lands.*

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

*Service of notice on owners and occupiers of land.*

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

XIX. That all notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode, if any such can, after diligent inquiry, be found; and, in case any such parties shall be absent from the Province, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

XX. That

**XX.** That if any such party be a corporation aggregate, such notice shall be left at the principal office of business of such corporation; or if no such office can, after diligent inquiry, be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

*Purchase of lands otherwise than by agreement.*

Service of notice on corporation aggregate.

**XXI.** That if for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the Special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

If parties fail to treat, or in case of dispute, question to be settled as aforesaid.

**XXII.** That if no agreement be come to between the promoters of the undertaking and the owners of, or parties by this Act enabled to sell and convey, or release any lands taken or required for, or injuriously affected by, the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed Fifty Pounds, the same shall be settled by two Justices.

Disputes as to compensation, where the amount claimed does not exceed Fifty Pounds, to be settled by two Justices.

**XXIII.** That if the compensation claimed or offered in any such case shall exceed Fifty Pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the Sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall, as aforesaid, signify his desire to have the question of such compensation settled by arbitration, or if, when the matter shall have been referred to arbitration, the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Compensation exceeding Fifty Pounds, to be settled by arbitration or jury, at the option of the party claiming compensation.

**XXIV.** That it shall be lawful for any Justice, upon the application of either party, with respect to any question of disputed compensation by this or the Special Act, or any Act incorporated therewith, authorized to be settled by two Justices, to summon the other party to appear before two Justices, at a time and place to be named

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

*Purchase of lands  
otherwise than by  
agreement.*

in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such Justices to hear and determine such question, and for that purpose, to examine such parties or any of them, and their witnesses, upon oath ; and the costs of every such inquiry shall be in the discretion of such Justices, and they shall settle the amount thereof.

*Appointment of arbit-  
rator when questions  
are to be determined  
by arbitration.*

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

*Vacancy of arbitra-  
tor to be supplied.*

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

*Appointment of um-  
pire.*

**XXVII.** That where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall

shall differ, or which shall be referred to him under the provisions of this or the Special Act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity, appoint another umpire in his place, and the decision of every such umpire, on the matters so referred to him, shall be final.

*Purchase of lands otherwise than by agreement.*

**XXVIII.** That if, in either of the cases aforesaid, the said arbitrators shall refuse, or shall for seven days after the request of either party to such arbitration, neglect to appoint an umpire, the Governor, in any case in which a Railway Company shall be one party to the arbitration, and two Justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the Special Act, shall be final.

Governor empowered to appoint an umpire, on neglect of the arbitrators, in case of Railway Companies.

**XXIX.** That if, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under provisions of this or the Special Act, in the same manner as if such arbitrator had not been appointed.

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

**XXX.** That if, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

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

**XXXI.** That if, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

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

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

Power of arbitrators to call for books, &c.

**XXXIII.** That before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall, in the presence of a Justice, make and subscribe the following declaration, that is to say—

Arbitrator or umpire to make a declaration.

“I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the Act [naming the Special Act.]

“A. B.

“Made and subscribed in the presence of

”

And

*Purchase of lands  
otherwise than by  
agreement.*

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

*Costs of arbitration,  
how to be borne.*

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

*Award to be delivered  
to the promoters of the  
undertaking.*

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

*Submission may be  
made a rule of Court.*

**XXXVI.** That the submission to any such arbitration may be made a rule of any of the Superior Courts, on the application of either of the parties.

*Award not void  
through error in form.*

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

*Promoters of the  
undertaking to give  
notice before summon-  
ing a jury.*

**XXXVIII.** That before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned ; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest on such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

*Warrant for summon-  
ing jury to be ad-  
dressed to the Sheriff.*

**XXXIX.** That in every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the Sheriff, requiring him to summon a jury for that purpose ; and such warrant shall be under the common seal of the promoters of the undertaking, if they be a corporation ; or if they be not a corporation, under the hands and seals of such promoters or any two of them ; and if such Sheriff be interested in the matter in dispute, such application shall be made to some Coroner of the Province ; and if all the Coroners be so interested, such application may be made to some person having filled the office of Sheriff or Coroner in the Province, and who shall be then living therein, and who shall not be interested in the matter in dispute ; and with respect

respect to the persons last mentioned, preference shall be given to one who shall have most recently served either of the said offices; and every ex-Sheriff, Coroner, or ex-Coroner, shall have power, if he thinks fit, to appoint a deputy or assessor.

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

**XLI.** That upon the receipt of such warrant, the Sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the Supreme Court, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested; and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

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

**XLIII.** That any Judge of the Supreme Court, or any Commissioner of the said Court, in this behalf duly appointed by the Governor, or in default of such Judge or Commissioner, the Sheriff shall preside on the said inquiry; and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and if either party so request in writing, the presiding Judge, Commissioner, or Sheriff, shall summon any person considered necessary to be examined as a witness touching the matters in question; and on the like request shall cause the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the Superior Courts.

**XLIV.** That

*Purchase of lands  
otherwise than by  
agreement.*

*Provisions applicable  
to Sheriff to apply to  
Coroner.*

*Jury to be summoned.*

*Jury to be impan-  
nelled.*

*Judge or Commis-  
sioner, or Sheriff, to  
preside. Witnesses to  
be summoned.*

*Purchase of lands otherwise than by agreement.*

*Penalty on Sheriff and jury for default.*

XLIV. That if the Sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit Fifty Pounds for every such offence, and such penalties shall be recoverable by the promoters of the undertaking by action in any of the Superior Courts; and if any person summoned and returned upon any jury, under this or the Special Act, whether common or special, do not appear; or, if appearing, he refuses to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he shall show reasonable excuse to the satisfaction of the Sheriff, forfeit a sum not exceeding Ten Pounds; and every such penalty payable by a Sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties, as if such jury had been returned for the trial of an issue joined in any of the Superior Courts.

*Penalty on witnesses making default.*

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

*Notice of inquiry.*

XLVI. That not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

*If the party make default, the inquiry not to proceed.*

XLVII. That if the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two Justices in manner hereinafter provided.

*Jury to be sworn.*

XLVIII. That before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the Sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

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

XLIX. That where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen; or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of

of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands, by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the Special Act, or any Act incorporated therewith.

*Purchase of lands  
otherwise than by  
agreement.*

---

L. That the presiding Judge, Commissioner, or Sheriff, before whom such inquiry shall be held, shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by him, and being so signed, shall be kept by the proper officer among the records of the Supreme Court; and such verdicts and judgments shall be deemed records, and the same, or true copies thereof, shall be good evidence in all courts, and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof, or extracts therefrom, on paying for each inspection thereof One Shilling, and for every one hundred words copied or extracted therefrom Sixpence, which copies or extracts the clerk or other proper officer is hereby required to make out, and to sign and certify the same to be true copies.

*Verdict and judgment  
to be recorded.*

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

*Costs of the inquiry,  
how to be borne.*

LII. That the costs of any such inquiry shall, in case of difference, be settled by the Master or other proper officer of the Supreme Court, on the application of either party; and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

*Particulars of the  
costs.*

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

*Payment of costs.*

*Purchase of lands otherwise than by agreement.*

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

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

LIV. That if either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the Sheriff ; and for that purpose the promoters of the undertaking shall by their warrant to the Sheriff, require him to nominate a special jury for such trial ; and thereupon the Sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed, the Sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the Superior Courts ; and the Sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties ; and on the day so appointed, the Sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the Superior Courts.

*Deficiency of special jurymen.*

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

LVI. That

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

*Purchase of lands otherwise than by agreement.*

*Other inquiries before some special jury by consent.*

*Jurymen not to attend more than once a year.*

LVII. That no juryman shall, without his consent, be summoned or required to attend on any proceeding as aforesaid more than once in any year.

LVIII. That the purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the Province, is prevented from treating, or who cannot, after diligent inquiry, be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor, who shall not be interested in the matter, as two Justices shall nominate for that purpose, as herein-after mentioned.

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

*Two Justices to nominate a surveyor.*

LIX. That upon application by the promoters of the undertaking to two Justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the Province, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such Justices shall, by writing under their hands, nominate an able practical surveyor, who shall not be interested in the matter, for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him, of the correctness thereof.

*Declaration to be made by the surveyor.*

LX. That before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall in the presence of such Justices, or one of them, make and subscribe the declaration following, at the foot of such nomination, that is to say—

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

“A.B.

“Made and subscribed in the presence of ”

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

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

LXI. That the said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together

*Purchase of lands otherwise than by agreement.*

together therewith, by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

*Expenses to be borne by promoters.*

LXII. That all the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

*Purchase money and compensation, how to be estimated.*

LXIII. That in estimating the purchase money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the Justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the Special Act, or any Act incorporated therewith.

*Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.*

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

*Question to be submitted to the arbitrators.*

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

*If further sum awarded, promoters to pay or deposit same within fourteen days.*

LXVI. That if the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof, the same may be enforced by attachment, or recovered with costs by action or suit in any of the Superior Courts.

*Costs of the arbitration.*

LXVII. That if the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration

arbitration to be determined by the arbitrators, shall be in the discretion of the arbitrators ; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

*Purchase of land otherwise than by agreement.*

LXVIII. That if any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the Special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of Fifty Pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit ; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein ; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided ; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid ; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the Sheriff to summon a jury for settling the same in the manner herein provided ; and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the Superior Courts.

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

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating or not making title: Be it Enacted as follows---

LXIX. That if the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or entail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the Special Act, or the compensation to be paid for any permanent damage to

Purchase money payable to parties under disability amounting to Two Hundred Pounds, to be deposited in the Bank.

*Application of compensation.*

any such lands, amount to or exceed the sum of Two Hundred Pounds, the same shall be paid into the Bank, in the name and with the privity of the proper officer of the Supreme Court, to be placed to the account there of such officer *ex parte* the promoters of the undertaking (describing them by their proper name) in the matter of the Special Act (citing it) pursuant to the method prescribed by any Act or regulation for the time being in force for regulating moneys paid into the said Court; and such moneys shall remain so deposited until the same shall be applied to some one or more of the following purposes, that is to say—

*Application of moneys deposited.*

- In the purchase, redemption, or discharge of any tax, debt, or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or,
- In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or,
- If such money shall be paid in respect of any buildings taken under the authority of this or the Special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Supreme Court shall direct; or,
- In payment of any party becoming absolutely entitled to such money.

*Order for application and investment meanwhile.*

LXX. That such money may be so applied as aforesaid upon an order of the Supreme Court, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied, it may, upon the like order, be invested by the proper officer of the Court in the purchase of three per centum consolidated or three per centum reduced Bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would, for the time being, have been entitled to the rents and profits of the lands.

*Sums from Twenty Pounds to Two Hundred Pounds to be deposited, or paid to trustees.*

LXXI. That if such purchase money or compensation shall not amount to the sum of Two Hundred Pounds, and shall exceed the sum of Twenty Pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding Two Hundred Pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the cōverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters

promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank; but it shall not be necessary to obtain any order of the Court for that purpose.

*Application of compensation.*

LXXII. That if such money shall not exceed the sum of Twenty Pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit; or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

*Sums not exceeding Twenty Pounds, to be paid to parties.*

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

*Proviso.*

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

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

*Application of compensation.*

---

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

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

LXXV. That upon deposit in the Bank in manner hereinbefore provided, of the purchase-money or compensation agreed or awarded to be paid, in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the Special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal, if they be a corporation; or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two Justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

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

LXXVI. That if the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking; or if he refuse to convey or release such lands as directed by the promoters of the undertaking; or if any such owner be absent from the Province, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Master or other proper officer of the Supreme Court, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such

such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

Application of compensation.

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

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

LXXVIII. That upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any parts of such lands, or any interest in the same, the said Supreme Court may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, 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 shall seem fit.

Application of moneys so deposited.

LXXIX. That if any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of such rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interests of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Party in possession to be deemed the owner.

LXXX. That in all cases of moneys deposited in the Bank under the provisions of this or the Special Act, or any Act incorporated

Costs in cases of monoy deposited.

*Application of compensation.*

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

*Conveyances.*

And with respect to the conveyance of Lands: Be it Enacted as follows—

*Form of conveyances.*

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

LXXXII. That

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

*Conveyances.**Costs of conveyances.*

**LXXXIII.** That if the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters or other proper officers of the Supreme Court, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said Master or other proper officer shall certify to be due in respect to such costs to the party entitled thereto; or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expenses of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Master or other proper officer, and deducted by him accordingly in his certificate of such taxation.

*Taxation of costs of conveyances.*

And with respect to the entry on lands by the promoters of the undertaking: Be it Enacted as follows—

*Entry on lands.*

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

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

*Proviso.*

*Entry on lands.*

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

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

Upon deposit being made, Cashier to give receipt.

**LXXXVI.** That the money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Master or other proper officer of the Supreme Court, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry subject to the control and disposition of the said Court; and upon such deposit being made, the Cashier of the Bank shall give to the promoters of the undertaking, or to the parties paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

**LXXXVII.** That

LXXXVII. That the money so deposited as last aforesaid shall remain in the Bank, by way of security to the party whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in Bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed, it shall be lawful for the Supreme Court, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking; or if such condition shall not be fully performed, it shall be lawful for the said Court to order the same to be applied in such manner as it shall think fit, for the benefit of the parties for whose security the same shall so have been deposited.

*Entry on lands.*

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

LXXXVIII. That if at any time the company be unable, by reason of the closing of the office of the Master or other proper officer of the Supreme Court, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter, as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitor for the time being, addressed to the Bank in that behalf, request; and upon any such payment being made, the Cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the reopening of the office of the said Master or other proper officer of the Supreme Court, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of such Master or other officer; and upon production of such direction at the Bank, the money so previously paid in shall be placed to the credit of the said Master or other proper officer accordingly, and the receipt for the said payment be given to the party making the same, in the usual way, for the purpose of being filed at the proper office.

The company may pay the deposit money into the Bank by way of security during the time that the office of the Master or other proper officer of the Supreme Court is closed.

LXXXIX. That if the promoters of the undertaking, or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the Special Act without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of Ten Pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to

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

Entry on lands.

Proviso.

be recovered before two Justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of Twenty-five Pounds for every day they or their contractors shall so remain in possession as aforesaid: such penalty to be recoverable by the party in possession of such lands, with costs by action of the Supreme Court: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

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

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

**Proceedings, in case  
of refusal to deliver  
possession of lands.**

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

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

**XCII.** And be it Enacted that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof.

And

And with respect to small portions of intersected lands: Be it Enacted as follows— *Intersected lands.*

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

*Owners of intersected lands may insist on sale.*

**XCIV.** That if any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the Special Act, or any Act incorporated therewith, compellable to make; and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrator, as the case may be, shall, if required by either party ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

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

And with respect to lands subject to mortgage: Be it Enacted as follows— *Lands in mortgage.*

**XCV.** That it shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the Special Act; and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right, or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely or jointly with any other lands not required for the purposes

*Power to redeem mortgages.*

*Lands in mortgage.*

purposes of the Special Act; and in order thereto, the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest; and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then, at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

*Deposit of mortgage money on refusal to accept.*

XCVI. That if, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them if they think fit, to execute a deed poll, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

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

XCVII. That, if any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation being so agreed upon

upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend, and upon payment or tender thereof, the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

*Lands in mortgage.*

XCVIII. That if, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee, in satisfaction of his mortgage debt so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking if they think fit to execute a deed poll, in manner hereinbefore provided in the case of the purchase of lands by them, and thereupon, such lands, as to all such estate and interest as were then vested in the mortgagee, or in any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession: Nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

*Deposit of money when refused on tender.*

XCIX. That if a part only of any such mortgaged lands be required for the purposes of the Special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation, and the amount of such value or compensation being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction for his mortgage debt, so far as the same will extend; and thereupon, such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands, the value whereof shall have been so paid, and a memorandum of what shall have been so paid, shall be endorsed on the deed creating such mortgage, and

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

shall

*Lands in mortgage.*

shall be signed by the mortgagee, and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

*Deposit of money when refused on tender.*

C. That if, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act, in the case of moneys required to be deposited in such Bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession, they shall be entitled to immediate possession thereof ; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the Special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

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

CI. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained, the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of, or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed, and payment thereof enforced in the manner herein provided with respect to the costs of conveyances ; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off, can reasonably be expected

expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid, the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

*Lands in mort-gage.*

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or encumbrance not hereinbefore provided for: Be it Enacted as follows—

*Rent charges.*

CII. That if any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the Special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the Special Act, the same shall be determined as in other cases of disputed compensation.

*Release of lands from rent charges.*

CIII. That if part only, of the lands charged with any such rent-service, rent-charge, chief or other rent, payment or incumbrance, be required to be taken for the purposes of the Special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, the same shall be settled by two Justices; but if the remaining part of the lands so jointly subject, be a sufficient security for such charge, then, with the consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

*Release of part of lands from charge.*

CIV. That upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank, in the manner hereinbefore provided in like cases: and also, if they think fit, to execute a deed poll, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon the rent-service, rent-charge, chief or other rent, payment or incumbrance, or the portion thereof

*Deposit, in case of refusal to release.*

Rent charges.

thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

CV. That if any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be; and the party entitled to the charge shall have all the same rights and remedies over such last mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released, the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or, if they be a corporation, shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the Special Act; and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable; or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all Courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Leases.

And with respect to lands subject to leases: Be it Enacted as follows—

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

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

the land which shall not be required for the purposes of the Special *Leases.*  
 Act, in the same manner as they would have done in case such part  
 only of the land had been included in the lease.

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

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

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

CX. And be it Enacted, That the powers of the promoters of the undertaking, for the compulsory purchase or taking of lands for the purposes of the Special Act, shall not be exercised after the expiration of the prescribed period; and if no period be prescribed, not after the expiration of three years from the passing of the Special Act. Limit of time for compulsory purchase.

And with respect to interests in lands which have, by mistake, been omitted to be purchased: Be it Enacted as follows— *Interests omitted to be purchased.*

*Interests omitted  
to be purchased.*

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

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

*How value of such  
lands to be estimated.*

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

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

CXIII. That in addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favor of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same, to the parties with whom any such litigation in respect thereof

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

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the Special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof: Be it Enacted as follows—

*Sale of superfluous land.*

---

CXIV. That within the prescribed period, or if no period be prescribed, within ten years after the expiration of the time limited by the Special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the Special Act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of the lands respectively adjoining the same.

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

CXV. That before the promoters of the undertaking dispose of any such superfluous lands, they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed ; or if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the land so proposed to be sold, such person being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption, such offer shall be made to such persons in succession, one after another in such order as the promoters of the undertaking shall think fit.

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

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

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

CXVII. That if any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the

Differences as to price to be settled by arbitration.

*Sale of superfluous  
and.*

---

the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

*Lands to be conveyed  
to purchasers.*

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

*Effect of the word  
"Grant" in convey-  
ances.*

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

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

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

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking

undertaking, or their successors, and all other persons claiming under them.

*Sale of superfluous land.*

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

CXX. And be it Enacted, That if the promoters of the undertaking become possessed by virtue of this or the Special Act, or any Act incorporated therewith, of any lands charged with any tax, rate, or assessment imposed by law, they shall from time to time, until the works shall be completed and assessed to such tax, rate, or assessment, be liable to make good the deficiency in the several assessments for any tax, rate, or assessment by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the Special Act; and on demand of such deficiency, the promoters of the undertaking or their Treasurer, shall pay all such deficiencies to the Collector of the said assessments respectively: Nevertheless, if at any time the promoters of the undertaking think fit to redeem such tax, rate, or assessment, they may do so in accordance with any powers given in that behalf.

*Taxes, rates, &c., to be made good.*

CXXI. And be it Enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post, directed to the principal office of the promoters of the undertaking, or one of the principal officers where there shall be more than one, or being given or transmitted through the post direct to the Secretary, or in case there be no Secretary, the Solicitor of the said promoters.

*Service of notices upon company.*

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

*Tender of amends.*

And with respect to the recovery of forfeitures, penalties, and costs: Be it Enacted as follows—

*Recovery of penalties.*

CXXIII. That

*Recovery of penalties.*

*Penalties to be summarily recovered before two Justices.*

CXXIII. That every penalty or forfeiture imposed by this or the Special Act, or by any by-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two Justices; and on complaint being made to any Justice, he shall issue a summons requiring the party complained against to appear before two Justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two Justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such Justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such Justices shall think fit.

*Penalties to be levied by distress.*

CXXIV. That if, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such Justices or either of them shall issue their or his warrant of distress accordingly.

*Distress, how to be levied.*

CXXV. That where in this or the Special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, cost, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained.

*Application of penalties.*

CXXVI. That the Justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the Colonial Treasurer, to be paid to "the Relief Fund," and to be applied under the provisions of the Ordinances passed on the second day of September, one thousand eight hundred and forty-four (No. 16).

*Distress against the Treasurer.*

CXXVII. That if any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed Twenty Pounds, be recovered by distress of the goods of the Treasurer of the said promoters, and the Justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such Treasurer, unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such Treasurer or left at his residence;

residence ; and if such Treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

*Recovery of penalties.*

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

*Distress not unlawful for want of form.*

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

*Penalties to be sued for within six months.*

CXXX. That it shall be lawful for any Justice to summon any person to appear before him as a witness in any matter in which such Justice shall have jurisdiction under the provisions of this or the Special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter ; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses ; or if any person appearing shall refuse to be examined upon oath, or to give evidence before such Justice, every such person shall forfeit a sum not exceeding Five Pounds for every such offence.

*Penalty on witness making default.*

CXXXI. That the Justices before whom any person shall be convicted of any offence against this or the Special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule C to this Act annexed.

*Form of conviction.*

CXXXII. That no proceeding in pursuance of this or the Special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the Superior Courts.

*Proceedings not to be quashed for want of form.*

CXXXIII. That if any party shall feel aggrieved by any determination or adjudication of any Justice with respect to any penalty or forfeiture under the provisions of this or the Special Act, or any Act incorporated therewith, such party may appeal to the nearest General Quarter Sessions of the Peace ; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice

*Parties allowed to appeal to Quarter Sessions on giving security.*

Recovery of penalties.

Court to make such order as they think reasonable.

notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a Justice conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

Persons giving false evidence liable to penalties of perjury.

**CXXXIV.** That at the Quarter Sessions for which such notice shall be given, the Court shall proceed to hear and determine the appeal in a summary way; or they may, if they think fit, adjourn it to the following Sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such farther satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

**CXXXV.** That any person who, upon any examination upon oath, under the provisions of this or the Special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to Special Act.

Copies of Special Act to be kept and deposited, and allowed to be inspected.

And with respect to the provisions to be made for affording access to the Special Act by all parties interested: Be it Enacted as follows—

**CXXXVI.** That the company shall, at all times after the expiration of six months after the passing of the Special Act, keep in their principal office of business a copy of the Special Act, printed by authority of the Government; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the Registry Office a copy of such Special Act so printed as aforesaid; and the proper officers of the said Registry Office shall receive, and they and the company respectively shall retain, the said copies of the Special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom.

Penalty on company failing to keep or deposit.

**CXXXVII.** That if the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the Special Act, they shall forfeit Twenty Pounds for every such offence, and also Five Pounds for every day afterwards during which no copy shall be not so kept or deposited.

FREDK. H. ROBE,  
Lieutenant-Governor.

*Passed the Legislative Council, this Twenty-sixth day of March, One Thousand Eight Hundred and Forty-seven.*

W. L. O'HALLORAN,  
Clerk of Council.

SCHEDULES

**SCHEDULES REFERRED TO IN THE FOREGOING ACT.**

SCHEDULE A.

## **FORM OF CONVEYANCE.**

I of in consideration of  
the sum of paid to me [*or, as the case may be*, into the  
Bank of , in the name and with the privity of  
or to A. B. of and C. D. of two trustees  
appointed to receive the same] pursuant to the [*here name the Special Act*] by the  
[*here name the company or promoters of the undertaking*], incorporated [*or constituted*]  
by the said Act, do hereby convey to the said company [*or other description*] their  
successors and assigns, all [*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 company  
[*or other description*] their 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 day of in the year  
of our Lord

**SCHEDULE B**

**FORM OF CONVEYANCE ON CHIEF RENT**

I of in consideration of  
the rent charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by  
"The promoters of the undertaking" [naming them] incorporated [or constituted]  
by virtue of the [here name the Special Act] do hereby convey to the said company  
[or other description] their successors and assigns, all [describing the premises to be  
conveyed] together with all ways, rights, and appurtenances thereunto belonging,  
and all my estate, right, title, and interest in and to the same, and every part thereof,  
to hold the said premises to the said company [or other description] their successors  
and assigns, for ever, according to the true intent and meaning of the said Act, they  
the said company [or other description] their successors and assigns, yielding and  
paying unto me, my heirs and assigns, one clear yearly rent of  
by equal quarterly [or half-yearly, as agreed upon] portions, henceforth, on the  
[stating the days] clear of all taxes and deductions. In witness whereof, I have  
hereunto set my hand and seal, the day of in the  
year of our Lord

### SCHEDULE C

**FORM OF CONVICTION.**

C. (L.S.)  
D. (L.S.)

Adelaide: By authority, W. C. Cox, Government Printer, North-torrens.