

THE LANDS CLAUSES ACT

ARRANGEMENT OF SECTIONS

1. Short title.
2. Act to apply to all undertakings authorized by enactments hereafter to be passed.
3. Interpretation.
4. Interpretations in this and the special Statute.
5. Form in which portions of this Act may be incorporated with other Statute.
6. Purchase of lands by agreement.
7. Parties under disability enabled to sell and convey.
8. Parties under disability to exercise other powers.
9. Amount of compensation in case of parties under disability.
10. Where vendor absolutely entitled, lands may be sold on chief-rents.
11. Payment of rents to be charged on tolls.
12. Power to purchase lands required for additional accommodation.
13. Authority to sell and repurchase such lands.
14. Restraint on purchase from incapacitated persons.
15. Purchase of land otherwise than by agreement.
16. Certificate of Resident Magistrate evidence that capital has been subscribed.
17. Promoters to make owners and occupiers of lands full compensation.
18. Notice of intention to take lands.
19. Service of notice on owners and occupiers of lands.
20. Service of notice on a corporation aggregate.
21. If parties fail to treat or in case of dispute question to be settled as after mentioned.
22. Disputes as to compensation claimed.
23. Ten days' notice of intention to commence proceedings.

LANDS CLAUSES

24. Party claiming compensation may commence proceedings in accordance with sections 21 and 23.
25. In case of disputed compensation plaint to be entered.
26. Resident Magistrate to assess the purchase-money to be paid.
27. Judgments and orders to be recorded.
28. Fees, how chargeable.
29. Appeal to the Court of Appeal which shall have power to order a new trial.
30. Party claiming making default how compensation to be ascertained.
31. Sums to be paid for purchase of lands and for damage.
32. Costs of inquiry.
33. Particulars of costs.
34. Payment of costs.
35. Compensation to absent parties.
36. Resident Magistrate to nominate a surveyor.
37. Declaration to be made by the surveyor.
Form of declaration.
38. Valuation, etc., to be produced to the owner of the lands on demand.
39. Expenses to be borne by promoters.
40. Purchase-money and compensation.
41. When compensation to absent party has been determined.
42. Question to be submitted to the Resident Magistrate.
43. If further sum awarded promoters to pay or deposit same within fourteen days.
44. Costs of the proceedings.
45. Compensation claimed to be settled by the Resident Magistrate.
46. Application of compensation.
Purchase-money payable to parties under disability to be deposited in the Treasury.
47. Order for application and investment meanwhile.
48. All sums payable under contract with persons not absolutely entitled to be paid into Treasury.
49. Supreme Court may direct application of money in respect of leases or reversions.

50. Upon deposit being made the owners of the lands to convey.
51. Where parties refuse to convey or do not show title or cannot be found.
52. Upon deposit being made a receipt to be given, and the land to vest.
53. Application of moneys so deposited.
54. Party in possession to be deemed the owner.
55. Costs in cases of money deposited.
56. Conveyance.
57. Costs of conveyances.
58. Taxation of costs of conveyances.
59. Payment of price to be made previous to entry, except to survey, etc.
60. Promoters to be allowed to enter on lands before purchase on making deposit by way of security, and giving bond.
61. Upon deposit being made the proper officer of the Treasury to give receipt.
62. Deposit to remain as a security, and to be applied under direction of the Court.
63. Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.
64. Decision of Justices not conclusive as to the right of the promoters.
65. Proceedings in case of refusal to deliver possession of lands.
66. Parties not to be required to sell part of a house.
67. Intersected lands.
68. Promoters of the undertaking may insist on purchase where expenses of bridges, etc., exceeds the value.
69. Lands subject to mortgage.
70. Deposit of mortgage money on refusal to accept.
71. Sum to be paid when mortgage exceeds the value of the lands.
72. Deposit of money when refused on tender.
73. Sum to be paid where part only of mortgaged lands taken.
74. Deposit of money when refused on tender.
75. Compensation to be made in certain cases if mortgage paid off.
76. Rent-charges. Release of lands from charges.

77. Release of part of lands from charge.
78. Deposit in case of refusal to release.
79. Charge to continue on lands not taken.
80. Where part only of land under lease taken, the rent to be apportioned.
81. Tenants to be compensated.
82. Compensation to be made to tenant at will, etc.
83. Where greater interest claimed than from year to year, lease to be produced.
84. Limit of time for compulsory purchase.
85. Interests omitted to be purchased.
86. How value of such lands to be estimated.
87. Promoters of the undertaking to pay the costs of litigation as to such lands.
88. Sale of superfluous lands.
Lands not wanted to be sold, or, in default, to vest in owners of adjoining lands.
89. Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.
90. Right of pre-emption to be claimed within six weeks.
91. Differences as to price to be settled by the Resident Magistrate.
92. Lands to be conveyed to the purchasers.
93. Effect of the word "grant" in conveyance.
94. Service of notices upon company.
95. Tender of amends.
96. Procedure when Resident Magistrate interested.
97. Jurisdiction of Resident Magistrate's Court where land in two parishes.
98. Resident Magistrate to exercise jurisdiction in accordance with the Judicature (Resident Magistrates) Act.
99. Three Resident Magistrates to make rules.
Until rules come into operation Judge to regulate the practice of his Court under this Act.
100. Recovery of penalties.
101. Distress against the treasurer.
102. Penalties to be sued for within six months.

103. Access to special Statute. Copies of special Statute to be kept and deposited and allowed to be inspected.
104. Penalty on promoters failing to keep or deposit copies of special Statute.
105. Accountant-General entitled to percentage.

SCHEDULES

THE LANDS CLAUSES ACT

[27th June, 1872.]

Cap. 207.
 Acts
 33 of 1965
 S. 14,
 6 of 1987
 S. 17,
 32 of 1995
 S. 3.
 L.N.
 13E/2013.
 Short title.

1. This Act may be cited as the Lands Clauses Act.

2. This Act shall apply to every undertaking authorized by any enactment which shall hereafter be passed and which shall authorize the purchase or taking of lands for such undertaking; and this Act shall be incorporated with such enactment, and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such enactment, 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 enactment which shall be incorporated with such enactment, form part of such enactment, and be construed together therewith as forming one enactment.

Act to
 apply to all
 under-
 takings
 authorized
 by enact-
 ments
 hereafter
 to be
 passed.

3. In this Act, and in enactments to be incorporated therewith—

Interpreta-
 tion.

“the special Statute”, used in this Act, shall be construed to mean any enactment 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;

“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 Statute, 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 Statute”, had been used;

“the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special Statute be authorized to be executed;

“the promoters of the undertaking” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Statute empowered to execute such works or undertaking;

“the Resident Magistrate’s Court” shall mean the Resident Magistrate’s Court for the parish within which the lands are situated.

Interpretations in this and the special Statute.

4. In this Act and the special Statute—

“lands” shall extend to messuages, lands, tenements, and hereditaments of any tenure;

“lease” shall include an agreement for a lease;

“oath” shall include affirmation or other declaration lawfully substituted for an oath in the case of any person exempted by law from the necessity of taking an oath.

Where under the provisions of this or the special Statute or any enactment 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 Statute, would be enabled to sell and convey lands, to the promoters of the undertaking.

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

5. For the purpose of incorporating with enactments hereafter to be passed some portion only of the provisions of this Act, it shall be sufficient in any such enactment 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 matter or by enumerating the

sections) shall be incorporated with such enactment, 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 enactment, form part of such enactment, and such enactment shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such enactment shall relate.

6. With respect to the purchase of lands by agreement, subject to the provisions of this and the special Statute, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands, by the special Statute authorized to be taken, and which shall be required for the purposes of such enactment, and with all parties having any estate or interest in such lands, or by this or the special Statute 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.

Purchase of
lands by
agreement.

7. 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 in tail or for life, married women, seised in their own right, or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors, and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years,

Parties
under
disability
enabled to
sell and
convey.

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

Parties
under
disability to
exercise
other
powers.

8. The power hereinafter given to release lands from any rent-charge or incumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, 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 compen-
sation in
case of
parties
under dis-
ability.

9. 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 Statute, 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 judgment of the Resident Magistrate, or by the valuation of a surveyor or other competent person appointed by a Resident Magistrate under the provisions hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors or other competent persons, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors or other persons cannot agree in the valuation, then by such third surveyor or other competent person as the Resident Magistrate shall, upon application of either party, after notice to the other party for that purpose nominate, and each of such two surveyors, or other competent persons, if they agree, or if not then the surveyor or other person nominated by the said Resident Magistrate, 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 Treasury for the benefit of the parties interested, in manner hereinafter mentioned.

10. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special Statute 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.

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

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Statute, and shall be otherwise secured in such

Payment of rents to be charged on tolls.

manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents became payable; and if at any time 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, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Power to purchase lands required for additional accommodation.

12. In case the promoters of the undertaking shall be empowered by the special Statute to purchase lands for extraordinary purposes, it shall be lawful for all the 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.

Authority to sell and repurchase such lands.

13. 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 land to be held at any one time by the promoters of the undertaking for the purposes aforesaid, shall not exceed the prescribed quantity.

Restraint on purchase from incapacitated persons.

14. 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 Statute; 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 land so sold or disposed of by them.

15. With respect to the purchase and taking of lands otherwise than by agreement, 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 Statute, or any enactment incorporated therewith in relation to the compulsory taking of land for the purposes of the undertaking.

Purchase of land otherwise than by agreement.

16. A certificate under the hands of the Resident Magistrate 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 Resident Magistrate thinks proper and sufficient, such Resident Magistrate shall grant such certificate accordingly.

Certificate of Resident Magistrate evidence that capital has been subscribed.

17. The promoters of the undertaking shall make to the owners and occupiers of, and all other parties interested in any lands taken or used for the purposes of the undertaking, or injuriously affected by the undertaking, or by the execution of the works, full compensation for the value of the lands so taken or used, and for all damages sustained by such owners, occupiers, and other parties by reason of the exercise, as regards such lands, of the powers by this or the special Statute, or any enactment incorporated therewith, vested in the promoters of the undertaking.

Promoters to make owners and occupiers of lands full compensation.

Notice of
intention to
take lands.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Statute, or any enactment 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 land 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.

Service of
notice on
owners and
occupiers
of lands.

19. 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 Jamaica, or cannot be found after diligent inquiry, then such notices shall be served on the duly authorized attorney of such parties; or if such person has no such attorney, or no such attorney can be found after diligent inquiry, such notice shall also be left with the occupier of such lands, or if there be no occupier, shall be affixed upon some conspicuous part of such lands, and upon the door of the Resident Magistrate's Court House for the parish within which the lands are situated.

Service of
notice on a
corporation
aggregate.

20. 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, and upon the doors of the Resident Magistrate's Court House for the parish within which the lands are situated.

21. 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 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 Statute enabled to sell or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

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

22. 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, the amount of the compensation to be paid by the promoters shall be settled by the Resident Magistrate.

Disputes as to compensation claimed.

23. Before the promoters of the undertaking shall commence proceedings for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to commence such proceedings; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for

Ten days' notice of intention to commence proceedings.

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

Party claiming compensation may commence proceedings in accordance with sections 21 and 23.

24. In cases of disputed compensation, if, after the expiration of the twenty-one days mentioned in section 21, the promoters shall not within thirty days commence any proceedings for settling the amount of compensation to be paid for the land mentioned in such notice, the party claiming compensation may, if he think fit, instead of waiting for the promoters to commence proceedings, commence proceedings himself in the Resident Magistrate's Court for settling the amount of the disputed compensation :

Provided, that he first gives to the promoters a notice similar to that required in section 23.

In case of disputed compensation plaint to be entered.

25. In every case in which any question of disputed compensation shall be required to be determined by the Resident Magistrate, the promoters of the undertaking, or the party claiming compensation, shall enter a plaint in the Resident Magistrate's Court, and thereupon a summons shall be issued and served on the other party eight days at least before the day on which the Court be holden, at which the matter is to be inquired into.

Resident Magistrate to assess the purchase-money to be paid.

26. The Resident Magistrate before whom any such proceeding shall be taken is hereby authorized and required to assess the sum of money to be paid as purchase-money, or by way of compensation; and such Resident Magistrate shall have in every such proceedings the same power and jurisdiction over such proceeding, and over the parties, witnesses, and all other persons in all respects, as if such proceeding were an action in such Resident Magistrate's Court.

27. The judgments pronounced, and orders made by any Resident Magistrate in any such proceeding, shall be entered on record in the office of such Resident Magistrate's Court, and searches for the same may be made and copies taken in the same manner and subject to the same conditions, and on payment of the same fees as is or may be provided for searches for and copies of other documents in the office of such Resident Magistrates' Courts.

Judgments
and orders
to be
recorded.

28. Until rules are made fixing the Court fees payable under this Act, the Court fees payable upon proceedings under this Act shall be the same, as nearly as may be, as the Court fees payable in actions in such Resident Magistrate's Court. The amount of compensation claimed or offered, as the case may be, by the party commencing the proceeding shall be the amount of demand of the plaint:

Fees, how
chargeable.

Provided, that the Court fees under this section shall not exceed the highest fees payable in the Resident Magistrate's Court.

29. There shall be an appeal to the Court of Appeal from the judgment or order of a Resident Magistrate in any such proceeding on any point of law; and the Court of Appeal shall also have power to order a new trial of any inquiry for the assessment of any sum of money to be paid as purchase-money or by way of compensation, if the Court think that the sum awarded is too high, or too low, or that for any other reason there ought to be a new trial. The Court of Appeal may, if it shall think fit, order that the new trial shall be had before the same Resident Magistrate's Court, or before a Judge of the Supreme Court, and may give all such directions as may be necessary for that purpose, and the Judge of the Supreme Court shall, in acting under such order, have all the power and jurisdiction of the Resident Magistrate, and the orders and judgments of such Judge shall, for the purposes of the new trial, and of all the

Appeal to
the Court of
Appeal
which shall
have power
to order a
new trial.

consequences thereof, and for the issuing of execution and otherwise, be deemed to be orders and judgments of the Resident Magistrate's Court :

Provided, that no such judgment or order shall be altered or reversed, or such new trial granted on any point which might have been but was not raised at the inquiry before the Resident Magistrate. No judgment or order shall be altered or reversed, and no new trial shall be granted, when the effect of such judgment, or order, or of the former trial shall be to do substantial justice between the parties. Such appeal and application for a new trial shall, subject to any rules made under this Act, and subject to any rules made by the Supreme Court as to the proceedings in the Court of Appeal be made in the same form and manner, and shall be subject to the same conditions, as appeals from the Resident Magistrate's Court in personal actions.

Party claiming making default how compensation to be ascertained.

30. If when the proceedings are commenced by the promoters, the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded with, but the compensation to be paid shall be such as shall be ascertained by a surveyor or other person appointed by the Resident Magistrate in manner hereinafter provided.

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

31. Where any 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 Resident Magistrate shall deliver his judgment 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 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 other lands by the exercise of the powers of this or the special Statute or any enactment incorporated therewith.

32. On every such inquiry, where judgment 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 judgment 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 land shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, each party shall bear his own costs incident to such inquiry. Costs of inquiry.

33. The costs of every inquiry shall, in case of difference, be settled by the Resident Magistrate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in such proceeding, and in taking the inquiry, the attendance of witnesses, the employment of counsel and solicitors, and otherwise incident to such inquiry. In settling the amount of costs under this section, the Judge shall not be bound by the scale of fees in the Resident Magistrates' Courts, but may, if he thinks fit, allow larger fees than are allowed by such scale. There may be an appeal to the Court of Appeal if the Judge thinks fit to permit one from any decision of a Judge under this section. Such appeal shall be made in the same way, and subject to the same conditions, as appeals under section 29. Particulars of costs.

34. 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; Payment of costs.

and if any such costs shall be payable by the owner of the lands, or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the Resident Magistrate to such owner, or determined by the valuation of a surveyor or other person, 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 money so awarded or determined, the excess shall be recoverable by distress, and on application to any Justice he shall issue his warrant accordingly.

Compensation to absent parties.

35. 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 Jamaica, and of not being represented in Jamaica by a duly authorized attorney, is prevented from treating, or who cannot, after diligent inquiry, be found, or who shall not appear at the time appointed for the inquiry 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, or other person as the Resident Magistrate shall nominate for that purpose, as hereinafter mentioned.

Resident Magistrate to nominate a surveyor.

36. Upon application by the promoters of the undertaking to the Resident Magistrate, and upon such proof as shall be satisfactory to him that any such party is, by reason of absence from Jamaica and of not being represented in Jamaica by a duly authorized attorney, prevented from treating, or cannot, after diligent inquiry, be found, or that any such party failed to appear on such inquiry before the Resident Magistrate's Court as aforesaid, after due notice to him for that purpose, such Resident Magistrate shall, by

writing under his hand, nominate an able practical surveyor or other competent person for determining such compensation as aforesaid, and such surveyor or other person shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him, of the correctness thereof.

37. Before such surveyor or other person shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such Resident Magistrate, make and subscribe the declaration following at the foot of such nomination, that is to say—

Declaration to be made by the surveyor.

“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.

Form of declaration.

A.B.”

“Made and subscribed in the presence of ”

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

38. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor or other person, and shall be preserved 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.

Valuation, etc., to be produced to the owner of the lands on demand.

39. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Expenses to be borne by promoters.

Purchase-money and compensation.

40. 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 Judge, surveyors, or other persons, 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 Statute, or any enactment incorporated therewith.

When compensation to absent party has been determined.

41. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, or other person, and deposited in the Treasury under the provisions herein contained by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid, could not be found, or was absent from Jamaica, and not represented in Jamaica by a duly authorized attorney, if such owner or party shall be dissatisfied with such valuation, it shall be lawful for him, before he shall have applied to the Supreme Court, or to a Judge thereof for payment or investment of the money 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 the judgment of the Resident Magistrate, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to the judgment of the Resident Magistrate.

Question to be submitted to the Resident Magistrate.

42. The question to be submitted to the Resident Magistrate in the case last aforesaid shall be, whether the said sums 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. The proceed-

ings shall be in the same form, and conducted in the same way as other cases of disputed compensation. The person dissatisfied with such valuation shall commence the proceedings and enter the plaint, first giving to the promoters a notice similar to that required from the promoters by section 23.

43. If the Resident Magistrate shall determine 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 such decision, or in default thereof the same may be enforced by attachment, or recovered with costs by action of debt.

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

44. If the Resident Magistrate shall determine that the sum so deposited was sufficient, the costs of and incident to such proceedings shall be in the discretion of the Resident Magistrate; but if the Resident Magistrate 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 proceeding shall be borne by the promoters of the undertaking.

Costs of the proceedings.

45. 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 Statute, or any enactment incorporated therewith, such party may have the same settled by the Resident Magistrate; and it shall be lawful for him to give notice in writing to the promoters of the undertaking of his desire to have the same so settled, 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 claimed to be settled by the Resident Magistrate.

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, such party may, after twenty-one days after the giving of such notice, commence proceedings in the Resident Magistrate's Court for settling the amount of compensation in the manner hereinbefore provided for settling cases of disputed compensation.

Application
of com-
pensation.

Purchase-
money
payable to
parties under
disability to
be deposited
in the
Treasury.

46. With respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right, or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Statute, or the compensation to be paid for any permanent damage to any such lands, shall be paid into the Treasury, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Statute (citing it), pursuant to the method prescribed by the law and practice for the time being in force for regulating moneys paid into the Supreme Court; and such moneys shall remain so deposited until the same be applied to some or more of the following purposes, that is to say—

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

- (b) 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
- (c) if such money shall be paid in respect of any buildings taken under the authority of this or the special Statute, 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
- (d) in payment to any party becoming absolutely entitled to such money.

47. Such money may be so applied as aforesaid, upon an order of the Supreme Court, or of a Judge thereof, made on the application of the party who would have been entitled to the rents and profits of the land in respect of which such money shall have been deposited; and until the money can be so applied, it may, upon the like order, be invested in Government debentures, or in any debentures payment whereof is guaranteed by Government, or in the Workers Savings and Loan Bank, or in any other security in which, according to the then practice of the Court, trust funds may be ordered to be invested by the Court, or the Court or Judge may direct that such money shall remain in the Treasury, and the interest, dividends, and annual proceeds thereof shall be paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Order for application and investment meanwhile.

48. All sums of money 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

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

absolutely for his own benefit, shall be paid into the Treasury 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 of a Judge thereof, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Treasury, 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 execution of the works.

Supreme
Court may
direct
application
of money in
respect of
leases or
reversions.

49. Where any purchase-money or compensation paid into the Treasury under the provisions of this or the special Statute, shall have been paid in respect of any lease for a life or lives of 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, or for a Judge thereof, on the application 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 or Judge may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had

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

50. Upon deposit in the Treasury, in manner hereinbefore provided, of the purchase-money or compensation agreed or adjudged 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 Statute, or any enactment 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 apply to the Resident Magistrate for an order, which such Resident Magistrate is hereby authorized to make, 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 such order shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and upon such order being made 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 the Resident Magistrate or by a surveyor or other person appointed by the Resident Magistrate as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as

Upon deposit being made the owners of the lands to convey.

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.

51. 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 adjudged 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 Jamaica, and not represented by a duly authorized attorney in Jamaica, or cannot, after diligent inquiry be found, or fail to appear on the inquiry before the Resident Magistrate, 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 Treasury, to be placed, except in the cases herein otherwise provided for, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the Supreme Court.

Upon deposit being made a receipt to be given, and the land to vest.

52. Upon any such deposit of money as last aforesaid being made, the proper officer of the Treasury 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 apply to the Resident Magistrate for an

order, which such Resident Magistrate is hereby authorized to make, 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 such order shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and upon such order being made 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 immediate possession of such lands.

53. Upon the application of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the Supreme Court or a Judge thereof may, in a summary way, as to such Court or Judge shall seem fit, order such money to be laid out or invested in Government debentures, or in any debentures payment whereof is guaranteed by Government, or in the Workers Savings and Loan Bank, or in any other security in which, according to the then practice of the Court, trust funds may be ordered to be invested by the Court, or to remain in the Treasury, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles or interest of the parties making claim to such money or lands, or any part thereof, or may make such other order in the premises as to such Court or Judge shall seem fit.

Application
of moneys
so deposited.

54. 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 pos-

Party in
possession to
be deemed
the owner.

session of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Supreme 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 interest arising from the investment thereof, and the same shall be paid and applied accordingly.

Costs in
cases of
money
deposited.

55. In all cases of moneys deposited in the Treasury under the provisions of this or the special Statute, or an enactment incorporated 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 lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Supreme Court, or the Judge thereof, to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking, that is to say, the costs of the purchase or taking of the lands, or the costs 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, and of the re-investment 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 wherein 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 costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Supreme Court or to a Judge thereof, 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 or Judge if it or he think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

56. Conveyances of lands to be purchased under the provisions of this or the special Statute, or any enactment incorporated therewith, may be according to the Forms in the Schedules A and B, 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 to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

57. The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses incurred on the part as

well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

58. If the promoters of the undertaking, and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by the Registrar of the Supreme Court, upon an order of the Supreme Court upon petition in a summary way, or by application at Chambers by either of the parties; and the promoters of the undertaking shall pay what the said Registrar shall decide to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said Registrar, and deducted by him accordingly in his certificate of such taxation.

Payment of price to be made previous to entry, except to survey, etc.

59. 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 Statute, or any enactment incorporated therewith, until they shall either have paid to every party having any interest in such lands, or deposited in the Treasury, in the

manner herein mentioned the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein :

Provided always, that for the purpose merely of surveying or taking levels of such lands, and of probing or boring to ascertain the nature of the soil, or 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.

60. 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 valuation made, or judgment given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Treasury, by way of security, as 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 or other person appointed by the Resident Magistrate 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 the Resident Magistrate 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

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

Treasury for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of six *per centum* per annum, from the time of entering on such lands until such purchase-money or compensation shall be paid to such party or deposited in the Treasury for the benefit of the parties interested in such lands, under the provisions herein contained; and, upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in 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 Statute:

Provided, however, that the interest payable under this section shall be at the rate of four *per centum* per annum in all cases in which interest is payable out of public or parochial funds or money.

Upon
deposit
being made
the proper
officer of the
Treasury to
give receipt.

61. The money so to be deposited as last aforesaid shall be paid into the Treasury 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 Supreme Court; and upon such deposit being made, the proper officer of the Treasury shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

62. The money so deposited as last aforesaid shall remain in the Treasury, by way of security, to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned; and the same may, on application of the promoters of the undertaking to the Supreme Court, by petition or at Chambers, be ordered to be invested in Government debentures, or in any debentures payment whereof is guaranteed by Government, or in the Workers Savings and Loan Bank, or in any other security in which according to the then practice of the Court, trust funds may be ordered to be invested by the Court, and may be accumulated in such investment, or may be ordered to remain in the Treasury; and upon the condition of such bond being fully performed, it shall be lawful for the Court or Judge upon a like application, to order the money so deposited or invested, and if invested the produce thereof also, 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 or Judge, upon a like application, to order the same to be applied in such manner as it or he shall think fit, for the benefit of the parties for whose security the same shall so have been deposited.

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

63. 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 Statute, 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 twenty dollars, 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 respect-

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

ively to be recovered summarily 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 fifty dollars for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by action by the party in possession of such lands, with costs:

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 *bona fide*, and without collusion, have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Treasury for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

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

64. On the trial of any action for any such penalty as aforesaid the decision of the Justices, under the provision 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.

65. If in any case in which, according to the provisions of this or the special Statute, or any enactment 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

apply to the Resident Magistrate to deliver possession of the same to the person appointed by them to receive the same; and upon such application the Resident Magistrate shall deliver possession of any such lands accordingly, in the same way as nearly as may be as such Resident Magistrate would deliver possession of land upon a judgment for recovery of possession of land in his Court; and the costs accruing by reason of such application and delivery of possession to be settled by the Resident Magistrate 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, may be levied by distress, and upon application to any Justice for that purpose he shall issue his warrant accordingly.

66. 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.

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

67. With respect to small portions of intersected land, if any lands not being situated 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 Statute, 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

Intersected lands.

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.

Promoters of the undertaking may insist on purchase where expense of bridges, etc., exceeds the value.

68. 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 Statute, or any enactment incorporated therewith, compellable to make, and if the owner of such lands have no 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 Resident Magistrate or Judge shall, if required by either party, determine by his judgment the value of any such severed piece of land, and also what would be the expense of making such communication.

Lands subject to mortgage.

69. With respect to lands subject to mortgage, 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 Statute, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right, or in trust for any other party, and whether he be in possession

of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely or jointly with any other lands not required for the purposes of the special Statute; 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 the 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 the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

70. 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 Treasury, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also if such payment be made before the

Deposit of mortgage money on refusal to accept.

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 apply to the Resident Magistrate for an order, which such Resident Magistrate is hereby authorized to make, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and upon such order being made, 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.

71. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof, on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

72. If, upon payment or tender as aforesaid being made any such mortgagee fails 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 Treasury in the manner provided by this Act in like cases; and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to apply to the Resident Magistrate for an order, which such Resident Magistrate is hereby authorized to make, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and upon such order being made, such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the 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.

73. If a part only of any such mortgaged lands be required for the purposes of the special Statute, 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

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

value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands, the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of
money when
refused on
tender.

74. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon be 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 Treasury, in the manner provided by this Act in the case of moneys required to be deposited in the Treasury, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking if they think fit, to apply to the Resident Magistrate for an order, which such Resident Magistrate is hereby authorized to make, duly stamped, in the manner hereinbefore provided in the case of the purchase

of lands by them; and upon such order being made 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 Statute, 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.

75. 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 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 under-

Compensation to be made in certain cases if mortgage paid off.

taking, 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.

Rent-charges.
Release of
lands from
charges.

76. With respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, 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 Statute 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 Statute, the same shall be determined as in other cases of disputed compensation.

Release of
part of
lands from
charge.

77. 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 Statute, 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 the Resident Magistrate; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required on

condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

78. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce a good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Treasury in the manner hereinbefore provided in like cases, and also if they think fit, to apply to the Resident Magistrate for an order, which such Resident Magistrate is hereby authorized to make, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and upon such order being made, the rent-service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Deposit in case of refusal to release.

79. 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

Charge to continue on lands not taken.

deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Statute, 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.

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

80. With respect to lands subject to leases, 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 Statute, 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 the Resident Magistrate; 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 Statute; 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 land which shall not be required for the purposes of the special Statute, in the same manner as they would have done in case such part only of the land had been included in the lease.

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

Tenants to be compensated.

82. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an 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 the Resident Magistrate, 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 Statute.

Compensation to be made to tenants at will, etc.

83. 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

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

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.

Limit of
time for
compulsory
purchase.

84. The powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Statute, 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 Statute.

Interests
omitted to be
purchased.

85. With respect to interests in lands which have by mistake been omitted to be purchased, 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 Statute, or any enactment incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special Statute, any party shall appear to be entitled to any estate, right, or interest in, or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of 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

favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof, during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on, or awarded and paid in like manner, as, according to the provisions of this Act, the same respectively would have been agreed on, or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

86. 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 Resident Magistrate shall assess the same according to what he 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 executed.

How value of such lands to be estimated.

87. 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

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

the promoters, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place.

Sale of
superfluous
lands.

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

88. With respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Statute, or any enactment incorporated therewith, but which shall not be required for the purposes thereof, within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Statute 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 Statute; and in default thereof all such superfluous land remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

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

89. Before the promoters of the undertaking dispose of any such superfluous lands, they shall, unless such lands be situated 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; and if such person refuse to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where

more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

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

91. If any person entitled to such right of pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be determined by the Resident Magistrate, and the costs of the proceeding shall be in the discretion of such Resident Magistrate.

Differences as to price to be settled by the Resident Magistrate.

92. 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

Lands to be conveyed to the purchasers.

promoters of the undertaking, or any two thereof, acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the promoters 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 conveyance.

93. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Statute, or any enactment incorporated therewith, 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) 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 :
- (b) 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 :

- (c) a covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be) by the promoters of the undertaking, or their successors, and all other persons claiming under them :
- (d) and all such grantees, and their several successors, heirs, executors, administrators, and assigns, respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may, in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyance.

94. Any summons or notice or any writ or other proceeding required to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post, directed to the secretary, or in case there be no secretary, the solicitor of the said promoters.

Service of notices upon company.

95. If any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Statute, or any enactment incorporated

Tender of amends.

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.

Procedure
when
Resident
Magistrate
interested.

96. Whenever the Resident Magistrate shall be interested in the matter in dispute, the proceedings shall be commenced and carried on in the Resident Magistrate's Court of any adjoining parish; and the Resident Magistrate of such adjoining parish shall have the same jurisdiction and powers in all respects as the Resident Magistrate would have had if he had not been interested in the matter in dispute :

Provided that it shall be competent for the parties to any proceeding, if they are under no disability, to agree that the Resident Magistrate shall have jurisdiction in the proceeding, notwithstanding that he is interested in the matter in dispute; and after such agreement such Resident Magistrate shall have the same jurisdiction and powers as if he were not so interested.

Jurisdiction
of Resident
Magistrate's
Court where
land in two
parishes.

97. Whenever any piece of land, required or taken by the promoters of the undertaking, or injuriously affected by the execution of the works, does not lie entirely within the parish of one Resident Magistrate's Court, the proceedings authorized by this Act may be taken in the Resident Magistrate's Court of any parish within which any part of such piece of land is situated. The Resident Magistrate of a Court in which such proceedings may be taken, shall have

the same jurisdiction over the whole of such piece of land as if such piece of land lay entirely within the jurisdiction of his Court.

98. The jurisdiction given by this Act to the Supreme Court and to a Judge thereof, in respect of money paid into the Treasury under this Act, may be exercised by any Resident Magistrate's Court, in accordance with the provisions of the Judicature (Resident Magistrates) Act, when such money does not exceed two million dollars or such other amount as the Minister responsible for Justice may specify by order subject to affirmative resolution.

Resident Magistrate to exercise jurisdiction in accordance with the Judicature (Resident Magistrates) Act.
L.N.
13E/2013.

99. Three Resident Magistrates to be named from time to time by the Minister, or a majority of them, may make rules for fixing the practice, procedure, and Court fees in all proceedings in the Resident Magistrates' Courts under this Act. Such rules so made shall be submitted to the Minister, who may allow, disallow, add to, or alter such rules. The rules shall not come into operation until after they have been approved by the Governor-General in Council. Such rules, so made as aforesaid, may from time to time be in like manner revoked, altered, or added to, or new rules may be made. Until such rules shall come into operation the ordinary practice of the Resident Magistrates' Courts in actions shall, as far as possible be observed in proceedings under this Act, unless it shall be otherwise ordered by the Resident Magistrate, who is hereby authorized and required to regulate, as he shall think fit, the practice and procedure upon proceedings in his Court under this Act until rules shall come into operation under this section.

Three Resident Magistrates to make rules.

Until rules come into operation Judge to regulate the practice of his Court under this Act.

100. With respect to the recovery of forfeitures, penalties and costs every penalty or forfeiture imposed by this or the special Statute, or any enactment incorporated therewith, or by any by-laws made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered

Recovery of penalties.

by summary proceeding and in default of payment forthwith, the Court may award imprisonment with or without hard labour for a period not exceeding three months.

Distress
against the
treasurer.

101. If any penalty 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 forty dollars, be recovered by distress of the goods of the treasurer of the said promoters; and the Justices by whom any such penalty shall be imposed, 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; 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.

Penalties to
be sued for
within six
months.

102. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Statute, or any enactment incorporated therewith, for any offence made cognizable before Justices unless the complaint respecting such offence shall have been made before such Justices within six months next after the commission of such offence.

Access to
special
Statute.
Copies of
special
Statute
to be kept
and
deposited
and allowed
to be
inspected.

103. With respect to the provisions to be made for affording access to the special Statute by all parties interested, the promoters of the undertaking or company shall, at all times after the expiration of six months after the passing of the special Statute, keep in their principal office of business a copy of the special Statute, printed at the Government

Printing Office, 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 office of each of the Clerks of the Resident Magistrates' Courts of the several parishes into which the works shall extend, a copy of such special Statute so printed as aforesaid; and the said Clerks shall receive, and they and the promoters of the company respectively shall retain the said copies of the special Statute, and shall permit all persons interested to inspect the same, and make extracts and copies therefrom without payment of any fees.

104. If the promoters of the undertaking or company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special Statute, they shall forfeit forty dollars for every such offence, and also ten dollars for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on promoters failing to keep or deposit copies of special Statute.

105. The Accountant-General shall be entitled to deduct the same percentage from, and shall be bound to render the same accounts of, any money paid into the Treasury under this Act, as if such money were paid into the Treasury as money of the Supreme Court.

Accountant-General entitled to percentage.

LANDS CLAUSES

(Section 56)

SCHEDULE A

Form of Conveyance

I, _____ of _____, in consideration of the sum of _____ paid to me (or into the Treasury, as the case may be) *ex-parte* "The Promoters of the Undertaking" (*naming them*), pursuant to the (*here name the special Statute*), by the (*here name the company or other promoters of the undertaking*) incorporated (or constituted) by the said Statute, 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, seised or possessed of, or am by the said Statute 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 Statute.

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

(Section 56)

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 Statute*), 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 Statute, 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 hereunto set my hand and seal, the day of _____, in the year of our Lord _____