

6 Edw. VII. No. 14, 1906. *Public Works Land Resumption Act.*

| <i>Measures.</i> | | | | | <i>s.</i> | <i>d.</i> |
|-------------------------|-----|-----|-----|-----|-----------|-----------|
| Each Bushel | ... | ... | ... | ... | 0 | 3 |
| Each Half Bushel | ... | ... | ... | ... | 0 | 2 |
| Each Peck and all under | ... | ... | ... | ... | 0 | 1 |
| Each Yard | ... | ... | ... | ... | 0 | 1 |

| <i>Measures of Capacity of Liquids.</i> | | | | | <i>s.</i> | <i>d.</i> |
|---|-----|-----|-----|-----|-----------|-----------|
| Each Five Gallon | ... | ... | ... | ... | 1 | 0 |
| Each Four Gallon | ... | ... | ... | ... | 0 | 9 |
| Each Three Gallon | ... | ... | ... | ... | 0 | 6 |
| Each Two Gallon | ... | ... | ... | ... | 0 | 4 |
| Each Gallon | ... | ... | ... | ... | 0 | 2 |
| Each Half Gallon and under | ... | ... | ... | ... | 0 | 1 |

Verifying and Stamping Weighing Instruments.

| | | | | | <i>£</i> | <i>s.</i> | <i>d.</i> |
|--|-----|-----|-----|-----|----------|-----------|-----------|
| For Ten Tons and above | ... | ... | ... | ... | 1 | 10 | 0 |
| For under Ten Tons and above One Ton | ... | ... | ... | ... | 1 | 0 | 0 |
| For One Ton and above Five Hundredweight | ... | ... | ... | ... | 0 | 10 | 0 |
| For Five Hundredweight and above One Hundredweight | ... | ... | ... | ... | 0 | 5 | 0 |
| For One Hundredweight and above Fifty-six Pounds | ... | ... | ... | ... | 0 | 4 | 0 |
| For Fifty-six Pounds and above Fourteen Pounds | ... | ... | ... | ... | 0 | 2 | 6 |
| For Fourteen Pounds or under | ... | ... | ... | ... | 0 | 1 | 0 |

Adjusting Weights, Measures, and Weighing Instruments.

For the time occupied in the work, a fee at the rate of 2s. 6d. per hour.

WORKMEN, LIEN OF.

See MASTERS AND SERVANTS.

WORKS.

An Act to make Better Provision for the Taking of Land required for constructing Works authorised by Parliament, and for other purposes.

6 Edw. VII.
No. 14.
THE
PUBLIC
WORKS LAND
RESUMPTION
ACT OF 1906.

[ASSENTED TO 29TH NOVEMBER, 1906.]

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

Preliminary.

1. This Act may be cited as "*The Public Works Land Resumption Act of 1906.*" Short title.

Public Works Land Resumption Act. 6 Edw. VII. No. 14,

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| Interpretation. | 2. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say— |
| Constructing Authority. | “Constructing Authority”—The Crown or any person or Local Authority or corporation authorised to take land for the purposes of any works; |
| The Crown. | “The Crown” includes the Governor in Council and any person acting under the authority of the Governor in Council; |
| Judge; Registrar. | “Judge” and “Registrar”—A Judge and the Registrar respectively of the Supreme Court; |
| Land. | “Land”—Any land which at the passing of this Act has been or which may hereafter be alienated from the Crown in fee-simple : where necessary, the term includes any estate or interest in land; |
| Land Court; Land Appeal Court. | “Land Court” and “Land Appeal Court”—The Land Court and Land Appeal Court respectively constituted under “ <i>The Land Act, 1897</i> ”*: the term “Court” includes the Land Court and, on appeal, the Land Appeal Court; |
| Local Authority. | “Local Authority”—Any Local Authority or Joint Local Authority under and subject to “ <i>The Local Authorities Act of 1902</i> ”†; |
| Minister. | “Minister”—The Secretary for Public Lands or other Minister of the Crown charged for the time being with the administration of this Act; |
| Registrar of Titles. | “Registrar of Titles” includes any local Deputy Registrar of Titles; |
| Works. | “Works”—The works or undertaking of whatever nature authorised to be constructed or carried on. |
| Repeal. | 3. “ <i>The Public Works Lands Resumption Acts</i> ”‡ are repealed. |

Purposes for which Land may be taken and by whom.

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| Purposes for which land may be taken. 52 Vic. No. 7, s. 2. | 4. Land required for any of the following purposes, that is to say— |
| | (i.) For abattoirs, appliances for the destruction or prevention of pests or vermin, aqueducts, asylums for insane inebriate or indigent persons, baths and washhouses, beacons, bores, |

61 Vic. No. 25, *supra*, page 6228. † 2 Edw. VII. No. 19, *supra*, page 8355.
‡ 42 Vic. No. 5, *supra*, page 2527; and 52 Vic. No. 7, *supra*, page 2594.

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botanical and other gardens, bridges, buildings, canals, cemeteries, charitable institutions, colleges, crematories, dams, docks, dockyards, educational establishments, electrical works, experimental farms, ferries, fire stations, flood gates and flood warnings, fords, gas works, gravel and sand pits, gymnasiums, harbours, hospitals, industrial schools, infirmaries, jetties, landing places, libraries, lighthouses, locks, lockups, orphanages, markets, museums, offices, parks, pounds, prisons, public meetings, public music, pumps, quays, quarries, recreation grounds, reformatories, reservoirs, roads, rubbish depôts, schools, septic tanks, sewage farms disposal works and depôts, sewers, slaughter - houses, tramways, universities, viaducts, water-courses, waterworks, weighing machines, weirs, wells, wharves, works for the conservation of hydraulic and other power, or for any public or other work or purpose of a like character :

- (ii.) For the construction or erection of any public or other works which the constructing authority is authorised by any Act or resolution of Parliament to construct or erect ;
- (iii.) For any works incidental to any of the purposes aforesaid ;

may be taken under and subject to this Act, by any of the following authorities :—

- (a) The Crown ;
- (b) Any person or corporation authorised by any Act.

The purposes for which land may be taken by a Local Authority are set forth in "*The Local Authorities Act of 1902.*"*

5. When for the purposes of any works it is not necessary that the constructing authority should acquire the whole estate in any land, but it is sufficient for such purposes to acquire an easement upon the land, it shall be lawful for the constructing authority to acquire such easement only.

Easements.
52 Vic. No. 7,
s. 3.

* 2 Edw. VII. No. 19, *supra*, page 8355.

Procedure for taking Land.

Procedure for
taking land.
N.Z. 1894
No. 42, s. 17.

6. When land is required to be taken, the constructing authority shall—

- (i.) Cause a survey to be made and a plan to be prepared, signed by a duly licensed surveyor as evidence of the accuracy thereof, showing the land required, together with a schedule of the names of the respective owners and occupiers of such land, so far as they can be ascertained;
- (ii.) Cause a copy of such plan to be deposited in some place in the locality in which such land is situated:

Such plan shall be open to inspection by all persons at all reasonable hours. Any person having custody thereof, and refusing or obstructing such inspection, shall be liable to a penalty not exceeding five pounds;

- (iii.) Cause a notice to be published in the *Gazette* and in a newspaper circulating in the district, stating the place where such plan, together with a statement of the nature of the works proposed to be constructed and a general description of the land required, is open to inspection:

Such notice shall call upon all persons affected to set forth, in writing, any objections (not having reference to compensation) to the taking of such land, and to send such writing, within thirty days from the first publication of such notice, to the constructing authority:

Such notice shall also appoint a time and place at which any objector may appear before the constructing authority or some person appointed by it, and support the objection by such evidence as the objector thinks fit;

- (iv.) Cause a copy of such notice and description to be served upon the respective owners and occupiers of such land, so far as they can be ascertained.

How land
may be
taken.
N.Z. 1894
No. 42, ss. 18,
19.

7. If, within the said thirty days, no objection is made, or if, after due consideration of all objections, the constructing authority is of opinion that the land is required to be taken, the following procedure shall be adopted:—

- (i.) If the Crown is not the constructing authority, the constructing authority shall lay before the

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Governor in Council a memorial containing a list of the several parcels of land proposed to be taken, and whether in fee-simple or by way of easement only, together with the aforesaid plan, and give security satisfactory to the Governor in Council for the payment of the compensation which would probably be awarded for the resumption; and also furnish a statutory declaration by the chairman or other chief executive officer of the constructing authority, that all the provisions of this Act have been complied with, and that the constructing authority is of opinion that all the said land is required to be taken;

- (ii.) The Governor in Council may, by proclamation, declare that the said land, a list of the several parcels whereof shall be contained in or annexed to the proclamation, is taken for the works therein mentioned, as from the day named in the proclamation.

8. (1.) From and after the day named in the proclamation, the land therein specified shall become absolutely vested in fee-simple in the constructing authority, discharged from all trusts, obligations, mortgages, charges, rates, contracts, claims, estates, or interests of what kind soever, or if an easement only is required such easement shall become vested in the constructing authority; and the estate and interest of every person entitled to the whole or any part of the land or affected by such easement shall be taken to have been converted into a claim for compensation under this Act. Every such person, upon asserting a claim as hereinafter provided and making out his title in respect of the land, shall, subject to this Act, be entitled to compensation from the constructing authority.

(2.) Upon publication in the *Gazette*, such proclamation shall be conclusive evidence that the provisions of this Act have been complied with.

(3.) But where it is found that the proclamation incorrectly describes the land to be taken, or that any other error in form or substance exists in relation to such taking, the Governor in Council may, by a subsequent proclamation, annul or amend the same or any part thereof, and such first proclamation or such part thereof shall, from the date of the subsequent proclamation, be absolutely void:

Effect of
proclamation.
Comm. No. 13
of 1901,
ss. 7, 11.

Errors or mis-
descriptions.
N.Z. 1894
No. 42, s. 22.

Provided that—

- (a) No person shall be prejudiced in respect of any mortgage, charge, claim, estate, or interest existing in respect of the land, by reason of his having, in consequence of the former proclamation, done or omitted any act or thing, or failed to enforce or act upon any right, or comply with any obligation in respect of such mortgage, charge, claim, estate, or interest ;
- (b) No person shall have any right of action or claim against the constructing authority for anything *bonâ fide* done under such proclamation before the annulment or amendment thereof ;
- (c) Nothing herein contained shall limit the power of the constructing authority to take at any subsequent time the whole or any part of the land mentioned or described in any proclamation so annulled or amended in whole or in part.

Additional land may be taken.
N.Z. 1894
No. 42, s. 28.

9. If, after or during the construction of any works, it is found desirable, for the use, convenience, or enjoyment of any such works constructed or in course of construction, to take other land, such land, or the estate or interest of any person therein, may be taken in the same manner as land required for such works in the first instance.

Parties not to be required to sell part of a building.
42 Vic. No. 5,
s. 71.

10. In taking land the constructing authority shall not take a part only of any house or other building or manufactory if the owner is willing to sell and convey the whole of the land whereon it is built.

Owner may require small parcel of land severed to be taken.
N.Z. 1894
No. 42, s. 25.

11. If land, not situated in a city or town and not built upon, is so divided by the land taken as to leave on any side thereof a less quantity of land than one acre, the constructing authority shall, if required by the owner of such small parcel of land, take such parcel together with the other land taken :

Provided that in every case where such owner has other land adjoining into which such small parcel may be conveniently thrown, the constructing authority, instead of taking such small parcel may throw the same into the adjoining land by removing the fences and levelling and soiling the sites in a sufficient and workmanlike manner.

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12. (1.) Where the Crown is the constructing authority and an estate in fee-simple is taken, the land taken shall become Crown land and may be dealt with accordingly.

Registration.
N.Z. 1894
No. 42, s. 23.

(2.) In all other cases where an estate in fee-simple is taken—

(i.) If the land taken is not subject to “*The Real Property Acts, 1861 to 1887*,”* the constructing authority, within ninety days from the publication of the proclamation, shall deliver a copy of the proclamation to the Registrar of Titles, who shall thereupon bring the land under those Acts, and register the same in the name of the constructing authority and issue a certificate of title therefor ;

(ii.) If the land is subject to those Acts, the constructing authority, within ninety days from the publication of the proclamation, shall deliver a copy of the proclamation to the Registrar of Titles, who shall thereupon register the land in the name of the constructing authority and issue a certificate of title therefor.

(3.) Where an easement only is acquired by the constructing authority, the delivery of a copy of the proclamation to the Registrar of Titles shall be a sufficient authority to him to register such easement.

(4.) Any person in possession of any instrument evidencing the title to the land taken shall, upon receiving notice from the Registrar of Titles, deliver up to him such instrument, to be cancelled or to be endorsed with the proper endorsement, as the case may require.

Any person refusing or neglecting so to deliver up any such instrument shall be liable to a penalty not exceeding fifty pounds.

Moreover, no person having in his possession any such instrument shall be entitled to receive compensation under this Act until such instrument is delivered to the Registrar of Titles.

The Registrar of Titles shall issue a certificate of title for the land, if any, included in such instrument and not taken.

* 25 Vic. No. 14, *supra*, page 2148 ; 41 Vic. No. 18, *supra*, page 2196 ; 48 Vic. No. 4, *supra*, page 2206 ; and 51 Vic. No. 3, *supra*, page 2207.

(5.) The costs and expenses in connection with the registration and issue of documents rendered necessary by the taking of the land shall be borne by the constructing authority. Such costs and expenses may be taxed by the proper officer of the Supreme Court under the rules of that court.

Compensation.

Taking by agreement.
N.Z. 1894
No. 42,
ss. 26, 83.

13. The constructing authority may, without complying with this Act, enter into an agreement to take any estate or interest of any person in any land required, and in such case the compensation to be paid may be either agreed upon or left to be determined under this Act.

If the amount of compensation to be paid is the subject of an agreement, the constructing authority may agree to grant any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over, or under any land under its control, in satisfaction or part satisfaction of compensation.

Any agreement under this section may be made a rule of the Supreme Court by either party by filing the same or a true copy thereof in the office of the Registrar, and thereupon such agreement may be enforced accordingly.

Determination of compensation under other enactments.

14. (1.) When land has been taken under the Acts hereby repealed or under any enactment which for the determination of compensation applies the provisions of such repealed Acts and compensation for the land so taken has not been determined at the passing of this Act, and also when land is hereafter taken under any enactment which for the determination of compensation applies the provisions of such repealed Acts, the compensation for the land so taken shall be determined in the manner provided by this Act.

(2.) When land is taken, occupied, used, or otherwise affected under the laws relating to the construction, maintenance, and management of railways, or under any enactment which for the determination of compensation applies those laws, compensation for the land so taken, occupied, used, or otherwise affected shall be determined under this Act and not in the manner provided by those laws.

The said laws are amended to the extent indicated in the Schedule to this Act.

(3.) Notwithstanding any enactment to the contrary, when land is taken by a Local Authority, the land shall be taken and compensation in respect of such taking shall be

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determined in the manner provided by this Act and not in the manner provided by "*The Local Authorities Act of 1902*"*

15. (1.) A claim for compensation may be made by any person seised, possessed of, or entitled to the land taken or to any estate or interest therein, or by the executor or administrator of any such person, whether such person has or has not the power to sell and convey the same.

By whom
compensation
may be
claimed.
N.Z. 1894
No. 42,
ss. 47, 38, 40.

(2.) Any claim on behalf of *cestuis que trustent*, infants or persons of unsound mind, may be made by their trustees, guardians, or committees (or, where there is no committee, by the Curator in Insanity) respectively.

In the case of an infant not having a guardian within the State and known to the constructing authority, the Registrar shall, for the purposes of this Act, be the guardian of such infant.

16. Where compensation is claimed by a person whose estate or interest in the land taken is not duly registered or notified in the office of the Registrar of Titles, and any other person has claimed and obtained compensation in respect of the same land and without giving written notice with his claim of such unregistered estate or interest, such first-mentioned person shall not be entitled to any compensation whatever from the constructing authority in respect of such estate or interest.

Claim by
unregistered
person.
N.Z. 1894
No. 42, s. 34.

17. No compensation shall be payable to any person who is lessee, tenant, or licensee of any land taken if the constructing authority is willing and upon written application agrees to allow his estate or interest to continue uninterrupted.

Lessees, &c.
N.Z. 1894
No. 42, s. 34.

18. (1.) The time limited for making a claim for compensation under this Act shall be three years from the date of the proclamation taking the land, or in the case of land resumed under the Acts hereby repealed, shall be three years from the date of the passing of this Act.

Limit of time
for making
claim.

(2.) If no claim for compensation is made within such period the right to compensation shall be absolutely barred.

(3.) Provided that if the person entitled to compensation is believed to be absent from the State, or to be an infant or person of unsound mind, the constructing

* 2 Edw. VII. No. 19, *supra*, page 8355.

authority shall before the expiration of that period make an application to a Judge, accompanied by an offer of an amount by way of compensation, and thereupon the Judge may direct that such offer be accepted or that the claim be heard by the Land Court under this Act.

The Land Court shall proceed in the examination of such claim as in other cases, and the Registrar or some person nominated by him shall represent the persons entitled to claim, and may act in their behalf in all matters incident to the claim or the hearing thereof; and the moneys payable as compensation shall be paid into the Supreme Court, and shall there remain subject to the provisions hereinafter contained.

Compensation
how
estimated.
Comm. No. 13
of 1901, s. 19.

19. In estimating the compensation to be paid, regard shall in every case be had not only to the value of land taken but also to the damage, if any, caused—

- (a) By the severing of the land taken from other land of the claimant; or
- (b) By the exercise of any statutory powers by the constructing authority otherwise injuriously affecting such other land;

and compensation shall be assessed according to the value of the land, estate, or interest of the claimant on the date of the proclamation taking the land.

In estimating the compensation to be paid, there shall be taken into consideration, by way of set-off or abatement, any enhancement in the value of the interest of the claimant in any land adjoining the land taken or severed therefrom by the carrying out of the works for which the land is taken. But in no case shall this provision operate so as to require any payment to be made by the claimant in consideration of such enhancement of value.

Particulars to
be inserted in
claim to
compensation.
N.Z. 1894
No. 42, s. 42.

20. (1.) In order to obtain compensation, the claimant shall, within the period hereinbefore prescribed, serve upon the constructing authority a claim, in writing, stating—

- (a) The several areas and descriptions of the parcels of land taken or affected in respect of which he makes his claim, and the nature and particulars of his interest therein; and if the land or his estate or interest therein is incumbered, leased, or subject to any easement, he shall give particulars of such incumbrance, lease, or easement;

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- (b) Each matter on account of which he claims compensation, with full particulars of the nature and extent of the claim ;
- (c) His name in full, together with his address, which address shall be deemed to be his last known place of abode or business until notice in writing of a change of address is given to the constructing authority.

(2.) The claim shall be accompanied by an abstract or certified copy of all documents necessary to establish the claimant's title.

21. If the claimant does not give full particulars of all or any of the matters hereinbefore prescribed, the constructing authority may, by notice in writing, require him to furnish such particulars. If such particulars are not furnished within ninety days after notice or within such extended time as a Judge may allow, the claim shall be absolutely barred.

Constructing authority may require further particulars. N.Z. 1894 No. 42, s. 43.

22. (1.) The constructing authority may, within thirty days after the service of the claim or of the further particulars where they are required under the last preceding section, serve on the claimant an offer of compensation.

Offer of compensation.

But such offer shall not be deemed an admission by the constructing authority of the claimant's title to the land with respect to which the offer is made.

(2.) Within sixty days after the service of the offer of compensation, the claimant may serve on the constructing authority a notice rejecting the offer.

If notice of rejection is not given within such time, the offer shall be deemed to be accepted.

23. (1.) If the constructing authority makes no offer, or if the claimant rejects the offer, the amount of compensation to be paid shall be determined by the Court, and the following provisions shall have effect :—

Determination of compensation by Land Court.

(2.) The claimant shall forthwith file a copy of his claim and of all notices and other particulars in the office of the Registrar of the Land Court.

(3.) For the purposes of this Act the powers and duties conferred and imposed upon the Land Court shall be exercised and performed by one member thereof only ; but the decision of such member shall be subject at the instance of the constructing authority or the claimant to appeal to the Land Appeal Court.

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(4.) The Land Court shall have jurisdiction to hear and determine all matters of compensation arising under this Act, and the Land Appeal Court shall have jurisdiction to hear and determine all such matters upon appeal, and for such purposes all the provisions of Part II. of "*The Land Act, 1897*,"* so far as the same are applicable, shall extend to the hearing and determination of such matters in the first instance and upon appeal.

(5.) The decision with respect to compensation shall be in writing, and shall be transmitted by the Registrar of the Land Court to the Registrar of the Supreme Court, to be filed in the Supreme Court. On receipt of the decision the Registrar of the Supreme Court shall give notice thereof to the claimant and constructing authority.

N.Z. 1894
No. 42, s. 76.

(6.) The decision shall be final as regards the compensation awarded, but shall not be deemed to be final as regards the right or title of the claimant or any other person to receive the compensation, or any part thereof.

But if the sum awarded is not paid into the Supreme Court as hereinafter provided, within thirty days after the filing of the decision in the Supreme Court, the decision shall be final for all purposes and have the effect of a judgment of the Supreme Court, and may be enforced accordingly, subject, however, to this Act.

Grant of
easements in
lieu of
compensation.
N.Z. 1894
No. 42, s. 84.

24. If the amount of compensation to be paid is determined by the Court, the constructing authority may offer, and the Court may award to the claimant, in satisfaction or part satisfaction of the compensation claimed, any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over, or under any land under the control of the constructing authority; and the Court may, by its award, declare which (if any) of such easements, rights, privileges, or concessions so offered shall be granted to the claimant in satisfaction, or part satisfaction, or mitigation of his claim to compensation.

Crown may
grant surplus
land in lieu of
compensation.
N.Z. 1894
No. 42, s. 85.

25. If the Crown is the constructing authority, the Governor in Council may, in payment or satisfaction in whole or in part for any land taken, grant to the person from whom such land has been taken, any Crown land, and may for such purpose close any road not required for public use which traverses or adjoins any land owned by such person and grant the soil thereof to such person :

* 61 Vic. No. 25, *supra*, page 6228.

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Provided that, before such land is granted, the Court shall certify that the total value of the land, with money compensation (if any), does not amount to more than the compensation which would probably have to be paid by the Crown for the land taken if compensation for the same were made wholly in money.

Payment into and out of Court.

26. If any doubt or dispute arises as to the right or title of any person to receive any compensation awarded under this Act, or any compensation agreed to be paid by the constructing authority, or if any person refuses or neglects to receive any compensation so awarded or agreed upon, the constructing authority may, in the case of compensation awarded by the Court, within thirty days after the decision has been filed in the Supreme Court, and in other cases within thirty days after demand or tender made, pay the sum awarded or agreed upon into the Supreme Court; and the Registrar shall deal with and apply such moneys in such manner and shall pay the same to such persons as the Supreme Court or a Judge, upon the application of any person interested, may order, and the costs of and incidental to any proceedings under this section shall be in the discretion of the Court or Judge.

When title doubtful, compensation to be paid into Supreme Court.
N.Z. 1894
No. 42, s. 77.

27. (1.) If compensation is awarded or has been agreed to be paid in respect of land taken from any person having a partial or qualified interest only in such land, and not entitled to sell or dispose of the same, the following provisions shall apply:—

Compensation in case of limited interests.
N.Z. 1894
No. 42 s. 78.

- (i.) If the compensation is two hundred pounds or upwards, it shall be paid into the Supreme Court, and the Registrar shall apply the same, upon an order of the Supreme Court or a Judge made on the application of any person interested, to one or more of the following purposes, that is to say,—
 - (a) The discharge of any debt or incumbrance affecting the land, or affecting any land settled therewith, or to the same or like uses, trusts, or purposes;
 - (b) The purchase of other land to be conveyed, limited, and settled upon the like uses, trusts, or purposes;
 - (c) Removing or replacing any buildings on the land, or substituting others in their stead;

- (d) The purchase of such securities as the Court or Judge may direct, to be settled in the same manner as the land ;
- (e) In payment to any party becoming absolutely entitled thereto.
- (ii.) If the compensation is more than twenty but less than two hundred pounds, it shall be paid into the Supreme Court, and the Registrar may apply the same to any of the abovementioned purposes, but no order of the Court or Judge shall be necessary ;
- (iii.) If the compensation is not more than twenty pounds, it shall be paid to the parties entitled to the rents and profits of the land, or, in case of their disability or incapacity, to their respective guardians, trustees, or committees (or, if there is no committee, to the Curator in Insanity), as the case may be.
- (2.) The costs of and incidental to any proceedings under this section shall be in the discretion of the Court or Judge.
- (3.) Nothing in this section shall be deemed to prevent any person who has a partial or other qualified interest in land to which interest he is solely entitled, and which he may absolutely sell or dispose of, from receiving any compensation awarded to him in respect of such interest, or which has been agreed to be paid to him.

Mortgages, Etc.

Mortgaged
land.
N.Z. 1894
No. 42, s. 80.

28. If the land in respect of which compensation is awarded or has been agreed to be paid is, subject to a mortgage, the Court shall, upon application by the mortgagee, award that the compensation, or so much as is required for the purpose, shall be paid in discharge of the mortgage debt, or of part thereof, so far as the compensation will go.

“Mortgage debt” includes the interest payable on such mortgage up to six months beyond the day when the land affected was taken under this Act.

Land subject
to rent-
charge.
N.Z. 1894
No. 42, s. 81.

29. If the land in respect of which compensation is awarded or has been agreed to be paid is subject to a rent-charge or annuity, the Court shall, upon application by the person entitled to such rent-charge or annuity, determine what part of such compensation shall be paid to the person so entitled in redemption thereof ; and, if the

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land is part of land subject to a rent-charge or annuity, the Court, upon like application, shall determine what part of such rent-charge or annuity shall be redeemed, and what part of such compensation shall be paid in the redemption thereof, so that the remaining part of the land subject to the rent-charge or annuity shall be as good security as theretofore for the part thereof remaining unredeemed.

30. If the land in respect of which compensation is awarded or has been agreed to be paid is part of land in respect of which any rent is payable, the Court shall, upon application by the person liable to pay rent, determine what part of such rent shall cease to be payable, so that the rent ceasing to be payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is awarded or agreed to be paid bears to the value of the whole land.

Where rent is payable out of lands of which part only is taken.
N.Z. 1894
No. 42, s. 82.

General.

31. (1.) For the purposes of this Act, the constructing authority or any person authorised either specially or generally by it may—

Powers of entry, etc.
N.Z. 1894
No. 42,
ss. 96, 97.

- (a) Enter and re-enter from time to time upon any land, with such assistants as are required, to make any survey which is authorised to be made;
- (b) Affix or set up thereon trigonometrical stations, survey pegs, marks, or poles, and from time to time alter, remove, inspect, reinstate, and repair the same;
- (c) Dig and bore into the land so as to ascertain the nature of the soil, and set out the lines of any works thereon;
- (d) Do all things necessary for the purposes aforesaid.

(2.) When practicable, reasonable notice shall be given to the owner or occupier of the land of the intention to enter thereon, and the authority under which the person entering claims to enter or has entered shall, if required by such owner or occupier, be produced and shown.

(3.) Every person who—

- (a) Without due authority, destroys, mutilates, defaces, takes away, or alters the position of any trigonometrical station, survey peg, mark, or pole fixed or set up by any person under the authority of this section; or

(b) Wilfully obstructs any person acting under the authority of this section;

shall be liable to a penalty not exceeding fifty pounds.

Land may be occupied temporarily.

32. (1.) The constructing authority may temporarily occupy and use any land for the purpose of constructing or repairing any works, and may—

- (a) Take therefrom stone, gravel, earth, and other material;
- (b) Deposit thereon any material;
- (c) Form and use temporary roads thereon;
- (d) Manufacture bricks or other materials thereon;
- (e) Erect workshops, sheds, and other buildings of a temporary nature thereon.

(2.) The person having the charge of the works shall, before occupying or using any land as herein provided, and except in the case of accident requiring immediate repair, give to the owner or occupier thereof not less than seven days' notice in writing, and shall state in such notice the use proposed to be made of the land and an approximate period during which such use is expected to continue.

(3.) The owner of the land may, at any time during such occupation, give notice in writing to the constructing authority that he claims compensation; and if the land is not taken the owner and all persons having any interest in the land may recover under this Act compensation for all damage done, but not exceeding the compensation which would have been payable had the land been taken.

(4.) No compensation shall be payable for any act or thing done under this section, the right or authority to exercise which is reserved by any Act, or by any regulation, Crown grant, or other instrument, except to the extent therein mentioned, notwithstanding that the terms and conditions imposed by such Act, regulation, grant, or instrument have not been performed.

Proceeding in case of refusal to give up land.

33. (1.) If the owner or occupier of any land taken or occupied under this Act, or any other person, refuses to give up possession thereof, or obstructs the constructing authority or any person appointed in writing by it, the constructing authority may issue its warrant to the sheriff to deliver possession of the same to the person appointed

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in the warrant to receive possession, and on receipt of the warrant the sheriff shall deliver possession of such land accordingly.

(2.) The costs of the issue and execution of the warrant, to be settled by the sheriff, shall be paid by the person in default, and may be deducted from any compensation payable to him, or the same or any balance may be levied by distress and sale of the goods and chattels of such person.

34. Any notice, claim, or other document required by this Act to be served on any person may be sent to the last known place of abode or business of such person by messenger or by post. If such person is absent from the State the document may be served on his agent in like manner. If such person is not known or has no known agent in the State, the document may be served by the publication of the same, or a true abstract thereof, in the *Gazette* and in some newspaper circulating generally in the locality where the land affected is situated.

Service of
documents.
N.Z. 1894
No. 42, s. 8.

A document may be served on the Crown by being sent by post to the Department of Public Lands at Brisbane, addressed to the Minister, or to the office of such person either at Brisbane or elsewhere in the State as the Minister authorises by public notice to receive documents on his behalf.

Where a document is sent by post it must be sent so as to arrive in due course of post on or before the last day on which such document is required to be served.

35. The Governor in Council may from time to time make all such Regulations as may be necessary for giving full effect to this Act, and may by such Regulations impose a penalty not exceeding twenty pounds for any breach thereof. All such Regulations shall, upon publication in the *Gazette*, have the same effect as if they were enacted in this Act, and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

Regulations.

All such Regulations shall be laid before both Houses of Parliament within fourteen days after the publication thereof if Parliament is then sitting, or if Parliament is not then sitting then within fourteen days after the commencement of the next session thereof.

36. All offences against this Act or the Regulations may be prosecuted in a summary way before any two justices of the peace.

Recovery of
penalties.

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THE SCHEDULE.

| Year and Number of Act. | Short Title. | Extent of Amendment. |
|-------------------------|---------------------------|--|
| 27 Vic. No. 8... | "The Railway Act of 1863" | <p>S. 11, in the proviso, for the words "herein provided," the words "provided by 'The Public Works Land Resumption Act of 1906'" are substituted.</p> <p>S. 25, for the words "settled in the manner hereinafter provided for settling cases of disputed compensation," the words "determined in manner provided by 'The Public Works Land Resumption Act of 1906'" are substituted.</p> <p>S. 43, for the words "such as shall be determined by the valuation of a competent surveyor and valuator nominated for that purpose as hereinafter mentioned," the words "shall be determined in manner provided by 'The Public Works Land Resumption Act of 1906'" are substituted.</p> <p>SS. 44 and 45 are repealed.</p> <p>S. 46, the words "by the arbitrators jury or surveyor as the case may be" are repealed; for the words "they shall assess the same according to what they shall find," the words "the amount shall be assessed according to what is found" are substituted.</p> <p>S. 65, for the words "the Justices or arbitrators or jury as the case may be," the words "the Court under 'The Public Works Land Resumption Act of 1906'" are substituted; for the words "their verdict or" the word "its" is substituted.</p> <p>SS. 73, 76, 78, and 87, for the words "two justices," the words "by the Court under 'The Public Works Land Resumption Act of 1906'" are respectively substituted.</p> <p>S. 83, for the words "ascertained by arbitration and the costs of such arbitration shall be in the discretion of the arbitrators," the words "shall be determined by the Court under 'The Public Works Land Resumption Act of 1906,' and the costs of such proceedings shall be in the discretion of the Court" are substituted.</p> |

1906.

*Public Works Land Resumption Act.*THE SCHEDULE—*continued.*

| Year and Number of Act. | Short Title. | Extent of Amendment. |
|----------------------------|---|---|
| 27 Vic. No. 8... | "The Railway Act of 1863" | S. 134, the word "compensation" is repealed. |
| 28 Vic. No. 24 | "The Railway Act of 1864" | S. 7, for the words "by valuation by a surveyor summons before jus- tices or arbitration according as the circumstances of the case and the provisions of the said Act shall render necessary," the words "under 'The Public Works Land Resumption Act of 1906'" are substituted. |
| 36 Vic. No. 21 | "The Railway Amendment Act of 1872" | SS. 8, 9, and 10 are repealed. S. 3 is repealed. S. 4, for the words "settled as hereinafter provided," the words "determined under 'The Public Works Land Resumption Act of 1906'" are substituted. |
| 44 Vic. No. 10 | "The Railway and Tramway Ex- tensions Act, 1880" | SS. 5 to 17, both inclusive, S. 19, and Schedules A and B are repealed. SS. 7 and 8 are repealed. |