

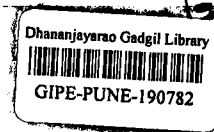
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Manual of Land Acquisition

for the

Presidency of Bombay

written by



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PREFACE

The scope of this work, as explained in paragraph 1, hardly falls within the definition of a Manual, if one understands thereby a set of condensed rules, put up in an easily portable size. Most of our so-called Manuals are, as this work is, in reality very comprehensive treatises compiled from the special point of view of the departmental officer.

2. When I am mainly reproducing the orders of Government and plain inferences from the text of the Acts and rulings, I have used larger type : when I am weaving my own tissue, doubtless out of authentic material but still in my own language and form, the type is smaller. Though published by order and with the approval of Government, no one will deem Government bound by any opinion, interpretation, or criticism, which I have thought fit to embody. The language used does not I believe anywhere leave room for doubt as to the passages in which I am giving my own opinions or suggestions, and those in which I am reciting definite Standing Orders.

3. A work of this type is by no means finished when published. It will be continuously revised, and will, I trust, remain alive in the sense of constantly assimilating itself to new requirements. Any suggestions to expand, modify, or correct the present text will always be welcomed by me or my successors in the task of its maintenance. Except the chapter on Valuation, most of the work is naturally a compilation in which I have used much the same materials as previous commentators. The Valuation chapter has benefited by the expert and patient criticism of Mr. A. E. Mirams, F.S.I., F.S.A., Consulting Surveyor to Government, so that some of it may almost be said to be our joint work, though naturally not in the form in which he would have expressed it. I am also much indebted to Sir Stanley Batchelor, now Chief Justice of Bombay, for kindly reading the proofs of the portions in which matters of law are discussed, and for valuable suggestions and criticisms.

4. Some will think the work too long and too detailed ; others will find it cursory and incomplete. I have had to steer the best course I could between these two dangers. The Manual is not recommended as a suitable book to learn by heart for an examination ; and it is not intended for the purely rule-of-thumb worker. But if all officers having to deal with acquisition cases become acquainted with its arrangement and principles, and turn to it for any details they want in the course of their work, it is my earnest hope that it will not fail them.

F. G. H. ANDERSON.

POONA, January, 1918.

SECOND EDITION.

Since the first edition in 1918 not only has the imprint been exhausted but we have had important legislative additions to our Acts, in directions anticipated in the first edition. In this second edition those Acts are now included and the Rules which the Local Government has approved to give effect to the wishes of the Government of India.

One of my chief difficulties has been in deciding where to place each point and ruling. The work has been laid out according to the logical sequence in time of the stages of procedure ; and therefore single subjects such as Tenants or Rights of Way tend to get scattered. I have done my best to reunite them by cross references to the paragraphs in which they occur.

Though there is no index, the table of contents has been so drawn that it is believed adequate to the discovery of any matter desired.

F. G. H. ANDERSON.

POONA, July, 1926.

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THIRD EDITION

The second edition being exhausted, this third reprint is published with all orders, rulings and legal decisions brought up-to-date. Valuable suggestions for improvement were received from Collectors and Commissioners. These have been accepted as far as possible, and incorporated in the third edition. In particular, a text of the Land Acquisition Act, 1894, and an alphabetical index have been added to this Manual.

N. A. FARUQUI,

Under Secretary to the Government of Bombay,
Revenue Department.

BOMBAY CASTLE.

27th August 1936

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ABBREVIATIONS.

(1) The term "Applicant" is used throughout to indicate the Department of Government, or officer, or Local Body, or Railway Company, etc., moving for the acquisition of the land.

(2) The terms "acquisition," "award," "notification," "payment," "proceedings," and so on must always be understood to be qualified by the term "under this Act."

(3) The sections quoted (*e.g.*, 'Sec. 9') means sections of the Land Acquisition Act, unless another Act is named.

Resolutions of Government are quoted by (1) a letter indicating the Department, (2) the No. of the Resolution, (3) the last two figures of the year, all enclosed in a bracket thus : (J. 777—07) means Judicial Department Resolution No. 777 of 1907.

In quoting Law Reports, the abbreviations generally familiar are used.

Acqn.	.. Acquisition.
A. G.	.. Accountant General.
A. O.	.. Acquiring officer.
A. S.	.. Award statement.
C.	.. Collector.
C. A. C.	.. Civil Account Code.
Cmr.	.. Commissioner (of the Division).
Co.	.. Company.
Compn.	.. Compensation.
Dpt.	.. Department.
D. L. B.	.. District Local Board.
G.	.. Government.
G. I.	.. Government of India.
L. A.	.. Land Acquisition.
L. B.	.. Local Body (not <i>Board</i>).
L. F.	.. Local Fund.
L. R.	.. Land Revenue.
Notfn.	.. Notification.
N. A.	.. Non-agricultural.
P. C.	.. Privy Council.
P. V.	.. Present value.
P. W. D.	.. Public Works Department.
R. L. A.	.. Remembrancer of Legal Affairs.
Ry. (s)	.. Railway (s).
S. F.	.. Sinking Fund.
S. S.	.. Secretary of State for India in Council.
X. N.	.. Executive Engineer.
Y. P.	.. Years' purchase.

THE LAND ACQUISITION ACT, 1894

(ACT No. I OF 1894)

STATEMENT OF REPEALS AND AMENDMENTS.

S. 2 REPEALED IN PART AND AMENDED	..	..	..	..	Act 10 of 1914, s. 3 and Sch. II.
S. 3 AMENDED	..	..	..	..	Act 17 of 1919, s. 2.
S. 4 AMENDED	..	..	..	..	Act 38 of 1923, s. 2.
S. 5A INSERTED	..	..	..	..	Act 38 of 1923, s. 3.
S. 6 AMENDED	..	..	..	..	Act 38 of 1923, s. 4.
S. 11 AMENDED	..	..	..	..	Act 38 of 1923, s. 5.
S. 17 AMENDED	..	..	..	..	Act 38 of 1923, s. 6.
S. 23 AMENDED	..	..	..	..	Act 38 of 1923, s. 7.
S. 24 AMENDED	..	..	..	..	Act 38 of 1923, s. 8.
S. 26 AMENDED	..	..	..	..	Act 19 of 1921, s. 2.
S. 38 AMENDED	..	..	..	..	Act 38 of 1920, s. 2 and Sch. I.
S. 38A INSERTED	..	..	..	..	Act 16 of 1933, s. 2.
S. 40 AMENDED	Act 38 of 1923, s. 9.
S. 41 AMENDED	Act 16 of 1933, s. 3.
S. 54 SUBSTITUTED	Act 38 of 1920, s. 2 and Sch. I.
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					Act 16 of 1933, s. 4.
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ACT No. I of 1894.¹

[2nd February 1894.]

An Act to amend the law for the acquisition of land for public purposes and for Companies.

[As modified up to the 15th March 1934.]

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the Land Acquisition Act, 1894.

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of March 1894.

2. *Saving.*— * * * *2

(2) *3 All proceedings commenced, officers appointed or authorized, agreements published and rules made under the “[Land Acquisition Act, 1870]” shall, as far as may be, be deemed to have been respectively commenced, appointed or authorised, published and made under this Act.

(3) Any enactment or document referring to the “[Land Acquisition Act, 1870]” or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

3. *Definitions.*—In this Act, unless there is something repugnant in the subject or context,—

(a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

¹ For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. V, p. 32 ; for Report of the Select Committee, see *ibid*, 1894, Pt. V, p. 23 ; and for Proceedings in Council, see *ibid*, 1892, Pt. VI, p. 26, and *ibid*, 1894, pp. 19, 24 to 42.

The Act has been declared in force in—

- (1) Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4, Burma Code ;
- (2) Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3, B. and O. Code Vol. I ;
- (3) Angul District by notification under s. 3 of the Angul Laws Regulation, 1913 (8 of 1913) B. and O. Code.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874) to be in force in (1) the Districts of Hazaribagh, Lehardaga (now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1894, Pt. I, p. 400 ; and (2) the District of Palamanu, see Gazette of India, 1894, Pt. I, p. 639.

It has been extended to British Baluchistan, by notification under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), see Bal. Code.

This Act has been modified in its local application by certain Acts passed by some of the Provincial Legislatures.

² Sub-section (1) of s. 2 was repealed by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

³ The word “But” was repealed, *ibid*.

⁴ These words and figures were substituted for the words “said Land Acquisition Act” by s. 2 and Sch. I, *ibid*.

⁵ Repealed by this Act.

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

(c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(e) the expression "Company" means a Company registered under the Indian Companies Act, 1882,¹ or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent² [and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912]:

T of 1882.

[XI of 1860.

I of 1912.

(f) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision; and

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure³ shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

IV of 1882.

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

¹ See now Act 7 of 1913.

² These words and figures were added by s. 2 of the Land Acquisition (Amendment) Act, 1919 (17 of 1919).

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

PART II.

ACQUISITION.

*Preliminary Investigation.***4. Publication of preliminary notification, and powers of officers thereupon.—**

(1) Whenever it appears to the Local Government that land in any locality ¹[is needed or] is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. Payment for damage.—The officers so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

Objections.

5A. Hearing of objections.—(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the local Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Local Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

Declaration of intended Acquisition.

6. Declaration that land is required for public purpose.—(1) Subject to the provisions of Part VII of this Act ²when the Local Government is satisfied, after

¹ These words were inserted by s. 2 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

² This section with its heading was inserted by s. 3 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

³ These words and figures were substituted for the words " whenever it appears to the Local Government " by s. 4, *ibid.*

considering the report, if any, made under section 5A, sub-section (2),] that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be ; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. *After declaration, Collector to take order for acquisition.*—Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. *Land to be marked out, measured and planned.*—The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

9. *Notice to persons interested.*—(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the

Act XVI of 1866 of Indian Post Office Act, 1866.¹

10. *Power to require and enforce the making of statements as to names and interests.*—(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Act XLV of 1860.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. *Enquiry and award by Collector.*—On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquiry into

¹ See now the Indian Post Office Act, 1898 (6 of 1898).

the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land ;

(ii) the compensation which in his opinion should be allowed for the land ;

and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. *Award of Collector when to be final.*—(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the person interested as are not present personally or by their representatives when the award is made.

13. *Adjournment of enquiry.*—The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

14. *Power to summon and enforce attendance of witnesses and production of documents.*—For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.²

XIV of 1882.

15. *Matters to be considered and neglected.*—In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Taking Possession.

16. *Power to take possession.*—When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

17. *Special powers in cases of urgency.*—(1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the

¹ These words and figures were inserted by s. 5 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

² See now Act 5 of 1908.

standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24 ; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

¹(4) In the case of any land to which, in the opinion of the Local Government, the provisions of sub-section (1) or sub-section (2) are applicable, the Local Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).]

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. *Reference to Court.*—(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. *Collector's statement to the Court.*—(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. *Service of notice.*—The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing the appearance before the Court on that day, to be served on the following persons, namely :—

(a) the applicant ;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and,

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

¹ This sub-section was added by s. 6 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

21. *Restriction on scope of proceedings.*—The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. *Proceedings to be in open Court.*—Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

23. *Matters to be considered in determining compensation.*—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market-value of the land at the date of the publication of the ¹[notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

24. *Matters to be neglected in determining compensation.*—But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired,

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the ²[notification under section 4, sub-section (1)].

25. *Rules as to amount of compensation.*—(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

¹ These words and figures were substituted for the words and figure "declaration relating thereto under section 6" by s. 7 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

² These words and figures were substituted for the words and figures "declaration under section 6" by s. 8 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

26. *Form of awards.*—¹[(1)] Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

¹[(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9) respectively, of the Code of Civil Procedure, 1908.]

27. *Costs.*—(1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. *Collector may be directed to pay interest on excess compensation.*—If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. *Particulars of apportionment to be specified.*—Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

30. *Dispute as to apportionment.*—When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V.

PAYMENT.

31. *Payment of compensation or deposit of same in Court.*—(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested, entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

¹ Section 26 was re-numbered s. 26 (1), and sub-section (2) was added by s. 2 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate.—(1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases.—When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may, direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

34. Payment of interest.—When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI.

TEMPORARY OCCUPATION OF LAND.

35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.—(1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation

and use of any waste or arable land are needed for any public purpose, or for a Company the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

36. Power to enter and take possession and compensation on restoration.—

(1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement and shall restore the land to the persons interested therein :

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. Difference as to condition of land.—In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement the Collector shall refer such difference to the decision of the Court.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

38. (1) Company may be authorised to enter and survey.—* * * * *

The Local Government may authorise any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

[38A. Industrial concern to be deemed Company for certain purposes.—

An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.]

39. Previous consent of Local Government and execution of agreement necessary.—

The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement herein-after mentioned.

¹ The words "subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf" were omitted from sections 38 (1) and 41 by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² This section was inserted by s. 2 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933).

40. *Previous enquiry.*—(1) Such consent shall not be given unless the Local Government be satisfied ¹[either on the report of the Collector under section 5A, sub-section (2), or] by an enquiry held as hereinafter provided,—

²[(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.]

(2) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure³ in the case of a Civil Court. XIV of 1882.

41. *Agreement with Secretary of State in Council.*—** * * If the Local Government is satisfied ⁴[after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40] that ⁵[the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that] the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, * * *⁶ require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

- (1) the payment to Government of the cost of the acquisition ;
- (2) the transfer, on such payment, of the land to the Company ;
- (3) the terms on which the land shall be held by the Company ;

⁷[(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided ; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

42. *Publication of agreement.*—Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

43. *Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.*—The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870,⁸ shall be deemed never to have applied to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land. X of 1870.

44. *How agreement between Railway Company and Secretary of State may be proved.*—In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

¹ These words and figures were inserted by s. 9 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

² These Clauses were substituted by s. 3 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933).

³ See now Act 5 of 1908.

⁴ Certain words were omitted by s. 10 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

⁵ These words and figures were inserted, *ibid.*

⁶ These words were inserted by s. 4 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933).

⁷ See footnote 1 on page 10, *ante*.

⁸ These clauses were substituted by s. 4 of the Land Acquisition (Amendment) Act, 1933 (16 of 1933).

⁹ Repealed by this Act.

PART VIII.

MISCELLANEOUS.

45. *Service of notices.*—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866,¹ and service of it may be proved by the production of the addressee's receipt.

46. *Penalty for obstructing acquisition of land.*—Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. *Magistrate to enforce surrender.*—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

48. *Completion of acquisition not compulsory, but compensation to be awarded when not completed.*—(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

49. *Acquisition of part of house or building.*—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his

¹ See now the Indian Post Office Act, 1898 (6 of 1898).

other land the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

50. *Acquisition of land at cost of a local authority or Company.*—(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

51. *Exemption from stamp-duty and fees.*—No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. *Notice in case of suits for anything done in pursuance of Act.*—No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender or sufficient amends.

53. *Code of Civil Procedure to apply to proceedings before Court.*—Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure,¹ shall apply to all proceedings before the Court XIV of 1882. under this Act.

54. *Appeals in proceedings before Court.*—Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.] V of 1908.

55. *Power to make rules.*—(1) The Local Government shall * * * have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made :

[Provided that where the provisions of this Act are put in force for the acquisition of land—

(a) for the purposes of any railway, or

(b) for such other purposes, connected with the administration of a central subject as defined in section 45-A of the Government of India Act, as the Governor General in Council may, by notification in the *Gazette of India*, declare in this behalf,

the power to make, alter and add to rules conferred on the Local Government by this sub-section shall be exercised subject to the control of the Governor General in Council.]

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall, * * * be published in the official Gazette and shall thereupon have the force of law.

¹ See now Act 5 of 1908.

² This section was substituted by s. 3 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

³ The words "subject to the control of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (33 of 1920).

⁴ This proviso was added, *ibid.*

⁵ The words "when sanctioned by the Governor General in Council", were omitted by s. 2 and Sch. Pt. I of the Decentralization Act, 1914 (4 of 1914).

MANUAL OF LAND ACQUISITION

INTRODUCTORY

CHAPTER I.

1. The Local G. has power [Sec. 55 (3)] to frame rules having the force of law; but most of the Local Gs. have not done this, nor has the G. of Bombay (R. 8397—06 and 10723—10) except for the purpose of defining the procedure and the validity of objections under the new Sec. 5A. These Rules are printed at para. 30B hereafter (R. 9173—30-3-26). The rules formerly issued with R. 6355—09 have been withdrawn and all officers are now required to follow this Manual (R. 1636—20). Some further executive instructions issued in R. 9173—11-6-24 have been incorporated in their appropriate place. Instructions issued by G. or even by a Board of Revenue are departmentally binding upon all subordinate officers. (Ezra case, I. L. R. 30 Calc. 82—85, 88). In this Manual all instructions and recommendations at any time issued by G. and still in force are embodied as nearly as possible in their logical sequence. A great number of references to the original orders are given, whereby the terms of the original case may be studied in greater detail. In order to make these instructions coherent a certain amount of explanatory matter, like connective tissue, and illustrative comment has been added by the writer. The Act is applicable to all India and has been the subject of several learned commentaries by practising lawyers. This Manual does not embody all the legal decisions on technical points of procedure, appeals, legal costs, and the like which are more fully dealt with in those commentaries, nor are all the legal discussions as to the multifarious points which have arisen reproduced from the Law Reports so fully as in those commentaries. At the same time it is believed that no important ruling or interpretation has failed to obtain notice in this Manual. When any of these delicate points arise in the course of a case it is recommended that officers who may have to decide them should refer to the publications of Messrs. H. Campbell (1911), F. E. Pargiter (late Judge of the Calcutta High Court), H. Beverley and Upendra Nath Ghosh, B.A., and for the general practice of urban acqn. to the 'Land Acquisition Procedure and Practice' (1916) by Mr. J. C. K. Peterson, I.C.S. (Calcutta Improvement Trust). Mr. A. K. Nanniah, B.A., B.L., has published a valuable and up-to-date compilation of almost every known decision. (Rs. 5, Venkaswamy, etc., Trichinopoly and Madras.) All of these works are unfortunately prior to the new legislation in Act XXXVIII of 1923. These commentaries contain numerous decisions inapplicable to this Presidency.

Courts have differed considerably in their views of the applicability of English decisions based on enactments and legal practices differing at some points widely from our Indian law. Yet at the same time our ultimate Court of Appeal is the Privy Council which is apt to be influenced by views and interpretations already domesticated in London. In I. L. R. 25 Calc. 346 English parallels are denounced almost without reserve as valueless. In this treatise, English cases are cited where they plainly would apply and where they supply blanks in our Indian case law: where they proceed upon language in the English Acts which (often intentionally) is not found in our Acts, or are for other reasons of doubtful application here they have been either excluded or queried. The most exhaustive summary of all these rulings will be found in the valuable work of Mr. Nanniah.

2. Of course the Act has no operation outside British territory or in an Indian State. For land required in States the procedure laid down in this Manual is to be adopted as far as applicable in every respect, the arrangements being made through the Political Officer. In no case should such land be entered upon, or damage done to trees or property without first securing through the local Political Officer the written consent of the Darbar. Further details of the reciprocal arrangements with Indian States will be found in paragraphs 42, 98, 236.

For other purposes, as also for Rys., when such land has been acquired the G.I. have strictly ordered that no Ry. officers may obtain access to additional land or

land for quarrying and the like without proceeding in the same way through the Political officer, and to avoid misunderstandings such land must never be entered upon until consent has been formally obtained.

3. *Deleted.*

4. In the City of Bombay there was a special Act for the Improvement Trust. That Act was repealed by Act XIII of 1933 and the acquisition of land for City Improvement in Bombay City is now governed by the special provisions in Chapter XII-A of the City of Bombay Municipal Act, 1888.

5. The Acqn. of Mines Act has not yet been applied to Bombay though this can be done by a simple procedure. That Act provides for the case in which the surface of the land and the workings for minerals such as coal under the land are separately dealt with. A Ry. Co. running across a coal field would naturally not desire to pay the entire value of all the minerals it crossed. See para. 42 (6).

6. The Irrigation Act VII of 1879, Part V, specially applies the procedure of this Act to certain cases thereunder. The District Municipal Act (1901) and the Bombay Municipal Boroughs Act (1925) provide an alternative procedure for setbacks by local arbitration, allowing no appeal or withdrawal, Secs. 92 and 160 of the former Act and Secs. 118 and 198 of the latter Act; but it is not usually found so satisfactory as that under this Act: see also Secs. 41 and 52 of the respective Acts.

7. Under the Land Revenue laws G. already possesses many rights over land. It is therefore obviously to the public interest that no such right should be disposed of when it is possible to foresee that hereafter it will be necessary to re-acquire that right at the public expense. This antecedent precaution should be in the mind of every officer disposing of public rights over land. In some cases even the occupancy right over agricultural land has been disposed of on leases or grants which provide that whenever any of the land is required for a public purpose it shall be surrendered at the same rate at which it was originally granted by G. Such a condition inserted in some Salsette leases in the eighteenth century saved very much money a hundred years later when waste and agricultural land was acquired for the B. B. & C. I. Ry. When reclamation leases are given, usually without occupancy price, a similar stipulation to surrender free or at a determined rate land needed for future roads or any other public purpose for which this Act might be applied is a valuable condition. It is usually inserted in sanads granting permission to build under Sec. 67, L.R.C., and in all free grants and alienations, L. R. R. 36 (1) (1921) (see para. 234); and was a condition of the grant of waste lands to the municipalities of Karachi (till surrendered in R. 2032—20-6-22), Hyderabad, Sukkur (R. 6914—85) and Hubli and Dharwar (R. 71—71), and ought to be a condition of all future disposals of the possessory rights of G. Under the Cantonment tenure, and the Sanadi tenure in Bombay City, G. can resume on paying *value* of buildings or other improvements (see para. 234). Land, of which the occupancy had been purchased, held free of assessment by a Muny. for a definite purpose, was used without G. consent for other purposes. A claim for compn. based on the income realised from the unpermitted use was rejected (Sukkur).

8. Before the Land Revenue Code (1865) when the tenures recognised were Inami, Mirasi and Upri (of which the latter was not proprietary and covered almost the whole area of the Presidency), G. usually acquired any Upri land needed for public purposes simply by resumption and cancellation of the tenant's liability for rent or assessment, giving compn. only for improvements made at the holder's expense. "Resumption on terms of remitting the assessment alone has been frequently practised and not regarded as affording any ground for complaint." (R. 2992—54.) Inamdars were also not to be compensated for small areas taken for roads. (*Ibid.*) Most of the occupied agricultural land in the Presidency has now been granted on a proprietary tenure *not including the right to build* anything other than farm buildings. Nevertheless, land suitable for building is usually permitted to be diverted to this object subject to payment of the usual and natural enhanced assessment or share of the unearned rental. Hence there is a natural presumption in the minds of vendors or purchasers of land on the ordinary tenure that they will get this permission on the ordinary terms and therefore enhanced prices are naturally paid for land adapted to building and situated in places where a demand exists [I Bom. L. R. 455 (1899)]. It may therefore easily happen that G. may have to pay a very high price to repurchase, as it were, from holders on the ordinary tenure their anticipation that G. will permit them to build. It is therefore desirable that steps should be taken to prevent this enhancement of value in respect of any clearly defined and reasonably restricted area if it is reasonably probable,—and still more if it is quite certain,—that it will have to be acquired.

A "restricted area" so constituted round Deolali Cantonment is discussed in Nasik Collector's Notfn. 11358 at p. 2450 of *B. G. G.* of 9-12-09 and G. 123—17.

Clearly if all vendors and purchasers are warned that C. will never give permission on any terms to build on a particular plot, it could not afterwards be argued that that plot had acquired an enhanced value on account of such expectation. It would be no use recording a private note in C.'s office or even issuing instructions to his subordinates; nor would it escape the appearance of injustice if the notfn. were made long after the enhanced value had accrued and land had changed hands at the enhanced value. The proper procedure for the protection of the public rights is that C., when he anticipates that it will be necessary to acquire for any public purpose any block or strip of land now held on the ordinary agricultural tenure, and which has not yet attained an inflated value for non-agricultural purposes should *erect notice boards* on or along the boundaries of the land warning purchasers that permission to build will be refused. The cost can be met from his contract grant but if the land is afterwards acquired, it can be recovered as a cost of acqn. from the applicant. Now also see para. 78 for recoupment of costs. Even when some enhancement has already occurred, but it may be necessary to reserve strips of land for roads or other access to buildings and the like in town planning or other such operations, still it would be legitimate to notify this intention in the same way. This has been done frequently in Salsette. (R. 3354—04.) In any subsequent acqn. proceedings it could not be maintained that the property had advanced in value as a building site, at any rate since the date of that notfn. This is fully supported by 33 All. 733. Besides building rights other licenses may be granted, such as permission to make salt, or to quarry stone, or make bricks, etc. Such leases are usually for a limited period and should never be granted for indefinite periods in localities where future acqn. is clearly foreseen.

9. Under this Act G. cannot acquire its own land but can acquire any rights or licenses granted by itself over *Government* land ("benefits to arise from land" being defined as land). The preferable course when an acqn. is anticipated is to give notice to the licensee or tenant that the license, permission, or tenancy granted to him will be terminated. When it has terminated, then acqn. can proceed along a much clearer course. A. O. cannot award part of the gross value to G.; he can value only the interests not already vested in G. (Adv. Genl. in R. 7876-19). To acquire means to purchase such interests as clog the rights of G. to use the land as it pleases (34 Bom. 618). For a case of buildings acquired when the land itself already belonged to G., see R. 12715-19. The market value which A. O. must determine cannot include the value of the assessment or other tax imposed by G. nor any departmental transfer of that tax as when assigned to L. B.). No award can fix a price for the assessment or apportion value as between G. and the owner (R. 3958F/24—24-4-26). See also para. 95. Although G. have the right to all minerals including quarriable stone, still, where C. had been in the habit of giving licenses to quarry, it was held that the land had "special adaptability" for quarrying and that the holder had a reasonable expectation that permission to quarry would be given as usual. An otherwise almost worthless (Rs. 96) stretch of land was thereby enhanced to a very high value (Rs. 5,140): see para. 232. G. consider that the revenue regulations should not be applied in a manner which will interfere with the most profitable use of the land.

See L. R. R. and commentaries for the details of mineral assessments.

When an Inam grant was made expressly to yield to the grantee a defined income from growing rice, it was ordered to be contested in court that this was no grant of mineral rights—though by unquestioned use for over 60 years such a right might be acquired and become unassailable by virtue of Limitation. (R. 7876-19).

Talukdars holding under a Sanad (evidencing a contractual relationship) do not own mineral rights; nor do Mehwasdars, since they do not own trees. (R. 3134-20).

10. G. have expressly ordered that in the vicinity of Ry. stations or other places where land is likely to be required no long leases shall be granted, and the intention to reserve those areas for roads or open spaces and not to allow building thereon shall be notified. (R. 140—88; 6188—03.)

10. (2) In the case of applications for permission to build on land in the vicinity of railway stations, the Collector should give one month's notice to the railway authorities to put in their objections, if any. The statutory period of three months for the disposal of the applications should not however be exceeded.

When an application to build upon land within 35 feet of a transmission line owned and operated by a Railway Administration is made to the Collector and it is proposed to grant permission, intimation of this should be given to the Railway Administration concerned so as to allow that administration an opportunity to acquire the land if it so desires. These orders apply in the case of unalienated agricultural lands but not to occupied lands in village sites or to lands for which permission for non-agricultural use has already been obtained. (R. 1996/28—18-4-1929 and 4999/24—2-6-1930).

11. Though it would not be correct to describe the Act as confiscatory, still it undoubtedly causes hardship to individuals because it restricts them to the *market* value of what is taken from them. Although all actual pecuniary losses, even the cost of moving and the loss on earnings resulting from interference with the good will of business and the like, are taken into account and paid for, there are many sentimental losses which cannot be paid for, because they have no market value. The Act does not command what is known as reinstatement under which a man losing a property artistically improved at great expense and enjoying advantages of scenery etc., might claim to be reinstated in another property, at however great a cost, possessing the same amenities. This is not what the Act offers but only the current prosaic market value. The owner whose land is notified is in the same position as if he were compelled to sell by some sudden reverse of fortune. He cannot stand out for a reinstatement value, but only for what a fair-minded purchaser will offer him in the existing state of the market. It is the legitimate aim of all officers administering the Act to secure for the public all land required for the use of the State at the least burden to the tax-paying public; on the other hand, no one should be deprived of his property even on the ground of State necessity without giving him at least as much as a prudent private purchaser would pay. Since the Act therefore imposes a burden on those whose land is taken, it must be interpreted like penal statutes strictly in favour of the private party and every irregularity prejudicing him is fatal to proceedings thereunder. (See para. 89.) It is most incumbent on a'l A. O., in the issue of notice and in giving facilities to parties to be heard, to bear this general principle in mind. When A. O. gave insufficient notice he lost his case (40 Ind. Cas. 76); and too 6 Ind. Cas. 457 and 44 P. R. 1904 and numerous English cases.

No party can be held to have waived any defect unless he does so with full knowledge and explicitly (34 Cal. 470). If under color of proceedings under this Act yet not lawfully and regularly covered thereby an official or corporation commit a tortious or unjustifiable act or exceed or abuse their powers, then the remedy is not by a claim for compn. hereunder, but by a suit for damages (7. C. W. N. 399 per Macnaughten J.)

In every case the utmost consideration, consistent with fairness to both sides, should be shown to the wishes and feelings of people who have to suffer for the public good. (G. 2610—72.)

Fifteen per cent. is to be added to all valuations for land and things thereto attached: *e. g.*, houses, trees (when taken over as they stand) and easements dominant and servient; but not on items for crops and (cut) trees, for severance, injurious affection (of the land) earnings (goodwill) or costs of moving. (10 Bom. L. R. 994.)

12. The solatium of 15 per cent. is discussed in R. 7042-18. Under the English Land Clauses Acts (1845, 1860 and 1869) a practice, which has never been embodied in the law, of paying a solatium of 10 per cent. grew up, but it has been expressly barred in all Acts empowering acqns. in and since 1890.

For the views of the Bombay G. see R. 7880—19; especially as to slum property.

13. Land taken in virtue of the Act does not require any Deed of Transfer, or registration, or other document. But of course there always are open the ordinary channels of acqn. by private contract. Great care must be taken to distinguish between acqn. under the Act and acqn. by private contract. Cases have occurred in which informal proceedings in the forms suggested by this Act have been held and certain prices have been awarded, and perhaps accepted without demur by parties. But on the one hand no formal notfn. or the other essentials of the procedure under the Act were observed and on the other hand no formal Sale Deed was executed. To land so acquired there would be no valid title whatever: there is no half-way procedure. For powers to sign deeds on behalf of G. or of the S.S., see H. D. 7119—8-12-26.

When land had been privately acquired by a L. B. and had been in their undisturbed possession for 16 years, there was no need to resort to formal acqn. to clear the title, as it had already been cleared by limitation (but not quite against all contingencies) R. 3060-20.

14. Though land may be acquired for G. by a private negotiation, this should not be done without the knowledge of C. and his consent. If this were omitted officers of other Dpts. might commit various mistakes as to tenure and title and also might pay prices so high as to embarrass other proceedings, or so low as to give rise to allegations of undue pressure or misapprehension.

15. G. entirely discountenances acqns. by private contract. When it is desired to acquire land, the land should be notified and the acqn. carried out under the Act. This procedure (1) shortens correspondence and negotiations, (2) makes certain of the land, and (3) secures an indefeasible title. The notfn. need not in

any way prevent or impede private negotiations ; these can be proceeded with and, if agreement be arrived at, the price agreed can be awarded in the manner indicated in the preamble of R. 1171—05 and paid under the usual procedure (C. A. C. appx. 7.) (R. 8762—86). If the price be not agreed upon by private negotiations still an award can be framed. In either case the land will be acquired and the title of G. will be secured, which will not be the case if the acqn. be made by private negotiations only. (R. 7751—05 and reaffirmed in R. 1161—24 of 14—11—24.)

Such an agreement does not preclude withdrawal under Sec. 48 : nevertheless the agreement is not void for want of mutuality. (44 Bom. 797.) Such agreements are optionally registrable [Section 17 (2) (v) Regn. Act]. But if the agreement is to purchase without applying the Act, then Registration would be compulsory. See also note to para. 13 *supra*.

(2) But land should not be taken permanently when required only temporarily (*i.e.*, for not more than three years), and will not be permanently spoiled by the use. Such temporary uses may be arranged by private treaty in writing ; and the Act (Secs. 35—36) applied only if treaty fails and the land is waste or arable. (R. 10082—17.) For temporary acqn. no notfn. is needed. Reference may be made to the Court as to rent or in disputes as to damage done. In case of land needed for Military Dpt. the expediency of temporary *versus* permanent acqn. is discussed in R. 11644—18, rather in favour of permanent. Temporary use of Ry. land by G. or another Ry. can be allowed without any stamped document, but just a signed memorandum. A Ry. is liable to pay rent for use of any G. (or other Ry.) land.

16. These orders do not apply to acqns. by private negotiations by L. B. It is within their discretion to negotiate privately before coming to G. for aid. The orders of course apply as soon as these L. B. ask G. to acquire on their behalf, because the acqn. would then be made by G. The L. B., however, would be well advised to adopt the course above. (R. 3175—06.)

17. Prior to taking proceedings under Chapter II of the Forest Act, 1878, land in private occupation, cultivated or not, must be acquired for G. either by private negotiation (R. 904—83 ; 7991—00 ; 5359—17) or compulsorily, and if by private negotiation, then either with or without proceedings. The risk to title in this case which would result from dispensing with the Act is infinitesimal because after the enquiry and notfn. under the Forest Act most defects would be cured. But the Act should be applied if it saves time. Should there be no advantage in time or in convenience, the proceedings can be dispensed with. The matter should be left to the judgment of C. (R. 4541—06.)

18. When a price can be agreed upon in easy preliminary negotiations and there is no dispute or objection, still formal proceedings under the Act will give very little real trouble. Complications may easily arise through private acqns. The following are known to have occurred :—

- (1) Sons have repudiated alienations by their father on the ground that they were a joint family and the father individually had not the power of alienation.
- (2) The person who accepts the price has been found not to be the real owner.
- (3) Suits have been brought to set aside the sale on the ground that undue official pressure was applied to the parties.
- (4) Minors are not bound or estopped by all acts of their guardians (17 Bom. 299).
No waiver of right is possible where the party is a minor, a limited owner (e.g., Hindu widow), receiver trustee, executor, etc.

It will therefore always be wiser, even in the simplest case, to make the acqn. through the simple formalities of the Act. Land under the Court of Wards can lawfully be acquired but if C. is both guardian and A. O. he must be specially careful to award a value impartially ascertained or the ward can recover the land by suit on reaching majority. (Privy Council in 17 Ind. Appeals 90.)

19. It has sometimes been deemed expedient to avert the speculative enhancement of prices which often occurs when notfns. are issued and lengthy proceedings instituted and interested persons combine to inflate their demands beyond the reasonable and normal prices obtaining before they knew that G. was the buyer. It is obvious that if 100 plots of land are to be acquired, and if a broker privately approaches some of the owners on behalf of any unknown client and obtains agreements to sell, in a fair and open market, at a certain rate for even 20 or 30 of the plots, it would be difficult for the owners of the remainder to hold out for extravagant

advances upon that price. G. have therefore approved, in some cases, the institution of such preliminary negotiations without divulging the intention to acquire when the local officers consider that economy will result. (R. 140—88.) When this is done nevertheless the Act should subsequently be employed and, to those persons who have agreed, the prices agreed upon should be awarded. It should be made clear in the agreement that the price is inclusive of everything and then that price should be divided by 115 and 100 should be awarded under the Act as market value and 15 as the statutory percentage. Thus the party will get the actual price agreed upon, and G. will get an indefeasible title. The broker's fee will require the sanction of G. and it should be made dependent on the price eventually paid. This fee will be counted as part of the cost of acqn. (G. I., P. W. D. letter 1780-R.C.—12-11-04.) Brokers have been sanctioned in R. 2784—10 and in Order R. 1982—11.

20. But whether land is taken under the Act or not, the orders are most stringent against taking any land before it is properly acquired by one or the other method. R. 8154—23; R. L. C. 2096—30-11-25. Urgent possession in special circumstances can be obtained under Sec. 17 (1) or 17 (2) but both these sections presuppose that the Act is being regularly applied.

21. It is a common practice for officers in a hurry to endeavour to enter upon possession in anticipation of the proper proceedings. This can be permitted in one way only: the owners or occupants must voluntarily execute agreements (which could be prepared in a printed form) undertaking, in consideration of the fact that formal acqn. proceedings were impending, to allow possession to be taken on condition that when the award is completed interest should be given them on the awarded amount at 6 per cent. from the date of entry. But such anticipatory entry is exceedingly dangerous—(1) It debars subsequent withdrawal under Sec. 48; (2) it presupposes that G. will accept that the object falls within the definition of a public purpose; (3) it precludes C. from taking all the precautions against unsatisfactory acqns., which we shall hereafter detail. If the acqn. is proper and the land is adequately determined and selected, possession can always be obtained within about 20 days at the most. Therefore circumstances ought never to arise justifying resort even to this method of taking agreements. Such anticipatory haste is usually followed by unusual delay in completing the acqn.

22. Any officer of the P. W. D. who unauthorizedly occupies land will do so at his own risk. (R. 2388—71, 709—81; P. W. D. 100 C. W. 321—81.) This re-affirms G. Circular 713—24-4-1826.

P. W. Officers should not enter on and use lands until they have been formally made over by the Revenue Dpt. (R. 1056—73; and P. W. D. 79-A-487—73; P. W. D.—S. 152—5—of 76: 18-12-23.)

23. Lands are not to be taken up by public officers except with the consent of the owners, otherwise than in accordance with law. Should this rule be neglected, G. will decide whether the costs of legal proceedings which may result should be borne by G. or the officer by whose order the land was taken. (R. 1789—75.)

24. Certain lands required for a road were taken up by a district officer in contravention of the above orders and no formal declaration for the acqn. was issued until after the road was completed and opened for traffic. Attention is invited to this irregular procedure, and all officers are warned that *in the absence of an agreement* possession should not be taken except where it is permitted either under orders of G. under Sec. 17 or in due course after an award has been made under 16. (R. 4251—10.)

It is the duty of C., who is armed with ample power, to see that lands are not unauthorizedly entered upon by railway officials or anyone else. (R. 1449—72.) No Co. may start work without complying with the law (R. 1878—20).

24-A. The taking of possession of land before completion of acquisition proceedings results in payment of interest on compensation. These interest charges are often considerable. It is incumbent on the P. W. D. (and other) officers concerned to see that unless absolutely unavoidable, land is not entered upon before it has been properly acquired and made over by the Revenue Authorities. Even in cases of urgency, the entry on land should be deferred to as late a date as possible in order to minimise the interest charges payable. The Revenue Officers should also see that acquisition proceedings in such cases are carried out with particular expedition and for this purpose, the P. W. D. (and other) officers should promptly furnish correct information, such as land plans and statements to the Revenue Authorities. (P. W.—1468/27—24-7-29.)

PRELIMINARY NOTIFICATION.

25. All valuations (whether for estimates or final award) are to be made as at the date of notfn. under Sec. 4. No improvement or other alteration can be taken as complete if not finished on that date. Where the P. W. D. had cut down some trees etc. before that date A. O. could not value them. The owner must separately sue the trespasser (3 Lr. Burma R. 117). As a friend of the parties A. O. might very properly facilitate a settlement between them out of Court.

After notfn. but before award it is discovered that land contains gold. This fact existed at the critical date though not known till later: its value must be awarded (2 K. B. 140). If not discovered till after possession and payment, no claim for revision would lie, unless applicant had concealed his knowledge.

Where G. took possession but no proceedings or award were drawn up, the owner petitioned G. and time passed in correspondence till the period of limitation running from dispossession expired. He then sued but was held time-barred. (II Sutherland's W. R. I.) No doubt G. had special reasons for taking advantage of the plea.

26. Cancelled.

27. The G. of Bombay did not before 1924 consider it necessary to issue any notfn. under Sec. 4 even to enable trial surveys to be undertaken, but C. and Political officers have always been instructed to render any assistance in their power. Cases which have arisen in other parts of India have shown the expediency of conforming to the law, and of issuing notfns. under Sec. 4 before entering upon lands; and without such notfns. officers employed upon surveys or reconnaissances are liable to be treated as trespassers. (R. 5405-93.)

The amending Act XXXVIII of 1923 now makes notfn. under Sec. 4 *obligatory in all cases without exception*, though it may be immediately followed by notfn. under Sec. 6 if real urgency is shown (para. 117).

R. 9173-11-6-24 and 8154-6-8-23 require that in submitting preliminary notfns. under Sec. 4 it should be stated whether there is budget provision. This should be understood rather to mean a reasonable expectation that funds will be available. If the notfn. under Sec. 6 cannot be proceeded with for want of funds in the budget, the acqn. must be promptly withdrawn. (R. 8154-29-10-28.)

28. The notfn. under Sec. 4 may describe the locality in which land is likely to be needed in the most general terms, but if it is described by enumeration of villages (S. Nos.) the list of villages (S. Nos.) should be complete in order that difficulty may not arise in case of a prosecution under Sec. 46 or even in action under Sec. 4, because if certain villages (or S. Nos.) are named, it will be inferred by the Courts that the notfn. does not extend to others which are not named. (R. 8880-84.)

A notfn. stating that a belt of land is required running right through the Taluka of X from the neighbourhood of village A to the neighbourhood of village B would be quite sufficient.

29. It should be particularly noticed that under Sec. 5 the payment for damages done by the surveyors and prospectors, if any, is awarded by C. himself. He cannot delegate the function to anyone, and on the other hand, there is no appeal whatever from his decision. Even the Court cannot take cognisance nor can the party claim a reference, if C. makes an award in good faith and in regular form.

In England no work contract or disposal which creates an onerous interest may be made after notfn. on the land notified or any land for which the holder proposes to claim as severed or injuriously affected. If part of an estate be notified the owner cannot begin to build a mansion on the residue and then claim for injurious affection (See para. 240) (*Mercer vs. Liverpool Ry. Co.* I. K. B. D. 625-1903). (But here is a good instance of a ruling which might not apply to India. Sec. 24, Seventy has, probably by inadvertence, been so drafted as to forego the benefit of this English rule.) We should endeavour to interpret the term "disposal" to include the creation of valuable easements or advantages over adjacent unnotified land. If the area notified under Sec. 4 be not too closely defined, we can almost attain the benefits of the English rule, and the standard form of notfn. is designed with this object, if the area be not scheduled with needless precision.

29-A. In the schedule to the notfn. under Sec. 4 the area should be stated as "approximate". There is then no objection to finally notifying under Sec. 6 a slightly larger area than that notified under Sec. 4 provided it is covered by the word "approximate". (R. 1879/24-21-9-34.) Ordinarily, however, it is desirable that the notfn. under Sec. 4 itself should cover a little too large an area rather than one that is too small. (*Vide* also para. 109.)

30. Before a notfn. under Sec. 4 is issued dealings in land may become active and a generally higher level of values may be more or less artificially engineered. The A. O. and the Court are not debarred from considering such transaction and such disposals as leases or contracts to sell are not *legally* invalid until after a notfn. under Sec. 4. [See Sec. 24 (7).] The effect of this rough preliminary notfn. is legally to bar speculative and unreal transactions on the eve of the award, and the worst that could result from notifying too much area would be the chance of a claim by some person that he had intended to dispose of his land but was checked by the rough notfn. and thereby incurred some loss in consequence of the *de facto* withdrawal by G. from the acqn. of the full area as originally notified. This is a very remote chance, and it would be hard for the claimant to make out a case and the damages could not be very great in any event. Therefore it is expedient to issue the notfn. at as early a stage as possible, and to see that it is comprehensive.

The forms of ordinary notfn. C under Sec. 4 and E to be used when it is also necessary to use the urgency clause (and exclude the operation of sec. 5A : see para. 116) are sanctioned in R. 488/24—29-5-26 as standard and special forms respectively, English only. They should be indented for on September 15th yearly. (*Ib.*—5-8-26.)

C

REVENUE DEPARTMENT ;
Bombay Castle, 193

No. —Whereas it appears to the Governor in Council
Government of Bombay (Transferred Departments)
that the land specified in the schedule hereto is likely to be needed for
lands are a public purpose
the purposes of the Society or Company, *viz.*, for ;

It is hereby notified under the provisions of Sec. 4 of the Land Acquisition Act, 1894 (1 of 1894), that the said land is likely to be needed for the purpose specified above.
lands are

2. All persons interested in the said land are hereby warned not to obstruct or interfere
lands with any surveyors or other persons employed upon the said land for the purpose of the said
lands acqn. Any contracts for the disposal of the said land by sale, lease, mortgage, assign-
lands ment, exchange or otherwise, or any outlay or improvements made therein, without the sanction
of the Collr., after the date of this notfn. will, under sec. 24 (seventhly) of the said Act, be
disregarded by the officer assessing compn. for such parts of the said land as may be
lands finally acquired.

3. If the local Government is satisfied that the said land is needed for the aforesaid
lands are purpose, a final notification to that effect under section 6 of the said Act will be published in
the *Bombay Government Gazette*, in due course. If the acquisition is in part or wholly
abandoned, the fact will be duly notified in the *Bombay Government Gazette*.

Schedule :—

(By order of the Governor in Council), Assistant Secretary
Government of Bombay (Transferred Departments) to Government.

E

REVENUE DEPARTMENT ;
Bombay Castle, 193 .

No. —Whereas it appears to the Governor in Council that the land specified in the
Government of Bombay schedule hereto is needed for a public purpose
are the purposes of the Society or Company, *viz.*, for

It is hereby notified under the provisions of Sec. 4 of the Land Acqn. Act, 1894 (1 of 1894),
that the said land is needed for the purpose specified above.
lands are

2. (Same as Form C.)

3. The Governor in Council is further pleased to direct under sub-section (4) of section 17 of the said Act that, as the acquisition of the said ^{land is}/_{lands are} urgently necessary, the provisions of section 5-A of the said Act shall not apply in respect of the said ^{land}/_{lands}.

Schedule :—

(By order of the ^{Governor in Council}/_{Government of Bombay}), Assistant Secretary to Government.

Secrecy and promptitude in getting out the notfn. under Sec. 4 (1) are most necessary in view of the decision in R. 2377—137-Conf.—16. The Punjab Chief Court in *Ramchand vs. S. S.* (the Metcalf Estate case No. 2483—1913) held that if a rise in value before the notfn. can be proved—even when due entirely to anticipation of that action—it cannot be disregarded. In the particular case before it, the Court held that the rise in value had not actually been proved.

His Majesty the King-Emperor announced on 12th December 1911 that Delhi would be the future Capital. Naturally all landholders in Delhi, after recovering from the first surprise, rapidly realised that all land fit for building would rise enormously in value. No doubt many negotiations and attempts at speculation were instituted. But it takes several days to carry out a land sale, and on December 21st the Punjab Government issued a preliminary notfn. under Sec. 6 of the Act as it stood before 1923. [It is highly probable that this required considerable subsequent emendations.] The Court found that there was no proof that a market had actually been made at the higher values during that interval of 8 days. If it had, then no doubt the enhanced value would have been decreed. As it was, the claimant who demanded 45 lakhs before C. and 15 lakhs before the Court, was awarded about 3 lakhs. It is evident, however, that if the notfn. had been a little longer delayed, the cost to G. would have been enormous. [The G. I. in preference to amending the Act then desired that all notfn. proceedings should be taken as speedily as possible. It is, however, self-evident that in the case of a large project it is quite impossible to carry out these instructions in such a way that speculation can be so checked. If a preliminary notfn. under Sec. 4 must first be given, there can be no secrecy and no restraint upon speculation; and amendment of the Act [Sec. 23 (1) Firstly] would seem desirable so as to give to a notification under Sec. 4 the same effect upon compn. claimable as a notification under Sec. 6, whereby the value to be awarded would be that proved to have ruled in the market on the date of the notfn. under Sec. 4. It is difficult to conceive any sound argument against such amendment.] Since the clause bracketed was first printed, the Act has been amended in precisely this sense by the Act of 1923, by transferring the bar against dealings to sec. 4.

For withdrawal after such preliminary notfn. see para. 303. If any withdrawal is decided care should be taken to give very early intimation to all owners, whose hands are tied while the notfn. remains in force.

30A. As soon as the notfn. under Sec. 4 (1) has appeared in the *Gazette C.* should issue a notice in this form :—

*Form of notice under section 4 (1) of the Land Acquisition Act, 1894
(I of 1894).*

To

Mr. A B or Messrs. CD or all persons interested in the within mentioned land.

Whereas in Government Notification in the Revenue Department No. _____ dated _____ it has been notified under section 4 (1) of the Land Acquisition Act, 1894 (I of 1894), that land* out of the lands roughly indicated in the attached schedule is needed or likely to be needed for the public purpose of

(or for the purpose of _____ ^{company}/_{society}) and whereas you are interested in the said land, you are hereby informed that if you have any objection to this acquisition under the provisions of the said Act, you must lodge your objections in writing on or before (date).

*(Describe the land by survey number or by approximate area as may be convenient.)

The undersigned will also hear you in person or by pleader at the time of presentation of the objections.

You are further advised that all contracts purporting to dispose in any way of the rights in and over the notified land commenced or effected without my sanction, after the date of the aforesaid notification, will be disregarded and no compensation will be paid for any outlay or improvement made on the land.

Dated

Collector.

Here also give instruction as to crops or tenants (paras. 224-5, 230).

[Here add a schedule as in the Form C of Notfn. under section 4 (1)].

N.B.—(a) No person is deemed interested unless he is entitled to claim compn. or a share in the compn.

(b) A date 30 days after the issue of the notfn. is prescribed by the Act. No provision is made for extending this period; but if for any reason C.'s notice cannot reach the parties or be published in the locality in sufficient time to give a reasonable opportunity of objecting, C. would not be acting illegally in fixing a later date as the last date of presentation. When however the notice given is reasonably sufficient, the statutory limit is 30 days after the issue of the *Gazette*. It is presumed by the law that parties will see the *Gazette*. Since however in practice this cannot always happen, C. would be exercising a just discretion in allowing reasonable latitude. He would be within the law in rejecting objections even one day after the 30th day, unless he saw fit to relax the provisions.

30B. RULES UNDER SEC. 5A PUBLISHED IN R. 9173, 30TH MARCH 1926.

1. Whenever any notfn. under sec. 4 has been published but the provisions of sec. 17 have not been applied; and C. has under sec. 4 (1) issued notices to the parties interested; and on or before the last day fixed by C. in those notices in this behalf any objection is lodged under sec. 5-A (2); *firstly*, C. shall record the objection in his proceedings; *secondly*, C. shall consider whether the objection is admissible according to these rules.

2. To be admissible *(a)* an objection must be presented in writing by a party interested in the notified land and must be presented within thirty days after the date of publication of the notfn. under sec. 4 or within such further period as may be fixed by C.; *(b)* it must allege some specific objection, such as these—

(i) the notified purpose is not genuinely or properly a public purpose;

(ii) the land notified is not suitable for the notified purpose;

(iii) the land is not so well suited as other land;

(iv) the area proposed is excessive;

(v) the objector's land has been selected maliciously or vexatiously;

(vi) the acqn. will destroy or impair the amenity of historical or artistic monuments and places of public resort: will take away important public rights of way or other conveniences; or will desecrate religious buildings, grave yards and the like.

3. After admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, C. shall decide whether it is *desirable* to hear oral or documentary evidence, which under sec. 14 or sec. 40 he has power to call for. If evidence tendered by the objector is admitted, C. shall also afford the other party an opportunity of cross-examining it, or rebutting it by other evidence.

If he admits evidence, he will fix a time and place for hearing it; and will hear and record it in his proceedings.

4. Agents, other than pleaders, will not be allowed to appear on behalf of persons interested in an enquiry under sec. 5-A.

5. After completing the record of evidence, C. shall submit his report and recommendation as to each objection, whether admissible or inadmissible, for the orders of G. under sec. 5-A (2).

In hearing and forming his opinion C. will have to bear in mind many matters dealt with in other sections of this Manual, with which he should be sufficiently familiar to be able to look up the law or principles applicable.

30C. Under section 5-A (2) of the Act an objection to the acquisition of land is to be made to the Collector who is bound to give the objector an opportunity of being heard. According to the definition in section 3 (c) of the Act the expression "Collector" means the Collector of a district and includes any officer specially appointed by the Local Government to perform the functions of a Collector under the Act. This overrides § 10 L.R.C. The Personal Assistant to the Collector, or the Assistant or Deputy Collector in charge of the taluka, or the Special Land Acquisition Officer, is therefore debarred from hearing objections under section 5-A (2) unless he is specially authorised by Government to do so. Government consider it necessary that ordinarily the Collector himself should hear the objections under section 5-A. They will therefore not be prepared to authorise any other officer to hear such objections except in exceptional circumstances which must be fully explained. (R. 9173—2C—9—28.)

CHAPTER II.

PROPOSALS FOR ACQUISITION.

31. We now reach the point at which it is decided that land must be acquired under the Act and not otherwise. It will therefore first be necessary to justify the acqn. This must be for a public purpose and this public purpose must be accepted and notified by G. The "public purpose" of course must not be illusory or vague. For instance, it would be most improper to propose that since a certain plot of land might be required hereafter for Police lines or else for a Hospital, therefore it should now be acquired under pretext of keeping it as an "open space" as a precaution against possible increase of value. When land acquired for one purpose is then found not to be required in whole or part, it may either be sold or used for other purposes; but this will only hold good when the change of intention is entirely in good faith and unforeseen. The whole tenor of the Act presupposes that land in excess of the actual necessity will not be proposed for acquisition. A case occurred in which the storm-water flowing at the foot of a Ry. embankment threatened to erode certain cultivated land. The Ry. Co. proposed to acquire the whole of the land not because it was wanted for any Ry. purpose, but in order to save the trouble of periodical small payments as compn. for the erosion. The acqn. was of course negatived. Land cannot be acquired to give it in exchange for other land needed for a public purpose. (R. 8507—15.)

If it is proposed to construct a tunnel under or viaduct over any land it must be acquired just as though the surface were appropriated. But the owner is at liberty if he so wishes to negotiate (outside this Act) for a license or franchise instead of full acqn. When land was notified solely in order to exact fees from the owner, without any need of possession of the land, this was held illegal (56 Ind. Cas. 32.)

Widening a private street to let fire engines pass, or scavenging carts, is a public purpose (2 Bom. L.R. 395). Preservation of protected monument is provided for in Act VII of 1904.

An exhaustive discussion (subsequently endorsed by the Privy Council, 39 Bom. 279) of the meaning of "public purpose" will be found in the original judgment of Besman J. and in the appellate judgment of Batchelor J. in *S. S. vs. Bai Hamabai F. Petit* (O. S. 1056 of 1909) and in *S. S. vs. Moosa Haji Hassan* (O. S. 795 of 1908), known as the Malabar Hill cases [though these were not under this Act but under a lease using the same words]. See also para. 84.

"General definitions are rather to be avoided when avoidance is possible; and I make no attempt to define precisely the extent of the phrase 'public purpose' in this lease. It is enough to say that in my opinion the phrase, whatever else it may mean, must include a purpose that is an object or aim in which the general interest of the community, as opposed to the particular interests of individuals, is directly and vitally concerned." (Batchelor.)

32. It has, however, been held in *England* (*Galloway vs. Mayor and Commonalty of London*, L. R. 1 Eng. & Ir. Ap. 34; *Quinton vs. Corporation of Bristol*, L. R. 17 Eq. 524) that when acquiring for a street or for other public improvements, a Municipality can acquire more land than absolutely required with a view to profitable disposal of the surplus to reimburse the great expense—termed recoupment—for which otherwise no return could be obtained save by applying the doctrine of Betterment (see para. 172). This principle figures largely in the Town Planning Act. Two recent Appeal and Special Bench rulings in Calcutta under the Improvement Trust Act have further endorsed it (*Chandra Kanta Ghosh vs. the Trust*, 47 Calc. 500) [47 I. A. 45; 45 Calc. 343; 64 Ind. Cas. 577]. I. L. R. XLIV Calc. 219 took the opposite view; but was overruled by the P. C. on 16th December 1919 (P. C. appeal 78 of 1918).

There is no doubt as to the power of Bombay City Myny. to acquire for recoupment under their Act (23 Bom. L. R. 35 & 361). So too for mufassil Mynys. under Sec. 90 (2) Act III of 1901 (R. 1768—20) and under section 14 (2) of Act XVIII of 1925.

33. The purpose of the acqn. having been scrutinised and passed we then consider some special rules for acqn. for (a) Village sites, (b) Railways, (c) Native State Railways, (d) for Companies, and (e) for Local Bodies.

General rules for acqn. proposals are as follows :—

(1) All orders for acquiring land must issue from the Revenue Dpt. (R. 162—72 and 439—72.) See para. 115 for educational acquisitions.

(2) Civil authorities will assist in obtaining for the Military authorities preliminary information as to probable cost, exact situation, etc., of any land required for military purposes. (R. 1129—70 and 1289—70.)

(3) When land is required by the Military Dpt. application must be made through C. who will submit the case with the usual information for orders of G. (R. 3726—76.) For Military Rules see A. R. I., Vol. 2, para. 407. No proposals are sent to G. direct: the inconveniences are given in R. 577—21.

(4) In all cases in which land is to be acquired for any Dpt. for work carried out by P.W.D. agency, the X. N. should apply to C. through the Supg. Engr., and C. should forward it through the Cmr. to G. in the Revenue Dpt. through the P. W. D. (R. 3862—97, 8541—06 and 7558—07.)

If a L. B. acquired land for any work through X. N. the latter would be entitled to charge the percentage for tools, plant and establishment on the money paid for the land. To avoid this the orders in R. 8541—06 were cancelled so far as L. B. are concerned and such bodies may now apply to C. direct under this Chapter. (F. 3952—19 & 7316—23.)

(5) X. N. should point out to C. the precise localities at which they propose to obtain material for the repairs of existing roads; and C. will then acquire the land. (R. 2388—71 and 709—81, and P. W. D. 100 C. W. 321—81.)

(6) Land may not be notified for an Imperial Civil Building till the site has been accepted by the Committee prescribed by P. W.—C. W. 565—09.

VILLAGE SITES.

34. (1) In any case where a need for new or additional gaothan is believed to exist, a suitable site should first be selected, and a careful estimate made of the probable cost of acquiring the area, including wells, trees, etc., likely to be required. In calculating the area needed G. desire that future requirements should be carefully studied. The site should be large enough to meet not only the demands actually in sight but also the probable needs for some years to come. It should then be ascertained how much of this area will be available for building plots after allowance has been made for roads and open spaces. The occupancy price per square yard which must be charged to cover the cost of acqn. should then be calculated.

(2) Public notices should then be given requiring persons desirous of obtaining new building sites to send in within a given period applications stating the area required together with a deposit of occupancy price at the rate announced in the public notice (according to the calculation above). When all applications have been received and the amounts deposited, proposals should be submitted for acquiring the land. To meet the cost G. will make an allotment at the time of publishing the notfn. The amount so contributed by G. will partly be recouped immediately in the form of occupancy price deposited at the time of acqn. and will partly be set against future payments, which may be expected as additional plots come to be taken up. It may be noted that the advance payments are not to be treated as deposits under the C. A. C. but should be credited at once to G. as a non-Tharayband item under V. L. R. and under the head "Acqn. of village sites" (see R. 12845—15 and R. 698/24—27-3-25). Rs. 6,500 were provided in 1925-6 under 5 L. R.

(3) When the acqn. is complete, the land should be finally marked out for building and sites should be allotted to those who have already applied and have made deposits. These applicants will not usually be called upon to pay an additional occupancy price beyond the sum already deposited, but in some cases—*e.g.*, where there is much competition for particular sites—it may be found desirable to auction some of the plots instead of allotting them. It is, however, important in disposing of sites by auction that adequate precautions should be taken to prevent exploitation by speculative buyers. Those to whom occupancies are sold or allotted will pay the usual annual rent, or a lump payment in commutation under L. R. R. (1921) 43 and 88.

(4) The same procedure should be followed when it is proposed to take advantage of L. R. R. (1921) 46, and to provide a new village site in place of an old one which the villagers are prepared to surrender completely. In such cases, however, the owners of plots in the old site will be entitled to plots of approximately equal area in the new, free of occupancy price and subject to the same conditions as those on which their plots were held in the old site. The cost of acquiring land sufficient to meet this demand will be met by G. to whom the old site will be surrendered. In such cases no advance deposits are necessary. The cost of acqn. will be borne by G., the occupants being required to surrender all rights in the old site according to the procedure laid down in Rule 46. In ordinary cases, however, such action is appropriate only when the value to G. of the old site as an

agricultural holding or for any other purpose is at least equal to the cost involved in acqn.

(5) The procedure prescribed in clauses 2 to 4 above can be followed in all districts except Ratnagiri, since G. have declared by notfn. under Sec. 3 (f) that it is customary so to make provision for village sites. (R. 700—97, 683—11, 1604—16.) This has since been extended to Ratnagiri also. (R. 12769—17.)

(6) In R. 3983—10 it was pointed out that D. L. B. could acquire lands to relieve overcrowding in villages. On further consideration G. are of the opinion that as a general rule such acqns. by L. B. should not be permitted. The main objection to their doing so is that they have no suitable agency for disposing of the sites and that as this would ultimately be done by the Mamlatdar under the control of the district officers there would be no gain to G. in not acquiring the land at the public expense. On the contrary, correspondence would be increased, since under Sec. 47 of the Local Boards Act building plots could not be disposed of by a Board without the previous sanction of the Cmr. The only advantage that would attach to acqn. by a Board is that it could in the interests of sanitation, when the cost of acqn. is high, dispose of building sites at a loss and it could also acquire more land than proved to be in immediate demand. But in any case where there was real need of more building land and the villagers were willing to pay for house sites prices which were, regard being had to their circumstances, fair but insufficient to cover the cost of acqn., the deficiency could be made good by a contribution from the L. B. An area in excess of immediate demands could be obtained in the same way. But circumstances which would justify a grant from a L. B. would indicate also a case for a grant from G.

(7) In order to carry out the procedure prescribed in clauses 2 to 4 above a provision will be made in the budget under 5, L.R. The actual payments for lands, etc., will be debited to "5, L. R." and receipts in advance credited to V L. R. in full.

(8) The Governor in Council desires that district officers should be on the alert to relieve overcrowding in villages. It is an important sanitary problem in many rural areas. The want of facilities for obtaining sufficient building space at reasonable rates also encourages encroachments on roads and existing open spaces. It is hoped, therefore, that the present instructions may prove of value both from the sanitary and the administrative point of view. (R. 8462—12 and R. 12845—15.)

CHAPTER III.

ACQUISITION OF LAND FOR RAILWAYS.

35. The Railways within the Bombay Presidency are classified as follows :—
Revised rules were published with R. 5201—19 : (Railway Board's Circular 889—P—16 dated 30-8-18).

(1) *State proper*—

(Land provided by G. of I. and cost including capitalised assessment debited to Capital Account.)

(a) North-Western.

(b) G. I. P.

The land of the G. I. P. is G. of I. property for all purposes (R. 653—19 ; 1754—20).

(2) *State : worked by Companies*—

(a) B. B. & C. I.

(b) M & S. M.

(c) Jodhpur-Hyderabad (British section.)

(3) *Companies' Railways*—

(Land in British territory provided free of cost by G. of I. Land in Indian States has to be arranged for by the Co. with the State concerned. All expenditure including capitalised assessment debited to 11—Subsided Companies).

(a) Tapti Valley.

(b) Ahmedabad Prantij.

(c) Dhond-Baramati.

(d) Nadiad-Kapadvanj.

(e) Godhra-Lunawada, and extension.

(f) Jacobabad-Kashmor.

(g) Mirpur Khas-Jhudo.

(h) Mirpur Khas-Khadro.

(i) Barsi Light (except the section Barsi Road to Barsi Town).

(j) Champaner-Shivrajpur-Pani Light.

(k) Pachora-Jamner.

(l) Larkana-Jacobabad.

(Larkana-Dodapur section open.)

(4) *Indian States Railways*—

(Land required in British territory has to be paid for by States.)

(a) Bhavnagar State.

(b) Bodeli-Chota Udaipur.

(c) Gaikwar's Baroda State.

(d) Petlad-Cambay.

(e) Rajpipla State.

(f) Kolhapur State.

(g) Sangli State.

(5) *Companies' Railways*—

(Land paid for by the Co.)

Matheran Light.

(6) *Companies' Railways*—

(Land outside road limits paid for by Co.)

Barsi Light (Barsi Road-Barsi Town Section only).

(7) *Companies' Railways, guaranteed by Indian States*—

(Land provided by States free of cost.)

Hyderabad-Godavari Valley.

36. Frequent instructions have been issued under this head. These instructions are required in full detail by the Agents and Engineers of Ry. Co. or Ry. projects for which land is proposed to be acquired. The Revenue officers do not require the full details about slopes and side-widths and other technicalities; but they do require a brief conspectus of the general rules under which these projects are prepared and submitted through them for action. Therefore the following reprint of the rules has been suitably condensed and contains, it is believed, all that Revenue officers require.

Land required for the re-construction of a Ry. or for repairs or extensions falls under the same rules as for the original construction. (R. 2650—73.)

37. All proposals must be submitted first through C. (but see para. 65) and it is for him to decide whether land shall be acquired privately by negotiation, or under the Act. But except for temporary occupation the Act is practically invariably applied. The scope for private negotiation by brokers or otherwise is indicated in paragraph 19.

ESTIMATES.

38. After the preliminary Notn. under Sec. 4 but before the final application for acqn. under Sec. 6 the G. I. require that C. should first be asked to make an estimate of the probable cost. (G. I., P. W. D., Circ. XI—Ry.—21-9-95.) This will be an estimate in detail and not the very rough estimate referred to in para. 26. The responsibility for the estimate is upon C., and should it be much exceeded by the awards explanation will certainly be required "as in no other way can the importance of framing the estimates with care be effectually brought home." The S. S. has frequently complained of inadequate estimates involving miscalculations of expenditure. C. must remember and impress upon all concerned the importance of reasonable accuracy. (R. 1278—12.) Local G. have been desired to frame rules giving effect to these principles. (R. 7953—07, 11373—08, 3009—09, 10264—09, 1388—13.)

39. Of course a Ry. might decide, on receipt of the estimate, to abandon one line or block of land and take another instead. It must therefore be plainly understood that when an *estimate* is asked for it is undesirable that the land should have been demarcated on the ground or even measured with any precision. C. will not be able to find the exact boundaries by going to the spot, and therefore if there are any valuable buildings or groves of trees likely to be of unusual value, it is the duty of the Ry. officers to draw his attention to their location and thus enable him to make an estimate for them also.

40. It would be well to depute, to make the estimate, the officer who is likely afterwards to be A. O. No labour that he may then spend on collating rentals and recent sale prices in the vicinity will be wasted if afterwards any award has to be framed. An estimate not based on such details, now fairly easy to obtain from the Record of Rights, cannot be of much value. C. will review the estimate of his assistant and will apply his own knowledge and experience and obtain any further particulars desirable and will be responsible for the final estimate. In framing such estimates regard should of course be had to all principles discussed in the Chapter on Valuation. If many buildings are involved, C. would be unwise to commit himself to an exact figure. It is not contemplated that in making this estimate elaborate calculations should be entered upon. But an officer of experience can give minimum and maximum values for a building with tolerable certainty. If there are many of a similar type, a precise valuation for one specimen might be worked out. It would be best to safeguard the result by giving the values as lying between certain limits.

41. The instructions issued by the G. I. are condensed as follows :—
(G. I., P. W. D., Circ. XI—Ry. of 21-9-95.)

3. C. will be in all cases requested to furnish data in the shape of rates per acre. This he cannot do unless furnished with information as to the situation of the land as it is impossible to quote rates which shall be even approximately true for the whole of a large tract. A separate sketch map should, therefore, be furnished for each district traversed by the railway, canal or other work, showing the exact course of the centre line of the land to be taken up, with reference to villages and towns. This map should be to a scale of one inch to the mile and should show village boundaries. The distances should also be marked upon it, and the average width of the strip to be taken. For land near towns, or likely to have a specially high value, a map to a sufficiently large scale should be prepared, showing the approximate boundaries with a note of any valuable trees, buildings or

other property. C.'s estimate will then take some such form as the following:—

Statement showing the Total Estimate of Cost of Land required by the

No. of Miles. 1	Area of Land. 2			Amount allowed for the Land itself. 3			Number of Houses. 4			Compensation for Houses. 5			Number of Trees. 6			Compensation for Trees. 7			Number of Tanks or Wells. 8			Compensation for Tanks or Wells. 9			Total of Columns 5, 7 & 9 10		
	A.	g.	a.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.			

No. of Miles. 1	Additional compensation at 15 per cent. under Section 23 (2) of the Act. 11			Value of any Crops in the Land. 12			Damages under Clauses 2 to 6 Sec. 23 (4) of the Land Acquisition Act I of 1884. 13			Total of Columns 10, 11, 12 & 13. 14			Interest at 6 per cent. per annum for 6 months. 15			Capitalised Value of Government Revenue. 16			Grand Total 14, 15 & 16. 17					
	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.			

3-A. In addition to these data C. should give a rough estimate of the amount of such further items (if any) as are likely to be included in an award based on Sec. 23 (1), including also, when necessary (see para. 284), an estimate of the capitalised value of abated land revenue and charges for establishment and contingencies. It will rest with the authorities, to whom the data are thus supplied, to work out the total estimated cost including (in cases where voluntary surrender is not probable) the additional 15 per cent. imposed by Sec. 23 (2).

In case of Rys. of Classes 1 to 3, the cost of all trees, fencing, fixtures, and materials of buildings should be separately shown; C. should ascertain whether the Ry. administration will take them over at this estimated value or they should be sold by A. O. See paras. 77 and 310 (R. 6669—16.)

LAND FOR RAILWAYS IN INDIAN STATES OR REQUIRED BY STATES IN BRITISH INDIA.

(LATEST ORDERS: G. OF I., POL. AND FOR. 493-I, DATED 30-3-26.)

42. When land is required in British India for a Ry. of Class 4 or 7 no doubt schedules and plans similar to those described for other Rys. would be prepared. An estimate would also be furnished by C. in the first place. The Darbar or Co. is usually required to deposit the estimated cost, together with the cost of establishment and correction of Land Records, etc. (or alternatively the percentage in para. 78) subject to the principle that costs and establishment which would not be charged to a Ry. Administration in British India will not be demanded from a State. (P. 4362—12.) The following further special rules were issued with R. 6436—13 and repeated in 1926:—

(1) Such land as is in private ownership will be acquired by the British Revenue authorities, as for a public purpose under the Act. [This implies that the purpose will, if not for a Railway, be capable of being classed as 'public.'] The Darbar will be required to pay, as compn., the actual amount of

the awards paid in the case of private land, and in the case of G. land the full market value, *plus such incidental items of expenditure as the cost of establishment, demarcation, stationery (or percentage as above)*. The Darbar will also be required to pay compn. for the value of extinguished land revenue, the amount to be settled by negotiation in individual cases, due regard being had to the indirect advantages accruing to the British G. from the railway. This introduces the principle of "betterment" (para. 172); the increase of L. R. on other lands might easily exceed the loss on that acquired. Where differences of opinion between the Darbar and the Revenue authorities occur as to the compn. payable on account of extinguished land revenue, an arbiter shall be appointed by the Local G. concerned or, in the case of Baroda, Hyderabad and Mysore, and other States not in political relations with Bombay, by the G. I. and his decision shall be final.

(2) Before making an award the A. O. will give sufficient notice to the officer of the Darbar concerned, and will take into consideration any representation which he may make, whether orally or by letter. More especially he will allow such officer an opportunity of appearing in person or by agent and of producing evidence as to value.

(3) When land is required in Indian State territory for the purposes of Rys. of Class 1, 2, 3, 5 or 6, the general principle is that, so far as possible, the same degree of compn. shall be paid to the Darbar as is payable by Darbars under the provisions of the preceding clauses. (P. 7092—11.) Where the Ry. Co.'s contract provides that the S. S. will use his good offices to secure the provision of such land free [a condition which will not be repeated], the question whether compn. will be paid or not will be left for negotiation between the Political authorities and the Darbar. (Amended as per P. 5929—14.)

(4) In order to give effect to these general principles, the following procedure should be adopted :—

In all cases in which it is proposed to acquire land and the Darbar are entitled to compn., estimates of the amount payable will be framed as expeditiously as possible by the Darbar, and forwarded to the Railway Administration who should be given all facilities for checking the estimates. This estimate will be based on the amount awardable under the law : except where the State has no L. A. Act, or is itself the owner of the land or an interest in it. If such estimates are accepted, they will be treated as a settlement. Where, however, differences of opinion occur as to the compn., or where the amount of an award is raised by action in a Court of Law and the Railway Administration is not prepared to pay to the Darbar the increased sum demanded, arbitration will take place. If both parties signify in writing their consent, the arbiter shall be the Political Officer and his decision will be final. In other cases the compn. payable will be assessed by one arbiter appointed by the G. I. or by the Local G. in direct political relation, one by the Darbar and third by mutual consent and their award will be final. In these latter cases the arbitrators will decide the incidence of the cost of the arbitration.

(5) In determining the compn. Political Officers and arbiters will be guided by the general principle that the amount shall be equivalent to what would have been payable by the Darbar had acqn. taken place in British territory and had compn. been assessed as in clause (1), *ante*,

(6) Where land is acquired either for a Darbar's railway in British territory or for a State railway or railway worked by a Company in State territory, the Ry. will have same rights (Sec. 7 to 14 and 51, Railway Act) to quarry stone and to excavate sand, clay, earth or other material for the purposes of the railway on the land so acquired. (P. 7092—11, 6436—13 as modified in 1926.) Royalty will be payable under the Rules of the territory : if there be no rules or the claim be disputed, it will be arbitrated as above.

N.B.—In Br. India the practice as to the use of stone, etc., by Ry. Companies is thus summarised :—

(1) On the permanent way strip since deep quarrying is naturally impossible, there is no charge or royalty for material cut away and used in construction.

(2) Outside that strip, only the surface rights are acquired under the Act but no mineral unless Act XVIII of 1885 is applied and extra compn. paid. Otherwise the owner's consent and payment of royalty is required for quarrying.

(3) The original owner (usually G.) retains all mining rights; but G. will not permit mining even by private owner within 50 yds. of the outer toe or edge of the railway formation (sec. 20, Mines Act VIII of 1901).

[Full text is printed in G. of I., Pol. & For., 493-I, dated 30-3-26, printed in R. S. -11, dated 1-6-26.]

(7) Temporary land can be acquired under Part VI of the Act; or (in a State where that Act does not exist) by negotiation; with ultimate resort to arbitration as above.

43. Land may not ordinarily be acquired except in connexion with a duly sanctioned work [except such as 'Sanitary zones' not connected with particular works] in the estimate for which the cost of the land has been included whatever the source from which the cost is met. The power to sanction the acqn. of land in any case thus depends upon the aggregate cost of the work and the land required for it. In cases, however, where there may be special circumstances which render it necessary to acquire land in anticipation of the preparation of an estimate for a scheme, reference should be made to the Ry. Board prior to any steps being taken for the acqn. unless the total probable cost is within the powers of the Ry. administration (P. W. D. 5303-19-1-24). The above applies to Rys. of Class 1 and 2 (para. 35).

CLASSIFICATION OF RAILWAY LAND.

I.—Railways constructed by Government (Class 1).

44. Land is divided into two classes: *I.—Permanent, II.—Temporary.*

(I) will be required permanently after the Ry. is open for traffic and construction is complete. Under this head will be included all land to be occupied by the formation of the permanent way with side-slopes of banks and cuttings, and berms; the entrances to tunnels and shafts belonging to the same; the sites of bridges and protective or training works; station-yards; landing places for Ry. ferries; ground to be occupied by works belonging to the Ry., such as gas-works, arrangements for water-supply, etc.; ground for the storage, manufacture, or acquisition of materials; land for cemeteries, plantations, gardens, and recreation grounds; sites for permanent stations, offices, workshops, dwelling-houses and other buildings required for the purposes of the Ry. or the accommodation of the staff, with the grounds, yards, roads, etc., appertaining thereto.

Under this head will also be classed land permanently occupied by the diversion of roads or rivers, or for other works undertaken for public purposes incidental to the construction of the Ry., although such land will cease to be held by the Ry. authorities on the completion of the works.

(II) is required for temporary purposes only, and is relinquished after construction.

*II.—Railways constructed by Companies (Classes 2, 3, 5 and 6).**

45. The old division into four classes—A, B, C, D—is now abandoned and all land is acquired under the same two classes (Permanent and Temporary) as for Class 1 subject to para. 59 below.

As the G. I. P. Ry. and the B. B. & C. I. Ry. have become State Rys. all lands in their possession which are shown in the demarcation plans, as corrected up to date, under the old Classes "A" and "B", should be treated as held under "Permanent". (R. 6376—07).

(For roads leading from one class of land to another, it has been ruled that the tenure of the land farthest from the Ry. determines the class of the road.)

Rys. are not allowed to hold land (except by leasing it from G.) otherwise than under these classes.

46. It will be incumbent on Ry. Administrations to avoid the location of the line upon land the acqn. of which will entail unnecessary expenditure or annoyance to the owners, if the object sought can be equally well attained by a slight

realignment, or otherwise. The Ry. Administrations and C. are responsible that the fullest consideration is given both to the land-owners and to the interests of G. (R. 7953—07.) This principle will apply equally to any subsequent acqn.

47. In estimating the amount of land provision should be made not only for the land required permanently but also for the Temporary land.

GENERAL ARRANGEMENT, SIDE-WIDTHS, ETC.

48. Land is everywhere (except under the special previous sanction of the Ry. Board) to be provided of width sufficient to allow of the line being doubled. For this purpose the minimum width for "Permanent" land under ordinary circumstances is both for the 5 ft. 6 in. and for the metre gauge:—

Embankment	..	.. 70 feet, 2 slopes.
Cutting	..	.. 76 feet, 2 slopes

49. The width here specified is, in each case, the *minimum*, and it may frequently be necessary to arrange for extra land required *after the line is open*, for repairs to embankments, for stacking material, or for other purposes. Land so provided would be *additional* to the minimum permanent land shown on the diagram.

50. At station-yards the cutting or filling for the formation of the main line and sidings may sometimes be arranged for in the general levelling and improvement of the plot of ground to be permanently acquired, where this cannot be done, extra provision should be made.

Also where ground is reserved for a plantation or other similar purpose.

51. Under special circumstances, where land is expensive, it may be advisable to equalize the quantities for cutting and filling, and take the material for banks from the adjacent cuttings.

52. Where practicable, for low banks or shallow cuttings, the land taken up for side-cuttings or spoil-banks should be on one side of the line only.

53. In setting out land for side-cuttings, arrangements should be made for berms at suitable intervals to allow convenient access to the line during construction, and to prevent the side-cuttings ultimately developing into water-courses alongside the embankment. A width of 40 feet in a length of 200 feet is generally suitable for this purpose, that is to say, each excavation would be 160 feet long and separated from the next excavation by an interval of 40 feet of undisturbed earth.

54. In setting out land for spoil-banks, care should be taken to leave sufficient space for drainage and for catch-water drains, where required to prevent surface water from the adjacent land running down the slopes of the cutting.

55. In arranging the side-width, the line for the fencing and for the inner edge of side-cutting or spoil should be continued straight in portions as long as practicable. That is to say, these lines should follow the *average* variation in height of bank or depth of cutting over considerable lengths and not be made zig-zag to suit the local variation at each chain peg. Where the variation in side-widths would be comparatively unimportant it will often be advisable to neglect such local variations entirely, and take up the land in a parallel strip for some distance.

PLANS TO BE MADE.

56. To enable C. to take action it is necessary that proper plans should be made for reference by all concerned.

57. The scale for these Land Plans should ordinarily be 400 feet to 1 inch; but where this would not admit of sufficient detail being shown with clearness, the scale should be 100 feet. A scale of 50 feet may be used in special cases or congested areas in large towns.

Note.—When the land to be acquired forms an addition to that previously acquired, the original scale for which was not one of these, the additions may be drawn to the same scale as the original.

58. The data for the preparation of the Land Plans should generally be obtained during the progress of the survey for the location of the line, and the general instructions for the preparation of plans to accompany a project, when submitted to the Ry. Boards, apply also to plans for the acqn. of the land.

59. (a) In the case of a Ry. Class 1, 2, 3, 5 or 6 (and also apparently Classes 4 and 7) the plans will show the outer boundary line; and all land, for whatever purpose required, will be taken up at first as for permanent occupation. This land will be coloured pink on the Land Plans.

As early as practicable, after the line is opened, the original plans will be corrected, showing the boundaries of the Permanent Land (Pink) and also Temporary Land (Yellow).

(b) Detached portions of land should be referred to some fixed point on one of the main sheets with distances and compass or other bearings, or such reference to the published maps of the neighbourhood as will ensure ready identification. A corresponding entry should be made on the nearest main sheet.

(c) On all Land Plans, the position of the boundary of each class of land is to be determined by dimensions (offsets) written on the plan, sufficient to enable such boundaries to be readily verified.

(d) The names of villages are, in each case, to be written on the plan alongside of the line indicating the village boundary. If the boundary line crosses the Ry. line the names are to be repeated on the other side of the line, with the chainage of the crossing point.

(e) When boundary marks have been erected for the demarcation of the Ry. land the position and number of each mark is to be shown on the Plans.

(f) On each plan the number of each detached mark shown therein is to be tabulated. (P. W. 3441/27—5-4-32.)

The Plans should show all existing roads and buildings and whether the latter are used for public purposes or by special departments.

60. The Plans are to be made up in sets for continuous portions of land, each set being complete for a revenue district (or length of Indian State). On each end sheet (first and last) of every set, a sufficient portion of the continuation sheet of the next set should be repeated, to enable the two sheets to be connected or traced together, if required. For each set the sheets are to be numbered consecutively throughout, and the name of the Civil district (or State) is to be marked conspicuously on each sheet.

61. The minimum number of sets of Land Plans and Schedules required is two, *viz.*, one for C. and one for the Railway; but usually 3 are sent.

62. Each set of Land Plans is to be signed by the officer immediately responsible for its preparation, and by the Chief Engineer of the Ry. In the case of land required for a line already opened, the Manager will also countersign the plans before sending them on.

63. Land Plans are to be kept up to date either by adding to the existing plans or substituting new sheets as may be necessary. Each such addition or alteration is to be carefully checked by the officer in immediate charge of that portion of the Ry. and attested by him. At any date this must show a clear and accurate record of the land occupied on that date.

64. A complete series for the whole line is to be kept by the Chief Engineer.

65. When the work is confined to a single district the application should be made to C.; when it extends to more than one district, but lies within a single division, to the Comr.; when to more than one division, to the Revenue Secretary. When the estimated value exceeds Rs. 25,000 in any district, or one lakh in any division, the data must be forwarded to the P. W. D. authorities (through the Comr. or Revenue Secretary) who will countersign and be responsible for them. (G. I., P. W. D., Circ. XI. Ry.—21-9-95.)

PROCEDURE FOR NOTIFICATION.

To complete the account of special Ry. procedure we now go ahead of the general narration, resumed in paragraph 86.

66. All arrangements will be made by C., but preliminary enquiries regarding the probable cost of land may be made by the Ry. Officers direct from the owners or otherwise (see para. 19). It would be unwise to stimulate a rise in prices before notfn. under Sec. 4 (1), which we presume already published. The enquiry under Sec. 5A (see para. 30A) being completed, C. now proceeds to the notfn. under Sec. 6.

67. To this end C. is to be furnished with particulars as follows :—

(a) A complete set of Land Plans as above, which must be countersigned by the Consulting Engineer : any subsequent alterations must be properly authenticated.

(b) A complete set of schedules in the form on page 22.

68. On receipt of sanction for the construction (or after approval of the project in case of open line), and of course after the local examination dealt with in paras. 88-90 *et seq.*, a statement containing the following information should be sent by C. through the Cmr. and the Ry. Administration to the Secretary, P. W. D. (Ry.), with full draft Notfns. under Sec. 6 :—

(a) The name of the Ry.

(b) A copy of the order sanctioning the construction.

(c) A brief general description of the route to be followed, with the names of important villages near which it will pass.

(d) A list of the Civil districts with the approximate area in acres of the land required in each.

(e) For each district the places at which the Land Plans will be available for inspection by the public.

A report whether there is any necessity for the application of the urgency clause Sec. 17 (1) (see para. 117) will have accompanied the preliminary Notfn. Sec. 4 (para. 30).

With this statement should also be sent, a general index plan to a scale of 1 mile to 1 inch, showing the route.

The Ry. authorities are responsible for drawing special attention to all cases in which religious buildings or tombs are proposed to be acquired. (*Vide* P. W. D. Code, Vol. I., Ch. IX, para. 958, and Ch. X, para. 1062.)

Land already public property should be separately applied for and *not included* in the notfns.

69. The Report of C. and his draft notfn. and the endorsement of the Cmr. and of the Ry. Administration will be dealt with in the P. W. (Ry.) Dept., and any necessary references to C. or the Ry. will be issued from that Dpt. When all points have been cleared up and discrepancies removed the papers will be transferred for the final (Sec. 6) gazetting of the notfn. to the Revenue Dpt. (P. W. D. 571-Ry.—15.)

70. When orders are received for the construction of the Ry., the land required should be properly marked out, unless this has already been done. The outer boundaries of the land must have been clearly demarcated before the first formal application. It is of course impossible to prepare Plans till its boundaries are fixed on the ground.

71. Except for survey and demarcation, work must not be commenced or damage done, materials deposited, or any excavation or demolition put in hand until the land has been formally made over, or unless approval in writing has been obtained from C.

72. The procedure laid down in Ry. Board's letter 2650 Rly., dated 2-9-13, for the transfer or acqn. of land in cantonments or in charge of the Military authorities, and of the construction of buildings and other works in the vicinity of forts and cantonments, should be strictly observed.

73. In the case of a Ry. Class 2, 3, 5 or 6 all arrangements for the acqn. or relinquishment of land will be made by the Agents in direct communication with the Local G. ; in the case of Class 3, no steps for acqn. should be taken until the estimates have been approved and the Land Plans and schedules countersigned by the Ry. Board to signify, *not* that the Board accept their correctness (for which the Agents are responsible), but that they are satisfied that the land is actually required.

74. The sanction of the Board is also necessary to the transfer of land from one class to another, when such transfer involves a charge against State funds.

75. All land, whether temporary or permanent, will be taken up in the first instance as for permanent occupation and valued accordingly. The distinction between "Permanent" and "Temporary" land is merely of the nature of a forecast of the probable disposal on completion.

76. In the case of a Ry. of Class 1, 2, 3, 5 or 6 the Ry. will, in the first instance, be debited with the full cost of all land acquired, and afterwards credited with the amount realised by the sale of land relinquished. In the case of a Ry. constructed by a Company or other body and entitled to receive land free of cost from Government the cost of all land will be borne by Government and charged to the head "11 Subsidised Companies—Land" and, in the case of such native state lines traversing British territory as are entitled to receive land free, to the head "12 Mis. Ry. Expenditure."

77. In the case of land provided free of charge or for State Railways (Classes 1 to 3), the Co. or Administration, in the absence of any express stipulation to the contrary, will be entitled to dispose of or use any material, trees, buildings, etc., that may be on the land *when it is handed over* to them, but G. will be entitled to dispose, or stipulate for the disposal, before handing over the land, of any buildings, crops, trees, etc., which they may have been obliged to acquire with the land and to apply the proceeds in reduction of the cost of acqn. by credit to 10 State Rys. or 11 Subsidised Companies (see para. 310) in the new Ry. Account Heads. Further, it is the business of the Ry. to clear the land of all obstacles or obstructions and prepare it for the construction of the railway; G. undertake to secure them empty possession only, free of legal encumbrances.

The same practice is observed in other classes.

BANDA DISTRICT.
Bilaspur Tah.

GONDA-AZIMGARH RAILWAY.

AZIMGARH SECTION.

Schedule showing land required for Railway purposes in the Bilaspur Tahsil of the Banda District.

Name of Village—Mandwal.

Reference.		Purpose for which the land is required.	Area of land required.
Set.	Sheet.		(Pink). Acres.
Set C—Banda District.	3	Main line from chainage 36627 to chainage 38900, land to be permanently occupied.	4·6963
	3	Same length for side cuttings ..	3·1309
	3	Extra land for stacking material, etc., at site of Bridge no. 57.	9·5500
	4	Mandwal Station-yard ..	28·6961
	4	Approach road to Mandwal Station ..	2·7548
	4	Site for temporary House and Office for Assistant Engineer.	5·5096
	5	Brickfield to north of line opposite chainage 42350.	11·2163
	6	Main line from chainage 41440 to chainage 42728, land to be permanently occupied.	2·4389
	6	Same length for side cuttings ..	1·5243
		Total ..	69·5172

Azimgarh,
17th September 1891.

Executive Engineer.

Manager
(for open line State Ry.)

or

Consg. Engr. Engr.-in-Chief.
(for Company's Ry.)

CHAPTER IV.

ACQUISITIONS FOR LOCAL BODIES AND COMPANIES.

(Port Trusts are included in "Local Bodies".)

78. Here also the L. B. must apply to C., giving him *mutatis mutandis* much the same sort of information as in the case of acqn. for the P. W. D. or for Rys. No special orders have been issued in the case of L. B., but it has been ruled that when a Municipality or other L. B. applies to take up land under the Act, G. will assume that the necessity of the acqn. has been fully considered, the cost estimated, and provision made for payment of the award and costs. (R. 5835-94.) A common fault is for the L. B. to omit to provide or to argue about its liability to pay the cost of the measurements and the correction of the Land Records. If special establishment is entertained the L. B. pays its full cost: if not, it used to pay the same fees as private persons in measurement cases undertaken by the Land Records Dept. (R. 6231-10.) [*cf.* para. 42 for Indian States.]

79. But in R. 2461/24-6-3-25 and 24-11-25, it was ordered that Companies and L. B. financially independent of G. should pay after 1-4-25 for ordinary acqn. work (except those made for the Development Dpt. in Bombay City or Suburban area and by special L. Acqn. officers with staff, whether under Consulting Surveyor or not):—

Total awarded Compn.	Percentage.	With a minimum of Rs.
1 to 1,000	5	10
1,001 to 5,000	2	50
5,000 upwards	1	100

For the representation of the L. B. before A. O. and in Court, see paras. 134-5, 293 and 295 (2).

When proceedings are withdrawn (i) before Notfn. under section 6: no percentage charge is made and (ii) after Notfn. under Sec. 6, the percentage is levied on the A. O's award or the Court's award whichever is the last reached. (R. 2461/24-6-6-27.)

When land is acquired on behalf of the Central Government through the agency of the ordinary revenue establishment percentage and measurement charges should not be recovered from that Government. Similarly measurement charges should not be recovered from that Government in respect to Government land transferred to it.

Percentage and measurement charges should continue to be recovered from the Government of India when the work is done by the agency of a special establishment. (R. 999/28-29-1-32.)

80. The following form of agreement should be adopted whenever land is to be acquired on behalf of MUNICIPALITIES or the Municipal CORPORATION of the City of Karachi. An agreement made this _____ day of _____ 19____ between the _____ Municipality hereinafter referred to as the _____ Municipality of the one part and the Secretary of State for India in Council (hereinafter referred to as the Secretary of State) of the other part.

WHEREAS the _____ Municipality Corporation is desirous of acquiring all that land situate in the village of _____ in the Registration Sub-district of _____ in the district of _____ known by the name of _____ (or being part of the _____ known by the name of _____, as the case may be) containing by superficial measurement _____ more or less, which said land is now in the occupation of _____ and is delineated in the survey (or Government) map of _____ as (part of) the field (or estate, or plot, etc., as the case may be) No. _____, and bounded on the north by _____ on the south by _____ on the east by _____ and on the west by _____ together with the trees, houses, and all other things whatsoever standing on the same or attached to the same or permanently fastened to anything attached to the same; AND WHEREAS the _____ Municipality Corporation has applied to the Government of Bombay (hereinafter referred to as Government) to acquire the said land on its behalf under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act); AND WHEREAS Government have consented to acquire the said land under the said Act on behalf of the _____ Municipality Corporation on the _____ Municipality Corporation agreeing in manner hereinafter appearing.

These presents witness that the Municipality Corporation doth hereby bind itself to pay to Government the cost of the acquisition of the said land and all such charges as may be incurred by Government or by any officer of Government in respect of the said acquisition at such time or times as the Collector of (hereinafter referred to as the Collector) shall require, on the amount of the said cost or charges being certified by the Collector and doth agree that in the event of its making default in any such payment it shall be lawful for Government to recover the same as if it were money due to Government by the Municipality Corporation under section 178 of the Bombay District Municipal Act, 1901 section 218 of the Bombay Municipal Boroughs Act, 1925 (hereinafter referred to as the Municipal Act). And the Secretary of State doth hereby agree with the Municipality Corporation that as soon as all costs and charges of the said acquisition shall be paid by it or recovered from it as aforesaid, the said land together with the trees, houses and other things standing thereon or attached thereto, or permanently fastened to anything attached thereto, shall vest in the Municipality Corporation and be thenceforth held by it for the purposes of the Municipal Act like any other property vested in the Municipality Corporation under section 50 section 63 of the Municipal Act, (free of all claim or charge whatsoever on the part of Government).*

In witness whereof the President (or vice-President) and two other councillors of the Municipality the Chief Officer of the Municipality the Chief Officer of the Corporation

have for and on behalf of the Municipality Corporation set their hands and the common seal of the has his hand Municipality Corporation has been affixed hereto in the presence of

1.
2.

(any two persons)
two members of the Standing Committee. And the Collector of has by
the Chief Officer and one councillor
order of the Government of Bombay hereto set his hand and the seal of his office for and on
behalf of the Secretary of State for India in Council the day and year first above written.

†Signed and delivered by President
Vice-President

and two councillors of the
Municipality, and sealed with
the common seal of the Municipality, in
the presence of—

1.
2.



‡Signed and delivered by Chief
Officer in the presence of—

1.
2.

and the common seal of the Municipality
has been affixed in the presence of—

1.
2.



Two members of the Standing Committee
of the Municipality.

* Portion in brackets to be omitted when land acquired is still liable to land revenue.
† In the case of Municipalities governed by Bom. III of 1901.
‡ In the case of Municipalities governed by Bom. XVIII of 1925.

*Signed and delivered by Chief
Officer in the presence of—

1.
2.

and the common seal of the Corporation
has been affixed in the presence of—

1.
2.

Chief Officer and one Councillor of the
Corporation.

Signed, sealed and delivered by
Collector of

In the presence of—

1.
2.



Common
seal of the
Corpora-
tion.

Official
seal.

(R. 1879/24—25-3-36.)

ACQUISITION FOR COMPANIES.

81. For a Co. land can be acquired [Sec. 40 (1) (b)], when the work of the Co. "is likely to prove useful to the public". In substance this means the same thing as public purpose though it is not a state or G. purpose because the operations of the Co. are not carried on by G. The operations of the Tata Hydro-Electric Co. are "likely to prove useful to the public". If the work were being done by G. it would undoubtedly be called a public purpose. Hence the Act is applied in such cases. See R. 519-19 in which G. say they have never had to consider the possibility of using the Act for Industrial Cos. not supplying great public utilities.

It is necessary (speech of Mover in introducing the Bill) that the public utility be such that G. can prescribe the terms on which the public may use it: Sec. 41 (5).

This purpose should not be so narrowly construed in the case of a public utility Co. as in a trading case (N. London Ry. Co. vs. Metro. Board of Works 7 W. R. 640).

For a big acqn. for an industrial Co., see R. 1138—20.

82. Before C. can take action to acquire land, he will not only require the same sort of particulars as are given by a Ry. Co., etc., but it will also be necessary that the agreement prescribed by Sec. 41 and the investigation under Sec. 40 or 5A shall have been completed. (For signature see para. 80). It is important to note that in an enquiry under Sec. 40 no person whose land is proposed to be acquired has any right of appearing or objecting. [I. L. R. 30 Calc. 74; 7 Bom. L. R. 422 (P.C.)].

The agreement should (as in the case of L. Bodies—para. 80 *supra*) cover the risk discussed in R. 6949/24—6-6-27.

But under the amended Act of 1923 an enquiry under Sec. 5A in which interested parties can appear may be substituted for the enquiry under Sec. 40. The present wording of Sec. 4 (2) read with Sec. 38 obliges the issue of a notfn. under Sec. 4 (1) and an enquiry under Sec. 5A in every case of acqn. for a company before the final consent and agreement and notfn. under sec. 6.

* In the case of the Corporation governed by Bom. XVII of 1933.

After the consent of G. has been obtained, the Act substitutes the "purposes of the Co." for the public purpose; it was argued that land could not be acquired for a stone quarry wanted by a Co. since a quarry or stone could be brought in the market. But this view was eventually withdrawn. It is equally expedient that the Co. should not pay too much for its land or for its structural materials: both equally subserve its purpose, and the cost of the public utility would be needlessly enhanced—to the defeat of the main purpose of the Act [R. 6906-F of 20-1-23 and 6866F (letter) 20-7-23].

83. Cancelled.

84. An institution open only to "higher class Hindus" can hardly be said to be useful to the "public". (R. 4903—11.) However, in matters of caste and religion, whether an institution is public or not, is difficult to determine except upon a consideration of local circumstances. In another connexion, the G. I. have held (R. 4892—13) that the term "public" connotes an absence of distinction of caste, race, creed, or membership of any particular body; hence it is certain that land could not be acquired for a club, but it might be acquired for a caste burial ground, if their numbers sufficed to constitute a community or section of the "public" in that locality, too considerable to be viewed as a small group of private individuals.

85. All agreements under Sec. 41 which have to be published in the *Gazette of India* under Sec. 42 should be sent direct to the publisher for Part II of the *Gazette* and not to the G. I. (R. 4885—05.)

CHAPTER V.

FINAL NOTIFICATION (Sec. 6).

86. We have now reached the stage at which C. has before him a formal application from the P. W. D., a Ry. Co. (including Indian State Rys.), a Local Body, or a Co., for an acqn. The documents already described with the necessary formalities must have been submitted and objections heard under Sec. 5A. He has then to prepare for submitting the case to G. with a final notfn. under Sec. 6. But before he does so he must satisfy himself of several matters: in the first place, of course, that the proper formalities have been observed and that he is not being asked to make an acqn. by unauthorized people or on insufficient particulars. When satisfied as to that, he must next see whether the land is correctly described, and since he is the custodian of the official Land Records he may have to supplement particulars from those Records, and then he has to see whether there is any objection admitted by G. as valid, or whether temporary acqn. will suffice [see para. 15 (2)].

87. He has very likely been asked to make an estimate of the cost at some previous time. At that stage of the investigation he would have pointed out to the applicant any obvious and general objection to the acqn. But there may be minor objections which would not be apparent on the first and rough estimate. We shall now describe the examination which should be made on receipt of a detailed proposal, leaving it to be understood that if all these objections could have come to light at an earlier stage then they should have been dealt with at that stage: as for instance in the enquiry under Sec. 5A.

88. The first essential for an examination of the proposal is that the land should be demarcated. Presumably its gross area has been accurately measured and for this purpose the limits must have been determined. When only a whole S. No. or City Survey plot already measured and mapped in official records is applied for, then fresh demarcation would not be necessary, assuming that there are sufficient boundary marks in existence by which the plot can be identified. Where boundary marks have disappeared they should be re-established. Grave errors might occur through misunderstanding between A. O. and the parties as to exactly what land was being acquired, e.g., whether it did or did not include a path, or water-course, or gateway, etc.

89. In large Ry. acqns. it is sometimes the practice for the Ry. Engineers to ask C. to depute a Surveyor to accompany them when they *first* survey or measure the land. Then, on their finding that the cost will be excessive, or that there is some other objection, or on making a slight change in their projects, they ask for a second meeting. Cases have occurred in which this has been done 4 or 5 times before the schedules were finally drawn up. The inconvenience is obvious; the proper course is for the applicants who will now always have the protection of Sec. 4 (2) to make their own survey and measurements—doing no damage to crops, etc., unless they pay on the spot—and when they have concluded and settled finally what land they want, to place conspicuous marks at each corner or bend in the acqn. boundary. These marks are sometimes far apart in difficult land among bushes and hedges. They would be hard to find; therefore they ought to be pointed out to the village officers at the time they

are set up and entrusted to their keeping. The marks should be substantial enough to endure until the formal notfn. is issued. Little wooden pegs which any mischievous child can pull up are obviously unsuited.

90. When C. receives the formal application and the land is demarcated, the next step will be either to examine it personally or to depute the officer who will probably afterwards be the A. O. (P. W. D. A.-1722—08.) In simple rural cases it might suffice to delegate this function to the Mamlatdar or even a Circle Inspector (see paras. 116 and 266). But whichever officer examines the ground, the questions he should ask himself are these :—

(1) Is permanent acqn. proposed when temporary occupation under Sec. 35 will suffice for the whole or any part? See para. 15 (2) and also note that if a temporary occupation extends beyond 3 years, permanent acqn. is still possible; and, if parties acquiesce, there is no legal objection to letting the temporary occupation run on.

(2) Is the area asked for palpably in excess of requirements?

(3) Can very much less expensive land be got for the purpose in the vicinity?

(4) Does the boundary intersect any building or the premises of any building in such a way that Sec. 49 (1) might be invoked?

In such cases it will be well to ascertain whether the parties will invoke this section; since if the whole is not covered by the Sec. 6 notfn. no valid proceedings can be held till a revised notfn. is published. (R. 6111—15 and 10997—15 see para. 107.)

(5) Does the boundary leave any fragments of land such that excessive demands for severance might arise? By "excessive demands" is meant demands equal to or exceeding the value of the severed fragment. (See para. 240 *et seq.*)

When C. fearing higher claims asked sanction to acquire fragments under Sec. 49 (2) & (3) it was refused since this power can only be used after excessive claims *have been* preferred (R. 1089/24—31-5-26).

For the Director of Land Records' instructions to Surveyors and District Inspectors to avoid and prevent excessive fragmentation, see his circular L. R. 281—28-5-23 also see P. W. D. 692-C. W.1783—21-11-83.

(6) Is any religious building, graveyard, or ancient monument affected?

(7) Does the proposal interfere with any public rights of way, or streams, or water courses, or drainage channels for which provision must be made? Large blocks of land in Olpad (Surat) have become waterlogged and their survey assessment has had to be reduced through insufficient attention to this point when the B. B. & C. I. Ry. was first constructed.

(8) What action is needed as to crops and tenants? (Para. 224-5, 230.)

(9) In urban localities, are there any rights of private access to buildings or rights of ancient lights and air likely to be interfered with? (The latter question would not arise if the acqn. is not for the purpose of building.)

(10) Is any of the scheduled land occupied by the Military or other Dpt., the Court of Wards, or by L. B., or is it unoccupied at the disposal of G.?

91. In any ordinary case the answer to most of these questions will be in the negative. But when any of these difficulties does arise, the next question is whether the acqn. should proceed without regard to the difficulty or whether the point should be referred back to the applicant. To take extreme cases as an illustration: if X. N. proposed to acquire a temple as a muram quarry, of course the application would be rejected; on the other hand, if a Ry. Co. for widening their line are obliged to pass through some piece of Military or Post Office land, it is improbable that there will be sufficient reason for changing their boundary. If the boundary passes through the corner of a factory such that enormous cost might be involved in acquiring the whole factory, or if it cuts off part of a graveyard so as to offend religious sentiment, then probably the applicants would revise their plans. If it is found that the land belongs to G., then for that land no proceedings under the Act are required, but it is optional for G. to grant the use of the land or not. If they are likely to refuse, then the scheme must be revised. In short, all these considerations must be weighed and the land plans may require to be reconsidered or even in some cases perhaps wholly abandoned in consequence of some of these difficulties. When a serious difficulty is found it will probably be desirable for the applicant to meet C. or his representative and discuss it on the ground.

[Inspections for valuation purposes, which might be simultaneous with the above inspection, are dealt with in para. 171.]

92. Before proceeding we will consider certain of these difficulties in detail.

93. The land may have been already once before acquired for a L. B., or Co. Nevertheless, it can be again acquired from that Body for another public purpose. The Act places no restriction upon the kind of land; the words "any particular land" will even cover this case. (R 4825—13). Land which vests in a Muny. under Sec. 50 of the Municipal Act or otherwise can be acquired: the fact of notfn. is equivalent to the statutory sanction of G. to its sale. The Muny. will be entitled to compn. in the usual way; for street land (of which they hold only surface rights and that for a purpose yielding no income) they can probably get nothing, except in some cases re-instatement [R. 10563—14.] For a discussion in detail of Municipal rights in land vesting in or transferred to them, see City Survey Manual.

But if it has been once acquired by G. it can never need to be again acquired unless G. have in any way let it relapse into private ownership.

94. There is no reason why Shetsanadi lands should not be acquired and it is better to apply the Act than to proceed by resumption. (R. 671—12.) We may presume this view would not apply to recent grants, where a power of resumption for public purposes on special terms is reserved in all Sanads making such grants: L. R. (1921) 36 (1) (Old Rule 16).

95. When C. claims land on behalf of G. but the claim is disputed, the A. O. can decide the claim under this Act. But no reference can be made to a Court on such a point (I. L. R. 7 All. 819 and 19 All. 339; R. (Memo.) 3733—08 overruled in I. L. R. 34 Bom. 618, G. of Bombay *vs.* Esufali).

But he should be slow to pronounce a decision against G. since the opponent party has always the right to claim a reference to the Court while G. has no such right, but would be finally bound by A. O.'s decision.

It is, however, far better to discover the claim of G. before notfn. than after. If the claim is likely to be disputed as a preliminary and before notfn. C. should take some steps to enforce the claim of G. or remove the opposing claim or, in the last resort, get it settled by a Civil or Revenue Court before the proceedings come on. Sec. 37 (2), L. R. C., gives the best ordinary procedure.

It is hard for C. and the Court to refuse compn. after notfn. on the ground that there is no acquirable interest vested in any private person, since the notfn. itself presumes it. (25 C. L. J. 476).

Ex-hypothesi, G. cannot acquire its own property and to apply the Act is a logical negation of the claims of G. (12 Bom. L. R. 34 & also see 4 Calc. L. J. 256). When however G. owns part of the interests in a plot, it would be proper to apply the Act to the remaining interest—which alone can be paid for—and decide the *extent* and value of the G. interest.

G. land leased to a tenant but needed at once for a public purpose, can be acquired to the extent of extinguishing the tenant's right on compn. See para. 9.

For a curious muddle, where C. sold land for arrears of revenue at the same time that it was being acquired, see 66 Ind. Cas. 546.

96. Court of Wards land can of course be acquired, and the Court of Wards can act in an acqn. proceeding like a private person. No sanction of G. is required for the transfer of the immoveable property under the Act; but if an agreement is made between the A. O. and the Court of Wards and an award is passed upon that agreement, then the sanction of G. would be desirable under Sec. 27, Court of Wards Act. (R. 4043—11.)

This would, therefore, make it undesirable to appoint the same officer who discharges the duties of Court of Wards or Manager to be the A. O. for such land. (See also para. 18.)

97. Land within a Cantonment or in the occupation of Military Dpt. as a camping ground, etc., cannot be acquired under the Act, because it is the property of G. But though the soil may belong to G., buildings or other things attached to the earth may be private property, and to this extent the Act may be applied for their acquisition. But no such acqn. can be made unless the Army Dpt. or the General Officer Commanding assents. The rules relating to the acqn. of land in Cantonments, etc., and for the payment to the Military

Dpt. are given *in extenso* in P. W. D. 1951—13. Further rules are also given in the Mily. Lands Manual, Section III. The case is not common and they are not reproduced here in full. But it must also be remembered that even if the land is acquired for Ry. or any other purpose with proper sanction still, in some circumstances, the uses to which it can thereafter be applied are restricted by the Works of Defence Act VII of 1903 and V of 1909, which should be consulted. The Military Dpt. retained a right of reversion in R. 8731—17.

98. Even within Indian States there are sometimes camping grounds or Cantonment areas in charge of the Military Dpt. or shown in the Quartermaster-General's route book. These rules as to the acqn. of Military land or entry upon it apply to such land also so far as officers of G. are concerned. Whether these restrictions apply also to the State officials depends upon the conditions under which the land is held by the Military Dpt. (R. 6582—93 ; 7788—93.)

99. It is most important to remember that not only will G. have to pay for the land actually acquired but may also have to pay compn. for severance, for easements destroyed or diminished, and for other injuries affecting lands not acquired. Cases are possible in which these claims may involve more expense than the value of the acquired land itself. The discussion of these claims in detail is placed at the end of Ch. VII, para. 240, *et seq.* Before passing an estimate or proposal to notify C. must be sure from the reports before him or from his personal inspection that no dangerous claims under this head will arise and that his estimates provide for those that will arise, so far as prudent foresight can penetrate.

These matters must be thought of at the time of acqn. because after the acqn. and award it is not possible for parties whose easements are affected or for G. to sue in Courts to rectify such omissions. If the owner of an easement of light and air over a notified plot did not claim before the A. O. and afterwards a large building is erected on the acquired plot depriving him of his easement, his remedy seems barred : as he was an "interested party" and was included in the General Notice. (See para. 245.)

The inspecting officer must have a general idea of the principles of compn. and of the law as to intersection of premises (para. 107) and of the risks of claims for injurious affection and severance in respect of land outside the acqn. boundary (para. 240 ; *et seq.*), otherwise his inadvertence may result in serious loss to G. and the public.

100. Public rights of way over a public road can indirectly be acquired but should be either preserved or adjusted by the provision of some equivalent. A level-crossing over the Ry. or a sub-way or an over-bridge, as the case may be, may be considered equivalent to the high-road. But even on a level-crossing the land upon which the high-road lies does not become the property of the Ry. They only obtain permission in virtue of the Ry. Act (41 Bom. 291) to run across it and it is not they (as one might sometimes think) who permit the public to use the level-crossing at the pleasure of the Ry. Co. Sec. 7 of the Ry. Act gives the Ry. Co. power to lay lines on or over a street but not to acquire any street (16 Bom. L. R. 104). If they provide a bridge, then the old road first ceases to be a road and then can become their property. The same argument would apply to rights created by Legislation, *e.g.*, streets vesting in a Muny. We must first arrange to divest the land of its character as a street, so as to make it ordinary land belonging either to G. or some other person and then if not G. land acquire it. (See also para. 91.) Before, therefore, an acqn. is recommended to G. and notified it should first be settled how all these rights and easements, if there be any, are to be dealt with.

English rulings are :—

No one can sue for a public right interfered with by an authorised public work (Herring *vs.* Metro. Board of Works).

When upon acquired land there is a public right of user (*e.g.*, a tow-path along a river bank) the user can be absolutely extinguished—(but should not be if its retention is consistent with the purposes of acqn.).

Any public rights over land cease on its acqn. because land with an easement attached can be acquired and the easement extinguished, even if that easement is enjoyed by the public (14 Calc. 417 & 25 Calc. 194). G. cannot acquire its own high roads but can allow their assignment to other uses.

A Local or Highway authority cannot be considered to have any interest in street land beyond the depth necessary for its maintenance and such drains, etc., as are usually placed under the street surface (several Eng. cases). For making a tunnel, etc., at an adequate depth under the street no compn. is due to the authority in whom the street vests.

A Ry. Co. may divert a road if the diversion is more convenient than an (over) bridge but not merely to save expenses (*Atty. Gen. vs. Ely. Ry. Co. : Hugh vs. Golden Valley Ry. Co.*)

101. When A. O. cannot save G. from a possible conflict with religious sentiment by modifying the original proposition, his next endeavour will be to make a tactful negotiation with the parties. The Act enables him to acquire "land", but not the sentiment of a community. When therefore the two are inseparable, he will naturally seek to appease communal feeling by such concession in the matter of market value as is represented ordinarily by the adoption of the principle of reinstatement (see para. 157) rather than capitalisation of income.

Special care is required in cases of congested areas and street improvements. C. will of course apply to the Comr. for instructions in all cases when difficulty can be foreseen. For further details, see R. 1179—15.

102. The method of reinstatement by agreement is appropriate to the case of Churches, Temples, Mosques, and the like ; it is embraced by Sec. 31 (4) of the Act and may take the form of an arrangement to rebuild the religious edifice elsewhere and to pay the cost of the ceremonies incidental to removing the image (if any) and consecrating the new place. Of course, such buildings will not be touched without great necessity. But sometimes a temple, or other such edifice might come in the only possible line for the construction of a canal or a tunnel through a range of hills ; it is impracticable to give money compn. to a community or sect ; with tact and consideration, and by explaining the necessity, and arranging a suitable reinstatement A. O. will usually surmount the difficulty (see R. 6567—14).

102A. Re-instatement is appropriate in cases of public parks, schools, churches. (*Halsbury Laws of Eng. VI. 37 ; Wilde C. J. in Hilcourt vs. Archb. of Cant. 10 C. B. 347.*) Also for business premises when the business can only be carried on in special conditions.

103. Finally, after considering the above matters and settling the difficulties which have arisen, C. will be at last in a position to recommend the acqn. to G. For this purpose he must have the land measured and submit a draft notfn. Not only its gross area but the area of each separate plot of which it consists must be reported. It will have been settled in the previous inspection whether any change of boundary to avoid houses, religious buildings, wells, or awkward severances should be made and presumably they have been made.

Then the surveyor of the Revenue Dpt.—according to the rules in the Manual of Land Records—will measure the land (not only broken fragments, but whole S. Nos. or Sub-divisions) as finally demarcated and will give, plot by plot, the area [and the occupant or owner or as many of the persons interested as he can ascertain from the Record-of-Rights or otherwise]. In one plot there may be many interests such as an owner, some sharers having a charge upon his interest, a reversionary after the owner's death, a mortgagee, a tenant on a building lease, a tenant or lodger in the building, an agricultural tenant or a neighbouring owner of a dominant easement. All these interests are included in the single plot as a single area. At the time of this measurement it is essential that a representative of the applicant should meet the Revenue Surveyor, and having agreed, upon the boundary already demarcated they should jointly measure the details and sign a joint statement. A form (reproduced in para. 104 below) for this joint measurement certificate has been prescribed. (P. W. D. A-1722—08 ; R. 4698—08). For cols. 1—5 only the Revenue Surveyor is responsible : and the applicant's surveyor joins him in responsibility only for the agreement of total area, and the particulars in cols. 6—8. The form will no longer attempt to give estimates of value (originally prescribed) but if a valuation has not previously been made C. will now obtain it. (The P. W. D. agreed to this change below Rev. Dpt. u. o. No. 6087—1-7-14.) (Standardised in R. 7449—16.)

104. Errors in procedure very commonly arise at this stage. It is obviously most inexpedient that the time of the revenue surveyors should be wasted in making detailed measurements before the matters above dealt with in paras. 90—102 have been settled. A vicious habit exists of sending Circle Inspectors to measure the land not only before any preliminary inspection but sometimes before the applicant has demarcated his requirements and even sometimes at the stage when only an estimate of probable cost per acre is desired. Pitiful examples have occurred in which an area has been measured 4 or 5 times on account of constant changes of plan before the final notfn. ; and even then through disregard of questions of severance and intersection of buildings and so on, many of the measurements have had to be done again. Measurement made before the rough notfn. under Sec. 4 (now obligatory in all cases) would

be peculiarly pernicious as it would defeat the object now achieved by this notfn. (see para. 30). Owing to the methods of cross staff (but not of Plane Table) survey every change in a boundary necessitates remeasurement of the unit-plot,—whether Survey No., or Pot-hissa—in which it occurs. It is most earnestly desired that no measurement for the purpose of notfn. should be made until it is quite settled what the boundaries will be. It ought to be self-evident that no time can possibly be gained by making a measurement according to a boundary which is liable to change. For the purpose of estimates and all preliminary discussions, an inspection and eye-estimate of area with the aid of the cadastral maps are quite enough, provided the area notified under Sec. 4 is not *less* than that finally acquired (see para. 109).

Another vicious practice is often observed by which the *applicant*, especially the X. N. of the District or the D. F. O., is expected to give in his application the measurement of *each plot* instead of the total area, and even sometimes the names of owners and tenants. In no case should any Dpt. other than the Revenue be expected to give such details. The most the applicant should furnish is a map and total area, and the map or plan should show if possible the boundaries or parts of boundaries of the villages which his boundary intersects.

If a Ry. Co. wants an acqn. survey done, it should first be asked to assent to debit being raised for actual expenditure through the Exchange account, or else to deposit the estimated cost in cash (A. G.'s D. A. IX-258—28-4-27).

*Accompaniment to G. R., P. W. D., A-1722, dated 19-6-08**

Department requiring land : [Old Standard Form R. M. 317 (e)].
Purpose for which required : Now R. L. R. 2.

Particulars of land required				Name of Kabzedar	Details of			Remarks
Taluka, Village, S. No. and Hissa	Class of land	Area	Assessment		Buildings	Wells	Trees	
1	2	3	4	5	6	7	8	9

*For Sind modifications, see R. 7233—16

Certified that we have filled up the above columns after enquiry on the spot.

Certified that the boundaries of the land required have been clearly demarcated by (pegs, stones, trench) and that its area is :—

Note.—For cols. 1—5 the Revenue officer alone is responsible.

For cols. 6—8 both officers are responsible and for agreement of total area.

(Sd.)

(Sd.)

Circle Inspector.

(Designation of the representative of the acquiring Dpt.)

105. After the proper measurement and examination of the ground and the correction of the detailed boundary (see para. 107 below) on the results of the examination has been completed, C. will forward the draft notfn. with his report accompanied by such documents as the case obviously requires, such as the schedule and plans received from the Ry. and the committee's report under para. 33 (6) (P. W.-C. W. 3432-19). [R. (letter) 1615—65.] His report under Sec. 5-A, will cover the requirements of R. 667-14. But if the *Urgency clause is applied* he should nevertheless see that no genuine objection is disregarded. All religious buildings, tombs, and grave yards must particularly be detailed. (R. 1179—15.)

It is most important that the boundaries should be accurately and finally determined before this final notfn. The Act allows A. O. to declare the true area by his award. He is not bound by past errors in Revenue records (41 Ind. Cas. 905). Sometimes this has been thought to give the power to extend or contract the actual area acquired, by means of passing an award for a greater or smaller area. This is, however, entirely illegal. If the award is made for a less area, there would probably be no great objection as this would amount only to a withdrawal from the remaining notified area which G. could approve *ex post facto*; possibly some incidental damage might be claimed. But to award for a greater area in the sense of extending the original boundary is quite inadmissible. The only case in which additional area can be acquired (distinguish 17 Bom. L. R. 192 where apparently Sec. 49 (2) and (3) were not properly used) without a gazetted notfn. but simply by an intimation from G. [not from A. O. or C., Sec. 49 (2) and (3)] is

when an owner makes such claims for severance—hereafter discussed (para. 240)—as will make it as costly to adhere to the original boundary and pay the severance as to acquire the whole area. Of course these severance claims must be probable or likely to be awarded. But any such case ought, with reasonable care, to be detected in the first examination, and the finally notified boundary should include any such tiny fragments as cannot reasonably be left out or for which the severance claims will be excessive.

106. Another way of meeting a severance claim for want of access is for the Ry. or other applicant to allow a passage over the acquired land. (See Section on Severance.) This can sometimes be done and such cases should be ascertained either before notfn. which is much better or, at any rate, before award. Such an exchange of facilities would be within the competence of the A. O. under Sec. 31 (4). The object of the Act is to acquire land free from all encumbrances and easements, but if the applicant does not object to an easement being granted, it is *not obligatory to extinguish them all*. The case of public highways has already been referred to (para. 100).

107. When the premises [Servants' quarters are part of a building, 43 Calc. 665] of a building or house are intersected a fresh notfn. under Sec. 6 must issue to include the whole, if the owner insists, under Sec. 49 (1). Even when a well situated in a compound, or a vacant piece of dumping ground, is cut off from a house or factory, still there is the power to insist on the acqn. of the whole. It is, therefore, exceedingly important to ascertain, when the boundary is being examined, what the wishes of the owners are in respect of any such intersection. If they waive their rights under Sec. 49 (1) then immediately a *written statement of waiver* should be obtained from them. But if they press their rights for the acqn. of the whole, then either the whole of their property must be excluded or included as C. and the applicant may decide, and the boundaries and notfn. under Sec. 6 must be amended accordingly. The proceedings as to the residual unnotified part of an intersected building-plot are *ultra vires* till this amended notfn. issues. (R. 10997—15; H. C. Appeal 96 of 1912.)

Some parties would not be competent to waive their rights, see para. 18 :

In the event of disagreement if C. refuses to refer a dispute the H. Court can interfere (16 Calc. W. N. 327). The question of fact to be adjudicated by the Court is whether the fragment notified is reasonably required for the full and unimpaired enjoyment of the main premises (30 All. 176, &c.). The Court decision is not appealable (17 Ind. Cas. 117 and 23 Calc. W. N. 378). The term house includes shop, inn, hospital and factory; and includes several buildings used for a common purpose in one ambit or curtilage; and even an unfinished house. But when two villas are built in the semi-detached style, one can be taken alone. (Halsbury VI. 71.) More land than is reasonably required for the convenient enjoyment of the 'house' cannot be covered (9 Oudh Cas. 311). Two houses held under separate leases but used as one are treated as one (Siegenberg vs. Metro. Dist. Ry.). A market garden was held not to be part of a cottage; but a nursery garden was held part of a nurseryman's house. A plot of which a lease had been promised but not delivered is not part of the house. If water is cut off from a mill or factory using water, that is taking a "part". When the main business is not manufacture but only some small subsidiary process is carried on, that is not a factory. To throw a bridge across land is to take that land—but see para. 31: (Pinchin vs. London Blackwall Ry.). Taking a right of way is not necessarily taking the 'house'.

Where an owner had leased part of his compound for agriculture permanently, he was allowed to claim its value as part of his house or building premises. (sci: he had not parted with the right to control uses adverse to his amenities) (44 Ind. Cas. 923).

If the Court rejects the claim, this does not bar an alternative claim for severance.

108. The measurements by the Ry. Co. or other applicant are usually made in gross. They measure the whole area irrespective of its sub-division into different plots and tenements. But the Revenue officers sometimes take the area of each whole plot or tenement as formerly surveyed and then measure only the portions of those plots which are severed by the proposed boundary. When the Revenue surveyors add up their detailed results they are likely to differ from those of the applicant.

109. In the case of differences in the measurements made by C. and the Ry. of lands acquired for or relinquished by railways, the measurements made by the Ry. authorities should be accepted, as between G. and the Ry. Co., provided that the difference in each case does not exceed the following limits:—

Areas	Discrepancy to be allowed ⁺
(1) Under 3 acres .. .. .	.. 5 per cent.
(2) From 3 to 5 acres .. .. .	.. 4 do.
(3) Over 5 and up to 7 acres .. .. .	.. 3 do.
(4) Over 7 acres .. .. .	.. 2½ per cent. or 1 guntha in an acre.

This order does not apply to lands in towns or cities in which no allowance should be made for differences, but "actuals" must agree. (R. 8402-03, and 2012-04.)

No doubt similar discrepancies can be tolerated in other than Ry. cases. The meaning of the expression "as between G. and the Ry. Co." probably means that the Ry. measurements should be taken as final for G. land. But in practice the Land Records Dpt. must take their own measurements which are in detail by Survey Nos., etc., rather than the measurements of the applicant. For private land the A. O. will award what he finds to be the correct area as between the two measurements. When a boundary is laid down in straight lines in the field, particularly when the surface is broken, no two measurements of the enclosed area, made with ordinary instruments, will tally exactly. This is the meaning of the latitude allowed to A. O. to "declare the true area". It has already been explained (para. 104) that this does not mean that he may vary the boundary.

C. cannot acquire or give possession of any land beyond the boundaries given in the declaration, and if G. takes possession of land beyond the limits prescribed by the declaration it trespasses on private land (11 Cal. W. N. 875). The words 'boundaries' or 'limits' in the above sentence should, however, be taken as subject to the implication of the words, "approximate area" in section 6 (2) of the Act, where instead of specific boundaries the declaration refers to the land to be acquired by its approximate area. In such cases if the actual area stated in the award under section 11 is found to be so slightly in excess of the area given in the declaration under section 6 as to come under the expression "approximate area" there would be no objection to the excess area being included in the acquisition without another notification under section 4 or declaration under section 6 (*vide* also para. 29-A). (R. D. File 1086-28).

110. It may be worth while noting some of the causes for discrepancies in area which have sometimes occurred. A Ry. Engineer usually measures the land by rectangular off-sets from the fixed base line or centre line of the permanent way. Then he deducts the area already in possession of the Ry. and thus arrives at the area "to be acquired". In one case it was found that the centre line had been shifted from the up line to the down line; in another case it was found that instead of measuring from the centre line the surveyors measured from the Ry. boundary fence which they assumed was the boundary of the "A" class land; in fact it was the boundary of the "B" class, and not correctly placed. In these cases the Ry. measurements were wrong and the Revenue surveyors were right. Often the Ry. line is on a high bank or in low cutting. It is then difficult to measure from the centre line rectangular off-sets in the same horizontal plane. Again the Revenue surveyors assume that the recorded areas of all Survey Nos. are correct. Unfortunately this is not always the case; sometimes because of original errors, sometimes because of subsequent changes of boundaries. The Ry. Engineer should be required to indicate on his plan from what base or by what calculation he obtained his areas.

111. These notes may be helpful when dealing with cases of inadmissible discrepancies of area. In most cases we require an exact map drawn to scale, of the original boundaries of Revenue divisions and the new proposed boundary of the acquisition, showing exactly how it intersects the boundary of Revenue plots. For such purposes the Plane Table is a much more useful instrument than the chain and cross-staff, especially because when afterwards any modification of the boundary is decided upon it can be made on the P. T. map *without remeasurement*. This cannot be done in cross-staff work.

112. The "boundaries" may be stated in the notfn. but it seems undesirable to state the tenure. In Bombay Presidency where there are so many different classes of tenures, mistakes are more likely to occur than elsewhere, and as any scrap of evidence of title is eagerly seized on, unfounded claims might be based on such mistakes. The chance of such mistakes should be avoided where there is no need to incur it. (R. 5731-95.)

113. In schedules appended to the notfns. columns such as "Tenure," "Name of Khatedar and Claimant" and "Boundaries" need not be inserted, as they are not required by law, and *errata* are likely to occur.

In Bombay City there are various sets of serial Nos. assigned to properties at successive surveys, and for divers purposes. Few owners read the Gazette and the notice on the land is the really effective one; para. 136 note (c). It has been decided to give the names (as registered) of owners in the notfns. under Sec. 4 & 6 for Bombay City.

It is required in the statement (para. 104) that the Revenue Surveyor should insert in his schedule the names of the interested persons most of which will have already been scheduled for the enquiry under Sec. 5A. (See rules para. 30B.) It is important to note that no such names are required or should be inserted in the notfn. But while doing the measurement the

surveyor can very conveniently enter these particulars from the Land Records or recheck those got in the preliminary enquiry, and thereby save much trouble to the A. O. at the commencement of his proceedings.

114. A declaration under Sec. 6 need show nothing beyond (a) the district or other territorial division, (b) the purpose, (c) the approximate area out of each Survey No., and (d) when a plan has been made, the place where it may be inspected. (R. 1337—95.)

115. C. will then submit his report. He will invariably state the probable compn. and how the charge will be met (*e.g.*, from a deposit made by an Indian State or from Muml. or L. B. funds; according to budget provision, or from the P. W. budget, etc., etc.) (R. 615—83). He will forward the case through Cmr. and will recommend who should be nominated as A. O. and will say whether there is Urgency.

The Cmr. should see that notfns. are not submitted hastily on behalf of L. B., *i.e.*, not until he is satisfied that the project in connexion with which the land is required, is sufficiently matured to justify the acqn., so that the project can proceed without loss of time. (R. 5835-94.)

If the land is needed for educational purposes the Cmr. will submit the case through the D. P. I. (R. 1786-91).

116. Ordinarily the Assistant or Deputy Collector in charge of the Taluka is nominated as A. O. (G. I., P. W. D., Circ. XI.—Ry., (para. 6), dated 21-9-95.) (R. 4339—74.) He must, however, first be appointed to perform the functions of a Collector under sections 3 (c) and 7. (R. 2997/28-16-1-35.)

A suggestion that A. O. should always be selected from the Judicial service found no support from the Cmr. or from G.

A proposal that A. O. should give security like Rev. officers was negated in R. 2920/24—14-4-25.

When any considerable area of land is to be taken up for public purposes, a special officer should be deputed for the purpose, and care must be taken in his selection. Ability to weigh evidence and knowledge of Indian character and local conditions are as important as the theoretical knowledge of the principles of valuation (G. I. quoted in R. 330—10).

The powers and duties given to the A. O. under the Act cannot in turn be delegated (see 8 Oudh Cas. 118). But apparently he may allow an assistant or deputy to make local enquiry and incorporate the results in his proceedings (Madras Board's Instructions). If he does so, he should make it clear over his signature in what he relies on his agent's report (19 Panj. L. R. 1909).

117. If the applicant requires the land urgently and C. recommends the application under Sec. 17 (1), then if the Cmr. and the P. W. Secretary in transmitting the papers to G. do not object, G. will notify Urgency without further reference (R. 8440—14).

When Urgency is declared C. or A. O. takes possession under sec. 17 (1) as soon as—

- (1) The notfn. under sec. 6 has issued.
- (2) The general notice under sec. 9 has issued for at least 15 clear days.
- (3) The boundary has been demarcated and measured and mapped.

But this possession must be limited to arable and waste land: these terms probably do not cover roads or tanks or any land (not arable) which is in use, and certainly not gardens.

The urgency declaration precludes G. from any subsequent withdrawal, whatever the cost. Also it deprives owners of any right of being heard under Sec. 5A. Therefore great care should be taken and such a proposal will be scrutinised by G. very closely and must be supported by stronger reasons than are needed to justify the acqn. itself. (Para. 7 of R. 9173 of 11-6-24; also see paras. 20 & 230.)

The rough notfn. under Sec. 4 now renders it needless to hurry on notfn. solely to check a rise in land prices. Notfns. under Sec. 6 should not issue till the acqn. is to be completed forthwith.

The making of this final notfn. ought in all cases to imply that Budget provision for the anticipated payments exists. In the order, G. should intimate that no proceedings may be taken or awards declared "pending budget provision" where it does not exist (R. 8154-23) nor can the urgency clause be applied till funds are available. This restriction does not apply to Notfns. under Sec. 4, but in that case C. should be satisfied that there is reasonable ground for expecting that funds will be available.

118. Each notfn. is signed by an Assistant Secretary to G. But the Press publishes all the notfns. of the week together and prints only one signature after them all: if the legality of this is impugned, evidence should be given of the actual signature and of the Press practice. (Order R. 10405-14; also R. 5827-3-4-35).

C. should keep a complete list (or index) of all issued notfns. under Secs. 4 & 6: when people enquire if land has been notified he must always be able to give them information; error ought not to be possible. (R. 12312-19.)

The forms of notification under Section 6 are—

(i) ordinary—D.

(ii) when urgency is declared—F, G and H.

(R. 2997/28-35).

(For indents, see para. 30).

D.

REVENUE DEPARTMENT.

Bombay Castle, 193 .

No.—Whereas by Government Notification in the Revenue Department, No. , dated 193 , it was notified that the land specified in the schedule hereto was likely to be needed for the purpose stated in the said notification, viz. for lands were

And whereas the Governor in Council is satisfied, after considering the report of the Collector under sub-section (2) of section 5-A of the Land Acquisition Act, 1894 (I of 1894), that the said land is needed to be acquired at the public expense (or at the expense of a local lands are body or corporation or company, as the case may be) for the purpose specified above.

It is hereby declared under the provisions of section 6 of the said Act that the land is required for the purpose stated above. lands are

The* is hereby appointed under clause (c) of section 3 of the Land Acquisition Act, 1894 (I of 1894), to perform the functions of a Collector for all proceedings hereafter to be taken in respect of the said land. He is also directed under section 7 of the said Act to take order for the acquisition of the said land.

A plan of the said land can be inspected at the office of the lands

Schedule.

* * * * *
By order of the Government in Council,
Government of Bombay,
(Transferred Departments),

Assistant Secretary to Government.

(To be used when orders for partial abandonment are passed simultaneously with this notification.)

The acquisition of the remaining land mentioned in Government Notification No. , dated for the purpose stated above, is hereby abandoned and the Government in Council is pleased to direct that the said notification Government of Bombay (Transferred Departments) are shall be cancelled in respect of the remaining land lands.

(Note.—The Collectors concerned should then inform the persons interested of the abandonment of the acquisition.)

By order of the Government in Council,
Government of Bombay,
(Transferred Departments),

Assistant Secretary to Government.

FORM F.

(To be used when in view of the urgency of the acquisition the notification under section 6 is to be issued simultaneously with or immediately after the notification under section 4 issued in Form E.)

REVENUE DEPARTMENT.

Bombay Castle, 193 .

No. .—Whereas by Government Notification in the Revenue Department, No. , dated 193 , it was notified that the $\frac{\text{land}}{\text{lands}}$ specified in the schedule hereto $\frac{\text{was}}{\text{were}}$ needed for the purpose stated in the said notification, *viz.*, for

And whereas the Governor in Council is satisfied that the said $\frac{\text{lands is}}{\text{lands are}}$ needed for a public purpose or for a company as stated above.

It is hereby declared under the provisions of section 6 of the Land Acquisition Act, 1894 (I of 1894), that the said $\frac{\text{lands is}}{\text{lands are}}$ needed for a public purpose or for a company as stated above.

The is hereby appointed under clause (c) of section 3 of the said Act to perform the functions of a Collector for all proceedings hereafter to be taken in respect of the said $\frac{\text{land}}{\text{lands}}$. He is also directed under section 7 of the said Act to take order for the acquisition of the said $\frac{\text{land}}{\text{lands}}$.

And whereas the acquisition of the said $\frac{\text{land}}{\text{lands}}$ is urgently necessary ;

The Governor in Council is further pleased to direct, under sub-section (1) of section 17 of the said Act, that the Collector shall, on the expiration of fifteen days from the publication of the notice relating to the said $\frac{\text{land}}{\text{lands}}$ under sub-section (1) of section 9 of the said Act, take possession of all the waste or arable $\frac{\text{land}}{\text{lands}}$ specified in the Government Notification aforementioned.

A plan of the said $\frac{\text{land}}{\text{lands}}$ can be inspected at the office of the

Schedule.

* * * * *

By order of the Governor in Council,

Assistant Secretary to Government.

FORM G.

(To be used when in view of the urgency of the acquisition Government direct that the provisions of section 5-A shall not apply to the land.)

REVENUE DEPARTMENT.

Bombay Castle, 193 .

No. .—Whereas by Government Notification in the Revenue Department No. , dated the 193 , it was notified that the $\frac{\text{land}}{\text{lands}}$ specified in the schedule hereto $\frac{\text{was}}{\text{were}}$ likely to be needed for the purpose stated in the said notification, *viz.*, for

And whereas the acquisition of the said $\frac{\text{land is}}{\text{lands are}}$ urgently necessary, the Governor in Council is pleased to direct under sub-section (4) of section 17 of the Land Acquisition Act, 1894, that the provisions of section 5-A of the said Act shall not apply to the said $\frac{\text{land}}{\text{lands}}$;

And whereas the Governor in Council is satisfied that the said $\frac{\text{land is}}{\text{lands are}}$ needed for a public purpose or for a company as stated above ;

It is hereby declared under the provisions of section 6 of the said Act that the said $\frac{\text{land is}}{\text{lands are}}$ needed for a public purpose or for a company as stated above.

The _____ is hereby appointed under clause (c) of section 3 of the said Act to perform the functions of a Collector for all proceedings hereafter to be taken in respect of the said $\frac{\text{land}}{\text{lands}}$. He is also directed under section 7 of the said Act to take order for the acquisition of the said $\frac{\text{land}}{\text{lands}}$.

The Governor in Council is further pleased to direct, under sub-section (1) of section 17 of the said Act, that the Collector shall, on the expiration of fifteen days from the publication of the notice relating to the said $\frac{\text{land}}{\text{lands}}$ under sub-section (1) of section 9 of the said Act, take possession of all the waste or arable $\frac{\text{land}}{\text{lands}}$ specified in the Government Notification aforementioned.

A plan of the said $\frac{\text{land}}{\text{lands}}$ can be inspected at the office of the

Schedule.

* * * * *

By order of the Governor in Council,

Assistant Secretary to Government.

FORM H.

(To be issued when the urgency of the acquisition is found after the Collector's report under section 5A (2) is considered by Government.)

REVENUE DEPARTMENT.

Bombay Castle,

193 .

No. _____.—Whereas by Government Notification in the Revenue Department No. _____, dated _____ 193 , it was notified that the $\frac{\text{land}}{\text{lands}}$ specified in the schedule hereto ^{was} _{were} likely to be needed for the purpose stated in the said notification, viz. for

And whereas the Governor in Council is satisfied, after considering the report of the Collector under sub-section (2) of section 5-A of the Land Acquisition Act, 1894 (I of 1894), that the said $\frac{\text{land is}}{\text{lands are}}$ needed to be acquired at the public expense (or at the expense of a local body or corporation or company, as the case may be) for the purpose specified above.

It is hereby declared under the provisions of section 6 of the said Act that the said $\frac{\text{land is}}{\text{lands are}}$ needed for a public purpose or for a company as stated above.

The _____ is hereby appointed under clause (c) of section 3 of the said Act to perform the functions of a Collector for all proceedings hereafter to be taken in respect of the said $\frac{\text{land}}{\text{lands}}$. He is also directed under section 7 of the said Act to take order for the acquisition of the said $\frac{\text{land}}{\text{lands}}$.

And whereas the acquisition of the said ^{land}/_{lands} is urgently necessary ;

The Governor in Council is further pleased to direct, under sub-section (1) of section 17 of the said Act, that the Collector shall, on the expiration of fifteen days from the publication of the notice relating to the said ^{land}/_{lands} under sub-section (1) of section 9 of the said Act, take possession of all the waste or arable ^{land}/_{lands} specified in the Government Notification aforementioned.

A plan of the said ^{land}/_{lands} can be inspected at the office of the

Schedule.

* * * * *

By order of the Governor in Council,

Assistant Secretary to Government.

CHAPTER VI.

PROCEEDINGS.

119. Almost all the matters we have hitherto considered relate to preparations and departmental negotiations preliminary to bringing the Act into use. But after the notfn. under Sec. 6 has been gazetted and an officer has been designated as A. O., then for the first time he acquires a legal position and power to act. Before considering what those powers are, we will touch first on establishments and costs.

120. Ordinarily the duty of taking up land for G. purposes rests upon the Revenue Dpt., and this duty and the cost of temporary establishments connected with it is borne as part of C.'s establishment. The percentages levied from financially independent bodies (see para. 79) will reduce the nett burden.

121. In cases where special establishment is employed, the whole of the cost of acqn. including contingencies should be borne by the L. B. In small cases where land is acquired for Cos. or L. B. including semi-public bodies, libraries and Educational societies (R. 9268-23) and presumably Indian States, and the operations are conducted by the ordinary staff without extra establishment, the charges are now merged in the percentages levied.

122. When an officer already in the service of G. is specially engaged for a period in the acqn. for the P. W. D. for a large project, his pay, establishment and contingent charges may be treated as a portion of the cost, and as an item of expenditure on the project (C. A. C. I. 118). But to admit of a proper and careful control over the charges, as well as to limit the period of the employment, when the estimates for a project are submitted for the sanction of the G. I., the actual cost of the land, distinct from the establishment and other charges, must invariably be noted.

123. With the estimate a separate schedule of the establishment should be submitted and its probable cost for the guidance of P. W. Audit office, any excess being dealt with under the rules relating to excess outlay. [P. W. D. 44-A.I.-93-74 ; and R. (Memo.) 1391-74].

124. The cost of temporary subordinate establishment engaged (under orders of G.) under officers of the Revenue Dpt. not placed at the disposal of the P. W. D. should be charged to the works concerned, when the A. O. is made a P. W. disburser (C. A. C. I. 118). Otherwise the charges should be debited to the Revenue Dpt.

125. These arrangements for establishment and other costs will have been made before notfn. The Indian State or Co. or L. B. will have been required to deposit the cost, or percentage, (para. 78) while Ry. Co. or Dpt. of G. will have made budget provision, not only for the full anticipated cost of the land but also for the establishment and contingent costs, if any. Among these costs will fall cost of printing, notice-boards, clerks, stationery, law costs (para. 295) and the like.

126. In view of para. 271 when a notfn. is issued in December or later, it would be prudent (unless the award can certainly be completed and paid before March 31st) to apply first for the transferring of the allotment to the next year's budget. The G. I. will admit such transfers of sums exceeding Rs. 20,000 up to 8th March : but for smaller sums not after 2nd January. This difficulty must also be borne in mind. (See para. 271.)

127. Assuming now that the notfn. has appeared and due provision for his expenditure exists, the A. O. will commence his proceedings under the Act. Let us first see what his powers are. A. O. must get to work at once and always within the same financial year, lest the budget grants lapse ; except in very large schemes which necessarily take several years, when the provision will probably be distributed (R. 8164-23). Moreover if there is great delay between notfn. and possession inconvenience and even loss may be caused to owners for which the law provides no compn. (60 Panj. R. 1917.)

127-A. It has been brought to the notice of G. that there have occasionally been unnecessarily long delays in completing the proceedings in connexion with the acqn. under the provisions of the Act, of lands especially for such big projects as branch or feeder railway lines, with the result that the Ry. or other body concerned is unable to obtain speedy possession of the land required with consequent upset of budget arrangements and loss of interest on capital. Such delays, wherever they occur, are usually due to a want of the proper understanding and application of the provisions of the Act and of the procedure in this Manual. The officers entrusted with the acqn. proceedings should accordingly be instructed to make themselves familiar with the Act and the procedure, whenever they are called upon to undertake such acqns. The Commr. in Sind and the Commrs. of Divisions are requested while on tour to examine particularly the land acqn. work done by C. and their assistants and to deal adequately with cases in which they observe any undue delays or irregularities in the prescribed procedure. (R. 449/28—16-8-28.)

128. As laid down in *Ezra vs. The Secretary of State for India*, I. L. R. 32 Calc. 605, the A. O. is, in no sense of the term, a Judicial officer ; nor is the proceeding before him, in which he makes his award, a judicial proceeding (R. 8397-06 ; also 27 Calc. 820 and 30 Calc. 85). His inquiry and valuation are departmental in their character, for the purpose of enabling G. to make a tender through him to the persons interested, and it is incumbent on him, before making his award, to consider all available information on the question. (R. 8452-13.)

The A. O. is therefore by no means confined (like a Judge or Magistrate) to considering information, evidence or documents judicially before him. (11 Bom. L. R. 1176.)

Nor can he rely solely on individual claimants to produce all the evidence on which he will base his award (34 Bom. 491). Nor is he obliged to disclose to the parties all the information on which he relies (7 Bom. L. R. 422 P. C. & 30 Calc. 605). Unregistered documents are admissible in evidence for what they are worth.

The expression 'Collector' used in Court Fees Act, Sched. II, 1 (a), 4th head, and 1 (b), 2nd head, refers to a Revenue officer as such. A. O. is not, however, acting as a Revenue officer at all (27 Calc. 820) and although he is frequently the C. of a district and thus in another capacity a Revenue officer, it is not essential that he must be a Revenue officer, for G. may appoint any person to be A. O. ; *vide* R. 4353-10.

129. It is most important to note that A. O. cannot administer any oath or affirmation, or require verification of any statement by affidavit. It follows therefore that he cannot take cognisance of any forgery coming to his notice, nor of any other offence committed before him ; it is not possible to commit perjury before an A. O. (30 Calc. 84.)

This would not bar prosecution for giving false information or for an attempt to cheat, after the Civil Court proceedings are over (27 Calc. 985).

130. A rule to apply the Court Fees Act to these proceedings cannot be made under Sec. 55. Such a rule would be outside the scope of the Act and therefore

ultra vires. The A. O. is the agent of G. and is therefore a public officer within the meaning of Sec. 6 of the Court Fees Act.

131. Of the documents received or furnished in the course of these proceedings the following are exempt from Court Fees :—

- (a) Applications for compensation (Court Fees Act, Section 19 xxii).
- (b) Awards or agreements and copies of such furnished to persons claiming under them (Section 51).
- (c) Applications under Section 18.

The question whether other applications or documents under the Act require to be stamped has to be determined by reference to schedule II to the Court Fees Act.

Although section 18 of the Land Acquisition Act, 1894, provides only for a reference to the District Court from an award made by a Collector yet the effect of sections 53 and 54 of the Act is to make the award of a District Judge liable to an appeal to the High Court. A further appeal to the Privy Council is also provided in certain cases. The word "order" in section 8 of the Court Fees Act, is wide enough to cover an award made by a District Judge. (R. 9717/28—6-10-32 and 20-7-34). Section 8 of the Court Fees Act therefore applies in cases of land acquisition appeals.

Extracts from Record of Rights must bear a stamp of 8 annas whether produced before A. O. or in a reference to Court. (Court Fees Act Schedule I, Art. 9).

132. The first step is to issue the notices, individual and general and upon the land, as required by Sec. 9. An inadvertent omission to notify a party—such as a part-owner or mortgagee—would not invalidate the proceedings ; and no party can take advantage if he is shown to have had full knowledge (30 Calc. 576 & 51 Ind. Cas. 501). But a wilful omission would be fatal (27 Bom. 424).

133. A. O. can compel any party or witness to appear before him (Sec. 14). This does not make him a Court but it does render the person who refuses to appear liable to prosecution for disobedience of a summons. However, the Act itself, in most cases, adequately punishes *parties* who do not appear after legal service of notice and who do not produce proper evidence. Section 25 (1) of the Act provides that where the applicant has made a claim pursuant to any notice under section 9, the court shall not award to him any amount exceeding that claimed before the Acquiring Officer ; while section 25 (2) further provides that if the applicant has refused to make such claim or has omitted, without sufficient reason (to be allowed by the Judge), to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector (12 C. W. N. 263 ; I. L. R. 33 All. 376). (R. 343/24—31.) The Court will also not give costs to a party failing to place his case properly before the A. O. when invited to do so.

134. The following procedure adopted in municipal land cases in Bombay City should be adopted *mutatis mutandis* by all A. O. :—

When C. has to acquire land for municipal purposes, the Muniy. is asked to send a representative. In minor cases a departmental officer attends. All important cases are entrusted to the Muni. Solicitors. On the day for hearing the Muni. Solicitor attends, and in important cases the land-owner is represented by a lawyer. The Muni. Solicitor states the rate the Muniy. is willing to pay and every opportunity is given him to support the rate by sales and other evidence. The land-owners name their figure and bring evidence in its support. In all important acqns. adjournments are granted and every opportunity is given to both parties to produce all available evidence. The evidence produced both by the Muniy. and by the land-owner is of necessity one-sided ; each party confines itself to details which tend in its own favour. In the bulk of cases the most helpful evidence is that of sales and awards from C.'s records.

When A. O. proceeds to apportion the compn. among all persons interested, whether they appear before him or not, the Record of Rights (where prepared) will be of great assistance, though not in all cases conclusive: see para. 295 (1).

135. For the purpose of his inquiry A. O. should, in addition to the notices required by Sec. 9, give notice to the departmental or other officer, or the L.B. or Co. concerned [for Indian State, see paragraph 42 (2)], and should take into consideration any representation, which such officer, etc., may make, whether orally or by letter. More especially he should, before making his award, allow such officer, etc., an opportunity of appearing in person or by agent and of producing evidence as to the value: see also Sec. 50. (R. 8397—06 and 8439—08.)

136. The following *model form of proceedings* was sanctioned in R. 4421—13. A few abbreviations and verbal corrections have been introduced. The form should be regarded like the forms of proceedings in Magisterial cases. It is not a rigid and invariable form, but intended to be written out for each case as nearly as may be according to the model, certainly not omitting any such matters as are noted in the model, if they arise in the case.

CASE No. OF 19

Read G. Notfn. No. , dated , page of
B. G. Gazette.

The land has been marked out [under Sec. 4] and a plan made which is filed (a) .. Ex.

Ordered under Sec. 9 that public notice be given at and special notices be served on the following persons believed to be interested (b) .. Ex.

(1)

(2)

(3)

(4) etc., etc.

Notice on to be served by post under Sec. 9 (4); (c) .. Ex.

Order under Sec. 10 (if any) .. Ex.

Proceedings adjourned to at

Camp , date 19

Collector.

Proceedings resumed.

Present :—

(1)

(2)

(3)

(4)

} In person or by pleader.

Objections to the measurements are made by .. Ex.

Order on above .. Ex.

Statements of persons interested showing nature of interest claimed and amount and particulars of compn. claimed .. Ex.

Statement (d) of .. Ex.

Sale-deed (by dated conveying such and such land to for Rs.) put in on behalf of .. Ex.

Statement of Ex.
 Proceedings adjourned to at
 Camp , date 19 .

Collector.

Proceedings resumed.

Present :—

(1) }
 (2) } In person or by representative.
 (3) }
 (4) etc., etc. }

Grounds of award recorded Ex.
 Award statement drawn out and filed Ex.

Absent :—

(5)
 (6)
 (7)
 Notices under Sec. 12 (2) to persons absent Ex.

Camp , date 19 .

Collector.

Notice to
 (5) returned served on (date) Ex.
 (6) Do. Ex.
 (7) Do. Ex.
 Possession taken (e) on (date) under Sec. 16 or Sec. 17 Ex.

Compn. dealt with as follows :—

Received by No. 1, with protest on (date) ; receipt filed Ex.
 Received by No. 2, without protest on (date) ; receipt filed Ex.
 Refused by No. 3, deposited into Court Ex.
 No. 6 cannot be found and makes no reply ; paid into Revenue Deposit.

Camp , date 19 .

Collector.

Proceedings resumed.

Application from No. 1 requiring a reference to the Court, dated Ex.
 Adjourned for preparation of statement of reference.

Camp , date 19 .

Collector.

Proceedings resumed.

Statement with schedules prepared and forwarded to Court in accordance with Sec. 19 Ex.

Camp , date 19 .

Collector.

I. Form of General Notice to be published on the land and at the places under clauses 1 and 2, Sec. 9.

(1) NOTICE is hereby given that _____ acres, _____ gunthas, _____ square yards, more or less, of land situate in or near the village of _____, bounded as below, and recently marked out and measured, with the buildings, if any, standing thereon are about to be taken by Government for [here specify the purpose] under Act I of 1894, in accordance with a declaration, Revenue Department, No. _____, dated _____, published in the *B. G. Gazette*, Part I, pp. _____ of _____

(2) All persons interested in this land are hereby called upon to appear personally or by agent on the [enter a date not less than fifteen days from the date of the publication of the notice] at the office of _____, at _____, to state the nature of their interest in the land, and the amount and particulars of their claims to compn. for the same, and their objections, if any, to the measurements made under Sec. 8 of the Act.

Boundaries.

North—	South—	East—	West—
Dated	19		

Collector.

II. Form of Special Notice to be issued under clauses 3 and 4, Sec. 9, to occupiers and other persons known or believed to be interested, or to be entitled to act for persons interested.

(1) As above.

(2) If you have any interest in or rights over this land or are entitled to act for persons so interested, you are hereby called upon to appear personally or by agent, etc. [as in (2) above].

III. Form of Requisition under Secs. 9 and 10
[to be added when so ordered to Notice II].

You are further required to make or deliver to the undersigned at [here specify the place] on [here specify the date not earlier than fifteen days from the date of requisition] a statement containing, so far as may be practicable, the name of every person possessing any interest in or right over the land, or any part thereof, referred to in the notice of _____ served on you, as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise; and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

Dated _____ 19 _____

Collector.

(Sanctioned as Standard Forms in English and Vernaculars in R. 488/24—29-5-1926.)

IV. Form of Notice under Sec. 12 (2).

Project	Number of case
To	

Notice is hereby given that in the above case, in which you have been treated as a person interested, an award was made by me on the _____ 19 _____ under Sec. 11 of Act I of 1894, as follows :—

- (1) The true area of the land is
- (2) The compn. to be paid for the land is Rs.
- (3) The compn. is apportioned as under :—

To	A.—Rs.	B.—Rs.
----	--------	--------

2. The sum payable to you is Rs. _____. You should appear before me personally or by a duly authorized agent on or before _____. You may accept the payment "under protest" without prejudice to your right to have the matter referred to the Civil Court. Interest will not be payable in the case of failure to appear.

Dated _____ 19 _____

Collector.

V. Statement of Award under Sec. 11.

CASE No. OF 19																			
Name of project																			
Number and date of the declaration	No. , dated published at page Part of the <i>B. G.</i> <i>Gazette</i> of the																		
*Situation and area, survey numbers, and village in which situated.																			
*Description of the land, <i>i.e.</i> , tenure, assessment and class, <i>e.g.</i> , bagayat, jirayat, forest, etc.																			
*Names and addresses of persons interested and the nature of their respective interests.																			
*Claim made by the party interested (f)																			
*Compn. awarded :—	Rs.																		
(i) for the land itself																			
(ii) for trees, houses or any other immoveable things (in detail) and easements																			
(iii) for crops or huts																			
(iv) 15 per cent. under Sec. 23 (2) (g)																			
(v) Damages, in detail, under clauses 3, 4, 5 and 6, Sec. 23 (1)																			
	Total Rs.																		
Total Award under Sec. 11	Total Rs. (in words)																		
	<table border="1"> <thead> <tr> <th rowspan="2">Names of claimants.</th> <th colspan="2">Amount payable to each.</th> <th rowspan="2">Remarks.</th> </tr> <tr> <th>Rs.</th> <th>a. p.</th> </tr> </thead> <tbody> <tr> <td>Apportionment of the compn.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>*Date on which possession was taken under Sec. 16 or 17, or in any other manner. (If under Sec. 17, quote the orders of G.)</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Names of claimants.	Amount payable to each.		Remarks.	Rs.	a. p.	Apportionment of the compn.				*Date on which possession was taken under Sec. 16 or 17, or in any other manner. (If under Sec. 17, quote the orders of G.)				Total			
Names of claimants.	Amount payable to each.		Remarks.																
	Rs.	a. p.																	
Apportionment of the compn.																			
*Date on which possession was taken under Sec. 16 or 17, or in any other manner. (If under Sec. 17, quote the orders of G.)																			
Total																			

* N.B.—When in one "case" several unit plots are dealt with these details will best be shown in a tabular form.

Dated

19

Collector.

CASE No. OF 19

VI. Reference to the Court under Sec. 18.

WHEREAS A. B., son of , has not accepted the award a copy of which is hereto annexed (Repeat Form V) made by me under Sec. 11 of Act I of 1894, and has required by the accompanying application (dated) that the matter be referred to the Court, I hereby make this reference to the Court of the

Grounds on which the amount of compn. was determined :— (A copy of the award or relevant portion should accompany.)

Nature of the objection taken to the award.

SCHEDULE.—Particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested.

Dated

19

Collector.

VII. Reference to the Court under Sec. 30, Act I of 1894.

WHEREAS a dispute exists between the parties interested (or between A and B) as to the apportionment of the compn. (or of a portion of the compn.) settled by me in the award of which a copy is hereto annexed, † made under Sec. 11 of Act I of 1894, I hereby refer such dispute for decision to the Court of

Particulars of the dispute

†Repeat Form V.

Dated

19

Collector.

NOTES ON THE MODEL PROCEEDINGS.

(a) If by any conceivable chance this has not been done before the notfn. then of course the A. O. must, as his first step, supply the deficiency. But the situation is hardly possible.

(b) A schedule showing the names of these persons will have been prepared from the Land Records at an earlier stage (*vide* para. 113). This schedule or a copy thereof might here be filed rather than write the names all out again. When no better title than 12 years' adverse possession can be set up, it suffices (37 Ind. Cas. 464). A. O. is not bound by errors in any of the Land Records (42 Ind. Cas. 905). Neglect to study the Registration indices would constitute "gross negligence" (26 Bom. 538). Effective possession is the best *prima facie* evidence of title.

(c) The most important of the notices is the notice served on the land. Many persons do not read notices in District or Taluka Kacheries. A notice on the land itself cannot fail to attract the attention of any tenant or person in occupation. But the common practice of pinning the notice to a tree with a babul thorn even in wet or windy weather, so that the notice is unlikely to remain there an hour, is futile. Nor is it indeed fair to the persons concerned to give such inadequate notice. The best way is to prepare a sufficient number of small wooden boards such as are used for making small boxes or kerosine oil cases, and paste the notices on these boards and set the boards up on the land either by firmly fixing them to a tree or, better still, on a wooden upright erected on the proposed boundary of the acqn. if it intersects the plot, or in the middle of the plot if the whole is to be taken. When there are houses or fences the notices can be affixed thereto. It is of course inexcusable to omit to give this notice on the plea that the names of the supposed owners and tenants are known through the Record-of-Rights or otherwise, or because they have been notified individually under Sec. 9 (3). The notice on the land is intended to get at the person whose rights have been suppressed or inadvertently omitted. Nothing can be more fair and thorough than the notice-board on the land itself.

(d) Notes of the statements in the briefest form such as are recorded in Magisterial summary cases are contemplated. The habit of taking lengthy formal statements exactly like witnesses' statements in warrant cases wastes time and has no value (*vide* para. 128 above). But it is most important that, when a party agrees to waive any question of severance or not to press his rights to have the whole premises acquired under Sec. 49 (1) or accepts an apportionment, his signature should be recorded in evidence thereof.

(e) A report or receipt of the person receiving possession should be filed.

(f) It is exceedingly important to note any claim that is made, or whether no definite claim was made, or if the party refused to claim. Of course the validity of an application to refer to the Court and the limit of enhancement by the Court under Sec. 25 (1) and (2) turns entirely on this point. Parties should be induced to formulate their claims with precision, showing their title, co-sharers, legal ability to alienate the land, its area as well as alleged profits; and likewise in case of mortgagees, lessees, and tenants. No Court Fee stamp is needed upon a written claim. When a claim is put in after the time fixed in the notice, still it cannot be held that no claim was made. A. O. can deal with such a claim; and in 60 Panj. R. 1918 a late claim was admitted. It would therefore seem that the filing of the award fixes the limit after which a claimant would be effectually barred; A. O. can amend or re-write it before that, but not after (59 Ind. Cas. 429 and 23 Bom. L.R. 779). A landowner sent his Agent who admitted the correctness of the plans, etc., before A. O. Years later he sought to repudiate the agent. But if the Agent had no authority then there was no appearance in spite of served notice and the owner must abide by the decision.

(g) The 15 per cent. is not paid on the items in (v) or crops in (iii) but only on the land itself and buildings, easements, trees, etc., permanently attached thereto. (See Comments in para. 12.)

137. But this form is not suitable for large cases in which there are many unit-plots to be dealt with. It is well suited for cases in which perhaps 5 or less plots are concerned, but if there were 500 plots then it is clear that we could not, in a single proceedings sheet, conveniently note day by day, all the persons who appeared. Nor could we conveniently treat the proceedings as a single unit. We should be obliged to treat the proceedings for each plot (or, at any rate, each small group of plots) as a unit; otherwise the thread of each unit case would be hopelessly lost. For such large cases no doubt a general Proceedings Sheet could be written up in which instead of the details depicted in the model proceedings we could make such entries as

"Proceeded to-day with cases 17—20, 25, and 44 as noted in detailed sheets.

"Adjourned till to-morrow for hearing further cases."

For discussion of "unit" cases, see para. 141.

All productions of documents and statements of witnesses relating to individual cases would be noted in the individual sheets; while witnesses called by interested parties to give general evidence about the whole acqn. and generally about the value of land over the whole tract could be noted in the general proceedings. But A. O.'s own notes and the valuations put in by the applicant or otherwise on behalf of G. may be kept in a separate **confidential file** (see paras. 128 and 146) and not included in the proceedings or in the reference to the Court: but their *effect* will appear in the award and reference.

138. A specimen form of a proceedings sheet suitable for use in large complicated cases where a considerable block of a town is being acquired for a sanitary scheme, or in some large Ry. project is given on page 45. It was rejected by the Commissioners as unsuitable, on account of its complexity, for the average proceedings in ordinary Mufassil cases. But in big cases with a special officer employed, it will still be found useful for reference. In such cases of course it would probably be expedient to print the Notice and Proceedings forms specially. This is what the writer did when he had about 1,500 plots containing many buildings to deal with in one case. Evidently in such a case it is better to print the number and date of the declaration, and the purpose of acqn. and the name and address of the Special A. O., and all that sort of thing, rather than fill them in by hand in the standard forms. But the standard forms should be used in all other cases.

Another form, almost the same in general effect but more elaborated for town properties will be found in the pamphlet on Valuation by Mr. A. E. Mirams, F.S.I., F.S.A., etc.

Reverse of Form.

DESCRIPTION, MATERIALS, ETC., OF BUILDING.

Measurement—

gross superficial area : _____
 nett units habitable (or useful as offices, etc.) _____
 cubic contents _____

Whether any available open land for extension _____

Age— Life (*n*)—

Initial cost as stated by the owner—

„ „ as estimated—

„ „ as adopted for valuation (*b*) :— _____

Estimated annual rental value— _____

Basis on which rent has been fixed.

Any leases or sales of this property ?

Deduct—

Taxes, Rates, etc., paid by the owner _____

For Insurance and Repairs at _____ per cent.

on initial cost (*b*). _____

Vacancies and bad debts and cost of _____

collection at _____ per cent. on gross rent

Sinking fund for the remaining life of the building. _____

Total deductions. _____

Nett annual rent. _____

Rate of interest for property of this class.

Factor from Tables for Years' Purchase of this income for expected life of property (*n*) _____

Add—

Present value of land which will be vacant after (*n*) years :—

Awarded amount—Rs.

Acquiring Officer.

139. The persons interested, to whom notices are to be issued under Secs. 5A and 9 (3) include all permanent tenants, mortgagees, sharers, and the like, but do not include tenants-at-will or employees. If a brick-field is being acquired whereby the business will be ended, the foreman and workmen employed therein do not rank for compn. Of course there may be a dispute as to whether a tenant is a tenant-at-will or not, and in that case he would have to be treated as a person interested until he is decided to be merely a tenant-at-will. (11 C. W. N.—312.)

A mortgagee (see para. 147) (with or without a decree) 'is interested' but not a mere holder of a money decree against the owner (1 Ind. Cas. 164). Any person claiming a subordinate interest (e.g., the owner of a dominant easement, see para. 244) can come in, even though the principally interested party does not admit his claim (64 Ind. Cas. 93).

'Persons interested' include occupancy or unexpired tenants, who are not 'at will': but do not include labourers employed on wages on the land however much they may be injured. (16 Mad. 369).

A person who has sold land with some reservation (e.g., of an easement) or restrictive covenant (e.g., not to build) is still an interested person and his right must be bought out. See Note (b) to Proceedings Form para. 136 and p. 41.

140. G. is not a person interested and cannot appear in the case, because the A. O. is the agent of G. But the A. O. may, of course, summon any witness or evidence of which he is aware or which is suggested to him in order to ascertain value. See para. 146 for functions of the Consulting Surveyor.

141. The subject of valuation will be dealt with in a separate Chapter. Each plot of land in separate ownership will be dealt with as a unit for the acqn. (*Vide* paras. 103 and 137.) It is difficult to define 'unit case.' On the one hand it would plainly be wrong to lump the whole of the plots covering several villages together, even if held by one principal owner. On the other hand when one owner, with many tenants, etc., owns many contiguous or similar plots it is not allowable to treat each case as a separate unit (64 Ind. Cas 579: sci :—because it confuses matters of severance, injurious affection, and the like). Several interests in one plot (owner, encumbrancer, tenant, etc.) cannot be separated into cases, but must be treated as one unit. It would therefore seem the best test is unity of ownership, subject to contiguity and avoidance of confusion. If the same owner has several plots not at all contiguous, it would be convenient to take each separate plot as a unit. The party might desire a reference to the Court as to the value of one plot, while accepting the award as to others: it would be well to record the agreement of the party to treat any particular plots separately.

142—146 Deleted.

146-A. The question arose in Bombay City how to safeguard the interests of G. in land acquired for L.B. and others, when those interests were related to the market value of the land and the value put on the land by the A. O. is enhanced in the courts. Such cases may also occur outside Bombay City, as for example in places where land is held on the khoti tenure. G. cannot claim a reference against the decision of the A. O. as to the value of their interests, because they are not a "person interested" within the meaning of section 3 (b) of the Act.

In proceedings under the Act land is acquired by G. It may be acquired for a L. B. or a company, but the acquisition is entirely by G. and at the discretion of G. The A. O. is the agent of G. and not a judicial officer. His function is to make to the owner whose land is to be acquired an offer on behalf of G. that is, to make an award, which, if accepted by the party to whom it is made, is final. If the award is not accepted, the land has still been acquired, but the aggrieved party can require that the matter be referred by the A. O. for the determination of the court. When any land in which G. have an interest is to be acquired on behalf of a L. B. or a company, the A. O. has no jurisdiction to decide anything as between G. and the L. B. or company. His function is merely to award compensation to the claimant after determining the interest of G. in the land, no mention however, being made in the award of his determination of such interest.

When G. acquire land on the application and on behalf of a local authority, it should be distinctly understood that such local authority binds itself in its application to pay the actual expenses incurred by G. in making the acquisition and also to pay to G. such price as may be determined for their interest, if any, in the

land. When land is acquired by G. on such application and the acquisition is complete, the land does not at once and *ipso facto* become the property of the L. B. On the contrary, the acquisition merely extinguishes all rights and interests adverse to G. and the land thereby becomes their exclusive and unencumbered property. Consequently before the land is made over to the L. B. it is open to G. to make with that body such terms and conditions as may be considered suitable for the protection of G. interests. Such interests may involve the payment by the L. B. to G. of a capitalised sum on account of the present and future interests of G. in the land or of an annual rent or assessment in consideration of such interests. If there is a difference of opinion between C. and the L. B. as regards this payment, the matter should be referred for the orders of G. If, however, for any reason the L. B. concerned is not willing to pay the amount so determined or to accept the terms offered, the land acquired may either be retained in the possession of G. or be disposed of at the risk and cost of the local body, who shall be responsible for any loss caused to G. by the sale or any loss of assessment.

When, therefore, land is acquired on behalf of a L. B. it should be made over by the A. O. to that body on the distinct understanding that it is liable to pay all costs and expenses incidental to the acquisition, and such value of the interests of G. if any, as may be determined by him. Cases may, however, occur in which a holder, who has a limited interest in the acquired land, may be dissatisfied with the award of the Land Acquisition Officer, and the matter may be referred to the court under section 18 of the Act, as a result of which the court may enhance the amount of compensation awarded by the A. O. Whenever, in consequence of such enhancement of the compensation awarded by the court, the value of the G. interest in the land is correspondingly enhanced, G. will claim from the L. B. concerned that enhanced value. This intention of Government should invariably be communicated to the L. B. and explicitly made a condition of its liability before the acquired land is formally transferred to it.

When land is to be acquired on behalf of a company as defined in section 3 (e) of the Act, an agreement under section 41 is necessary before it can be acquired, and care should be taken to provide in a similar manner for the protection of G. interests in the agreement.

147. A. O. should not decline to decide between two disputing claimants. It seems possible that he might make a reference to the Court saying "A and B each claim the amount and I cannot make up my mind which should have it, and I therefore refer it to the Court." But it would be better to say "A and B dispute and I have, on a cursory view awarded the amount to A, but I have not paid it and I now refer the dispute to the Court at B's request". In the latter case there is a party definitely interested in claiming a reference; in the former case matters are less well defined.

When rival claims are made for compensation, the *prima facie* title to the money is with the party who was in sole and exclusive possession of the land at the time of its acquisition and the *onus probandi* is on the party claiming that he has a better and superior title to the money. (30 Bom. L.R. 755).

A is owner and B mortgagee for Rs. 250 plus Rs. 100 for interest to date: A. O. awards Rs. 1,000 total value, and then apportions Rs. 350 to B and 650 to A. A objects that he is not liable to pay off the mortgage yet and that the rate of interest was extortionate. A. O. will nevertheless award as above and leave A to claim an apportionment reference. At most he might endeavour to persuade B to accept less interest, pointing out the cost to both sides if an unreasonable reference is forced. (See paras. 298—302.)

When the mortgage debt exceeds the whole of the award and no part of the estate remains, the mortgagee has no further personal remedy against the mortgagor since there has been no destruction or improper disposal of the mortgaged realty (1908 Panj. L. R. 5). But it was ruled in 20 Oudh Cas. 256 that acqn. is destruction and the mortgagee can afterwards only sue for his money or for fresh security; there can of course be no redemption. (22 Oudh Cas. 342.) A mortgagee who has already got an execution for sale of the property can attach the compn. money without further suit (13 C.W.N. 350) otherwise it is dealt with in a reference to the Court if the mortgagor does not come to a reasonable settlement before A.O.

These rulings apply as well to compn. for severance and injury as for the realty itself. (Panj. L. R. 1908, p. 5.)

The Court—and therefore probably A. O. also—has power to pay off the whole of a mortgage even when much of the mortgaged estate remains (*Martin vs. L. C. & D. Ry.* and 14 Suth. W. R. 24). The theory of indivisibility of the mortgaged estate attaches also to

the compn. monies (17 Panj. R. 1907). In these observations it is fundamentally assumed that the mortgage antecedes the declaration under Sec. 4 (13 C.W.N. 357).

All trusts and obligations upon the real estate remain impressed upon the compn. monies (6 Mad. 347).

148. In all important cases and most others it cannot be too strongly insisted upon that the proceedings should be held on the ground which is being acquired in spite of the fact that an inspection may have once been made under para. 90. This inspection for hearing will fully cover the "valuation" inspection (para. 171). A pocket book and pencil is all that A.O. needs for recording the proceedings on the ground; they can be written up in office afterwards. It is surprising how many spurious allegations will disappear when the parties are confronted on the ground. Moreover, it is much more fair to the parties, who can point out boundaries, means of access, facilities for irrigation, condition and value of trees, and many points connected with a building far more readily on the spot than in an office. Points such as are noticed in para. 90 or 103 may often come to light when proceedings are held on the ground. Misunderstandings as to boundary are cleared up and illiterate persons and tenants have an opportunity of being heard which should not be denied them. The general rule should be that proceedings must be held *on the ground at least once*; if postponed for further evidence, etc., then the office will do. Proceedings may relate to a single plot of unculturable land wanted for a gravel-pit up to large proceedings involving the acqn. of thousands of acres. Of course a rigid rule cannot be laid down for all these cases, but no conscientious A.O. could possibly deal with a difficult or important case except on the ground. In City cases, a temporary office can be set up in or near the buildings notified.

149. Having ascertained that the applicant and G. do not object to complete the acqn. at the price awarded, A O. will then embody the award figures in an A. S. The A. S. should be sent to the Audit Officer: detailed rules as in para. 260. If the work is executed by a L. B., then the A. S. will also be sent to the President so that he may audit the payments. (R. 3309—14.) The statement should usually be in duplicate, since the Audit Officer may require one copy to forward to the Ry. Co., or to the Indian State or other body which has deposited the cost.

CHAPTER VII.

VALUATION.

[For the date to which value should be referred, see para. 30.]

150. Extract from speech by the Right Honourable David Lloyd George, Chancellor of the Exchequer, at Newcastle, October 1909:—

"There has never been a public undertaking in this country—Municipal, City, or industrial—there has never been an enterprise but that the landlord has generally secured anything from four to forty times as much for the land as its agricultural price. When I was at the Board of Trade I saw a good deal of this. I remember the cases that were brought to me of complaint from the trading community as to the oppressive character of the railway rates from every part of the country. From all kinds of businesses and undertakings there was a complaint that the heavy character of the railway rates was interfering with the success and the prosperity of that particular business. I had to go into it. I went into it very carefully in hundreds of these cases, and I found in the end that it was not the railway companies which were to blame. They had had to pay for every yard of land which they had used many times its real value."

This text, of which the rhetorical exaggeration may be admitted (though it has been amply endorsed by Mr. Winston Churchill and shown by the evidence recorded by the Dyke-Acland Land Enquiry Committee in 1911-13 to be even a mild statement of the facts) is placed at the head of this Chapter to emphasise that, while it is not suggested that an unfairly low value should ever be offered, on the other hand the temptation to overgenerosity must be equally resisted. Such generosity at the public expense reacts against the development and against the prosperity of the country in which the land-holder has also his stake.

151. The most essential part of all acqn. work is the proper valuation of the property. The fringe of the subject has been touched under the head of "Estimates" and "Proceedings". The G. I. in 1895 directed that general rules should be framed in every province for the guidance of officers in valuation. The owner of the land possesses the power of appeal from the award. G. (including the applicants for whom G. acts) is deprived of that power, largely because it possesses executive control over the operations; and it is most important that such control should be efficiently exercised in the interests of the general tax-payer. The rules should lay down the data which should be collected (see para. 171 *post*) and the principles upon which the award should be based. (R. 8397—06).

152. Of course the same principles which are applied to the valuation of private land are also applied in the valuation of G. land handed over to Cos. and L. B. All these valuations will be made by the Revenue Officers and not by the acquiring Dpt. or L. Body.

153. There are not many expert land valuers in India. The profession in many tracts may be said scarcely to exist. Individuals are sometimes put forward as experts who have not dealt with a dozen relevant cases in their lives. There is great advantage to the parties in having an A. O. to value their land who has usually dealt with many such cases and in some instances has experience up to the best expert standard. Though they may not be content with his valuation, still they would do well to study his reasons and see the matter as much as possible from his point of view before being led away by incompetent advice and entering upon contests in the District Courts on impractical grounds.

No experience enables anyone to dispense with enquiry; expert evidence or opinion must be founded on due proof *abunde* of the assumed facts (10 Bom. L. R. 908 : 32 Cal. 346 : II C. W. N. 875 : 33 Bom. 325).

MARKET VALUE.

154. The Act prescribes that the "market value" shall be given. There are several definitions of this term by the Courts. No claim for surveyor's fees or legal expenses is admissible (see Ref. 97 of 1904, Bom. Tribunal of Appeal). In *G. of Bombay vs. Merwanji M. Cama*, 10 Bom. L.R., p. 912, it was held that "market value" means that price which, at the given time and place, the land would fetch at an open sale according to the current market rates; and this value depends on general pre-existing considerations apart from the individual projects of a particular purchaser.

155. In *Kailas Chandra vs. Secretary of State* (17 Cal. L. J., p. 35) the definition is given as "the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land" (57 Ind. Cas. 301) "when both are actuated by the business principles prevalent at the time in the locality".

There is reason to think that the results deplord (para. 150) by the Chancellor of the Exchequer sprang from a tendency of the Courts towards allowing a monopoly value in cases of class (b) discussed in para. 160, as well as from abuse of the "special adaptability" doctrine discussed in para. 232. This is expressly barred in India by clauses *firstly and secondly* of Sec. 24. It would be beneficial if it were ruled that market value presupposes more than one buyer, and more than one seller, with reasonable competition between them.

We have got very nearly this definition in para. 155 in "*Kailas Chandra, etc.*", if we read "from a willing *but not-obliged-to-buy*-purchaser . . . bargaining for the same"; and in para. 154 the phrase "apart from the projects of a particular purchaser" tend in the same direction.

In *Premchand Burreal vs. Collector of Calcutta* (2 Cal. 106) "such measure of compensation as is warranted by the current price of similar property in the neighbourhood . . . without reference to the price which its owners may previously have given for it" is given as the market value.

In *Bombay Improvement Trust vs. Jalbhoy* (33 Bom. 496) is another definition:—"The price which would be obtainable in the market for that concrete parcel of land with its particular advantages and its particular drawbacks."

Shortly then "market value" can be defined as "that price which will be received by a willing seller from a willing buyer, in the open market, for that particular parcel of land" "estimated rather with reference to commercial value and not mere speculative and unpractical imaginings". (32 Cal. 343.)

"The market value is the point where a vendor who wishes to sell meets a purchaser who wishes to buy: and it can only be ascertained by considering where vendors and purchasers of similar properties have met in the immediate past." (*Bombay Improvement Trust Tribunal of Appeal, Ref. 22 of 1905.*)

Garth J. in 2 Calc. 103 attempted a shorter, indeed a too short definition: "the current price of a similar property."

The author hazards this attempt:

"Market value in Indian law is the price which the land—for such uses as a prudent owner would make—would fetch in open auction (or free bargain at arm's length) the day before the notfn., if seller and buyer are under no illusions or coercions and know all about the land except the impending acqn."

A price paid by a careless purchaser without inspection or thought is no basis for the compn. for the same property (Bom. H. C., First Appeal, 418/24—24-2-26).

It is most important to remember that the English law and definitions by English Courts have a different orientation which can best be expressed by saying that English Courts look

backwards to the late owner's loss : Indian law looks forwards to the purchaser's gain. "The property is to be valued upon the basis of the user that was actually made, and subject to the restrictions upon its owner before the notfn. ; the value it will have after acqn. and when free from restrictions is quite irrelevant. Compn. is to the extent of the owner's loss (*Stebbing v. Metro. Bd. of Works* 6 Q.B. 37). "What will the owner lose, now and hereafter, by having the land taken?" [*ibid* and also 25 Cal. 19; also *Lucan and Chesterfield Gas & Water Bd.* I. K. B. 29 (1909).]

In India we think that even if an owner is making a poor use, or no use, still a purchaser intending a better use might offer him a good price ; and in fact the English courts have often awarded on the Indian principle or even more liberally.

In all valuations there must be inference and induction difficult to reduce to exact reasoning or to explain (P.C. in 26 Bom. 21). But a good award leaves very little room for inexpressible sentiment and should make it clear how far the final figures are so influenced.

156. Market value is not the same as cost. This truism hardly requires explanation. Buildings "married" to land have been so united by the enterprise of the builder ; and as he does not work from motives of charity he is entitled to a builder's profit. So in the case of absolutely new buildings the value of the whole, assuming prudent building, would be *more* than that obtained by adding the cost of the land to the cost of building. In the case of old buildings, deterioration is usually the cause of the value being considerably less than cost. In almost no article of trade or property of any kind do sellers ever offer goods in the market at their cost price. In stocks and shares the cause and effect of all dealings is that prices go up and down. To know the cost price is of very small help towards determining the present market value. There is no reason why the present value should not be sometimes much higher and sometimes much lower. In First Appeals 78, 81 and 117 of 1924 decided on 17-12-25 the Bom. H. C., reduced a value from Rs. 2,200 an acre to Rs. 1,000 an acre although the khot (holder of leasehold land in the Bombay Suburban Dist.) had paid Rs. 2,200 an acre for it. He had bought in a boom to protect his own quarry monopoly in the vicinity. (The Khot being owner of the minerals the question of reserved rights did not arise.) But that because land A in which quarries are being worked has a certain value therefore all land containing stone has the same value is a fallacy not to be admitted. After the boom (1919) there was a rapid fall and in 1921 when notified the land would never have realised the price paid. Nor can market value be confused with the cost of reinstatement. The writer once saw a small house ingeniously constructed out of an old ship's cabin. The occupant was a retired Captain and when his old ship was broken up he purchased the cabin and removed it and converted it into a house from motives of sentiment. Now it would have been entirely impossible, at any cost however great, to have procured for him another house possessing the same associations and yet if his house had been put up for sale in the open market it certainly would not have commanded from any purchaser an infinitely great price. This is a strong example of the difference between market value and cost of reinstatement in the literal sense of the word.

Market value cannot be based on cost but only on what is likely to be got from a purchaser Bom. H. C., F. Appeal 63/1923 decided on 16th January 1925.

157. But reinstatement in English legal practice is taken to mean the provision of equal (or sometimes better) facilities, where such facilities can be given in a suitable and convenient way, without extraordinary expense (*Corp. of Edinburgh v. N. British Ry.* 1892; *London School Bd. v. S. E. Ry. Co.*, 1887). Even if a stone building is given in place of a wooden structure which possessed certain historical and artistic uniqueness, this has been held to be sufficient reinstatement. The Indian Act does not recognise reinstatement at all even if it can be effected at a less cost than the sum claimed. It might however be a fair argument in favour of the adequacy of compn. tendered that it was sufficient for reinstatement and if other methods of determining market value gave no reasonable result, the cost of reinstatement might fairly be adduced. A well in private property saved its owner Rs. 1,000 a year in water rates : it was acquired : he claimed Rs. 25,000 as its capital value. The P. W. D. could have built him a new and better well on his residual property for less than Rs. 1,000. Though the law does not provide for reinstatement, this is clearly a case in which the compn. should not much exceed the cost of reinstatement. Any purchaser would have found it cheaper to build another well than to pay him Rs. 25,000.

158. Then again we have the principle that anything which produces no income, profit, or advantage capable of expression in terms of money can have no market value [22 Cal. W. R. 234, *C. of Hughli vs. Rajkristo Mukherji* (1874)]. A beautiful outlook from a house might very conceivably increase the rental value and diminish the probabilities of its remaining vacant from time to time. So far it has a money value, but if the view were appreciated only by one person and not such as would command a desire on the part of other tenants to enjoy it, then it has no market value since it does not add to the income of the property.

Ancient statuary and temples have no market value (16 Mad. 369 P.C.) Moveable antiquities acquired under the Monuments Act (1904) must be valued on the same principles (19 Bom. L.R. 937). A Rector was trustee or owner of old disused graveyards. He could have derived no profit from them. They were acquired for streets and as such would become very

valuable to the Muny. and citizens ; but since the rector suffered no loss, he could claim no compn. The future value arising from the acqn. is quite irrelevant (*Stebbing v. Metro. Board of Works* 6 Q.B. 37).

159. The market value of any ordinary commodity is not determined by the extreme prices. There is always a rising and falling of the market and during any period there will be maxima and minima recorded. The bulk of the transactions during that period do not take place either at the maximum or at the minimum price, but at intermediate prices. If therefore we are asked to fix the market price at a given date of any such commodity we cannot take the highest or the lowest recorded price. We must consider the general trend of prices ; if they are steadily rising and the last price recorded is also the highest and there are circumstances which indicate that the rise is likely to continue, then we might be justified in taking the last price as the market price of the period. In the case of commodities for which there is a very wide market, such as coal, wheat, silver, etc., the last recorded price at which business has actually been done is the market price until another transaction takes place.

In determining the market price of land we must consider the volume of transactions and the general average trend. We should exclude from consideration prices settled for very small plots evidently sold in special circumstances. A blind average of the recorded transactions is not fair to either party [10 Bom. L.R. 701 (1907)] but sales of similar properties on the same day can fairly be averaged when the prices vary.

MONOPOLY AND EXTORTION.

160. No two plots of land in the world can be exactly alike. They must differ at least in situation, and they may differ in many other respects. In actual purchases and sales the vendor is often in the position of a monopolist. For instance, if I wish to purchase an acre, of land "anywhere in the Deccan", if I find one owner demands a high price I try another and so on until I get an acre of land at what I consider a reasonably cheap price. But if I wish to extend the compound on the east of my house, the owner of that plot is the only person who can satisfy my demand. It is no use to tell him that if he will not name a reasonable price I shall go to somebody else and buy another plot ; he knows I cannot. The market value of land presupposes that there should be sellers as well as buyers. The monopoly value extracted from me by my neighbour for the extension of my compound is outside consideration. In a free market with plenty of buyers and plenty of sellers the value of land may range from almost zero upwards ; but for any given class or type there will be a certain average fair value. How this value is determined we will consider shortly. But beyond that value there may still be sales infected, if we may so say, by monopoly. We frequently find in cities that extraordinary prices have been paid for small strips of frontage land, or for street corners, and so on. Yet it is obvious that if a substantial area of land were brought into the market so that there would be enough to satisfy the requirements of most buyers, there would be no possibility of maintaining these monopoly-prices. It is a most difficult task, in dealing with a mass of recorded sales in city or suburban areas, to distinguish between monopoly prices and market prices. For an interesting discussion on land values inflated as it then seemed beyond all reason by senseless competition in a restricted market, see Mr. McNeill's report, as C. of Nasik, 8330—27-8-14 in R. 10262—14. Time has proved that the values then paid were not inflated or senseless : in 1914 it was a guess.

In order to understand fully how to deal with these monopoly problems, let us in the first place distinguish two kinds of monopoly : (a) those in which the vendor possesses a unique property ; (b) those in which it is only the need of the purchaser which is unique.

To make the conception still clearer, let us take as an illustration of (a) a corner plot of land with frontages to two of the most important streets in a city. There can only be one plot of the kind ; and there can only be in the whole city a limited number of plots whose facilities and commercial value are at all comparable therewith. The owner of such a plot possesses a natural or universal monopoly as against all other vendors. Whether he sells the plot privately or at an auction or under this Act, he can reasonably expect to obtain a unique price. The Koh-i-nur or the Cullinan diamonds will not sell at the same rate per carat as the ordinary small diamond, nor can the monopoly plot we have described sell for the same rate per yard as any other ordinary plot in the city.

(b) On the other hand, let us suppose a tunnel through the ghats. It comes out on a particular plot of land. The engineers cannot make it any higher or lower, and cannot take it either to the right or left. The owner of that barren plot of land, when he hears of the alignment of the tunnel, would like to say that since the Railway Co. cannot possibly avoid my plot of land, I can demand a lakh of rupees for it, and they must pay it. This kind of monopoly of the particular plot required is not admitted by the Act. Sec. 24 Firstly, excludes any degree of urgency of the need ; i.e., the price is not to be measured by the fact that the applicant under the Act is obliged to have that plot and no other, for this condition exists in all acqu. The owner of the hillside plot will be paid as market value just the same value as he might have

got if the tunnel had not been constructed at all, a merely nominal sum; whereas the owner of the corner plot in the city may be awarded a very high price indeed. The difference is that the monopoly in the one case existed before and independently of the need of purchase, whereas the other did not.

A more difficult case can be thus presented; between the premises of the growing business of Z and the main road lies a frontage strip owned by A. It is too small for independent use such as the erection of shops, etc., but A knows that Z must some day enlarge his premises and seek to get his frontage. A refuses to sell the strip except at an extortionate price, say Rs. 100 per yard, while all other similar land, having frontage but not in narrow strips, in the town is sold between Re. 1 and 2 per yard. A might even sell his land by public auction, and if B, C and D all recognise that sooner or later Z must buy it, they might speculatively bid up to Rs. 70 or 80 a yard. Now if Z's demand disappeared the value of the plot would collapse to the ordinary level. If Government notify that strip or part of it, what is its market value? Z can now no longer buy it; even if he offer Rs. 1,000 a yard. It seems that we ought to say that the market value, like that of all similarly situated land in the neighbourhood, is about Re. 1½ a yard; Z's possible surrender to extortion is excluded from consideration. If B and C have bought the land at Rs. 40 and 60 a yard, relying on their estimates of Z's necessity, they have miscalculated and overreached themselves and lost their money. The idea of market value does not presuppose a special purchaser Z, obliged to buy at any cost. The measure of the market price would not be the urgency of the G need or the fact that they could not possibly take any other plot than the one notified, but the award would be for such amount as the owner would have been likely to get if he had wanted to sell the plot in open market and there had been no neighbour compelled by circumstances to purchase it. On the other hand it might be argued that before the notif. appeared anyone would have given far more than Re. 1½ a yard because of the apparent certainty that Z must buy, and therefore for that land a market value was established which must be awarded. On the English basis of "A's loss" the value is almost nil.

Every A. O. should act upon the above views and exclude from consideration the fact that G. or some other persons were tied down to the purchase of this one plot, and the fact that the owner would not sell that plot to the particular purchaser who is obliged to acquire it except at a fantastic price. He should award the market value on the assumptions set out in the definitions of market value in paras. 154-157.

Discussing frontage strips, the Bom. H. C. observed on 16th November 1925, "Strictly speaking, these lands would have no market value; because if the claimant put up for sale such strips of land bordering the road (sci: by themselves without their hinterland) he would never find a purchaser."

THE DIRECT BASIS OF VALUATION.

161. Recent sales of similar land rank very high as evidence (15 Bom. 279; 34 Calc. 599. 23 Ind. Cas. 542; II Cal. W. N. 875). Post-notification, transactions are not altogether to be ignored; but should only be treated as evidence of doubtful value. (35 Bom. L. R. 763). If we also have leases and direct evidence of rental value, there is as little room for other evidence as in the trial of a culprit who is caught in the act by a policeman and confesses his guilt. Merely extenuating circumstances!

There are special circumstances which sometimes vitiate the prices recorded in sale deeds (and not settled at open market auction). Sometimes these prices are not the actual prices paid. Instances have been known (and actually pleaded in proceedings under this Act) in which lower prices have been recorded in order to save stamp duties and also sometimes to deceive the principals on whose behalf the sale was made (the agents taking the difference). Sometimes the cash is only part of the consideration, the rest being services rendered or to be rendered. Also sometimes the land-owner owes to his sawkar an accumulated debt. Then the sawkar offers to take over his land at a certain price to be paid in cash and also to wipe off the debt and unpaid interest. Then the price recorded in the deed (illegally omitting to mention the extinguished debt) is not the full value. On the other hand sometimes prices higher than the actual are recorded. This may be simply for ostentation. The purchaser will gain credit and envy if the price is exaggerated, and it may be useful when he wishes to mortgage the land. Then again in some cases the sawkar records the whole amount of the debt with compound interest together with the small amount of cash now paid as the aggregate price of the land; but he knows of course that he never could recover the whole debt and therefore the recorded price is higher than the real price. These are some of the considerations which are believed to vitiate the prices recorded in sale deeds and which call for particular scrutiny when the recorded price is abnormally high or low. The prices should not be accepted unreservedly unless the relations of the parties and the antecedent facts are known. (10 Bom. L. R. 710). See also para. 177. We rely on the "price that reaches the vendor's pocket" (see para. 154). Sales by Hindu widows often result in litigation: they rarely command a full value (57 Ind. Cas. 734).

162. Sales, contracts and improvements in the notified land made after the notfn. under Sec. 4 are certainly excluded from consideration because they are illegal and therefore the sale must be unreal, but a more difficult case is presented by sales made a little before the notfn. There always elapses a certain interval between the time when the intention to acquire a bloc first becomes known and the actual notfn. No sale recorded during this interval should be given much weight. (See para. 30 and Punjab Record 63—1907 and Punjab Chief Court case 2483—1913). This is not in consequence of the terms of the law, but is a reasonable deduction from ordinary commonsense interpretation of evidence. Plainly as soon as the landholders suspect that their land will be acquired, it is in their interest to promote recorded sales at extraordinarily high values. Cases have been found in which some of the plot owners have sold their land mutually to *one another* at enormous prices, evidently without the slightest intention of carrying out the sale, but simply in order to produce the documents in the proceedings. Any Court or A.O. would discount such evidence not because it is legally inadmissible, but because it would not convince a sensible man of the truth of the facts sought to be established (Sec. 11 Evidence Act). Likewise, after the intention to acquire becomes known, there must be an increase in the value of surrounding land, because so much land is plainly about to be with drawn from the market. This consideration as well as the natural desire of the landholder to inflate values will tend to produce sales at exaggerated prices a little before and during the proceedings. A. O. must of course be on his guard against this evidence. [Here see also para. 30 and also case 36 of 1915 of the Calcutta Improvement Trust.]

The proposal to build a railway naturally enhances land values along its route. In English cases it has been ruled that no such enhancement due to the scheme itself of which the acquisition is part can be allowed to influence awards (1908 I.K.B. 571 ; 1914 I.K.B. 417). In F. A 91/24—2-3-26 the Bom. H. C. held that speculative purchases about the time of the notfn arising from a rumour that G. is about to acquire land within a certain area must be kept distinct from the valuation of building potentialities. But if there had been a genuine rise in value from a feeling that sooner or later a railway was sure to come, such an assumption must be allowed. (27 Mad. L.J. 106.) See para. 232 on special adaptability, where a similar distinction operates. Where there happened to have been a boom in values just about the notfn. date (but doubtless not influenced by it) these boom prices were market prices (8 Sind L.R. 126). Sales of unaffected but similar land made after the acqn. would be perfectly sound evidence, if quite uninfluenced by it (9 Ind. Cas. 228).

163. There has hardly been a case in which acquired land, if for any reason sold again or even leased, has realised prices justifying the award. A.O. might always fairly ask this question : " Will this land, if offered for sale forthwith in its present condition, easily command the price I am about to award for it ?" If it will not, he is not awarding the market value. When valuing any estate from calculations, the Court should always compare the calculated result with their opinion derived from inspection of the land. Will any purchaser be found willing to pay this price ? If not, they must modify their calculations. (Bom. H.C. F. Appeal 238 of 1923—22-9-25).

164. The amount awarded under the Act is always of course an estimate and an offer made by G. and accepted, perhaps reluctantly, by the parties. Previous awards for similar land cannot be quoted as evidence of market value. They were only the opinion of the A.O.'s. They usually exceed the market value, and if they do there will naturally be no appeals. In Calcutta Improvement Trust Tribunal case 95 of 1914, it was held that accepted awards were good evidence ; but unaccepted awards, being merely offers, were not (case 43 of 1915). Evidently, they have a high opinion in Calcutta of the infallibility of their A.O. Nor can much weight be given to alleged offers (10 Bom. L.R. 919). In most markets it is dangerous to make an offer if you are not prepared to pay what you offer. But in land one can always back out ; until a deed is signed and possession delivered, an offer [if not at auction or " under seal " so that it can be immediately accepted and carried out] exposes the author to small risk. For this reason, claimants usually adduce evidence of splendid offers for their land. Unless business has been actually done, uninfected by monopoly considerations, at these offered prices, A. O. should disregard them. Genuine offers however may be adduced to prove the fact of the existence of a market (25 C.W.N. 1002).

CAPITALIZATION.

165. The percentage return actually realised on money invested in Consols or Government of India $3\frac{1}{2}$ per cent. or 4 per cent. paper may be taken as the minimum return for which any businessman will lay out capital. In ordinary Hundi business or advances upon Bills of Lading and so on the Banks charge a comparatively higher rate of interest. A man investing in business operations will naturally expect to get on his out-lay the higher rate charged by the banks. It is obvious that the riskiness and difficulties of the business will influence the expected rate. Where the return is easy and certain, and involves no prospect of litigation, dunning, or disappointment, the rate accepted is usually low. Where there are many risks of season and fashion, and bankrupt debtors, and the business is unpleasant and difficult, larger returns are

expected. Probably such a business as collecting hides for export involving numerous untrustworthy agents and disagreeable duties might not be undertaken for less than 10 or 12 per cent.

The man who has capital will put it into this business or that, according to his judgment of the risks and profits. If for Rs. 100 invested in one way he can get 4 each year, and invested in another way he can get 9, he will certainly choose 9 unless the difficulties and risks are greater than would compensate for the difference between 4 and 9. But if it could be shown that every alternate year the income would disappear through bad seasons and insolvency of debtors, and that in the good years it will still cost him 1 per cent. to collect the income, then he might prefer the unvarying 4 per cent. to the nominal and doubtful 9, which is, in reality, not quite 4.

166. Every Rs. 25 invested at 4 per cent. per annum in perpetuity purchases an income of Re. 1 per annum for ever. At 10 per cent. Rs. 10 purchase the same income. Another way of describing an investment at 4 per cent. when the income is to endure for ever is to speak of purchasing the income at 25 Y.P.

167. But if the income is to last for a limited number of years and then cease, plainly its value is less and consequently the Y.P. would be lower. The nature of the mathematical calculation necessary to ascertain the exact value is set forth in para. 246. But of course it can be obtained more rapidly from tables already calculated out. Such tables will give us the value of an income of Re. 1 per annum for any number of years at the different probable rates per cent. The higher the rate per cent. the less the present value of the income for the fixed number of years. A set of tables for use in this Presidency has been compiled by Mr. A. E. Mirams, F.S.I., F.S.A., etc., the Consulting Surveyor to Government, and distributed under R. 1613/24-25. From such tables we find that an income of 1 at 6 per cent. for 15 years is now worth Rs. 8·7899, we could then express this by saying that such an income is worth 8·7899 Year's Purchase.

168. In land valuation we have, in practically all cases, to value the annual income. Where the land is let at a fixed rent, and this rent is likely to continue for ever, the proposition is quite simple. The only element requiring determination is the rate of interest to be expected. Where rent and tenure are normal it would not usually be below 4½; and would rarely go so high as 10, though perhaps, in the case of rents for the lowest possible kind of house, the risks and difficulties of the rent collection might induce purchasers to estimate on a 9 or even 10 per cent. basis. In the case of land the rent of which is affected by quarrying rights, 10 per cent. is not at all an unusual Table upon which to capitalise the income; because such a rent is risky and to a large extent dependent on the amount of material that can be extracted from the land, and hardly falls within the category of a "fixed" rent.

For agricultural land the rentals are exposed to the risks of famine seasons and want of thrift in the tenantry at all times. No one would invest in rack rents at a lower rate than what he can get on equal security in various industrial debentures and the like, unless for some unusual reason such as the Mussalman objection to receive interest. Nor, on the other hand, would he have reason to expect a disproportionately high return from agricultural land. The higher the rent charged, the greater the risk. Then, in some parts of the country the fickleness of seasons is much greater than in others. Sometimes this is met by lower (average) rents: sometimes by a higher rate of capitalisation. It is only by ascertaining the ratio of rent to sale-value that A.O. can judge which method is in vogue.

Rates of interest vary from year to year; no past opinions or practice can be an absolute guide.

169. Turning to the *ground rents for building land*, we see that when a building has actually been erected and cannot easily be removed, the ground rent is secured, and it approaches in certainty and security an investment in public securities, though the Bombay High Court ruled that they cannot be valued higher than a 5 per cent. security (10 Bom. L.R. 920). A fixed rate to Government was capitalized at 23 Y. P. in 10 Cal., p. 774. But in India except in large towns the practice of leasing land for building for long periods, and reserving a ground rent, is not common. More usually the land is sold outright to the person who wishes to build. Thus, values of land intended for building are often better determined on the basis of actual sales (i.e., capital value), than on the basis of capitalised income. When let on lease at a *bona fide* ground rent then the capitalisation of the ground rent taken as "unsecured" is a true guide to the market value of the land.

170. The generally accepted rule is that the ground landlord will expect his ground rent to be covered at least 6 times by nett rents of the buildings erected. The builder would not agree to pay the ground landlord more than ⅙th of his rent nett. Hence arises the doctrine which is sometimes useful, and should always be considered, and to which we may refer hereafter (see para. 187) that ground rents in suburban localities must always be at least six times covered before a building project can be classed as sound business.

Assume the case of a landowner who desires to lease his building land to a builder for house construction at a rent of Rs. 100. The builder proves to him that from his land and buildings he will get from tenants a nett rent of Rs. 100 a year. To this the ground landlord might naturally object that any accident or failure in that income would result in his own failure in turn to get the ground rent and force him to close the lease according to the usual terms. Moreover, it is not possible that any builder would consent to put up buildings which after paying ground rent will yield him no income at all. Neither party could accept such business.

The percentage at which a purchaser might be expected to invest money in land together with the buildings upon it is in a different category. The rent to be obtained from the "married" land and buildings assuming it to be a rack (or full) rent would not be so secure as that accruing from land only. The rent from house-property, though immune from the risks of good and bad seasons, is subjected to many other risks. It is impossible to lay down any hard and fast rule, but 6 per cent. is the return usually expected by investors in house-property in Bombay City. Even here 6 per cent. must not be adopted invariably, as there are cases where property is in great demand either for sentimental or business purposes where 5 per cent. has been awarded by the Tribunal of Appeal. In other large towns and in the mofassil, experience has shown that property has changed hands at even as low as 4 per cent. There are many local reasons for this; hence the importance of a careful enquiry before we come to any decision.

MATERIALS FOR VALUATION.

171. The A. O. should prepare or be furnished with the following data :—

(1) a plan of the notified land showing on as large a scale as possible all survey Nos. and boundaries of separate properties ;

(2) a statement of all sales effected in the neighbourhood of the acqn. during the last three years (or longer, if necessary to obtain a sufficient number) ;

(3) a smaller scale map showing the location of notified lands, and the adjacent lands of which the values are to be taken into consideration.

(4) notes of any previous inspection of the notified land or the land sold in (2). The statements referred to in para. 104 and all the other documents leading up to the report (para. 115) and notfn. will be before him.

A. O. should not restrict himself merely to the consideration of such evidence as may be adduced by the claimants, but should do his best to obtain any reliable information that may be forthcoming as to the real market value of the land. He should study the estimates (paras. 38, 87, 115, etc.) ; he should turn to the Record of Rights [see paras. 136, note (b), and 295 (1)] and ascertain what transactions are recorded there ; and he should make a careful search through Index No. II kept in the Sub-Registrar's office (26 Bom. 538) in order to make sure that no transactions have occurred, which have escaped entry in the Record of Rights, and to ascertain the history of the land so far as the Sub-Registrar's records disclose it. Having collected all possible information regarding the value of the land itself he should collect and analyse similar information regarding adjacent land or land of a like character, using the Record of Rights and Registration Indices, Survey and Settlement Records or any similar source. He should be careful, however, before accepting the figures shown in documents found in the Registration offices, to examine the history of each transaction as far as possible, as the amounts there shown are often unsafe to follow (see para. 161). The A. O. must of course pay special attention to Secs. 23 and 24 and to the general principles recognised by the Courts in determining the market value of land.

We have emphasised the need of inspection for legal purposes in para. 90 : here again we must still emphasise the necessity of inspecting not only the land under acqn. but, when we have recorded sales in the neighbourhood also before us, then that neighbouring land also (I. L. R. 26 Bom. 20, S. S. vs. Charlesworth Pilling & Co.).

Points to be noticed in such inspections as affecting value (apart from such matters prior to notfn. as are referred to in para. 90) are for agricultural land, the depth and quality of the soil, the crops grown, levels, and risks of floods, possibility of irrigation from wells or canals. If there has been no such irrigation hitherto, there is a strong presumption against its feasibility. At the Survey Settlement if the land has been classed for agriculture, trial pits to test depth, etc., have usually been dug, and ordinarily that classification can be accepted. If a claim is made for a higher grade of soil than that classification indicates, these tests might be taken again. The survey assessments were sometimes made many years ago ; good cultivation and working and the adaptability of the field may sometimes have led to an improvement in relative value. Occupants should be cautioned against sowing fresh crops, unless there is time for them to mature before possession is taken (para. 230).

In the case of vacant building land, it is most important to consider its shape and position with reference to roads. When land is of very irregular shape, it cannot be supposed that every yard of it would sell at the best value ; " a considerable part of it would be useless " (Bom.

H. C. in F. Appeal 238 of 1923). A few yards make a great difference. The future utility of the site is what a business man chiefly considers in buying. This must be a prudent estimate, not mere speculation and impractical imagination (I. L. R. 32 Calc. 343). When the expected demand is not immediate, we must make a reasonable estimate of the number of years for which it will be deferred. Then we have to find the present value of the sale price expected so many years hence.

Does the adjoining owner covet it for a frontage so as to raise the problem discussed in para. 160? Is it large enough for individual development? (The aggregate area to be acquired may be large: but may consist of many plots held by separate interests and unfit for any practical use. The value of the combined plot after acquisition will then largely exceed the value of its components). Is it a corner plot with two frontages in a busy quarter? Is it suitable for shops, for dwellings or for warehouses? Future difficulties may be avoided if boundaries be rectified to avoid severance and intersection of buildings, and if tenancies are terminated, and crops removed before Award.

BETTERMENT.

172.

[These comments are rather in the nature of a criticism of the Act and are not instructions for the A. O., but a warning that there are certain considerations which the Act does not permit him to entertain.]

The point in which the Indian Act, agreeing with the older English enactments but not with some recent Acts (Tower Bridge, Light Railways, and some London County Council cases), is most at variance with economic theory is in clause sixthly of Sec. 24. Let us consider how it works. Suppose a plot of land 120×60 ft. with a 60 ft. frontage at one end only on a main business road, but at the other end no access or frontage at all. The depth of the plot, compels the owner to set aside about 30 ft. in rear of the length of 120 for indispensable light and air. We now propose to acquire and throw into the road way a strip of 30 ft. depth fronting the road. He claims a very high rate, say Rs. 15 a yard, because that is the value deduced from the rental value of the actual plot under acqn. and of similar frontage plots. It is admitted that beyond the depth of 30 ft. the value would only be Rs. 5, and at the middle of the plot and beyond (60 to 120 ft.) only about Re. 1. When we cut off the front 30 ft., and set his land back, we give him a new and better front. The second block of 30 ft. frontage now acquires a value of say Rs. 20 per yard, instead of Rs. 5 which it formerly had. Then comes the belt of 30 ft. still valued at Rs. 5 as before; then the balance of land worth only Re. 1 is reduced to 30 ft. The aggregate value of the remainder of his property after the acqn. is now Rs. 5,200 instead of Rs. 4,400 which was the value before the acqn.

Then again, suppose instead of acquiring his frontage we took 30 ft. from his back premises now valued at Re. 1 per yard to make a road, which will now give him a frontage both ways and access where before there was none; so that 30 ft. facing the new road will be worth Rs. 8 against its present value of Re. 1. The value of his remaining property will then have gone up to Rs. 5,600 instead of Rs. 4,400 as it now is.

In both these cases, why should the public pay him anything at all? Should he rather not pay them? The whole cost of making the roads is upon them and not on the owner. The point is discussed in R. 7042-18. Betterment can also be taxed by enhanced rates of taxes. But this usually fails to get so much or so directly as immediate set-off in acqn. would do. See also paras. 187, 201.

Sets-back and Sets-forward.—It has been decided in P. C. Appeal 52 of 1917, decided on 26-7-1918, that when the Bombay City Improvement Trust allows a set-forward it cannot require a frontager to pay any price for the additional land given him; indeed they may even have to compensate him for the cost of making the set-forward. So they cannot recoup the cost of a set-back by such recoveries. An order to set forward under the Bombay City Municipal Act III of 1888 thus becomes equivalent to a conveyance of the land. This is another most onerous denial of the betterment doctrine. It is not found in the Mufassil Munl. Act.

A similar case arises when the land irrigated by a well is acquired, but other land equally suitable but not hitherto irrigated remains. By taking the irrigated land we leave the owner in a position to improve an equal area of his now dry crop land to irrigated land; yet we are not allowed to set this off against the cost of acquiring his land. [Though it would be used to set off a claim for injurious affection in severance for his other land.] So Sec. 24 sixthly bars the application in India of the doctrine of betterment in either case, and is the most conspicuous point in which the Act is at variance with what seems to be a sound theory of compn. and in this particular is so unfair to the public (the point is strongly brought out in 31 Ind. Cas. 259) as to outweigh any apparent hardship caused to private owners by any other provision in the Act.

This was recognised in framing the Bombay and Calcutta Improvement Trust Acts and in the Bombay Town Planning Act; from these enactments the doctrine of betterment has not been excluded. See references to betterment in paras. 42 (1), 187 and 201.

AGRICULTURAL LAND.

173. If the rent which this land produces is definitely known and all deductions can be accurately calculated, the valuation is very easy. We can find a great deal of information about rents in the Record-of-Rights [see para. 295 (1)], but we must be on our guard against incorrect statements of the rent. In the first place the rent recorded in the rent note or lease

may be subject to an understanding that when crops more or less fail, some remission or concession will be granted. Sometimes, indeed, the landlord would be obliged to give up part of his rent (see new Sec. 84-A, L. R. C). On the other hand, sawkars know that cultivators will not easily part with their land. Not only is it a matter of sentiment, but a man brought up to agriculture and possessing ploughs and other implements and cattle cannot, if he gives up his land, very easily find other employment. There is an economic as well as a sentimental attachment to land. Therefore the sawkar will often lend money on the terms that an annual instalment shall be paid to him covering the interest on the loan and some repayment of capital, and he will fix this instalment much higher than the rent which the land could possibly bear if leased for cultivation in the open market. But the cultivator thinks he can probably pay it and so discharge his debt and often he pays it out of the surplus of other land; or by wages earned as a labourer. But the sawkar, to secure himself, takes either a sale deed or a mortgage with possession, and then leases the land back to its owner at the so-called "rent", which is really the maximum instalment for repayment of the loan which the sawkar thinks his debtor can pay. When a rent is of this character A. O. must not rely upon it: though such notes rarely exceed the economic rent by much, as the landlord relies on the rent suit to recover his dues.

Sometimes rents are expressed in shares of the produce, and one can frequently obtain trustworthy estimates of the average value. But of course these are very often subject to fluctuations of season and require to be capitalised on the basis of a higher rate of interest than genuine fixed cash rents.

174. There are a few other considerations to be weighed when considering rents. Strictly speaking, the rent should be such portion of the surplus profits as the tenant agrees to pay after meeting the cost of his labour and seed, implements, cattle and other cultivating expenses. Therefore rents ought to vary and usually do vary in proportion to the gross produce. The survey assessment is based upon an estimate of the net productivity or capacity for producing after making allowance for variations in cost of cultivation. Environment and future adaptability were also taken into account. G. deliberately abstain from taking more than a restricted share of the net produce. Therefore assessments are almost everywhere less than rents. But since the assessment is supposed to bear a more or less fixed ratio to the net produce, and the rent is also related to the same quantity, we should expect that the ratio between rent and assessment would not vary very greatly in the same assessment circle and for similar lands. In fact, we find that it does not. A rent less than the assessment is scarcely imaginable, and if it did occur, would indicate that the assessment had been pitched too high through an error; and of course occasional errors of calculation have occurred even in this matter, though they are rare. An important cause of variation in the rent and sale value of intrinsically similar land is the state of its tillage; fields in good 'heart' and tith, well farmed and manured, command far more than the same land in a waste and neglected condition. A mere comparison of the survey classification and position on the map is useless without critical inspection. In the United Province rules, a defined lower rate is fixed for land more than 3 years unsown. The land may have been allowed to deteriorate very much through neglect since it was assessed or it may have been much improved and worked up by careful tillage or, finally, the landlord may have leased it with a nominal rent for other than economic and business reasons. On the other hand the assessment is presumed to range between one-half and one-quarter of the rental produce (i.e., the surplus produce which remains after meeting all cultivating costs, labour, etc.). In some tracts where population was thin and a low assessment was imposed to stimulate agricultural expansion (such as East Khandesh), possibly the share falls even below one-sixth. If this be so, we should expect that the gross rent would range from 2 to 4, and in exceptional cases up to 6 times the assessment. This indeed is what we actually do find; and, broadly speaking, $2\frac{1}{2}$ times the assessment is the average rent in Bombay Presidency [see para. 253 (1)]: care must be taken not to ignore the full significance of the term *average* in this statement.

175. But it may be asked, why trouble about the assessment or its ratio to the rent when we can ascertain the actual rents themselves? The reason is this: when we find a rent less, say, than $1\frac{1}{2}$ or more than 4 times the assessment, we should suspect that it is incorrectly stated. Often we see land which looks as good as certain other land, but it is alleged that the rent is less. On referring to the assessment we find that it was assessed lower and therefore there must be some fault in it which does not meet the eye, but was well known to the classer and also to the present tenants. But if, on the other hand, it is alleged that rents are higher than surrounding land while we find the assessments are equal, we should make a careful investigation before accepting the allegation.

It does not follow that all land of the same quality would command the same rent. When it is cut up into very small or ill-shapen pieces so that ploughing is difficult and the waste pieces round the boundaries and corners bear a high proportion to the total area, the rent per gunta may fall below that of broad stretches of land. Land nearest to the village and the tenant's homestead, or to a main road, will naturally command a better rent (34 Calc. 599). When cash rents are not available, the landlord's share of produce can often be estimated (16 Mad. 369). This method is usual in Sind.

176. For agricultural land, then, we may ascertain the gross rent, and after deducting the L. R. and L. F. or any other charges, we may capitalise the net rent (38 Bom. 37) at from 5 to 7 per cent., i.e., from 20 to 14 $\frac{1}{2}$ Y.P. Or we may ascertain the actual sale prices per acre

of similar land in the vicinity. Both methods will lead to approximately the same result unless there is some error in the data. Therefore it is usually desirable to work out both methods and see whether they coincide or not. If they do not, then either we have made some error in our assumptions or, perhaps, the land has begun to be affected by speculative demands for building or other non-agricultural purposes.

We sometimes find both rents and sales; and the sale prices seem to exceed the capitalised rents, particularly where conditions are prosperous and money depreciating and produce appreciating. In contrary conditions we may find sale prices depressed. But as a general rule sale prices tend to rise and a sale price higher than the capitalised rent is readily explained by the fact that the purchaser adds to the capital value of the existing rent his estimate of the present value of future increments in the rent. In such conditions the owner is certainly entitled to these higher rates: but the burden of proving them is on him (28 Cal. 146.)

177. It must be remembered when dealing with the actual sale prices that the sale deeds usually include all farm buildings, trees, bushes, wells, embankments, or anything else, standing on the land. In these notes on valuation we propose to deal with buildings, trees and wells, separately. Therefore when we find the price per acre for a certain land has much exceeded the capitalised rent, let us first see whether there were any fruit or timber trees of value, or any building in the land, and if so deduct the value of these items, and then we shall find that the sale price will conform better to the capitalised normal rent. These improvements may also belong to the tenant.

NON-AGRICULTURAL LAND.

As an alternative or supplement to the views in this chapter there is a pamphlet by Mr. A. E. Mirams, Consulting Surveyor to Government, to which attention was drawn and copies distributed on 25-11-12; circular O/F-12379 "Hints to A. O., &c., on valuation, &c."

178. We now turn to land which is to be valued as building sites or for some other non-agricultural purpose. The first danger to guard against is the attempt frequently made by claimants to value it as both. A sheep cannot be valued both for its value as mutton and also for its value for producing wool and lambs. If it is used at once for mutton it cannot produce the other values. Similarly, if land is to produce an agricultural rent it cannot be used for building. If it is used for building, it cannot be cultivated (4 Md. Cas. 521). (There is a discussion on the valuation of building-sites in R. 6504-5-00.) The basis of valuation must not be shifted (27 Mad. L. J. 106).

179. But it may be argued that it is intended to use it for building in the future, and for the present to go on drawing the agricultural rent. This is a simple proposition. We may presume that the land is never diverted to the non-agricultural purpose until the return therefrom will exceed the agricultural rent. No man, getting an income of Re. 1 from agriculture, would give land for building for a rent of half a rupee, or sell it for less than the capitalised value of his one rupee. The first step is to estimate how many years it will be before the increased value for building purposes will become operative. The next is to capitalise the agricultural rent for this term of years. We must determine as nearly as we can what the enhanced value will be, and arrive at its "present value" by the help of Mirams' Valuation Tables (see para. 167). The two resultants should then be added together and this will give us the present value. An example will illustrate the calculation:—Land at present yielding Rs. 15 per acre will 25 years hence be worth Rs. 1,000 per acre. What is the present market value? Table I, p. 12, under the heading of present value of Re. 1 per annum tells us what is the present value of a given sum per year for a period of years.

In ordinary agricultural land valuations in India it is generous to take the 5 per cent. table and, inasmuch as the enhanced land value will be unsecured (i.e., no building yet erected) building land value, 6 per cent. interest may be expected.

One acre net rent Rs. 15 per annum, for 25 years at 5 per cent.	Rs.
(reinvesting [see para. 217] surplus income at 3 per cent.) years' purchase=12·92 ∴ Rs. 15 × 12·92 will give the present value	
per acre of the annuity before enhancement and is	.. 193·8

The next table to consult is Table II, p. 48—

"The present value of Re. 1 due at the end of a given number of years."

after 25 years at 6 per cent. is ·2330 years' purchase, ∴	
Rs. 1,000 × ·2330 will give the present value per acre	.. 233

Rs.	..	426·8
-----	----	-------

If the area is 6 acres then—

Rs. 426·8 × 6 = the present value of the whole, which in this case is	..	2560·8
	say	Rs. 2,561

With no future prospect, a full value would be $15 \times 20 = 300$ Rupees per acre.

For agriculture the assessment is known ; for lands already built upon or gone over to N.A. uses the N. A. assessment is usually also known. But for land now held and used for agriculture, but in demand for building, &c., the liability to pay increased assessment for that use must be taken into account (Bom. P. J. 1899, p. 206 : R. 7114-00). Vendors and purchasers are apt to ignore this liability. The instructions given in R. 3865-07 should be followed.

The site values at which plots have been changing hands may or may not have taken account of this liability ; it is for A. O. to judge. His task is rendered more difficult in that, according to the principles of N. A. assessment, the full market value must first be established before the N. A. assessment can be deduced from it. Therefore in an area of rapidly changing values there is easily room for uncertainty. If the site value has already taken N. A. assessment at the proper rate into account then it is a sound guide to compn. If it has not, then the vendors have got away with too much of the value and the purchaser has been left to face a demand not dreamt of ; and it is safe to presume that when the levy becomes known, there will be a proportional sobering of prices : and it is these prices that should be awarded. The dangers and indeed unfairness of leaving N. A. rates undetermined or unannounced in an area of booming land values should be borne in mind by Collectors.

180. How can we determine the immediate value of land suitable for building (or for any other N. A. purpose which the locality admits) ? The agricultural assessment of course has nothing to do with it. The worst land for agriculture may be the very best for building. We often find localities in which rocky elevated land has a non-agricultural value, while rich agricultural land near it has no such value (*e. g.*, Warkas and Rice land in North Salsette). It is not until the non-agricultural value has risen much above the value of the best agricultural land that this latter will come into demand at all. Sometimes it costs from 4 to 8 annas per square yard to convert low-lying agricultural land into possible building sites. A good method of roughly ascertaining the value of non-agricultural land is to collect particulars of recent sales and reduce to a uniform rate of annas per square yard, or rupees per guntha. Then take a map of the locality and plot the rates so ascertained in each Survey Number or part thereof to which they relate. Then consider the maxima and minima. Observe in which localities they occur. Ordinarily, it will be found that lands near to high-roads and railway stations and blocks of existing buildings will bear higher rates than the more remote. Then we shall also find certain small plots sold at abnormal prices owing to extortion by owners possessed of a monopoly. We should then inspect the lands which have been sold, and we may be able to strike out of our rate list certain items in which the circumstances were evidently peculiar. We may find that a building already existed, although no clear mention is made in the sale deed. We can then disregard certain very high and very low rates and determine upon a fair average range. If we find that land close to the sea or the railway or the main road has sold for the highest prices and that these prices tail away and get lower and lower as we recede from these localities, then we could easily make up a distance-scale [like a contour survey] under which the land nearest (say) to the railway is classed at 100 and a reduction of 10 per cent. is made for every 100 yards distance, until at a thousand yards away we get down to agricultural values. This is a mere indication of the method, applicable to different circumstances of each case in different ways, and it must not be thought that because land 500 yards distant has sold as building land that everything between that and the centre is building land. It may be that there is no further demand for houses and in a village or town where the population is stationary it is quite a common experience to find this sort of thing existing. Demand has sometimes been fully satisfied by supplies not of the best quality.

181. The value of land intended for building uses [not necessarily as it now is, but as it might be if developed (10 Bom. L.R. 696)] depends also upon size and shape, elevation, access to roads, frontage (see para. 172) nature of foundation (*e. g.*, rock or sand under the surface), and so on according to the different circumstances of each locality. A careful study of local sales and consultation with dealers and landholders, and attention to the arguments of parties will enable A. O. to frame scales and to support them with such convincing instances and reasons that no Court of reference will be likely to differ very materially from his conclusions.

182. There will be great room for difference of opinion as to whether land should be classed as agricultural or not. In order to give a non-agricultural value it must be shown in the generality of cases that there have been actual sales at rates well above the agricultural in the immediate vicinity, and it must be ascertained that those rates were really paid for non-agricultural reasons. The parties to the sale can be called. It is no use alleging an immediate demand for building in a locality far removed from any existing buildings and without any natural facilities. It would be difficult to apply this doctrine in the case of a locality in which suddenly a new railway appeared. Obviously there is an immediate prospect of very much better prices for land, and in an acqn. notified after the railway alignment was known, the A. O. would be obliged to take it into account. Yet if there had been no actual sales his difficulty would be considerable, though it would be easy to say that the award should be higher than the previous rural agricultural value, yet how should he decide how much more ? It seems impossible to answer this question until at least a few transactions have occurred round which the vague and undefined enhancement can be, as it were, defined and crystallised.

183. A somewhat difficult case in which a judicial opinion was given is worth recording. There was some rice land surrounded on three sides by buildings on the outskirts of a city. The land was leased for cultivation on a long lease. There was no evidence that anyone ever wanted to build upon it. There was other land higher and more suitable for small ordinary buildings in the neighbourhood. But a G. Dpt. wanted to erect a very large building for which none of the ordinary small sites would do. They therefore elected to acquire this block of rice land and fill it up and drain it. The A. O. refused to award a non-agricultural value, but gave only a capitalised rent for agriculture. The Court held that the very fact that G. desired to build upon it was proof that it was suitable for building. It therefore awarded a building site value, rather less than that of the better small sites round about. It should have been argued that the whole of the big rice plot could not have been sold at anything like the value paid for the small plots in the vicinity. Its present value, on any such basis, might have been below its agricultural value. The fact that its owners had not sold any of it at rates above the agricultural was equally significant. The fact that G., suddenly coming into the market to acquire a large plot, found it convenient to take this block and make it fit for building did not affect the market value on and before the date of notification when no such future utility was contemplated, and should have been excluded from consideration (see also para. 232). The history of the Bombay Suburban Development affords a good commentary on this paragraph. More stress should have been laid in supporting A. O.'s award on the consideration to be dealt with in the next paragraph.

184. It is quite evident that the value of land for building depends upon the quantity available within certain limits of space. Land near Bombay may be worth Re. 1 per square yard. But does this value extend to 20, 50, or 200 miles from Bombay? Certainly not. Then again suppose a few miles from the centre of a City there are only half a dozen small plots available for building and one very large block of a hundred acres which, however, the owner will not sell. Bargaining for the small plots goes on and forces the price up to Rs. 5 per square yard. Then the owner of the large block dies and his executors tempted by the high rate of Rs. 5 per square yard, offer it for sale. Will they get Rs. 5 per square yard for the whole block? Any business man will at once say that it is absurd. The high rates for the few plots sold were due to the restriction of the market. Immediately a large new block is offered, prices will fall tremendously even more than wheat prices fall when a heavy new harvest comes to hand. But the executors might argue that they could divide the 100 acres up into one thousand small plots and offer for sale only one at a time and thereby get as good a price for each plot, one after the other, as has been obtained for the previously sold plots. The answer to this is a simple calculation in present values. One plot sold this year at Rs. 5 a yard, 2 plots sold next year, 2 the year after, perhaps none for one or two years, then again 2 or 3 and so on. In how many years will one thousand plots be sold? Even if we allow that they might be sold, one by one, at the high rate supposed within a century, still the present value of that block of land will not reach 7 annas a yard, because Rs. 5 due half a century hence (the average time of disposal) is only worth 6.976 annas now. The 5 per cent. table is taken since the expectation is by no means a certainty. Therefore though I may sell one diamond for £100, I cannot possibly think of selling ten thousand of the same quality at the same price. As soon as I commence offering them in large numbers the price will go down, and if I wait in the expectation of realising the whole price 10, 20, or 30 years hence that is exactly the same as reducing the price to $\frac{1}{3}$, $\frac{1}{4}$ th, or half immediately. It is a favourite device of claimants to argue that because a certain plot not far away sold for so much a yard, therefore their block of land, very many times as large, should be valued at the same rate. No A. O. should be drawn into this admission. Adequate demand cannot be lightly assumed (9 Bom. L.R. 1233; 30 Bom. 325 does not differ). The chances of the demand being great enough to secure tenants for all the sites offered must be considered (42 Ind. Cas. 905). 10 Bom. L.R. 660 points out that if parts of an estate are sold it cannot be said that the value of the whole can be ascertained by proportion (also Bom. H. C. Appeal 63 of 1922 decided 16-11-25). Large plots cannot be dissected into so much frontage, so much interior and so on, at various rates. A few front plots might sell well and the rest never find a buyer. But the claim assumes that each square yard has a value equal to the best rate yet obtained for any plot. (27 Bom. L.R. 1276). Large areas of back lands cannot be valued on the basis of a few sales of frontage plots (I.L.R. 26 Bom. 1; Charlesworth, Pilling & Co.). It was rejected (on much the same ground as has been given above) by the Panjab Chief Court in the Metcalf Estate case, para. 26.

185. As long ago as 1876 (I.L.R. 2 Cal. 103) it was laid down, and the ruling has been frequently followed, that an owner is entitled to the market value of his property, not according to its present disposition but laid out in the most lucrative way in which the owner could dispose of it. See also Halsbury's Laws of England VI. 37. There are similar American rulings: 162 Tennessee 131. This does not seem to have meant more than that if a horse is suitable for racing, but is at present being used for a hack, it should be valued as a race-horse because that is the best market in which it might be sold. Land now under crops or jungle might be valuable for building chawls, or hotels, or mansions. The owner would therefore rather sell it on this basis than as jungle. But of course jungle land suitable for an artillery range has no greater value on that account; because only G. can possibly use an artillery range and, in common

parlance, there is, "no market" for artillery ranges. This is a profit due to the use to which the land may be put *after* acqn. and therefore excluded from consideration. The decision in 13 C. W. N. 1046 seems open to question, if the rifle range for which the land was being acquired was a G. range; and Richardson J. (dissenting) in that case took the view in the text, see also 1 C. W. N. 698. There can be no "market" for things of which G. reserve a monopoly. This is the converse of the point discussed in para. 160. Value arising from use to which the land is subsequently to be put is excluded from consideration by Sec. 24. *ffithly*.

If it were paid for, it is rightly pointed out in 13 Calc. W. N. 1046 that the public would have to purchase its own improvements in advance. Uses which would not be taken into consideration on the day of the Notfn. cannot be adduced (Vaughan Williams L. J. in 2 K, B 140 1902). G. got some capitalists to take leases of parts of a marine marsh for salt pans. That conferred no value on the rest of the marsh in the absence of proof of demand and also of the willingness of G. to license more pans. The award of Rs. 14 per acre was restored and the Dist. Court's award of Rs. 200 cancelled (Bom. H. C. Appeal 255 of 1923). This was subsequently upheld by the Privy Council (P. C. Appeal No. 142 of 1927). L. 151—23-4-1929.

186. But the decision of 1876 has given rise to a crop of what are called "hypothetical schemes" which make their appearance in acqn. proceedings. The general outline of such schemes is that the holder of a plot of vacant land argues that if he spent so much on erecting buildings he would then get so much net rent, the capitalised value of which would be so much, and therefore deducting from that value the amount of capital he would have to lay out to secure it, the balance is the value of his land "laid out in the most lucrative way" (see I.L.R. 15 Bom. 279). One of the chief objections to such schemes is that every item is *assumed*, if the cost of the buildings rather exceeded the estimate; if, owing to the number of such buildings in the market, the rents fall a little short of the assumption; if the interest which had to be paid on the capital was a little more than estimated; the whole hypothesis breaks down and there might not be any profit at all in this particular method of disposal. As observed by Batchelor, J. (10 Bom. L.R. 701), "the scheme never moves out of the region of unverified hypothesis. The initial uncertainty increases at every step; and the final result is devoid of any real probative force whatever". A similar view is in 56 Ind. Cas. 758. To take an extreme case, we might find a plot of jungle on the top of a hill 20 miles from a fashionable hill station. There might be no demand for land in the neighbourhood and no sale recorded for many years. Yet the owner argues that it might become a fashionable resort. Speculators might desire to have that plot for a hotel. If a hotel were built, it would cost so much and the probable number of visitors each year would be so many, and the value of the hotel would consequently work out to so much, and from this he might deduce a high value per acre for his land. No one would have the slightest hesitation in rejecting such a claim as quite preposterous. Potentialities may exist but may have no *present* value (10 Bom. 2. R. 675 & 696). On the other hand the land might be situated in the midst of the Mills in Bombay and all round there might be a keen demand for residential blocks for mill-hands. If the plot were of the right size, shape and position for such a building, then such a scheme prudently worked out could not be set aside as absurd. However, even so, one would naturally ask the owner "Why then have you not yourself so used your land?" Further we should have to bear in mind that all such projects are conditional in the absence of effective competition. Someone else might build a more attractive block, or the great number of rooms offered might depress the existing scale of rents and so on. The Privy Council (16 Bom. L.R. 55 & see R.L.A.'s circular 1451 of 28th May 1914) has, however, decided that evidence of hypothetical building schemes cannot be excluded as *inadmissible*. The weight to be allowed to such evidence in any particular case must therefore be considered. (Lords Shaw and Macnaughten.) Where parts of one estate were valued for inconsistent uses, the award was reduced by Rs. 10,000 (Bom. H. C., F. A., 1, 2, and 3/25 decided on 5-1-26).

187. In the ordinary course of business any person wishing to develop such a scheme would naturally look about and buy the cheapest land he could find provided it was not unsuitable. If the owner, putting forward the hypothetical scheme could buy, in the vicinity, any other land for a less price than he puts (hypothetically) on his own, then why should he not use that cheaper land and save his own capital? He would be in the position of the builder of the non-economic building referred to in para. 207, who might have rented a house and invested his capital in securities and made a good saving. The claim assumes that the builder will surrender all his estimated profit to the landowner (33 Bom. 28). The owner of the horse who claims that it is valuable as a probable Derby winner and yet uses it as an ordinary hack is obviously open to the retort that the very fact that he has not entered the horse for the race but is actually using it in another way puts his contention out of court. The A. O. should be on his guard against such schemes and they should be thoroughly sifted before being accepted. When accepted only a deferred value must be allowed as the income is not realizable all at once. The value of any completed thing does not necessarily exceed the cost of its components. Evidence of actual sales and the inferences therefrom cannot be excluded by such methods (9 Bom. L.R. 1232). But the two methods may corroborate one another (33 Bom. 28).

A certain amount of guess-work and conjecture enter into all valuations; Courts should not go too far in this direction (II Ind. Cas. 838; 26 Bom. 1). This method is always highly susceptible of error (Bom. H. C. App. 238 of 1923, 22-9-25).

A frequent factor in such calculations is the cost of filling in or levelling down. For the serious errors to which such estimates are liable we have the example of the Back Bay reclamation. In an Andheri case it was claimed that the land had a building site value and the earth and stone cut off the hillock would be sold; the Bom. H.C. held in App. 228 of 1923 on 24-8-25 that no such value could be allowed in absence of proof of an active demand for such materials: it was shown they were obtainable cheaper elsewhere.

A valuation made by the Consulting Surveyor on such a "hypothetical" basis is appended: it is interesting as employing the doctrine of the covering of ground rents: and for its comments on "betterment". It deduces the value (or rather the rejection of an inflated value) from the maximum gross rent which could reasonably be expected from tenants on a given area covered by buildings.

Valuation of a plot of rice land near a Ry. Station (Taluka Salsette) prepared by the Consulting Surveyor in a reference to the Court from an award.

The property being acquired is a strip of land required for a new road. The new road will run through the land which at date of Notfn. was used principally for rice cultivation, and was 5 feet below road level.

The first of the attached two calculations is in support of the award of annas 12 per yard and is intended to shew that the claim of Rs. 4 per yard is altogether untenable. For the purposes of argument a building plot of 50 feet frontage and a depth of 180 feet has been assumed. Any other size would equally prove the case. If the area were larger the argument would be worse for the claimant. If smaller the plot would not be a suitable one for a bungalow.

Road has been assumed at 40 feet wide.

(1) *Based on Award—*

Area 1,000 square yards.

Building plot of 180' × 50' at 12 annas a yard	..	Rs.	750
¼ road at 12a. 83 Rs. and filling 5,000 cubic feet at Rs. 3 per cent.	..	Rs.	233
Add cost of filling at Rs. 3 per 100 c.ft. (45,000 c.ft.)	..	..	1,350
			Rs. 2,333

At 5 per cent., ground rent required is Rs. 117 per annum,

Or,	10 per month.
Building to cost Rs. 6,000 at 7 per cent. interest	Rs. 420 per annum;
Or,	Rs. 35 per month,
Add ground rent	10 as above.

Net	..	Rs. 45 per month.
Or, Gross (1½ times)	..	67 per month.

(2) *Based on Claim—*

At Rs. 4 per yard, or over five times the amount of award, then the building plot will be worth 1,000 × 4	..	Rs.	4,000
Add land required for ¼ Road frontage (111 s.yds.) and filling (150 Rs.)	..	..	594
Add cost of filling plot at Rs. 3 per 100 c.ft.	..	..	1,350

Rs. 5,944

At 5 per cent., ground rent required is Rs. 297 per annum,

Or,	25 per month,
Building to cost Rs. 6,000 at 7 per cent. interest—	Rs. 420 per annum,
Or,	Rs. 35 per month.
Rs. 25 plus 35—	Rs. 60 net per month,
Or, gross	90 per month.

In this case, viz., when land is taken at Rs. 4 per yard, the ground rent of Rs. 25 is not 2½ times secured, which is absurd. That is, out of a net rent of Rs. 60 the amount of Rs. 25 must be set aside for ground rent. It is a well-established English rule that in the case of suburban development ground rents should be covered at least 5 to 7 times; whereas in my first example even at 12 annas, the amount of the award, I can only cover it 4½ times, which shews that 12 annas is more than ample. [The doctrine that any particular ratio of ground rent to gross rent is standardised or usual (in Bombay) was repudiated in 10 Bom. L.R. 714. Nevertheless, there must (see para. 170) be some minima ratio in every case.]

It may possibly be suggested that more than Rs. 6,000 should be spent on the building. Personally I consider it would be a very imprudent man who would spend it on a plot of this size, *but assuming* the building to cost Rs. 8,000 instead of Rs. 6,000 it will increase the gross rent by Rs. 17 from Rs. 90 to 107 or will mean an addition to the net rent of under Rs. 12 a month. Even then the ground rent will only be three times secured.

The only way to justify the claim of Rs. 4 per yard would be to shew that on the hypothetical plot Rs. 21,444 could be spent on building. This would enable the owner to get a rent of Rs. 150 per month net or gross Rs. 225, or in other words for a total cost of Rs. 21,444 building, *plus* Rs. 6,066 land which is Rs. 27,500 he would get net Rs. 150 or about 6½ per cent.

It is obviously for the claimant to shew that this expenditure of over Rs. 21,400 per plot would be justified. He will have great difficulty in doing this. Anyone knowing the locality must realize that it would be impossible to let buildings near the noise of the railway and on such a comparatively small plot at a rent of Rs. 225 per month, especially having regard to the fact that they would be surrounded by rice swamp land. If the size of the plot is increased, that means that the ground rent is spread over a larger area, or in other words that the value of the land per yard is reduced.

The only fair method of treatment is to take the whole area as it stands and assume that it will all be developed for building. Roughly only 9 or 10 plots could be provided of 180' × 50', as there would be considerable waste due to shape, and a road would have to be first made.

It cannot be contended that all these plots would go off at once and on normal lines probably some 10 years at least would elapse before they were disposed of. Assume therefore a mean of 5 years at 5 per cent. and the value must be discounted at .78 years purchase.

It will be seen that the 12 annas awarded should thus be reduced to $12 \times .78$ or practically 9 annas. Having regard to all the circumstances of the case I value the land in reference at 10 annas per yard.

It should be noted that the 12 annas per yard, the amount awarded, is equal to Rs. 3,630 per acre.

Incidentally it will be seen that the claimant has been awarded an enormous sum to be charged as expenditure on a road which greatly enhances the value of *his remaining land*. Unfortunately the Act as at present worded does not allow the enhanced value, due to the road being constructed, to be taken into consideration (see para. 172). [But in Secs. 16 and 17 the Town Planning Act does for the first time fully recognise the propriety of setting off the "increment" in value of residual property: and in justice to the public it is confidently expected the recognition will find its way into the general law and practice of Land Acquisition.]

TREES.

188. Trees may either be timber trees or fruit trees. Some trees belong to both categories, such as the tamarind, which produces fruit of small value, but is useful as timber. There are other trees whose leaves or other produce are marketable. The Tad palm produces leaves, fruit and toddy. But if used for toddy there can be no leaves or fruit. When dealing with trees belonging to two categories, A.O. should value them according to whichever of the two uses appears more profitable, unless circumstances (such as the available market) compel the owner to use in one way only. An award for potential building value *plus* fruit trees was disallowed: if a high building value exists, the fruit trees must be included even if some might be left standing by the builder (Bom. H. C. F. A. 111/24—1-3-26 and 237/23—16-2-26).

When land has been valued on its rental, care should be taken to ascertain whether the rent covers the owner's rights over the trees. He cannot be paid the capitalised rent and then paid again for rights included in that rent. But when the award is based on the rent of similar bare land, the trees are of course an additional item.

We must not forget that the method of valuing the land and the trees separately is not so good as the valuation of the orchard as such, when we have data in the sale prices or rentals of similar orchards. (43 Ind. Cas. 17.) This might well be the case with Konkan coconut gardens.

189. All trees occupy land to some extent. They deprive the owner of the whole part of the agricultural produce of the land. This deprivation is least when the trees are first planted. Indeed, in some cases young tad or coco-palms scarcely impede cultivation at all, but this deprivation increases with the age of the trees. We will call the income which might be derived from the land if under crops or vegetables, etc., for brevity, its "corn-crop value". It is evident that at any time the owner can clear off the trees and sell their timber and roots, and obtain, at the least, the corn-crop value of his land. In many cases of course this value is practically nothing when trees grow on rocky slopes; but in the case of mango groves it may be a high value. Therefore, our first proposition is that the value of land under trees must at least be its corn-crop value together with the nett timber value of the trees after deducting the cost of grubbing up the roots, etc.

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190. In estimating the timber value, A.O. may take the advice of an expert such as a Forest Officer or a Forest contractor. Such a man would value trees something in this way: he would take the value per khandi of the cut and dressed timber or fuel in the best market accessible; he would deduct the cost of carting and the cost of felling and trimming and of grubbing up the roots (but only if he intended to remove and sell them also), and he would allow a reasonable profit for the cost of supervision and the trade risk of the purchaser. Then he would quote a value for the standing trees. Frequently this value is practically nil where the cost of removal will leave no appreciable profit. If he does not include nett cost of clearing roots this must also be deducted before we get land fit for crops.

191. Let us next consider the case of a young plantation of trees intended for timber. Their P.V. may be practically nothing, but the owner will say that if left alone for 20 years their value will be considerable. Admitting this, how shall we value them? The problem amounts to this: after x years there would be a value of Rs. y (land plus felled trees); meanwhile we have to give up the whole or part of the corn-crop, if any, of the land and pay the land tax, if any. What then is the P.V. of y ? This can be immediately ascertained from the Tables, and 5% would be the most lenient rate of interest to assume or 6, 8 or even 10 if the proposition is precarious. Fruit trees income was held not to be worth (1919-20) more than 8 or 10 per cent. capitalisation (Bom. H. C. F. A. 122/24—9-3-26). If we then deduct the P.V. of the tax for x years, in almost every case it will be found that the balance is practically no more than the immediate corn-crop value of the land, and this will explain the phenomenon of denudation of timber which is going on almost all over India. As a business proposition it scarcely pays to set apart land and abandon its corn-crop value and pay the taxes in the expectation of a future growth of timber. It is only in natural forest land with no taxes and no corn-crop value, and so situated that the extraction of the timber is at no time profitable, that really large timber will ordinarily grow up. If the profits were quite assured, we should see a substantial area of land given up to timber growing. There is of course also the fact that few landholders can afford to forego present profit for future returns.

192. These considerations may be modified in one or two particular cases. There are some timber or fuel trees whose growth is so rapid that the reduced number of years necessary to be taken in our calculation of P.V. will alter the equation, such as Casuarina (*e.g.*, near Karwar), Fine, Eucalyptus, Grevillea Robusta, and perhaps others. Again Babul trees permit, for a certain time, the growth of grass on the same land; also there is some value in the pods and thorns which can be obtained from them during their growth. Often this value of grass, pods and thorns is sufficient to meet the taxes and make good the corn-crop profits of the land, and in these circumstances Babul can be grown with profit for fuel. But, even in these cases, although there is probably a small balance of profit in the long run, still the P.V. of the land with the young trees on it is very little greater than the corn-crop value together with the present felling value of the trees.

193. When we turn to fruit trees, the elements in the problem are somewhat different. A timber tree slowly increases in value from birth till it ceases to grow, when it would certainly be felled, if not earlier. But a fruit tree has not such a uniform increase. Take the ordinary case of the mango. In the first 20 years, roughly speaking, it yields nothing, and is not even worth cutting down for fuel, because that would destroy the hope of future income. Then it commences to give at first a small income and then a greater one until it reaches a maximum. Then, again, it will decline in productivity. The old trees are peculiarly liable to disease (such as Bangül) and parasitic growths, such as the Bindukali (*Lonicera*). A tree so attacked cannot bear fruit. Finally there comes a time when the future income is considerably less than the present felling value. But even then, sometimes, from sentiment or misjudgment, the owner does not fell them. The problem which A.O. has to solve is this: what is the immediate value of this tree over and above the corn-crop value of the land together with the obvious timber value of the tree?

194. Trees do not bear fruit with uniformity every year. In the case of the mango, it would not be safe to assume that the annual average produce was more than half the crop produced in a really good year. Of course in bad years the value per 100 fruits is greater, and in very abundant years the money value of the whole crop may be only a little more than in average years owing to the reduced price. Claimants will usually allege that the annual produce is uniformly at least the highest which they have ever on a single occasion obtained. A.O. should first ascertain definitely what kind of tree it is: whether grafted (*Kalmi*), or hand-sown (*Lavani*), or self-sown (*Raival*). He should then ascertain the age as nearly as possible. A few years more or less do not matter, but it is important to be able to estimate how much longer it will bear fruit profitably (*i.e.*, in excess of the corn-crop). Probably no mango tree more than 75 years old will produce a useful crop, but of course this is only a rough surmise. A tree which is admittedly more than that age may safely be assumed to be worth no more than timber, because even if up to the present it has borne fair crops, they will henceforth gradually decline, and soon their capitalised value will be less than the timber value.

195. Again, it must be remembered that the value of a crop on the tree is not the same as the value upon a market stall. Gathering and watching the crop, and carriage to market

and rejection of spoilt fruit entails a heavy deduction, frequently estimated at half the aggregate value. This can be proved by the usual practice of selling the crop to a dealer who undertakes to watch the trees and gather and market the produce on condition that he divides the gross sale proceeds equally with the owner. A.O. should therefore ascertain what is the highest proved net crop value which has *reached the owner* and he should then assume that the annual average income is little more than half that sum. He should ascertain the kind of fruit and its alleged and apparent age. He might call an expert fruit broker to assist him, and when he is sure of the age and fair average annual income the valuation of the tree will become a simple problem in P.V. The land and the tree (which cannot be separately acquired or valued) are worth the P.V. of—

(1) the net (*i.e.*, deducting taxes and cost of all cultivation, etc.) annual yield of the tree for its life. If this income is not to begin for n years, and the taxes and costs are running, then deduct P.V. of these expenses for n years from the P.V. of the net income commencing in the n th year.

(2) Its timber value to accrue at end of its life (negligible unless the life is very short).

(3) The cleared land to accrue at same time as (2).

195A. In App. 301 of 1923, 5-1-25 Bom. H.C. refused to admit a lower rate of interest than 6 per cent. in calculating this P.V.

196. If the tree is newly planted, of course, the income can only be estimated on the basis of the income from similar trees. We then may say that at the age of 20 years the tree will produce an extra income a each year for approximately 60 years and thereafter will be worth its timber value only. There are some kinds of trees and some localities for which these figures should be modified. Now the Tables will give the value of an income of a for 60 years at the moment when it commences. It is of course considerably less than a perpetual income of a : in 25 Ind. Cas. 393, the Privy Council seem to have valued the income of a mango plantation as a perpetuity. But if it is not to commence until, say, 15 years from date, then the Tables will give the P.V. of this also. The mistake of adding together the corn-crop value and the full fruit-crop value must not be made. Similarly on no account must a building value be given for a coconut plantation *plus* the agricultural value of the trees. The trees must only be valued as timber and are consequently of trifling importance.

197. The above argument applies where the trees approximately cover the whole of the land. When they consist only of a few trees at long intervals, then we must apply the fruit valuation to the area approximately occupied by each fruit tree only. An average large mango tree covers, and prevents from bearing crops, at least one gunta of land. But a coco-palm of course occupies much less.

198. The discussion of the mango tree is applicable to all other fruit trees *mutatis mutandis*. A.O. must be on his guard against allegations of prodigious crops which are made as glibly as the proverbial fish stories. Experience has shown that heavy amounts awarded for mango or other fruit trees are more likely to be unwarranted than most other awards. In one case a substantial sum was awarded and a whole grove of trees acquired by a Ry. Co. After acqn. they fenced and cultivated the trees in the hope of getting some of the alleged valuable crop until the time when their works of extension of the station-yard could be carried out. It was then discovered that the A.O. had been completely deceived. The trees were of a common variety, and did not produce enough fruit each year to meet the cost of watchmen, and therefore public money had been wasted on unproved allegations.

198A. "In valuations of salt-works when there are no sales or rents on record A.O. should consider the 'scarcity value' and should also award damages for injurious affection or loss of trade pending the bringing into use of new pans" (R. 26-F. of 20-2-22). The writer has tried hard without success to discover the meaning of scarcity value or rather to interpret it in terms of rupees. He would prefer to approach such a case along the much simpler route of reinstatement: G. would no doubt agree to allow the dispossessed salt-worker to open fresh pans nearby; the compn. could not exceed the cost of the move and interruption to earnings during the transit.

WELLS.

199. Everyone knows that there is nothing so speculative in India as well-sinking, particularly in the Deccan. It is a conspicuous instance of the principle that the value of a thing is not determined by its cost. Often a large sum of money is lost in sinking shafts which prove ultimately worth nothing. On the other hand, sometimes, a small expenditure produces a good supply of water. Wells therefore cannot be valued with reference to their cost.

200. Wells are dug for irrigation, for drinking purposes, watering cattle, washing clothes, etc. The extent to which these latter uses should be taken into account will depend upon situation and distance from the village and other water-supply sources. In residential premises

the well is used for domestic purposes and for gardening. Some wells are used both for domestic purposes and irrigation. The value of a well for irrigation is very easy to determine. Ascertain the area which it irrigates and value that area as irrigated land instead of ordinary dry-crop land. This value can be ascertained from recorded sales or from rent just as the value of any other agricultural land. Then the irrigation-value of the well is *included entirely* in the enhanced value of the land it irrigates; and can be deduced by a simple subtraction.

201. But sometimes we acquire only part of the irrigated land. The well remains, and some of the land which it commands. In this case should we pay for the acquired land as irrigated and thereby pay for at least part of the value of the well which is not acquired? Most Revenue officers understand quite well how much land a well which yields an ascertained number of kos can irrigate. If the owner can bring under irrigation other land in exchange for what we acquire then one would suppose that we need award only the dry crop value, and possibly a small amount for constructing fresh channels and embankments to bring fresh land under irrigation. But whether he has or has not any such fresh land, we must give the full value of the irrigated land taken. This is the result of section 24, sixthly, discussed in para. 172 (Betterment). A different case is when we acquire the well, but not the irrigated land; or when we cut off by acquiring an intervening strip some part of the irrigable land from the well which commands it. But these cases are not really difficult. If we take the well we must pay the whole difference between the value of the land as suitable for dry-crop and the value as irrigated of all the land it commands unless by reinstatement (at a less cost) of another well the irrigation can be continued as before. Reinstatement may then be used as an *argument in rebutting* the larger claim, though we cannot (para. 157) directly award on the reinstatement theory. If we cut off some of the land it commands, we pay the same difference: if the owner claims full irrigated value for injurious affection of some other of his not acquired land, then only can we use the betterment doctrine and refuse most of the claim, if he can divert the remaining water to other land.

202. If the well is so situated that it has a utility value for drinking and domestic purposes, and for cattle in addition to its irrigation value, then such amount as A.O. thinks reasonable, probably in no case exceeding an addition of Rs. 150 to its irrigation value, may be added, and a less sum when the utility is not very great.

203. Wells are not built of marble slabs and decorated with statues. Even if they were they would not be worth more than those constructed of plain brick or stone. But of course the durability of a well is an important consideration. A very roughly built well requires a substantial amount to be spent periodically on its repairs. Often it is found to have partially collapsed and not to be capable of use without substantial repairs. The full value of the well calculated upon the land it irrigates is its value as an *eternal* source of irrigation. If it is found to be in disrepair, the estimated cost of repairing it to its full working condition must first be deducted. Then if its construction is rough and unenduring a further deduction on account of the cost of future annual repairs must be made according to the best estimate A.O. can frame after consulting experts. A well, yielding 4 kos of water and built of cemented stone, able to last a century, may be nearly worth 4 kos of water for ever. On the other hand, a mere hole in the ground with brick or stone pitching without mortar and with a crazy superstructure, is not worth more than a few years' purchase, even though it also for the present yields 4 kos. This differentiation is quite a different thing from valuing the well according to its cost. Two wells may produce an equal quantity of water, still their value depends upon the durability of the income: it is this, and not the cost, which is valued.

204. When a well is part of a residential plot, whatever utility it has is included in the rental value of the property. In estimating the net rent we shall hereafter show that the probable cost of annual repairs must be deducted. The ultimate value of the whole property will include the well and everything else. But if "potential" land contains a well, then the purchaser who intends to erect houses will plainly regard the well as an additional value because it will save him from digging a well to supply the future houses with water. Even then if a municipal pipe supply is laid on and the tenants prefer it, the value of the well might disappear: though the well water might be cheaper than Municipal supplies. In fact, as a possible source of malaria it might even detract from the future value of the buildings. It might be claimed that the well would be useful for some irrigation even after the land were sold for building. A.O. will be able to judge of all this when he hears claims on the ground.

205. Fences, roads, drains, and embankments on agricultural land stand in a category similar to wells. Their value is not what they cost but what they produce or help to produce in annual income. A well-fenced and hedged, drained and embanked field commands of course a considerably higher rent than another without these improvements. The increase of value is sometimes more, sometimes less, than the cost of the improvement works. It all depends upon the prudence and judgment with which they were carried out and their life. It is also in respect of "improved" land that the greatest caution against blindly following the assessment is needed: improvements are not taxed in the assessment of L.R. (see para. 175).

LAND COVERED OR OCCUPIED BY BUILDINGS.

This method of valuation is again fully discussed in R. 7646—17 and further explained in R. 4598—19 ;
II Bom. L. R. 1176 ; Ref. 49 of 1902 of Bom. Tribunal ; Principles of Rating, Boyle & Davis, 219.

206. The first general principle is that land and buildings when "married" (as it is technically called) are valued by capitalising their net annual rent for the probable life of the building and then adding the P.V. of the land which will become available when the building dies. But before we go further into the subject, we must meet an objection frequently raised and sometimes given effect to by the Courts, which is that houses are often built for personal residence and not for letting at all ; if they were let on rent, they would not command a return upon the capital cost, even so high as the return obtainable in public securities. Indeed, in many cases the demand for houses is so weak that it might prove entirely impossible to let a house at all, because there are other empty houses available which also have no tenants. To take a concrete illustration, we may suppose a retired official builds himself a house for Rs. 20,000, laying out his money upon materials, etc., as prudently as possible. He does not build it in a rising suburb where rents are high, but in his ancestral town, which is declining in population and prosperity. He could, if he liked, rent other houses as big as that which he is building for not more than Rs. 300 a year or even less, that is for 1½ or less per cent. upon his capital ; but he prefers a house of his own for sentimental reasons. Now, if he put his money into guaranteed debentures, he could draw Rs. 800 a year, and after paying rent Rs. 300 he could have a net gain of Rs. 500 a year as compared with the enterprise of building his house. Then, again, when he dies, his widow, no longer able to maintain quite so large a house, offers it to be let, but cannot obtain more than, say, Rs. 250, because there are other empty houses and no well-to-do residents wanting to lease houses.

207. Now, if we value that house on its capitalised rental we shall not be giving more than Rs. 5,000 for what a year or two ago cost Rs. 20,000, and yet if fairly considered Rs. 5,000 is the full true market value. What, then, has become of the other Rs. 15,000 ? This is what the builder paid, perhaps unwisely, and certainly uneconomically for the sentiment of having a house of his own without a landlord. Of course, he did not mean to put it on the market ; it was not built for sale, but circumstances have forced it into the market and now the widow is face to face with loss. Yet no persuasion will induce any commercial purchaser to admit that the market value of a property producing a rent of Rs. 250 is more than Rs. 5,000. The only hope is that a purchaser may possibly be found who is also willing to incur some loss in pursuit of the same sentiment. But this does not constitute a market such as is contemplated in the term "market value". The most important factor, if purely residential buildings are sought to be valued, is the local demand for such houses (34 Bom. 486 ; but see Bom. H. C. App. 63 of 1922—16—1—25). When therefore G. requires that that property should be valued under this Act, the A.O. can award no more than its market value and "not what it cost to build" (25 Ind. Cas. 393). It has been remarked by at least one Court that it is well known that retiring merchants and officials and the like commonly build houses which are not good investments if considered from the point of view of commercial rental, and it has been sometimes, and without doubt unsoundly, held that the rental basis should be abandoned and the property should be valued on a basis of "re-instatement", or what it would cost to provide the party with a similar house somewhere else. This is a misinterpretation of the Act (see however para. 157). Lands which do not produce any income, profit or advantage capable of expression in money have not a market value. They may have a *sentimental* value and are keenly treasured by their owners, who would not quit them for any pecuniary temptation, like the ship cabin referred to in para 156. But this is sentiment, not market value. Just as one may imagine a widower keeping his late wife's jewellery and refusing to sell it for any price that could be named. Yet if at any time, it *must* be sold and it comes into the market, then sentiment goes for nothing and the jewellers and goldsmiths will simply take gold and stones, and weigh and assay them and give the market value. This is precisely the position of the uneconomical residence when it has the misfortune to come under acqn. Lord Loreburn observed in *Great Central Railway vs. Banbury Union* (1909) that many houses constructed at great expense produced small rents. In the same case Lord Dunedin said that the cost of construction is an irrelevant consideration in getting at rent. See also Ref. 8 (1905) Bom. Trib. ; and 9 C. W. N. 655.

These circumstances can even be reversed in a popular residential area where there may be a market for houses at even higher prices than the few instances of rentals seem to justify (Bom. Tribunal, 52 of 1902).

208. If then we revert to the principle that a building is worth its capitalised net rent, let us first consider how is the net rent to be ascertained. Of course if the building ever has been rented that is an important datum. If similar buildings in the neighbourhood have been rented, that is also valuable evidence. If no buildings quite similar, but larger or smaller, have been rented, we can bring them into comparison by reducing each building to some common denominator, such as the number of hundred sq. feet of habitable area, or the number of khans. The gross area of each storey can be measured and deductions can be made for staircases, verandahs (when not usable), and so on, till we know the net number of hundreds of sq. feet or khans as the case may be, in the whole building which are effective in earning the rent. We shall very

ordinarily find that in a particular part of a town the rate of rent per unit of area is similar for a similar style of building. Of course stone-built houses with tiled floors command a different rate from huts with mud floors. Having determined the rate of the locality for the class of building concerned, we can apply it to the building under acqn. It is rarely that one or other of these three methods will fail to give an adequate result.

209. The method of taking the average rent must of course be used with much caution. Just as in the case of land, so in the case of buildings, each individual building is *unique* and can only be appraised for rent when very similar to the buildings which are used for a basis of estimation. Of course the average of the rental of a palace, a shop, and a hut will not give a fair rent for the ordinary residence.

210. Just as in the case of sale deeds, so too A. O. must be on his guard against spurious rents and false accounts put forward for the dishonest object of inducing him to enhance his award. When an acqn. is impending fraudulent account entries and rent notes have frequently been detected.

211. Having ascertained the gross possible rent, we must then deduct (1) what taxes the *owner* has to pay. Taxes separately paid by the tenant though really part of the gross rent can be ignored. If the owner pays Munl. taxes, one-sixth of such tax (as being levied for road cess, etc.) should be deducted; 11 Calc. L.J. 408. But the *ratio decidendi* is not comprehensible; it would seem that since his net rent is what he loses, the whole tax should be deducted from his gross rent. We must also deduct (2) the annual cost of ordinary repairs. But if the rental ascertained is always paid on condition that the tenant does the repairs, then there will be no deduction on this head, but of course the gross rent will be less than otherwise it would have been. The deduction for repairs is made in the form of a percentage upon the estimated cost, this percentage varying according to the class of construction. Then any prudent owner will insure his property against fire and set aside from the gross rent (3) a premium, perhaps $\frac{1}{2}$ per cent. of the insured value. Next we come to a deduction which is not so easily estimated, and that is (4) the deduction for vacancies and bad debts and costs of collection. Substantial properties let to respectable tenants on long leases and adequately in demand would require a very small deduction to cover the risk of occasional vacancies and so on. But low class chawls, especially if highly rented, will obviously be occupied by a difficult class of tenants who will sometimes vanish without paying their rent and sometimes will give trouble, and sometimes rooms will be left vacant. The vacancies' deduction must sometimes be very heavy in the case of sea-side or hill-station or hot-weather resorts. Small houses built away from populated areas under the stress of a recurring epidemic such as plague remain empty for the greater part of the year. All these deductions, however, can be estimated in detail and no claimant can deny that to a greater or less extent his gross rent is subject to these deductions.

212. Some mention may also be made of what are known as deductions for insanitary conditions. Where Municipal action is becoming more stringent, and insanitary dwellings are being closed or ordered to be extensively remodelled, the rental derived from such buildings should be given a much restricted expectation of life. The same result is sometimes produced by general public sentiment, as noticed in paragraph 220; either the life must be reduced or else the cost of remodelling them in conformity with sanitary requirements should be deducted from the value calculated in expectation of normal life. If actually condemned as "unfit for human habitation" only breaking up value (paras. 221-223) can be allowed.

213. Sometimes in municipal or notified areas owners are required, every year, to give the rental value of their properties. They are naturally tempted to understate. Then, when acqn. proceedings are held, they allege a much higher rental. At present the law does not debar or estop the owner from pleading this higher rent, though the Bombay Improvement Trust Act Sec. 49 (4) makes the Municipal declaration under Sec. 155, City Munl. Act, conclusive against the owner. There is apparently a similar provision in Calcutta (33 Calc. 396) and it should undoubtedly be made universal. [See Report of Select Com. (1906) on Housing of Working Classes, Cd. 4750 p. 243.] Of course, A. O. must exercise his judgment in determining what gross rental he should accept as probable.

214. When the net rental has been determined, we then have to consider what this income is worth for the period for which it can be enjoyed. In the first place, this depends upon the rate of interest which the purchaser expects for his capital. This has been discussed in para. 165. The minimum rate which can be contemplated in India for the best and most attractive class of buildings is $4\frac{1}{2}$ per cent.; while for low class chawls or huts, the rate might range up to 7 or even more. There is not much difficulty in adjudging a rate of interest for any given property. There is no rule as to the rate (see para. 165). In 11 Beng. L.R. 236 the C. J. allowed 16 y. p. So too in 10 Bom. H. C. 34. No rate lower than 6 per cent. should be allowed for unsecured ground rents or 5 per cent. for secured; (10 Bom. L.R. 909).

215. Next we have to determine how long that income will be enjoyed. One method which used to be in vogue (See Gazetteer of Bombay City, Part I, p. 325-6) is to assume that a certain class of building will, on first erection, be good to last n years. Then since its present age is a years its remaining life is $(n - a)$. Therefore the net income will be earned for $(n - a)$ years. But this method is open to objection R. 3425-15). When a child is born a Life Insurance

Office will quote for its insurance a premium based upon the 'anticipated life' of a child aged 1. But when the child has actually survived 10 years, then its remaining expectation of life is not got by deducting 10 from the expectation at age 1. At 10 years let us suppose the expectation of life is 30 years. That means that he is expected according to averages to die at age 40. But at 40 he is still alive and well and he wishes again to insure with the same Co. Will the Co. then assume, adhering to their first hypothesis, that his expectation of life is zero? Certainly not. Each year that a man survives means that he has overcome certain risks and acquires, as it were a, *new* expectation. If he had by any chance died at the age of 30, then of course there could have been no question whatever of any expectation of life at age 40. The case of a building is very much the same. After a life of a years its remaining expectation of life is not $(n - a)$ as originally determined, but a fresh period N , determined by its present condition and state of preservation. This N may be more or less than $(n - a)$, more if the building has been well preserved and lucky, less if it has been much knocked about and was built of materials less sound than they appeared superficially. Therefore, when we value a building to-day it is better to form a fresh estimate how long it will last than to adopt the imaginary old estimate and call its future life $(n - a)$. [See also Ref. No. 150 of 1905 to the Tribunal of Appeal under the Bombay Improvement Trust Act.] The coup de grace to this old method was administered in R. 2423—20 reprinting Bom. Tribunal of Appeal's judgment of 21-7-20 in Ref. 22 of 1919.

216. Having determined the net income and the number of years it is to last, it is a matter of mere arithmetic to apply the Tables for the selected rate per cent. and ascertain the present value of that income to which we then add the P.V. of the land which will become vacant when the building dies; this is technically termed the annuity basis of valuation.

217. In the above method we have made no reference to sinking fund though it is really involved in the conception of present value: and enters into the calculation of the Formulae in the Tables. See a full discussion in R. 7646—17.

When we purchase a Government Security or make a deposit in a bank, we rely upon the promise to return the capital as well as the promise to pay periodical interest. When we buy a house, there is no one to promise the ultimate return of the capital. We may sell it again, but if we do not do so for a number of years, the house will have deteriorated substantially, and if we wait long enough it will so decay as to be worth nothing. Therefore in such a case as this the rent we receive must give us not only interest on our capital, but something towards the recoupment of our capital. In other words, out of the rent we must set aside a *s. f.* and since we require for this fund absolute security we must be content with from 3 per cent. to 4 per cent. interest.

When we say that Rs. 18 due each year for 5 years is now worth Rs. 80 when the rate of interest expected is 5 per cent. we mean that each year we shall receive Rs. 18; out of that we shall treat as income and interest on the invested Rs. 80 only Rs. 4, and the remaining Rs. 14 we must set aside at interest to replace the capital. It will accumulate for 5 years at the rate of Rs. 14 a year together with interest. Now, whether the sinking fund of Rs. 14 a year will amount to the full capital paid, Rs. 80, at the end of 5 years, depends entirely upon the rate of interest earned on the *s. f.* This has nothing to do with the rate of interest we expected on our investment. It will therefore be seen that when we speak of the present value of a series of payments or rents for a term of years we always of necessity imply (even though we may not know it) two rates of interest: (1) that which we expect to earn annually on our capital; (2) that at which we assume the *s. f.* portion of the annual income will be reinvested. This statement of the case is correct, even though it must be admitted that in ordinary life unbusinesslike people will often, disregarding interest, pay Rs. 80 for an income of Rs. 18 for 5 years, and then every year instead of setting apart Rs. 14 out of the income as a sinking fund, they will spend as income the whole of the rent, and then find at the end of that period that they have none of the capital left. But the Land and Estate Valuer does not take into his calculations the class of persons who eat up their capital and cannot understand true values.

218. In India and in ordinary practice nobody sets aside *s. f.* The vendor has no accumulation to hand over; usually, on the contrary, the building is in poor repair and fallen below even the expectation of life which it might have had if carefully nursed. What, therefore, the purchaser buys is not an eternal income, but an income for a limited number of years, N . Now if the new purchaser is a very prudent man and wishes to secure his capital and not to eat it up, then he will calculate what annual sum must be set apart as *s. f.* to replace at $3\frac{1}{2}$ or 3 per cent. his purchase price (and not the original cost of the building) after N years. He does not pay the original cost but a certain sum in cash as its present value, and wishes to insure against the loss of this sum. Ref. 150, Bom. T. A. Sec. para. 215. If everything (prices, wages, rents, taxes, and popular demand) remains unaltered at the end of the estimated life he could resuscitate the same income by again investing the original cost. Thereby he would repeat the same stroke of business by which the original builder erecting a certain building in a certain place realised a certain profit (or loss if the cost was more than the capitalised rental value), which in the unlikely contingency of all elements remaining unchanged can be done again in each generation. No present value can be set upon this vague future possibility: but it might influence the selection of an investment.

It is obvious that if it is wished to redeem our capital in one year then we must during that year save and set aside the whole amount of that capital. If we wish to redeem it in two years at 3 per cent., then we must annually set aside .4926 of the capital; or in 20 years .037 of it; and so on, gradually reducing the annual amount as the period for realization gets greater. If 60 years is the date of realization then only .006 is necessary per annum and at 100 years .0016. Beyond 60 years, even a business man might agree to disregard the s. f. It will be seen that as we approach perpetuity the sum diminishes to vanishing point. Thus it is that in purchasing an income in perpetuity it is not necessary to provide for any investment for redemption of capital. The amount to be invested would be infinitely small. Such is not the case however as the above figures shew when the annuity terminates within 60 years.

219. Now investments of s. f. must necessarily be made in absolutely sound securities, and consequently they can only be at a low rate of interest, not necessarily at the same rate that we are earning on our capital investment. The annual payments are usually very trifling in amount and the simplest method is to take out an insurance policy for the amount of the capital to be redeemed and pay annual premium to the Insurance Co. The current rates allowed by Insurance Cos. is about 3½ per cent. If however our annual income is sufficiently large to provide for a substantial s. f. investment to be made, as in the case of the big trusts, then we might safely calculate on a 4 per cent. investment or possibly more.

When purchasing a terminable annuity therefore we must in addition to deciding what rate of interest we require for ourselves, also provide for the reinvestment of a s. f.

Fortunately the valuation Tables save us laborious calculations, and it is only necessary to turn to a Table to find the number of years' purchase by which to multiply our net annual income, e.g., the 6 per cent. Table reinvesting at 3 per cent. for 30 years gives the Y. P. as 12.343. Multiply the net rent or income by this figure and we have its value, on the assumption that it ceases in 30 years (see para. 167.)

220. Disposing thus of the one element—the rate of interest—the second element in this calculation is the life of the income.

Parties will differ as to the expectation of life. The claimant will perhaps say 70 years; the applicant's surveyor will say 40 years. It is for A. O., on the spot and after hearing what both parties have to say, to judge to which of the two he should incline. Perhaps he will decide for 50 years, perhaps for 60 years. A few years more or less do not make much difference, but he should try to get certainly within 10 years of the truth. There is another consideration besides the mere durability of material. Sometimes it is notorious that buildings of a particular kind in a particular locality do not last long. There are towns (e.g., Surat) in which the soil appears to contain some salt and bricks and mortar rapidly decay through the action of this salt upon the lower courses of the brick work. But quite apart from these questions of durability, we sometimes find a section of a City in which the style of building is rapidly improving. Everyone who can afford it is pulling down the old mud and country-timber style of building and replacing it with three and four storeyed stone and burnt brick buildings. In such a section of a city a row of old houses which in virtue of their materials only might last 20 years are not really likely to last more than 10 because every day public sentiment and the feelings of their owner will be urging him to pull them down and lay out his capital in the erection of larger and better buildings in the more modern style. This is a point to which A. O. should pay special attention in estimating the life of an income derived from such old buildings. He must not confuse that with the life of the buildings themselves. Houses condemned as unfit for habitation must always be valued as land and debris only.

220A. When a building with or without the 'married' land is valued in the way detailed in paras. 206—220 it is assumed that it has been kept in a proper state of repair as a going concern. We purchase a certain income for a certain number of years. From the gross annual income we have assumed a deduction of a fixed annual percentage for repairs based upon the estimated original cost. But now suppose that for several years the late owner has neglected all repairs so that it will cost a substantial lump sum in excess of the assumed annual percentage in order to restore the building to its normal condition. If not so restored, then it will earn no income, or it will not live for the assumed life. It is analogous to a purchase of G. Securities in which the chain of endorsements is unsatisfactory, and necessitates an expenditure of say Rs. 20 in order to clear the title and enable the Public Debt Office to pay the interest to the purchaser. Obviously such an expenditure would have to be deducted from the purchase price, if it had been fixed at the normal market price for clean negotiable securities. If therefore we find after valuing a building as a proper going concern, that its repairs have been neglected, we must next deduct from the purchase price calculated in the ordinary way a sum sufficient to remedy the neglect. If there were any other outstanding charges such as unpaid G. or Local taxation, or legal fees, or anything else which the late owner would have had to pay, if his property had not been acquired, and which is chargeable upon the property and is not allowed for in the ordinary deductions from gross rent which will have allowed for in calculating the nett rent, then such sums also must be deducted from the purchase price before it is handed over by the A. O.

221. So long as buildings are standing upon land, we cannot value them separately (33 Bom. 325) any more than we can sell a horse's body to one purchaser and its legs to another, unless we first kill it, and then value it not as a horse but as the *debris* of a horse. It may, therefore, very possibly happen that the value of land together with the buildings on it is less than the value of the open land itself. This apparent paradox will be understood if we consider that the present buildings may be incapable of producing so much income as might be obtained from an agricultural lease or from the bare land if leased for the construction of a different type of buildings. But if we meet with such a case, then we might fairly employ the principle of valuing the property according to its "most advantageous disposal". Indeed, here would be a fair ground for the admission of one of the hypothetical valuations referred to in para. 186, because anyone would admit that the land could be cleared of its existing building and utilised in another way with more profit, and therefore its market value should not be taken exactly as it stands with the buildings now upon it. The present owner, through want of enterprise or want of capital, has not yet made the best possible use of it. Let us therefore give him the debris value of the buildings, and the best market value for the cleared land.

222. This method of valuation (the 'annuity basis') by capitalising the income likely to be produced, obviously cannot be applied to such commodities as potatoes or cloth. We there come upon a fresh category of products which are distinguished by the fact that they can be produced at will in almost unlimited quantities, provided there is demand and reasonable time is allowed. For such articles the general rule is that the value tends to fall to the cost of production of that portion of the total quantity produced which costs most. Without going into a minute consideration of this formula we may take it roughly that the market value cannot greatly exceed that limiting cost of production. If it did then somebody else would promptly produce a lot more and reduce the market value and continue to do this so long as there was a margin of profit.

223. Under the head of buildings we must not think only of stone and concrete, but also of the class known as huts or rough shelters of mud and thatch. These fall rather into the category of commodities capable of indefinite multiplication within a reasonable time. If we value on the basis of capitalised net income we are met with great difficulties. (1) The deduction for repairs is very uncertain, depending upon weather and white-ants, and so on. (2) The life for which the income will be received is equally uncertain, although certainly not very long; and an error of one or two years gravely affects the valuation. Moreover, if hut-building is at all profitable, plenty can be built in a short time. Hence, at a certain point in the downward grade of buildings, we change over from the category of income-producing property to the category of products valued according to cost of production, like a potato. But even then we do not pay for a partly decayed potato the same price as for a good one. Therefore we sometimes value mud and thatch huts, bamboo and matting shelters and the like at their approximate cost of production (*i.e.*, construction) and deduct a percentage for deterioration according to condition. A hut which cost Rs. 100 to build some years ago may be now on its last legs and worth hardly more than Rs. 20 through decay of the material. When it has got so bad that no one would buy it as a hut but only on the chance of utilising some of its materials for building a fresh hut and using the waste perhaps as fuel, then the structure is valued as debris for what would be termed its breaking-up value. A. O. must be prepared to value anything from a marble palace down to a hut or cattle-shed in the last stage of decay. As to huts see also 33 Calc., 396.

TENANCIES.

224. Stress is sometimes laid upon the fact that the farmer or householder occupying his own land or house cannot be considered as paying rent. It is true that his position is that of a landlord and also that of a permanent tenant at the full rent. As owner, he gets the capitalised full market net rent just as though he had let the property to himself as a permanent tenant. As a permanent tenant paying the full market rent, he would not be entitled to compn. for termination of his lease or tenure, because he was not holding on any reduced or concession terms: but he is entitled to the cost of moving and to any removeable fixtures and to compn. for any loss of earnings due to the move. Such loss is rare except in town and city cases: and no formula can be suggested for its determination. Facts and evidence must be considered, and actual accounts and the nature of the business and earnings. Such compn. is not claimable by monthly tenants; they are entitled to one month's notice which should be afforded them. Only where this cannot be arranged would they be entitled to compn. in lieu of notice.

Tenants held not entitled in England are: (1) tenants of the right of selling refreshments in an acquired theatre; (2) tenants of the sporting rights over game; (3) tenants who have covenanted away their right.

225. Tenants-at-will are not entitled to compn. (11 C. W. N. 312). They should be given by the owner the notice to which they are entitled, if any, under their agreements as soon as the notfn. is published. (*Ex parte Merrit* 2 L. T. 471). On the other hand, the rights of a tenant-at-will cannot be said to be *nil* (31 Calc. L. J. 63). In the U. P. a 'liberal solatium'

for disturbance is given : it is a question whether local custom gives such tenants, even though not entitled to stay, some practical assurance of fixity even under Govt. (L. Burma R. 509). A tenant-at-will evicted without the notice to which he is customarily entitled can lay claim to compn. In Bombay such agricultural tenants are entitled to hold till the end of the current cultivating year and premature disturbance certainly entails compn. unless there is proof of no loss. The mere probability of the continuation of a tenancy is not a ground for compn. (9 ; Ind. Cas. 923 ; Halsbury Laws of Eng. VI 34.)

Let us suppose a chawl is occupied by monthly tenants whose tenancy is presumed to be renewed every month when they pay the rent. If, after the notfn. (Sec. 4) the owner refuses to give them notice but continues to accept the rent and renew the tenancies, this is an illegal disposal of his rights which he cannot make without A. O.'s consent under Sec. 24 (7). A. O. should (if the owner has not done so) give formal notice to quit within a month from the date when he issues the first notices under Sec. 9 or such other date as he may fix having regard to the urgency of the case. If it will be many months before the buildings must come down he may allow tenants to continue in occupation after A. O. takes possession but before he hands over possession to the applicant. Rent earned in this interval will be credited to the cost of the work.

But if a tenant has by written or implied contract a yearly or longer tenancy, then he is entitled to compn. for the disturbance. Firstly, he is entitled to the cost of moving ; but is he entitled to any part of the value of the land or building ? If he has obtained his tenancy on something less than the present full normal rent, then the owner is not actually getting the full assumed income of the property. A leased land to B who built a house and lived in it for a number of years with A's knowledge : A cannot evict B without compn. (44 Bom. 609). A. O. will first award the full market value on the assumption that all interests combine to sell the fee simple as one lot (II Bom. L. R. 674), and then he will apportion the awarded sum—to the owner, the value of the income he is actually getting together with possible enhancement (I. L. R. 28 Cald. 146) at the end of the tenancy ; to the tenant the p. v. (58 Ind. Cas. 417) for the remaining term of his tenancy of an income estimated at the difference between the actual rent and the full present day market rate. It is thus easy to estimate the tenant's portion and deduct it from the gross value (see para. 103).

This method will in effect refund to the tenant any unexpired bonus or premium which enquiry will often show has been paid (14 Cal. 750). It covers cases where the tenant has erected a building (22 Cal. 820). The same view is taken in 51 Ind. Cas. 656. The question whether the landlord or the tenant has the right to develop the building value is sometimes most important. Sometimes a chain of tenants is found. The rights of each must be dealt with in succession on the same principle (10 W. R. 391).

For a case where the acquired land was an alluvial accretion to a rented estate, see 11 Cal. 696. When a landlord is compensated for a whole estate of which he has demised any part to a tenant, he is bound to grant the tenant a rateable reduction in his rent. (9 Cal. 57.)

225A. The same principles would apply to agricultural leases ; where the tenant also will get some credit for unexpired improvements, though these are rarely enough found in India ; the unexpired value of heavy applications of manure, draining, embanking and fencing done by the tenant must be paid to him and not to the owner so far as they enhance the value during the tenancy. The value of fruit or timber trees reared by the tenant in excess of the corn-crop value of the land should be apportioned to the tenant so far as the increased income falls within the lease ; the precedent in 3 C. L. J. 36a where the tenant was awarded half the value of trees he had planted appears to be too imperfectly digested for general application.

Similarly no reason can be discovered for the rough division of the value of 'shali' land between tenants and Khot in the ratio of 2 to 1 decreed in 23 Bom. L. R. 1288. Apportionment between zamindar and 'occupancy tenant' is discussed in 25 Mad. L. J. 17 and 4 Mad. 367.]

For severance or injurious affection causing loss only to a tenant see para. 240.

Bushes in the absence of custom to the contrary belong to the tenant (60 Ind. Cas. 521).

Local custom sometimes gives to a tenant a right to the whole or a part of the value of standing timber ; this should be ascertained.

226. We next have to consider fixtures and movables. Of course, when we value the net income of the property, this value includes all fittings and fixtures such as fences, steps, trees, wells, houses, factories, and the like. If these have been placed there by the tenants then the portion of the gross rental obtainable in the market today due to them is the property of the tenant unless there is a special agreement to the contrary with the lessor. (10 Mad. Law Times 349). But when the property has been acquired together with all its fixtures, the A. O. may still, by agreement, permit any fixture to be removed by the owner or tenant, subject to a proportionate deduction from the cash compn. to be made. For instance, sometimes the land is covered with trees which G. does not want to acquire. A. O. may then permit the occupant to sell and remove the trees and then deduct from the gross comp. the timber value of the trees. This is a matter for agreement and arrangement ; and failing an agreement everything must be acquired and paid for. Here also see paras. 41 (end) and 309.

Where the tenant had a covenant entitling him to remove his buildings, this was held to be overruled by the *vis major* of the acqn. which required the buildings (9 Ind. Cas. 923).

Since by Sec. 108 (h) of the Transfer of Property Act, and the common law (*cf.* I. L. R., 20 Bom. 1), the lessee may remove during the continuance of the lease all things which he has attached to the earth, the lessors would certainly not be entitled to claim compn. for improvements (buildings, etc.) if the land were acquired but would only be entitled to the market value of the land, and any buildings the ownership of which actually vested in them.

Earnings.—Compensation for loss in business sustained by moving or by change of employment is payable to the owner or his tenant as the case may be. We have to consider the extent to which profits or professional earnings are reduced or threatened by the move. Third parties who have no interest in the land cannot claim. The cost to a pujari of moving and reconsecrating an idol has been brought under this clause.

Goodwill.—Section 23 (1) fourthly, provides for injurious affection of earnings or as we may term it severance from business connexions. This good will is not personal but only such as attaches to a site or premises (*Bidder vs. N. Stafford Ry. Co.* 4 Q. B. D. 432). Loss on fixtures which cannot be removed or only at a loss is dealt with under this Head (Halsbury VI 36).

FACTORIES.

227. The need of valuation of factories can scarcely arise in ordinary experience. It is a very rare thing for any important factory to be acquired. Still it is not impossible and it is a matter in which better terms would probably be arranged by private negotiation than by strictly buying out the whole concern under the Act. The books of the Co. would give a very fair idea of original cost, depreciation, net average earnings, and so on, and of course the aggregate market value of the whole interests of a Co. at a given time is determined by the market price of its shares. Probably G. would be entitled to claim delivery of the whole of the Co.'s share at their market value on the day of notfn. But then it would acquire probably more than was required; such as outstanding debts, stock of goods in hand, and so on. Then the machines and other movable or partly movable property of the Co. would be much better employed if removed to a fresh site than if purchased and sold again by G. at their breaking-up value.

228. A peculiar case occurred to the writer in which a small factory was proposed to be acquired. The factory did not work and it was rather doubtful if its plant and machinery were actually in a fit condition to work. They would have cost a lot to put in order. But there existed a contract with a rival Co. under which the rival Co. paid them a substantial fixed sum every year not to manufacture anything, and therefore not to spoil their own monopoly. The Co. claimed the capitalised value of this payment as perpetual. This was just as absurd as would be the capitalisation of the present profits of any Co. on the basis of a perpetual income. Such a contract is clearly precarious, and could only be capitalised for a short term: and thereafter the earnings of the factory (or the value of its plant as a going concern) would have been very dubitable.

TENANT'S PROFIT BASIS.

229. We have yet another resource for valuing land occupied by companies or unusual businesses which have practically never come into the market. Let us suppose a vendor of images who has established himself on a plot of ground on a mountain path where pilgrims pass to a shrine. The landlord who has never previously derived any rent or profit whatever from the land discovers this business, and his claim to rent is not disputed, but the question is how much can he charge? The vendor is found after deducting all expenses and his own cost of living, etc., to be making a net profit of Rs. 100. If the landlord demands Rs. 100 as rent, the vendor will probably not think the business is worth continuing: a small deficit in his profits would leave him with no livelihood. Similarly he would strongly object to paying even Rs. 90; at Rs. 75 he might begin to think it worth while, while he would probably be perfectly willing to pay Rs. 50 sooner than be disturbed. Thus we see that *the profit which the tenant makes upon the land* furnishes at any rate a maximum limit for the rent which can be extorted. It is not a very sure basis, because in the absence of competition it is not certain that the tenant is making the most efficient use of his opportunities. If 50 vendors of images were all competing along the same road, we should soon establish a competitive standard: there would be no need of basing rents and land values upon hypotheses as to the tenant's profit, but there would of course be standard rentals paid all along the line, and they might prove considerably higher than the value calculated upon a single business. It will easily be seen that this is the actual process by which in our early Land Settlements the land assessments were fixed. The Settlement Officer had to consider what was the maximum net profit the agriculturist *could* make out of land of that quality. The next question was, what proportion of this profit should he pay as assessment. In later times, large bodies of sale and rent statistics afford a much surer and less controvertible basis. In all land valuation we can bear in mind that, failing all other data, we can fall back upon the

tenant's profit as a basis for a reasonable valuation. In I. L. R. 38 Bom. 293, the assessment of the Western India Turf Club is discussed. They were originally rated upon their gross income and not on the rental of the Race Course and other premises in Poona. This rental value was fixed upon the tenant's profit basis, it being pointed out that the tenant cannot possibly afford to pay away the whole profits. In Halsbury (Laws of England, Vol. 24, p. 27-8), it is observed that rent is paid for the accommodation that the property affords; if that accommodation is required for a profitable trade, that fact is taken into account in ascertaining the rent. If such accommodation is obtainable in many places, there is no need to enquire into profits; but if it is impossible to move (e.g., a Railway, Tramway, or Water-works or Harbour), the actual profits are among the matters which a purchaser would consider, and are therefore a basis for calculating the assessable value.

In *Reg. vs. Overseers of Mile End Old Town* (1847) this basis was adopted for assessing Water-works. From the gross profit was deducted a fair interest on the working capital which a tenant would require to invest and reasonable remuneration for his personal trouble, and the rateable value would be the bulk of remaining profit.

Though not often required in acqn. cases, the method is valuable in the cognate business of rating (for Municipal or other taxation) the rental or capital values of immovable properties.

When we buy a debenture or G. P. note it often carries some unpaid interest. The market price is the value of the "annuity" just after an annual payment of interest or dividend has been disbursed. Any further accumulation of income is added to the sale price. So too take rent payable annually on Dec. 1st. On Dec. 2nd after rent has been paid the value of all future rents may be put at 20 y.p. But if the property is taken over on June 1st, there is an addition of six months' rent also accumulated which the purchaser must pay for; so he should pay 20½ y.p. and not 20. In a sense this is an immature crop of rent standing on the land which the acquirer will reap particularly if he allows the tenant to remain longer in occupation (see para. 225). But agricultural rent is normally due only at harvest time.

CROPS.

230. By far the best way of dealing with crops is to frame the award as for bare land and refrain from taking possession until the crop has been matured and removed. This can be done in far more cases than it is usually supposed. Frequently Ry. Cos. or the P. W. D. press for early possession and after all do not make use of the land until the time the crops would have required to mature has expired.

The award valuation of the land might well be supposed to cover the value of any crop or trees standing on the notfn. date. Any further development after that date till possession is taken is not paid for unless with C.'s permission any further tillage or watering is done after notfn. It would seem that Sec. 23 (1) (2) relates to damage caused by removal on the possession date of crops not valued in the main award or not abandoned on the notfn. date. After notfn. (Sec. 4) it is still possible that the acqn. will not go through and C. might hesitate to prohibit further tillage or watering of half-grown crops, which would seem wasteful. He should certainly in issuing his notices under Sec. 5A make clear whether he will allow crops to stand till maturity or not (Mad. 151; 3 L. Burma R., 208). Years may elapse between the first notfn. under Sec. 4 and final possession. It is in such cases at any rate impossible to include in the award the value at notfn. date of a crop long ago reaped. When a crop must be taken over while immature, its value would be assumed to be the gross value when mature, based upon its present condition, subject to deduction of the cost of reaping or preparing for market, and of any further tillage, watching, etc., which may yet remain to be done and any rent or assessment for the year still to be paid. There is nothing so essential as to inspect crops before or just after notfn.; also great care should be taken that they are not injured by the applicants before notfn. or, if allowed to stand, before possession is taken. A case occurred in which it was proposed to acquire for a Ry. Co. some land containing a standing crop of sugarcane. In anticipation of notfn. and without the knowledge of C. the Co. permitted their work-people to trample down and plunder the crop. Ultimately it was decided that the land was not to be acquired. There was a very great complaint and some litigation about determining who were responsible for paying for the spoiled crop. The trouble would never have occurred if C. or the local Revenue subordinates had inspected the place when the proposals were made and had been firm in refusing to permit illegal entry upon the land. The owner complained, but attention was not paid and so he was driven to the Civil Court and the Ry. people had to pay smartly. Since annual crops are not permanently attached to the land, 15 per cent. is not due upon their value.

QUARRIES.

231. Nothing extra will be paid for land alleged to be valuable as a quarry, if it has been possible to take the precautions suggested in paras. 8 and 9. In any case, if no actual permission

has been given and fees paid, it can usually be held that there are plenty of other possible sites for quarries, and therefore the value of the expectation that C. will give permission is very small. But if permission has been given and some development work has actually been done, then the value of the quarry will consist in the amount of the fees paid and the cost of the development work done. This is a fair deduction from the principle of reinstatement; since for the same fees and same expenditure the quarryman would soon be in an equally good position elsewhere. However, this is a very difficult and intricate problem and the acquisition of a partially developed quarry is a rare matter, and each new case may involve calculations and arguments peculiar to itself. A case has just occurred at Dohad. For a fully opened working quarry just as for a factory, the valuation must be made upon the basis of profits actually realised. (Bom. H. C. Appeal 263 of 1923, 16th Nov. 1925: But this was Khot's land and it does not appear that the quarried stone was reserved as State property.) In Bombay City where an owner was actually quarrying in part of his land that part was valued as quarry, as having special adaptability. But he had leased the rest in perpetuity for building; and had thereby given up all his quarry hopes. After A. O.'s award he bought out his tenants' rights and claimed that all the land was now a quarry; this was disallowed as the transaction was after notfn. (11 Bom. L. R. 674.).

In the Bombay mofussil under the L. R. C., C. can and often does give permission to quarry: thus the potential quarry has the same sort of value as adaptability for building which also requires permission (38 Bom. 37). But it is permissible to observe that the removal of minerals, a part of the realty itself, is easily distinguishable from building, a mere use of the surface. Minerals are reserved as property of the State and not merely as a restriction on user. See next para. There are some landholders (*e.g.*, Talukdars) who are proprietors of the minerals: in such cases the valuation will be based upon actual rents received and life of the quarry; or if it is undeveloped then on the P.V. of the probable rents or net profit to be obtained from material in sight.

SPECIAL ADAPTABILITY.

232. Owing to the decision reported in R. 6796—16 in which an award for land worth agriculturally about Rs. 96 in a rural area was enhanced to Rs. 5,142 by the District Court on the ground that the land was endowed with "special adaptability" for a quarry (a quality it shares with many a hill in India), G. have desired that in any future cases of acquisition of land for which value as a quarry (whether developed or not) is claimed, careful consideration should be given and all facts reported so that the legal liability of the S. S. to pay for the stone (which is his own property specially reserved in almost all tenures and grants under the L.R.C.) or for the "adaptability" (which arises only from the existence of the underlying stone) may be adequately argued. The case in question was dismissed on appeal in the High Court (R. 9753—16; 2698—17), but the following argument was not used:

Stone near a Railway Station, etc., is naturally more valuable than stone far away, and stone well situated for extraction or near a good market will naturally be most in demand. Land containing such stone possesses "special adaptability" for quarrying, but the question that needs reconsideration is whether the fact that it contains public property should make the public pay more for it: in other words, the public, and not the landholder, are already owners of the "special adaptability" as well as of the stone of which it is merely an attribute. This vesting of mineral values in the Crown (under Bombay L. R. C.) seems also ignored in 60 Ind. Cas. 188 and 44 Ind. Cas. I.

Where the "special adaptability" is not complicated by any questions of State ownership of minerals or of powers reserved to G. under the Arms or Irrigation Acts, the problem then to be faced is very much that which has been dealt with frequently in English decisions (*infra*). But it must be faced in another way because *our law is different*. Let us suppose a Municipality wants to construct a town water-supply reservoir and selects a certain specially suitable valley in which there has been a long established value of the land for all other purposes. Now, can the owners upon notfn. of the land for a reservoir claim that owing to the "special adaptability" their land is really more valuable than previous transactions up to date of notfn. had established, and that higher value ought to be paid because the valley was the only one which could profitably be utilised as a reservoir? In the writer's opinion that is a claim which *cannot be made in India* because of Sec. 24, fifthly, which bars any extra value being paid on account of the use to which the land is proposed to be put after acqn. Before the notfn. no private person could have thought of making a reservoir in the valley. There would have been no one with the capital to do it even if he had surmounted the other obvious difficulties and taken the water-supply out of the hands of the L. B. There could not have been any *market* value based upon its adaptability for a reservoir even after the notfn. had appeared. It is quite untenable that the owners (who have got only the ordinary value which their land, apart from its special adaptability, had before the notfn.) have lost anything to which they are justly entitled.

There was an appeal in the Privy Council against the judgment of the Bombay High Court in which that Court reversed the judgment of the Assistant Judge, Thana, awarding Rs. 200 per acre for an irregular shaped piece of land by the sea, which is covered by the tide at various

times, and upholding the Collector's award of Rs. 14 per acre. The Privy Council upheld the High Court's ruling which was based on the views stated below :—

“ The real question is what would these lands have realised if they had been put up in the market in December 1917, for sale by private agreement or by auction, and that apparently is a point to which neither the witness nor the Judge has paid attention. It is not suggested that there are any instances of sale of similar land in the neighbourhood, because nobody would be likely to want to purchase such land. Consequently the court is thrown back on guessing what would be fair compensation to the owner for depriving him of his land. ”

The Privy Council occurred in the inference drawn by the High Court that it would not pay anybody to pay for land of this sort, if they were going to construct salt works upon it, more than the value as waste land and remarked that no doubt in arriving at the value of waste land, there being no sales to guide one, it is more or less guess work (P. C. Appeal No. 142 of 1927). L. 151—23—4—1929 (31 Bom. L. R. 683).

The argument could also be applied in case of an electrical station for which a particular kind of foundation was desirable and that foundation, though affording no special advantage for anything else except an electrical station, was to be had only in one field. The absence of this provision in the English law seems to have led to some of the over-compn., criticised in para. 150, and also to justify a distinction between the English decisions upon “ special adaptability ” and the line which we should take in India, which has been sketched in this note. Any such case will need careful argument in the Courts which are apt to lean upon the English decisions.

And in the English decisions the language does not differ much from this conclusion. Before a scheme and notfn. owners may have had a vague feeling that their land would do well for a reservoir ; but was any one going to give them a higher price on that account ? If yes, then they are entitled to that higher price in the award. But when a Local Authority promotes a scheme and converts a vague possibility into a certainty, they are entitled to no more on that account. The owner cannot profit by the notfn. (Collins M. R. in 1904, I.K.B., 417).

The element of sp. ad. can be admitted only when it would tell in the market. (2 Ind. Cas. 562.) In America it has been held that sp. ad. can be urged only having regard to the business needs of the community as existing or in the immediate future.

Apart from an actual demand, sp. ad. cannot rank for compn. “ even if this sp. ad. is that to which actually the acqn. seeks to put the land ” (e.g., land specially suited for growing sugarcane notified for a sugar growing Co.) (Halsbury Laws of Eng. VI, 39).

Sp. ad. is in a sense the basis of all values ; but sp. ad. for works of public utility to which only a public authority can put the land does not affect the “ market ” (Lucas and Chesterfield Gas and Water Bd. I.K.B. 30, 1909).

The following ruling seems to contradict the principles :—a Muni. drain passed over certain land ; if diverted it would have to go over a less favourable alignment ; that land has therefore a sp. ad. value ranking for compn. (25 Calc. W. N. 677).

When land could not profitably be used for making bricks by itself but adjoined a brick field the owner of which would gladly buy it for inclusion its value is what he would give. (25 Calc. W. N. 1002.) [This seems unsound : see para. 160, end.]

In *Reg. vs. West Middlesex Water-works Co.* (1859) it was laid down that “ value is derived entirely from the relation of demand to supply. If a Water Company comes into competition with a cultivator for land for Water-works, an addition is made to the value.” But in India as we have argued, this enhancement of the value by considering the demand for which the acqn. is made is excluded.

RIGHTS OF GOVERNMENT.

233. The A.O., as the agent of G., must protect the rights of G. and not pay money for what already belongs to G. In the first place, when land is valued as a prospective building site, he must remember that G. will levy a N.A. assessment on the land when used for building. If the market rates which he is considering are paid in the full consciousness that this assessment will have to be paid, then they are not liable to discount. But it has been observed that, ignoring or forgetting this liability, vendors are addicted to charging and purchasers are ready to give prices in excess of the reasonable value of “ land subject to this special assessment or fine. ” (Bombay P. J. 1899, P. 206.) The subject is reviewed in more detail in the writer's Supplement A to the L. R. Rules (1921).

234. The effect of the power of G. to refuse permission to build has been discussed in paragraphs 7 to 10. (See also R. 7114—00 and R. 3865—07.) All ordinary prices paid for agricultural land of course take the G. assessment into account and the arrangements made after the acqn. for the charging bodies financially independent of G. for this assessment are dealt with in another chapter (para. 278).

Serious mistakes may be made through not scrutinizing the terms on which land is held. Where the Sanad, Kaul, or lease (such as under L. R. C. old Rule 16) or the grants to Karachi, Hyderabad and Sukkur Municipalities in Sind and to Dharwar and Hubli prescribe that land required for a "public purpose" shall be surrendered on special terms, this should not be overlooked. It has been ruled that the special Rule of Evidence under which there can be no issue raised as to the "public purpose" after a declaration under Sec. 6 (3) will not apply to the same phrase when it occurs in a Sanad, lease or Kaul. Therefore, in spite of the notfn. it might still have to be proved that the purpose was public, if land held on such terms were being acquired. (R. 4777—09.) The L. R. R. (1921) has been amended to meet this difficulty but will only operate in grants after 1921.

G. can resume Sanadi land in Bombay City on payment of the value (*not cost*) of buildings or other improvements. Similar terms are found in other grants. The proper method in all such cases is to value the married land-and-buildings upon the basis of actual income, and deduct the value of the bare land. This view was endorsed by the Advocate Gen. in R. 6241—17.

235. Then again, a case occurred in which an inam village was resumed on extinction of the family. The late inamdar had been levying certain ground rent on houses in the village site. By inadvertence of the Revenue officials, after the resumption, his assignee continued to collect these rents. Then in an acqn. proceeding the A. O. awarded him the capitalised value of these rents without enquiring into their origin and discovering that they had lapsed to G. with the village.

236. Before 1926, land held on restricted tenure was ordered to be assumed to have the same value as land without such restriction. (R. 2383 and 4492—07.) These were cancelled by R. 6322/24—1—11—26. Lands on restricted tenure were given at much lower rates by G. who therefore have an equitable claim to pay less while acquiring such lands. The A. O. should now value these lands on such data as may be available in each case.

The condition of inalienability follows the land when sold or mortgaged—even when sold by Civil Court decrees. (R. 501-A/8-3-26.)

INAM LAND.

237. Inam lands fall into two broad classes, (a) those held for service still to be rendered, and (b) those now free from service liability. The orders relating to such lands are more fully reviewed in para. 253.

(a) Service lands.—These are lands in which the present holder has a *limited* interest [Sec. 31 (3).] Lands held for the service of a temple or other religious object (Devasthan) and land held as remuneration for a public office, can be acquired but the present holder is plainly not entitled to dissipate the capital value. The most obvious arrangement is either to invest the compn. or to give other land of equal value in exchange so that service may be continued. Instead of investing sometimes G. grant a cash pension, and credit the capital compn. to the Treasury. This is substantially the same as investment in public securities. Sometimes this pension can be paid by an exemption from an equal amount of land tax (revision of judi on residual inam land held for the same purpose).

(b) Non-service land.—In this category have been included all lands for which service has been commuted or abandoned, and even those lands held for service still rendered which have been subjected to what is known as scale judi. (This arrangement secures remuneration of the officiators, whatever happens to a portion of the land; all that is necessary is to rearrange the scale judi.) The cases which have occurred under this head seem to have involved only a relatively small part of the watan land. *Query* if different treatment would not be required if the proportion acquired were so great that the remaining scale judi exceeded the assessment. For all agricultural lands of this class (b) the market value is the same as other similar land together with the capitalised value of the exemption from assessment. It might be thought that since the exemption only increases the proportion of the gross rent remaining for the landlord, it should be capitalised at the same rate as all other rents. But it is a commonplace that for every addition to the rate of interest earned or expected upon capital, there is a concurrent increase of risk. A 4½ per cent. investment should be free from all risk. A 10 per cent. investment is very speculative. In the same way with rents. A low rent is safe. A fair rent is moderately safe. An extortionate rent is very uncertain. Therefore the portion of the gross rent represented by the Inamdar's exemption from assessment is at the safest end of the scale. If the Inamdar goes on increasing the rent, it is the increment which will be risky, not the income secured to him by the exemption.

237A. The rates at which land subject to a liability to service has been actually sold¹⁷ are no guide to its market value when freed from that liability. The cash allowance at 2½ times the assessment (see para. 253) will often much exceed sale prices obtained subject to the liability, because such sale prices represent only the profits of the land after deducting the cost of the service. (F. 1585—16 gives a good example.)

238. But Inam land is also free from the liability to pay N.A. assessment. This freedom is of no value when land is not in demand for N.A. uses. But when the land is in immediate

and keen demand, then of course the Inam land is worth as much as similar surrounding land together with the capitalised value of this prospective exemption. The amount of this exemption is variable, and the judi fixed on the agricultural assessment would always continue to be paid. But how much N.A. assessment will be imposed is in every locality determinable at the time of acqn. Though it is not likely to be fixed in perpetuity, but may be increased or decreased after a short or a long period, we may assume that it will remain what it is at present. Then we can capitalise the exemption and add that value to the value which the land would command if not Inam.

239. Service Inam land (a) may not be alienated for N. A. purposes without the permission of G. This permission is given when arrangements are made to secure for the watan-dars in perpetuity the N.A. profits. This was done in the case of the Cotton Mill north of Poona station by depositing the N.A. purchase price of the land with G. in return for the payment of an annual cash allowance. In valuing for acqn. service Inam land for which a N. A. demand is alleged the need of this permission and the nature of the arrangements usually made must be borne in mind as an additional obligation. When such Inam land as may not be alienated without G. sanction is found to have been alienated, A. O. must not award the value to the alienee, unless first the requisite sanction is sought and obtained. Otherwise C. should order restoration to the rightful holder, preferably before notfn. and certainly before award. (F. 1990—16.)

A similar piece of Maharki land in Poona was found to have been alienated and built upon. C. interfered and tried by certificate under the Watan Act to prevent the alienee from getting the compn. Held that the alienee had his title by long prescription; the award is not a decree or order of a court and moreover the plea of inalienability without sanction of G. could not be advanced after the notfn. (12 Bom. L.R. 848). The decision is curious. First the C.'s action was wrong as the alienation to which he objected was not the acqn. but the long antecedent act of the Mahars. He could not proceed by certificate to the L. A. Court. This led the H. C. to make the same confusion? The procedure in E. 1990—16 should have been followed.

In valuing agricultural Watan land, its liability to pay full rent under Sec. 9 (2) of the Watan Act (III of 1874) must be borne in mind. This is a restriction upon alienation to non-Watan-dars which reduces the market value of Watan land as compared with other alienated lands of the same quality, since it reduces the range of possible purchasers. (R. 8661—06, para 4.) [Whether the notfn. to acquire would not be held to abrogate such a restriction and to restore to the land its ordinary market value, does not yet seem to have been decided by the Courts.]

When Jadid inam land is acquired the grantor (superior Inamdar) has a reversionary interest and if he loses services or other benefits which arose from the alienation, he may even be entitled to the whole value alienated (10 Mad L. Times 391). Similarly a Talukdar may be entitled to a large interest or reversion in land he has alienated.

SEVERANCE.

240. We have now finished with the land acquired. But when all that notified land has been paid for, there may remain more to pay in respect of land not notified or acquired but left in the possession of its owner. These payments may be large, even larger than the award for the acquired land; and they are also sometimes avoidable. It therefore behoves C. and A. O. in approving and notifying projects always to have their eyes on this possibility no less than on the cost of the land they actually take.

These payments are dealt with in the Act under the heads of severance, injurious affection and loss of easements dominant over the acquired property but attached to property not acquired. There is really only one consideration—injurious affection; the other two heads are merely special cases of injurious affection. There is some advantage in discussing them separately, provided we remember that an essential oneness underlies all three heads.

In the first edition of this work the space devoted to these matters was insufficient; the treatment has since been much expanded to keep pace with the growth of legal complexities and of land values.

N.B.—A claim for severance, injurious affection or a loss of easement can be sustained as well by a tenant (with a lease) as by an owner.

241. SEVERANCE.—The line between severance and injurious affection is sometimes too fine to be discerned (Caledonian Ry. Co. vs. Lockhart) as when by severance the building value is destroyed (3 Q. B. 630). When there is betterment—even on grounds distinguishable from access—no compn. for severance is claimable (8 Sind L. R. I. 126). This differs from English decisions; but we may take it that in India when a claim is made for a damage to land outside the acqn. boundary and it can be shown that what is lost on one point is gained on another, the Court will weigh the whole of the claimant's interests and award only the net damage. Sec. 24 Sixthly read with 23 (I) does not exclude "betterment" in valuing damage to land not acquired; so we are free to follow the obvious path of equity.

A public path ran across a Mill compound; the land occupied by the path was acquired and widened for a road; held (unreported Cal. case 1886 *Kally Churn Ghose vs. Tarini Churn Bose*) that there was no greater severance than before the acqn.; as the Co. had still a full right of going across and along the road. But they never had had the right to close the public way. Regard should also be had to riparian rights. On a navigable and tidal river, the riparian owner has the right of access and navigation: just as in the upper or non-tidal reaches, if his land is daily in contact with the stream. But he is restrained from interfering with public rights and cannot claim compn. for their assertion. (*North Shore Ry. Co. vs. Pion* 14 Appeal Cas. 612—1889).

(a) The Act by implication contemplates two cases: *firstly*, when the remaining land of the estate affected by the notfn. consists of two or more pieces, and *secondly* when it consists of one piece only. In the first case the value of the remaining pieces or one of them is reduced by loss of access across the acquired land. When this damage can be effaced by an agreement ceding a passage, even by a bridge or level-crossing then no or far less (2 Q. B. 439—1896) question of damages will arise under this head. But the applicant (especially a Ry. Co.) must concur in any such arrangement. (R. 9484—14.) When no access can be accorded, then the compn. should take account of the extra cost and labour of going round some other way, or of purchasing some other access (28 Cal. 685). In one case at least a plot already acquired was permitted to be sold to a party in an access bargain. (R. 9484—14.)

See sketch above: M.'s hatched land is severed by the Canal acqn. in dotted lines. The severance is cured by a new way across the intervening land which, if G. land, may be granted or, if private, purchased, but not compulsorily acquired. The block S. M. now becomes readily accessible.

When the damage by severance can be cured by the purchase by the claiming owner of available adjacent land, the limit of compn. for the severance will be the cost of buying in the market the plot which will cure the injury. (25 Calc. W. N. 677.) If therefore G. land or other land at A. O.'s disposal such as unwanted land of the applicant can be offered for re-instatement, the claim can be avoided; see also 66 Ind. Cas. 849.

The severed pieces may be held under different titles or may not even be co-terminous without prejudice to a claim (Halsbury, Laws of England VI. 39). Nor is it necessary that the severed pieces be in actual use; severance decreases the value of the whole site (12 Ind. Cas. 202).

(b) *Secondly* when a plot originally, let us say, of 1 acre loses 39 gunthas by acqn. and 1 guntha is left, it might well be held that the remaining land is reduced in value though access is not affected. It will be too small for profitable cultivation and too small to build a house upon. If it is quite useless then the party can claim its full value; if it is diminished in utility but still not quite useless then part of its value may be awarded. A. O. after determining the market value of the other land will not have much difficulty in determining the amount to award for severance. A good way to value a severance is to take the gross value of the estate before acqn. and the value of what remains after: if the loss exceeds the simple value of the taken land then the excess would be rightly debited to (injurious affection by) severance (13 C. W. N. 1046).

(c) One of the worst forms of severance is when the acqn. (or the contemplated works) cut off water from land not acquired, or cut off the irrigable lands from a source of irrigation (not acquired) which thereby becomes valueless and are not replaceable by other lands of the same owner or which he can purchase. When a Muny. had before an acqn. cut off water without compn. from certain land which subsequently they sought to acquire, it was held they must pay for it as irrigated land (22 Ind. Cas. 306). Here the Court really combined two claims; for injurious severance by the former act and for the residual value under the acqn., before the Court. In strict law, the claim was limited to the value at the notfn. date.

(d) But it is also enacted that if the amount claimed and likely to be awarded for severance approaches the full value of the remainder land, then G. can decide to take the whole. They would usually do this when they have to pay the whole or almost the whole value of the fragment. If they take it, they get the land for the money; if they do not take it they pay nearly as much and get nothing. When G. decide to take the fragment they will issue an *Order*; but a fresh notfn. is not required [Sec. 49 (3)]. But it is most important to note that without this *Order* under Sec. 49 (3) A. O. has no authority to acquire the extra fragment. Even if his award for an extra plot be regarded as a private contract with the party, even so G. are not bound by that contract unless they confirm it. Therefore there would be no title to land so acquired. (R. 8440—08.) See also para. 90 (5).

When an owner claims severance compn. for land not acquired no 15 per cent. is claimable: and no possession is ever taken so there can be no interest liability against G. Nevertheless delay in payment should not occur.

(e) But there is a very legitimate way, after such fragments have been properly acquired, of using them for the purpose of the scheme. If we consider in the marginal sketch—where the dotted line represents the acqn. boundary—the fragment A which remained out of the land B, and was acquired we can see that it might usefully be given to the owner of field C in exchange for the fragment D of his land which is being acquired.

242. **INJURIOUS AFFECTION.**—Has been defined as an interference—physical, not mental or personal—with some valuable right (*Metro. Board of Works vs. McCarthy*). Here a loss of road frontage was compensated.

An acqn. for a bridge took some land essential to the working of a pre-existing ferry; the ferry owner was awarded a sum for injury to his other property. (25 *Calc.* 346.) But if the bridge promoters had taken none of the ferry land then although there would have been just as great injury to the commercial value of the ferry by the new bridge, it would have been an injury for which no compn. can be claimed (34 *Calc.* 487). Any new invention or public improvement throws out of action or makes unprofitable older and less desirable means; yet the law could never block all progress by decreeing compn. to be paid by every improver to all old interests he disturbed. Such losses must be accepted by the parties concerned as “*damna absque injuria*” (4 *Q. B.* 358). The 25 *Calc.* decision implies that the ferry would have continued to earn its profits forever in spite of the new bridge: it seems that had the doctrine of “*damna absque injuria*” been argued, it would have been held that the *future* value of the ferry should first have been ascertained (American case) and compn. limited to the extent to which that diminished value had been injuriously affected in excess of the value of the land taken.

Injuriouly affected means depreciated in market value; and need not connote any wrongful or illegal depreciation (*Ricket vs. Metrop. Ry. Co.*, 1867). The damage must be to the landed property, *e.g.*, by loosening foundations, obstructing light, drainage, access, sea river or road frontage (*Ib.*). It will be seen that these instances are perilously close to losses of easements.

In English cases it has also been held that the loss must be caused by the construction of the (notified) works and not by subsequent or problematic developments. Cases of compn. for damage to movables or earnings (goodwill of business) have not occurred in the Indian Law Reports, though plainly covered by Sec. 23 Fourthly. Such compn. was awarded in a case where the land taken had not yet been occupied by the claimant for his business (22 *L.T.* 591, *White vs. Commrs. of Public Works*).

243. It will be instructive to cite a few cases where injurious affection was not admitted. Where an Act of Parliament authorises a work, like a Railway, then any loss or damage caused by the work to persons or their earnings is not actionable, though it might have been if otherwise done. When it was alleged that beer belonging to a third party had turned sour by the vibration of the Ry. the claim was disallowed (*Hammersmith Ry. Co. vs. Brand*) but if it had belonged to the owner of the acquired land, it seems it would have succeeded. A's land was taken for one part of a Ry.; B's for a Ry. bridge. A cannot claim for annoyance caused by trains crossing the bridge (*City of Glasgow Union Ry. vs. Hunter*). But the Indian Act seems to make no such distinction; and the ruling was not followed in *K. B.* 1003 (1906). The damage must not be too remote or far fetched, as when a seedsman had to grub up his plants and thereby lost their pedigree (? avoidable) or where the closure of a road under a statutory power affected trade. Land was taken to widen a street in order to lay a tramway: the line was not laid on the acquired portion. The house owner was not entitled to compn. for the noise, etc., of the trams, an injury he shared with the rest of the street residents (*Rex vs. Mountford* 1906 2 *K. B.* 814).

A had a house near but not on a river; he used to draw water but his access was cut off by an embankment. Held that although he used his opportunity more frequently, he had no greater right than the rest of the public and could get no compn. (*Met. Board of Works vs. McCarthy*.)

When houses were acquired and removed and the trade of the locality was injured, this gave no title to compn. (*R. vs. London Dock Co. & B. vs. Vaughan* 4 *Q. B.* 190).

So too when B had a house on a public road which was inconvenienced by a level crossing, but no more inconvenienced than the public at large.

244. **EASEMENTS.**—When land is acquired, everything corporeal or incorporeal attached to that land is acquired with it. Even fisheries and water upon the land, whether still or flowing, and all benefits arising therefrom together with all easements are acquired and must be paid

for with it. Plainly, if the land we acquire owns a right of way over another piece of land, we acquire that right with the plot notified and acquired. But if another plot of land owns a right of way over the land we acquire, must the dominant hereditament be acquired and not the servient land only in order to extinguish that right of way? The point seems never to have been clearly decided: easements owned by other plots of land are "attached" to those plots, the dominant hereditaments, and are detached or subtracted from the servient plots; or in the language of Sec. 3 (a), land includes the benefits to arise out of the acquired plot but not the "drawbacks" which are attached as benefits to other land. This view is practically accepted in R. 3205-16.

A right of way across field 8 to field 10 "affects" both fields; but only the owner of field 10 is entitled to compn. if field 8 is acquired and the way closed. If 10 is acquired the easement remains attached to it and the owner of 8 has nothing to say unless the acqn. will entail an onerous and injurious increase of the burden on his land. (35 Ind. Cas. 97.) If field 8 is acquired the easement is taken with it and the owner of 10 must be compensated or reinstated (Halsbury, Laws of Eng. VI. 5.)

A person interested in an easement affecting the notified land [Sec. 3 (b)] includes the owner of a dominant easement, which is an easement affecting the servient land; but to define him as "interested" is not the same thing as saying that his rights can be acquired without notifying and acquiring his hereditaments to which they are attached. Yet it seems that the Act intends to allow the extinction of easements over the acquired land, an extinction which "injuriously affects" the dominant hereditament [and there is little doubt that they can be extinguished by agreements outside the strict scope of the Act].

The problem therefore which A. O. has to solve is how best he can clear up all such genuine and equitable claims without on the one hand forcing expensive and troublesome supplementary litigation, and on the other without exceeding his jurisdiction. The answer is: when an owner whose land is not acquired asserts a claim for damage to his land by the acqn., bring him in if possible as claiming for an easement over or affecting the acquired land. If that is impossible, then in India he cannot be heard. The curious phrase in Sec. 5A (3) "an interest in compn." will probably be held to have the same significance: so that owners fearing the loss of an easement at any rate can be heard in the preliminary inquiry; possibly it may go even further than Sec. 3 (b).

When therefore his land is injuriously affected *by the loss of an easement*, a neighbouring owner can come in, whereas if he is injured in some other way he cannot but must bring a suit outside these proceedings. The words "other property" in Sec. 23, Fourthly, seriously come in the way of a claimant who (1) owns no land under notfn., (2) cannot show that what he loses falls under the definition of an easement. If for instance he expects to lose the view from his window, not being "ancient lights". In four English cases a person whose land *was not acquired* was compensated for injury in the acqn. proceedings. But this is not the Indian law [16 Mad. 360 (P.C.)] and in *Duke of Buccleuch vs. Met. Bd. of Works* the Indian view was taken.

The facility of having flaps projecting over a (public) way or other land is an easement which can accrue by long use and would then rank for compn. A landowner has no right to water flowing under his land unless it is exclusively under his land; but it seems he might acquire an easement over such water if he had for a sufficient time used it and if his use was threatened by new works. An easement of ancient lights is not confined to particular windows and can even pass to a new building (59 L. J. Q. B. 162). It is an easement (which can therefore be acquired) and not a common law right (*Eagle vs. Charing X Ry. Co. L. R. 2 C. P. 638*). A right to the support of adjacent soil is similar; A Board constructed a sewer: the adjoining owner M excavated his soil up to the limit of the land acquired by the Board, and the sewer collapsed. As the Board had not enjoyed the easement (20) years, they had no case. Semble, that if M's land had been acquired for excavation, the Board would have lost any claim for injurious affection based on the deprivation of the immatured easement of support. (*Met. B. of Works vs. Metro. Ry. Co., 3 C. P. 612*). Easements recognised in India include a right to take cattle to water, or to graze in G. (waste) land.

If we acquire and extinguish the easements imposed upon the notified servient hereditament the total compn. (the value of the plot free of any dominant easements) will first be awarded and then apportioned to the two parties. If the plot acquired owns an easement such as right of access, or discharge of storm water, or the like across any other land, that right also is acquired and paid for with it. But we cannot apply the Act to acquire easements, licenses and the like apart from the land unless (as in para. 97) the land is already ours. Where a fishery was an easement enjoyed by the riparian owner, it cannot be acquired except by acquiring the foreshore land to which it is attached (I. L. R. 335 Calc. 525). Presumably the sea *could not* be notified both for indefiniteness and as already Crown property.

SUBSEQUENT CLAIMS.

245. A plaintiff who could have appeared before A. O. as "interested" and who could foresee the alleged injury at the time of the proceedings will certainly be non-suited if he subsequently or simultaneously sues in the ordinary Court for compn. or injunction. Up to the time

of taking possession or even so long as the case is in his hands A. O. should admit and deal with any such *bona fide* claim even in a supplementary award rather than force a separate suit. (34 Calc. 470.) But when the claimant is unable by any stretch to be admitted as a party interested [sec. 3 (b)] or when the injury is such as could not be reasonably foreseen at the time, then a subsequent or parallel suit is admissible. Where claimant became the owner after the proceedings he was barred (by the laches of his predecessor-in-title). A level crossing is an inconvenience with which the public must put up but if it diminishes the value of the property of an "interested" party he got in two English cases compn.; but under Indian law the loss seems to be 'absque injuria'.

A Ry. Co. has the right to run trains but not to emit injurious smoke for which a subsequent suit would lie. The damage must accrue and be assessed at the time of possession (25 Calc. 346) and should be dealt with as a consolidated claim. A Corporation took a stream but did not divert the whole water at once. Nevertheless compn. must be assessed on the assumption that the whole will be diverted. When the notfn. said "for sewage works" but it was argued that the corporation did not intend this use for some time, they were held bound by the notfn. (Beverly, p. 59). A successful claim for injurious affection does not bar a subsequent action to restrain the acquirer from using the land in a way that is a nuisance. A was compensated for injury caused by an acqn. for sewage works. Subsequently when the works caused a nuisance, he succeeded in a suit for injunction. He had the same rights as other owners and the acqn. of land gives the acquiring body no more right to be a nuisance than is enjoyed by other owners (Cowper Essex vs. Acton L. Bd. and 10 Beng. L. R., 241). G. as owners must show equally with any private owner that the use they make does not amount to a tortious injury.

An instructive instance of injury not amounting to the loss of an easement arose in the Mulshi acqns. for the Tata Power Co. A great lake submerging nearly all their cultivable lands and village sites left only the hill-tops and land that provided fuel and grass to the village. When the village went, its value went. Though not notified or acquired should any compn. be paid for the lands above the contour line of the full lake? Equity plainly says Yes; but the law gives the owners no status for claiming before A.O. unless some other part of their land is taken, though that land need not be continuous with the injured residue. The other owners could only claim by a Civil suit: unless G. accepted their claims out of court.

MATHEMATICAL FORMULÆ.

246. *Formula (or Table) I.*—The sum to which £1 paid now once only will amount at the end of n years at r interest on each £1 (not on each £100)

$$= (1 + r)^n.$$

Formula (or Table) II.—The sum to which £1 per annum paid every year will amount in n years at r interest—

(a) if first payment be made *to-day* and after n annual payments we wait till the *end* of the n^{th} year but credit no payment at end of n^{th} year—

$$(1 + r)^n + (1 + r)^{n-1} + (1 + r)^{n-2} \dots + (1 + r);$$

(b) but if first payment is a year from *to-day* and a payment is made at the end of n^{th} year, then on the date of the last payment the amount will be—

$$(1 + r)^{n-1} + (1 + r)^{n-2} \dots + (1 + r) + 1;$$

(c) or if $n + 1$ payments are made (1st *to-day* and last at *end* of n^{th} year)—

$$(1 + r)^n + (1 + r)^{n-1} \dots (1 + r) + 1$$

$$\text{Transformation: } 1 + (1 + r) \dots (1 + r)^n \dots = \frac{1 - (1 + r)^{n+1}}{1 - (1 + r)} = \frac{(1 + r)^{n+1} - 1}{r}.$$

Formula (or Table) III.—Let x = the amount which, paid into a Sinking Fund every year, will at end of n years amount to £1 (each payment to be made on last day of year, and the last on the last day of n^{th} year); then

$$x\{1 + (1 + r) + (1 + r)^2 \dots (1 + r)^{n-1}\} = 1$$

$$\therefore x = \frac{1 - (1 + r)^n}{1 - (1 + r)} = \frac{r}{(1 + r)^n - 1}$$

[which is the rate of interest per unit, divided by the aggregate of the compound interest for n years on £1].

Formula (or Table) IV.—All conceptions of Present Value imply that the capital should not be lost. The p. v. of £1 due n years hence means:—What sum invested at (the desired or assumed) rate r per cent. will at the end of n years produce £1? When the period is over, we shall recover the principal sum now paid together with interest thereon. The formula is easily deduced from Formula I, being $\frac{1}{(1+r)^n}$.

Hence P.V. to-day of £1 paid each year (on last day, see para. 217) for n years from to-day—

$$P. V. = \frac{1}{1+r} + \frac{1}{(1+r)^2} \dots + \frac{1}{(1+r)^n} = \frac{1 + (1+r) \dots (1+r)^{n-1}}{(1+r)^n}$$

i.e., Formula II (b) divided by Formula I.

But if the recipient of this income, every year when he receives it, spends it all, he will eat up his capital: the £1 received each year is more than the interest on his investment $\{r(P. V.)\}$ by exactly the amount required to be paid into a Sinking Fund at the *same* rate of interest in order to replace the capital after n years, as can be found by working out $1-r(P. V.)$ which transforms into $(1+r)^{-n}$.

Formula (or Table) V.—But an investor may desire to purchase an annual income i for n years (first payment to be received one year from to-day, see para. 217) so that it will yield him R interest (rate per £), while he invests the balance of each payment of i at r (a smaller rate) so as to yield at the end of the n^{th} year the exact purchase price he paid. The less the rate of interest we earn on our Fund the more we must pay into that Fund, but the safer it is presumed to be.

Let $s. f.$ be this annual sinking fund: then if A is the purchase price, $AR = i - s. f.$

The $s. f.$ after n years must amount to A .

Therefore $s. f. \{ 1 + (1+r) + (1+r)^2 \dots (1+r)^{n-1} \} = A$.

$$\therefore s. f. = \frac{Ar}{(1+r)^n - 1} \quad (\text{Formula III}).$$

$$\therefore AR = i - \frac{Ar}{(1+r)^n - 1}$$

$$\therefore A \left\{ R + \frac{r}{(1+r)^n - 1} \right\} = i.$$

$$\text{or } A = \frac{i}{R + \frac{r}{(1+r)^n - 1}}$$

or for every £1 of the income we can pay

$$\frac{1}{R + \frac{r}{(1+r)^n - 1}} \text{ year's purchase, } i.e. \frac{1}{R + \frac{r}{(1+r)^n - 1}} \quad (\text{Formula III})$$

This is the formula usually adopted in valuing incomes from buildings. When R is greater than r , we see that this formula must yield a lower value of A , or a less purchase price than when $R = r$; and when $R = r$ we see that we get $\frac{(1+r)^n - 1}{r(1+r)^n}$ as the number of years' purchase (which is of course Formula IV; which is in turn Formula II (b) divided by Formula I).

Formula (or Table) VI.—The value to-day of £1 due at the end of n years. This is the formula used in valuing the land covered by the buildings (which will be available only after n years) $(1+r)^{-n}$ (the inverse of Table I).

In all these formulæ, the only quantity difficult to ascertain is $(1+r)^n$: this is got from any logarithmic Table, as the antilogarithm of $n \log (1+r)$.

In witness whereof the said *A. B.* has signed this deed.

(Signed) *A. B.*

Signed by *A. B.*

in the presence of

(R. 1481, 2535—78.)

In cases of lands taken up by G. by private negotiation *without money payment*, C. merely remitting the assessment placed on the land, no more formal deed of relinquishment is necessary than the old form of rajinama hitherto in use. The rajinama and the consequent entries in the Land Records would be sufficient evidence. (R. 2535—78.)

EXCHANGES.

249. There are some awards not to be paid in cash. These fall into the two classes of ordinary *Exchanges* and *Service lands*.

Instead of paying money A. O., without the sanction of G., can often give G. waste land in exchange. (R. 4347—02.) No claimant can insist on getting land in exchange (13 Mad. 485). This does not mean that he can give (or acquire in order to give) other people's land. These exchanges fall under Sec. 31(4), and plainly admit resort to "reinstatement" (see para. 157). But if the reinstatement is of a religious building of which the ownership is not absolute or the exchange is made with any Guardian Trustee, etc. (see para. 251), then *sanction* under Sec. 31 (3) will be needed.

Such exchanges should also be set out in the A. S. and the value of the G. land given in exchange must be stated, as it will be charged to the applicant if financially independent of G. or to the capital account of the work, such as an Irrigation canal. The same arrangement will be made when the land is acquired partly by exchange and partly by cash payment. These exchanges are voluntary and by agreement. It is hardly imaginable that as soon as concluded the party will repudiate and claim more. There is no money award and therefore there can be no 15 per cent. or interest. All this is covered by the mutual agreement. For a fuller discussion see R. 1110/28—16-11-28.

LIMITED INTERESTS.

250. We now come to the cases under Sec. 31(3) in which the holder of the land has a *limited* interest, *i.e.*, he has no power to alienate in perpetuity. If the restraint upon his power came from a trust or other obligation laid upon him by some other private person, there would be no difficulty, as this private person would be made a party and compensated. But when the restriction is laid upon the holder by G. for a public or religious object, G. must see that that object is maintained.

(a) Instances of such restrictions are found in :—Ahmedabad Talukdars' Act (1862), Broach and Kaira Encumbered Estates Act (1881), Sind Encumbered Estates Act (1896), Gujarat Talukdars' Act (1888). The manager of an estate cannot alienate but the Talukdar can with G.'s approval. Recognised portions of a Bhag or Narva cannot be alienated (Bhagdari Act, 1881). The permanent tenant of a Khot cannot always alienate without the Khot's sanction (Khoti Settlement Act, 1880). Wards under the C. of Wards Act (1905) and Watandars under the Watan Act (1874) can alienate with the consent of G. which the notfn. implicitly conveys, G. retaining power to control the disposal of the compn. See also para. 18. (R. 12016—19 and R. A—770 of 4-10-21.) Local legislation ought to confer a power of alienation in such cases [Report of the Industrial Commission, Ch. XXIV, items (65) to (68)]. For alienations of Munl. (street, etc.) land, see para. 91.

The interest of an unrecognised sharer in Narva or Bhagdari village land is not such a "limited interest" as is contemplated by Section 31 (3): it can be acquired by the ordinary procedure (40 Bom. 254): apparently because, if G. itself acquires a portion of a Bhag, they cannot insist on its impartibility.

(b) The compn. money for land held under a trust or limitation remains impressed with the character of the realty (*Ex-parte* Walker, 1853; 11 Calc. L. J. 533; 13 *ib.* 606). When C. paid money, and the daughter of a Hindu widow applied to the Court: held that C. must first deposit the money in Court

(i.e., recover it and make a reference) before the Court could act (sci : under this jurisdiction ; a suit would probably have laid against C. and the payee) (35 Calc. 1104.) See however, as to recovery, the ruling in para. 291.

251. There are numerous cases of guardians (appointed by a Court, or natural, or *ad litem*), Managers of joint-family, Charity, Wakf (24 All. 189) or Trust properties, Administrators, Receivers, or Committees in lunacy ; as well as the important class of Hindu females without power of alienation beyond their life-interest and their transferees (11 Calc. L. J. 538). To discuss all of these would mean a treatise on ordinary Civil Law, far outside the scope of this Manual. All we can here say is that A. O. must scrutinise his list of awardees and see that none of them suffer under such a disability, and if they do he must try and get it cleared in the way appropriate to each case [see Sec. 3 (g) and Proviso IV]. He must acquire with a clear title and must not pay away the compn. when the title is incomplete or disputed. Here it is not the interest which is limited, but the party dealt with is not the holder of the whole interest. The money is sometimes allowed to be spent on improvements to the residual property (13 Calc. L. J. 597).

SERVICE LANDS.

252. When service land is acquired the award should invariably contain a direction for investing the compn. (R. 7092—07.) This is effected frequently by converting the capital sum into a pension or reduction of land-tax. Both G. and High Court declined to allow cash payment in R. 355—19. When a D. L. B. got possession of Service Inam lands in 1911 but did not pay till 1923 G. required them to pay the arrears of cash allowance for 1911—1923 as well as the capitalised value of the perpetual annuity (R. 785—14-4-24). When in the course of acqn. proceedings service inam land for village servants useful to the community was found to have been illegally alienated, it was ordered to be first transferred to the category of Khalsa fully assessed land and then acquired as such (R. 9874/24—23-4-28).

253. (1) In acquiring service lands, i.e., lands in respect of which service is rendered whether to G. or the village community and the *profits of which are assigned as remuneration* for an officiator, the award of a lump sum as compn. is ordinarily inappropriate and should not usually be adopted, as such an award would diminish *pro tanto* the remuneration available for future service. So too for Devasthan lands (R. 1279—12) and for shetsanadi lands. (R. 5452—07.) In such cases an arrangement under sub-sec. 31(3) should, if possible, be made with the person or persons interested for the grant of other lands in exchange, but it should be noted that it is not sufficient to convert into service land an equal area of unalienated land belonging to the holder, for in that case the occupancy value, for which compn. has to be paid, already belongs to the holder. This exchange means that the land given shall be held on the same title—no better and no worse—as the land taken. (R. 314—56.) For a case in which personal inam lands were bought by a Patel with the compn. awarded for his service land, and these were converted to Patilki Inam, see R. 8720—23.

Where land in exchange cannot be given or is not accepted, a similar arrangement should also, if possible, be made for the award of an annual cash allowance equivalent to the interest at 4 per cent. annually on the market value (as ascertained in the usual way) plus 15 per cent. : (R. 5394—94 ; 9850—95 ; R. 2642—14-9-20 and R. 87-A—24-4-36.)

provided that the allowance to be awarded shall in no case be less than 2½ times the survey assessment :

provided also that where the value of the land is so small as to produce, or there remains after all possible reductions of judi under para. 254 an allowance of Rs. 5 per annum or less, the A. O. may at his discretion award a lump sum instead of the allowance. (R. 3969—98.)

The market value of inam land will ordinarily be equal to the market value of similar khalsa land plus the capitalised value of the difference, termed 'Nuksan', between the assessment and the judi (G. 4547—85 ; though see also para. 238.)

When it transpires at the time of acqn. that the service inam land—the land itself not the revenue only having been originally granted (R. 4814/24—7-1-26)—is

far more valuable than the service for which it is held, C. can exercise the discretion given by R. 10336/08 *see* R. 8323/24—25-6-28 and specially the case of Kandhari (Bhusawal) therein quoted.

It has been questioned whether in awarding such a C. A., 15 per cent. (or interest if payment be delayed after taking possession) should be added. The C. A. is calculated on the money awarded which must include 15 per cent. But this is converted to an annual payment. Interest therefore only comes into question at the time of the first annual payment. All arrears from date of possession and interest on such arrears should be paid (R. 1110/24—16-11-28.)

(2) Cash allowances are not to be granted in cases where *the service is now dispensed with* though the lands may still be considered as service lands for other purposes, *e.g.*, (i) watan lands of hereditary district officers; (ii) *excess* shetsanadi lands held on a judi equal to the full assessment by shetsanadis discharged when their reorganisation was effected.

(3) Cash allowances should not be granted in cases where, though the lands are entered as service inam lands in the accounts and service is still rendered, *the profits are not assigned* as remuneration for an officiator. Thus in the case of patel and kulkarni inam lands where the officiator is *fully* remunerated in cash according to scale, an award in lump should be made.

(4) When a village officer or servant is remunerated according to a scale, and part at least of this remuneration is in land, compn. for any portion of his land acquired should be given in the shape of cash allowance only to the extent necessary to bring the remuneration remaining after acqn. up to the scale standard. (F.1958—12.) This is not so inconsistent with the $2\frac{1}{2}$ multiples prescribed in para. 253 (1) as at first it seems, if we suppose that the remainder of the compn. will be paid in cash to the officiator or invested for him, and if the land profits (rental) on which the compn. is based are $2\frac{1}{2}$ times the assessment.

254. (1) In all cases C. should direct that the judi payable by the holder on his holding should be reduced by the proportionate amount of judi on the land to be acquired. The cash allowance due under 253 (1) should, if possible, take the form of a *further* reduction of judi. In cases where the cash allowance exceeds the judi remaining after the deduction of proportionate judi, this remaining judi should be abolished and the cash allowance reduced accordingly. (R. 10256—11.)

This and the last para. will be made clearer by an illustration. Suppose land fully assessed at Rs. 100 out of which land assessed at Rs. 20 is acquired, and valued at Rs. 700, and there is no land available for exchange. We have the following cases:—

(a) The land is held by a Kazi who pays a judi of Rs. 52. His services are required and the land is assigned as his remuneration; therefore lump compn. cannot be given. The alienation on the plot acquired Rs. 9·6 at 25 Y. P.—240. Total compn. 940 + 15 per cent. =1,081. Three and half per cent. on this is Rs. 37·835, and this would be awarded as a cash allowance, if it were not subject to the " $2\frac{1}{2}$ times" provision; an allowance of Rs. 50 ($20 \times 2\frac{1}{2}$) must however be awarded. (Its capitalised value will be recovered from the applicant as well as the capitalised judi, unless the applicant is to continue to pay the judi, see also para. 278.) The Kazi will now have land assessed at 80 (judi 41·6 and alienation 38·4). A convenient way of paying him Rs. 41·6 annually will be to reduce his remaining judi (Rs. 41·6) to *nil*, leaving an alienation of Rs. 80 on his land and pay the balance of Rs. 8·4 in cash annually. In the result, the G. accounts will show an alienation of Rs. 80 a year for the Kazi's service; whereas in fact it is only 38·4; and 41·6 is not really alienated to the Kazi at all, but was purchased from G. and paid for by the applicant in cash to the Kazi; it would be a better method of accounting always to pay the allowance giving it its correct name) and not tamper with the residual alienation.

	Rs.
(b) The same land is held by a Patel:—	
Mamul judi	10
Scale judi	60
Nim judi on excess profits	15
Total Judi ..	85
Alienation or Nuksaa ..	15

This means that out of Rs. 90 original profits of the inam 60 are levied by G. and paid through the Treasury in cash to the officiator who is *unaffected by anything that happens to the land* so long as he gets that cash pay. The alienation on the portion acquired is Rs. 3 only. The holder still retains land assessed at Rs. 80 on which he will pay mamul judi as before Rs. 10, scale judi (unchanged) Rs. 60, and nim judi only Rs. 5; (see rules in old Survey and Settlement Manual, Vol. III, Chapter XIX, Secs. 20 to 32) so that he will enjoy an alienation of Rs. 5 only instead of 12 as before on this 4/5ths of his land. He should therefore be paid by the applicant $(3 + 7) \times 25 + 700 + 15$ per cent. on both items = 1,092½. None of the compn. will be converted into cash allowance or deducted from the judi. But as G. gains by this reduction of Rs. 10 in alienation, the applicant who will have to pay to G. full revenue of Rs. 20 on his acquired land or obtain a fresh grant of exemption, should receive from G. Rs. 250 (but without 15 per cent., see para. 278) for the alienation he has extinguished in their interest.

If land assessed at 40 were acquired, the mamul judi must remain (Rules as above), scale judi 50 would be levied, and there would remain no alienation, or nim judi. G. will pay Rs. 10 in cash in future which will be covered by the capitalised assessment (judi) which they will recover from the applicant. The full assessment will be paid by the landholder and the compn. paid him will be for the land and for Rs. 15 alienation only. The defect of this arrangement is that it does not take into account the future liability of the scale judi to be enhanced at revision settlement. On revision the full assessment of the remaining land might rise above Rs. 70.

(c) What does para. 253 (4) mean? This case is quite different from that of land under scale judi. Here the remuneration is fixed at Rs. 120, the land (assessed at 100 as before) is held by the officiator himself or rented by him, and Rs. 20 is paid in cash. There is no scale judi but the whole assessment of the land is alienated. Now upon the acqn. of land assessed at Rs. 20 as before if the full compn. is paid to the holder, there will be no means of continuing for ever the remuneration of his office. It will be necessary to deduct from the aggregate compn. enough to cover a cash allowance of Rs. 20 only, and the surplus alone will be paid to the officiator holder. Since Rs. 20 was alienated, the compn. must at least add the capitalised value of Rs. 20 to the land value, however low.

All these illustrations, so far as they relate to the payment by an applicant of the capitalised value of an alienation, should be read with para. 278.

(2) In cases where the claimant refuses to accept the land or allowance offered under para. 253, A. O. should award a lump sum in the usual way, and (whether or not the claimant applies for a reference to the Court) should deposit the compn. in Court under Sec. 31 (2). In making this deposit, or (where the claimant applies for a reference to the Court) in making such reference, A. O. should draw the Court's attention to the fact that the land is service land, and should request the Court to order the compn. to be invested and otherwise dealt with in the manner provided in Sec. 32 or 33, so as to secure it for the benefit of all those persons who would from time to time have been entitled to the profits of the land acquired.

(a) Erection of buildings on the remaining land was held a good investment (25 Cal. W. N. 597).

(b) Discharge of encumbrances on other parts of the estate of a Hindu widow was not allowed (26 Cal. L. J. 123).

The English Courts have sometimes allowed the corpus of such compn. money to be spent on improvements or salvage (special restorations) of the original estate (in *re Aldred's estate*, 1882) but not on ordinary repairs.

(3) Should the Court fail or refuse to comply with this request, C. should take steps for filing an appeal on the point, or if this is deemed inadvisable and if the Hereditary Offices Act (III of 1874) applies to the land, should report the matter under Sec. 6 of that Act and Nos. 82 *et seq.* of the Law Officers' Rules, with a view to the institution of a suit to secure the object indicated in (2).

When a Court allowed a Hindu widow to withdraw the whole capital no appeal lies (31 Ind. Cas. 677).

(4) C. while submitting proposals for the grant of a cash allowance under para. 253 (1) or a further reduction or abolition of judi under para. 254 should supply G. with the details in the appended form. (R. 10256—11.)

Model form giving the information required under para. 254 (4), L. A. Manual.

Survey No. and sub-division	Particulars of land			Particulars of the land acquired			Market value of the land acquired plus 15 per cent.	Cash allowance awarded, viz., 4 per cent. on the amount in col. 8 or 2½ times the proportionate assessment, whichever is greater	Revised judi (Column 4 minus column 7)	Proposals for further reduction of judi in lieu of grant of cash allowance; or if the cash allowance exceeds the revised judi for abolition of judi and grant of reduced cash allowance*
	Area	Assessment	Judi	Area	Proportionate assessment	Proportionate judi				
1	2	3	4	5	6	7	8	9	10	11
										*[which may be computed if it does not exceed Rs. 5].

(5) After such arrangements have been made, we must not forget their object and nature when fresh events occur. Such a case is dealt with in R. 9985—16. Here Kulkarni Watan land in an unsurveyed Inam village had been acquired under para. 253 (1). The whole Cash Allowance was paid to the Officiator, for whose remuneration the whole of the Watan lands were assigned (Nuksan as well as cultivating profits or rent). Upon commutation of service, the scale judi and other demands which would have been imposed on the land if it had not been acquired were now imposed on the Cash Allowance by deduction.

255. The Cmr., S. D., issued certain instructions for the treatment of the lands held by a discharged shetsanadi which were approved in R. 5370—11. In accordance with those instructions, which were designed to meet the requirements of a policy and not to enforce the full rights of G., the lands held by discharged shetsanadis are to be kept as service lands available for service if required. By this the status of the discharged shetsanadi is not lowered so as to deprive him of the compn. equal to two and a half times the assessment of his acquired land to which he would be entitled under R. 5452—07. (R. 671—12.) (R. 9620/24—26-6-29.)

This does not apparently mean that the compn. can take the form of a pension or reduction of assessment [see para. 253 (3)] but only that such land is not to be resumed at a less favourable compn. than 2½ times the assessment.

256. Sanction of G. is required to these exchanges whenever the interest of the holder is limited. [Sec. 31 (3)] When the limitation is not due to Watan or Devasthan tenure but arises from a leasehold or life interest, or a share, or as in para. 251, the sanction of G. is indispensable to any arrangement except cash compn. (R. 4018—10.) C. [R. 4347—02, modified by R. 11221 (35)—12] and Cmr. (R. 6825—86) have power to give unoccupied land in exchange for land "acquired"; but since Sec. 31 (3) absolutely requires the prior sanction of G. these delegations (detailed more fully in the orders under the L. R. Code) do not operate when land is acquired *under the Act*. (R. 4018—10.)

257. When these cash allowances are awarded, the capital value, which is the capital compn. will appear in the A. S. and will be debited to the applicant but a remark will be made against the item to prevent its payment in cash and to enable A.G. to make the proper adjustments in accounts: see para. 260 (19).

258. When some values have thus been paid for by exchange and others by conversion into pensions, there will remain the cash payments. The first essentials, after completing his A.S. is that A.O. should give due notice of the result to all the parties. If they are present when he announces his award the fact must be noted, person by person; if not present, notices must be served with the same care as the original notices on the land: and a signature or acknowledgment of receipt obtained.

The dates on which the notices reach the parties determine the limitation for references to the Court; although the maximum limit is six months A. O. should do all he can to reduce the period by effecting service of the notice. If he wilfully withheld or took no trouble whatever to intimate the award, it might possibly be held that even the six months from its date would not properly run (30 Bom. 275).

259. Payment may be made by cheque on the Treasury, or by an order tantamount to a cheque, or in cash, or by Money Order; or by deposit in Court, or as Revenue deposits. For payments of small amounts where it would trouble parties to attend the Treasury, A. O. should certainly arrange to draw a sufficient advance and proceed as near as possible to the residence of the parties and pay them the cash on a pre-arranged date. The detailed rules for payment (printed more fully in Appx. 7 to the C. A. C., Vol. I) are as follows.

260. (1) A. O. will be either a Rev. officer or some special officer placed at the disposal of the P. W. D., and invested with the powers of A. O.; the procedure differs in the two cases.

Procedure of Special Officers.

(2) These are regarded as P. W. disbursers, and supplied with funds in the manner prescribed for "Works outlay of P. W. officers in the P. W. Code".

(3) When an award is made under Sec. 11 the officer shall have an A. S. prepared in the appended form (marked A* showing the amounts payable to each person and shall, on the day the award is made forward a copy of the statement, signed by himself, to the A. G. with whom he is in account (Audit Code 406). Before signing the copy, the officer should carefully satisfy himself that it correctly shows the amounts awarded, and should enter the total of col. 6 in words both in the original and copy in his own handwriting. (This is an important protection against fraud.) A subsidiary statement in Form AA* giving particulars regarding the acceptance by the parties of the amounts in col. 6 of the A. S. should also be furnished to A. G. as soon as possible. If the subsidiary statement is not complete on the day that the award is made, entries in col. 7 of the A. S. will be made in the A. G.'s office on receipt of the statement in Form AA.

(4) In cases where an award has been made by a Court under Sec. 26, a second A. S. should be prepared in Form B* by the A. O. as soon as the decision of the Court is ascertained, and a copy thereof forwarded to A. G. On receipt of this statement, A. G. will proceed to check the entries in cols. 1 to 4 with the original award.

(5) Any change in the apportionment of the officer's award made by a Court under Sec. 30 should also similarly be communicated to A. G. for corrections in the A. S. And if under Sec. 31 (3) it has been arranged to grant a compn. otherwise than in cash, the nature of such compn. should be clearly specified in the column of remarks in the A. S.

(6) In giving notice of the award under Sec. 12 (2) and tendering payment under Sec. 31 (1) to such of the persons interested as were not present personally or by their representatives when the award was made, A. O. shall require them to appear personally or by representatives on or before a certain date to receive payment, intimating also that no interest will be allowed to them if they fail to appear. If they do not appear, and do not apply for a reference to the Civil Court under Sec. 18, A. O. shall, after any further endeavour to secure their attendance that may seem desirable, cause the amounts due to be paid into the Treasury as Revenue deposits payable to the persons to whom they are respectively due, and vouched for in Form E.* He shall also give notice to the payees of such deposits, specifying the Treasury in which the deposits have been made. When the payees ultimately claim payment of sums placed in deposit, the amount will be paid to them in the same manner as ordinary Revenue deposits without any reference to A. O. or his sanction. A. O. should, as far as possible, arrange to make the payments in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposit on account of non-attendance may be reduced to a minimum. Whenever payment is claimed through a representative, whether before or after deposit, such representative must show legal authority for receiving the compn. on behalf of his principal.

(7) In making direct payments A. O. shall take the receipt of each person to whom money is paid on a separate voucher in Form C* containing a reference to the item in the A. S. In cases where many payments are made under a single award, an acquittance roll in Form CC* may be substituted for separate receipts in Form C. A. O. shall forward the separate receipts or the acquittance roll to A. G. when forwarding to him the account of the month in which the payments are made. These receipts do not require registration under Sec. 17 (1) (c), Act XVI of 1908.

*Printed in Appx. 7 to C. A. C., Vol. I.

†But see para. 281: the amounts not payable in cash should be carefully distinguished.

(8) All payments into Court for deposit should be made by means of cheques in favour of the presiding officer of the Court, payable by order of the Court to credit of Civil Court Deposits. The cheques should be accompanied with receipts in triplicate, in Form D,* of which one will be retained by the Court for record, and the other two returned signed to A. O. who will keep one copy and forward the other to A. G. with the accounts of the month. Payments of the amounts deposited will be made under the rules for Civil Court Deposits.

(9) When a Court has awarded any compn. in excess of A. O.'s award, the further payment due, as entered in col. 6 of the A. S. in Form B,* should be made into the Court in a single lump sum by cheque, and the procedure described in the preceding paragraph should be followed, Form D being used with the necessary changes to give full particulars of the order of the Court.

(10) G. may authorise any particular A. O. to make all or any of his payments by cheques provided no inconvenience is caused thereby to the payees in consequence of distance from the Treasury. The use of cheques should be safeguarded by a strict observance of the following rules :—

(i) Every cheque book will contain a certain number of cheques, with consecutive printed numbers, and each book should contain its own serial number.

(ii) That serial number and the number of cheques should be reported to the Treasury Officer before the book is brought into use.

(iii) The cheque-book should be kept under lock and key by A. O. himself.

(iv) The cheques should be filled up by A. O. with his own hand, in words as well as figures, and cheques should be enfaced "under Rs . . .".

(v) A periodical comparison of pass-books (or advices of payment) from the Treasury with the counterfoils of the cheque-book should be made by A. O. himself.

Payments after the Special Officer is relieved.

(11) In any case in which a reference is made and the award of the Court is not made till after the special officer has been relieved the further payments due shall be made by C. who will observe the same procedure prescribed above.

Procedure of C. or other Civil Officer not specially employed.

(12) Such A. O. is not a P. W. disburser, but draws money for payment due under his award from the Civil Treasury. He shall, as soon as he makes the award, or as soon as he ascertains that an award has been made by the Civil Court, prepare a statement in Form A* or B* or in both, as the case may be, showing the amounts due, and forward a copy thereof to A. G. (paras. 3 and 4). Additions and alterations in the A. S. should also be communicated to A. G. as prescribed in para. (5) and a subsidiary statement in Form AA* should, if necessary, be furnished (para. 3). The procedure in para. (6) should also be observed.

(13) In making cash payments A. O. will follow para. (7) except that (since he gets cash by drawing an advance from the Treasury and not from the imprest of a P. W. disburser, the separate receipt or Acquittance Roll (Form C or CC) will be the Treasury Officer's vouchers for the payments, and shall be forwarded *by him* with the accounts of the month to the A. G. For payments into Civil Courts the procedure in paras. (8) and (9) should be observed.

(14) The Treasury Officer has no concern with the Award or with the A. S. ; he makes the payments on the authority of A. O. who may either pay the amount to each payee separately by an order on the Treasury, in which case he should countersign the receipt in Form C and make it payable at the Treasury, altering the words "Paid in my presence ^{in cash} by cheque" to "Pay"; or he may draw the total amount to be disbursed by him under the award on his own receipt as an *advance*, and after making the payments forward the receipts to the Treasury Officer in adjustment. In the former case, an advice list of the forms passed for payment should be sent to the Treasury Officer, who in turn should send weekly an advice of orders paid. It is to be noted that in no case is any copy of the A. S. ever sent to Treasury Officers. For debit in Try. accounts, see C. A. C., Vol. II., 430.

Audit by Account Officers.

(15) Whether the payment is made by a special Officer or by the "Collector" the audit shall consist in seeing that every payment is supported by a receipt in Form C,* CC,* D* or E* for the amount payable under the award, as shown in A. S., of which the auditor will have received copies. The auditor will also note in the last column of Form A the date on which possession is taken, as reported to him by the Executive Engineer or other officer.

(16) A. G. will, as he receives the vouchers, fill in the entries in the appropriate columns of the A. S. (Forms A and B), and as he receives the reports of possession, he will fill in col. 10.

*Printed in Appx. 7 to the C. A. C., Vol. I.

When all the vouchers showing payment either to the payee or into Court or into Revenue Deposits and the reports of possession have been received he will forward the completed statements in Forms A,* AA* and B,* in original to the Collector for permanent record (R. 190/28—27-3-28). This will complete the audit (R. 3723-02); any other or further returns or reports from the officers who assess or pay compn. will be disposed of by C. without reference to A. G.

(17) Cancelled.

(18) When the land is acquired for and the cost is debitable to any other Dpt. than the P. W. D. the procedure will also be the same, the Account Officer who will audit the payments being substituted for A. G. In the case of Rys. class I, it is the Chief Auditor; for Cos. Railways, the G. Examiner of Ry Accounts. For Indian State Rys. it will probably be the Ry. Account Officer of the State.

Procedure when no money compensation is paid.

(19) When comp. is granted in the shape of other land in exchange, or remission of revenue, as provided in Sec. 31 (3), and the land is acquired for G. purposes, no adjustment of the value of land given in exchange will be required, unless it is separately purchased by contract by G. If, however, the land is acquired for a body financially independent of G., the value of the G. land given in exchange and the capitalized abatement of L. R. should be charged against advances of funds—para. (21) below—made by that body.

A simple and convenient method of bringing the transaction to proper account is to pay the cash awarded to the party on his signature and then recredit it as the whole or part price of the exchanged land transferred to him under a suitable deed or sanad.

Investment of Compensation deposited in Court.

(20) Investments under Secs. 32 and 33 of money deposited in Court should be arranged for, in the case of purchase of G. securities, in communication between the Court and the Deputy Comptroller of the Currency and purchases of land should be effected under the Court's orders through C. The Dy. Cptr. will inform the Court what sum should be remitted from the deposits to enable him to make the investment. See para. 254 (2).

Audit adjustment and recovery of payments on behalf of bodies financially independent of Government.

(21) G. may direct that the payments, instead of being made and audited in the same manner as the ordinary payments of such body, shall be made and audited as if the land were being acquired for G. If G. issues such an order, A. O. will draw funds from the Treasury and make payments in the manner laid down in these rules, using the forms prescribed, and render his accounts to A. G. The Myny. or other body will pay the estimated compn. to the credit of G. (under deposits for work done for Public Bodies) in advance on such dates and in such instalments as G. may direct, further payment being required as soon as A. G. reports that the payments made exceed the advance. The A. G. will deal with the accounts and payments as prescribed in these rules, debiting the payments against the advances. (R. 4320—95, 755—96, 6950—96, 237—97.) If A. O. has any surplus in hand he will repay it to Try. for credit to the same Deposit head.

261. Delays in payment (like taking possession before award) give rise to claims for interest and swell the cost of the work. This result is principally due to failure to comply with Sec. 31. C. should take measures to secure compliance. (R. 6677—97; R. 8154—23.)

262. Orders sanctioning an acqn. for any Dpt. of G. should be considered a sufficient authority for the payment of all ordinary charges incurred in connexion with the acqn. The previous sanction of G. to the payment of awards is not necessary. (R. 1800—98.) See para. 117.

263. Cancelled.

264. Where possession *has already been taken* before payment of the compn. if a payee is not to be found or will not appear, the mere service of a notice under Sec. 45 intimating that if he fails to appear on a certain date to receive payment the amount will be paid into Revenue deposits and no interest will be allowed, would not of itself bar the payee's right under Sec. 34 to receive interest up to the date

of actual payment. Sec. 31 (1) clearly distinguishes between a tender of payment and the actual payment; and Sec. 34 allows interest up to the date of payment, and not merely up to the date of tendering payment. But where a payee avoids service of a notice or deliberately abstains from appearing simply in order to delay payment and thereby to obtain a larger sum in the way of interest than he otherwise would, the maxim *nullus commodum capere potest de injuria sua propria* would apply, and A. O., on proof of such conduct, would be justified in withholding interest from the date on which the actual payment could have been made. (Broom's Legal Maxims, 6th Edition, 278.) (R. 2783—00.)

265. In the case of petty payments, if the payees do not appear on a convenient day fixed for payment, and do not apply for a reference to the Court, A. O. should issue notices to them informing them that if they do not attend by a certain date, the compn. will be remitted by money order, the amount of the money order fee being deducted.

(2) The following rules are observed in making payments by money order :—

- (i) No separate sums exceeding Rs. 100 shall be so paid.
- (ii) With each money order shall be sent a receipt in Form C duly filled in. The Post Office will return the receipt, after it has been signed by the payee to A. O. who will dispose of the receipt in the usual way. Should a M. O. be returned by the P. O. unpaid, proceed on the analogy of the Bom. Try. Manual, Art. 41 B (1) by credit to "Cash Recoveries of Service Payments" which is practically a Deposit account.
- (iii) For the words "Paid in my presence" ^{in cash} _{by cheque} in Form C the words "Paid by money order" shall be substituted—or Form CC may be similarly used if payments are numerous.

(3) A. G. will accept the receipt for the amount entered in A. S. less the money order fee as a valid receipt for the full amount in A. S. (R. 2783—00.)

266. It will be seen that the rules in no possible way countenance a common vicious practice which exists of sending the A. S. to the Mamlatdar and instructing him to make payments. This deprives the party of his right of protest and claiming a reference before the officer who has the statutory powers to deal with it and can answer enquiries, and therefore must necessarily increase correspondence besides throwing on the Sub-Treasury officers duties not contemplated. The methods of payment open to A. O. are so easy that he should invariably dispose of the whole case himself: and such functions cannot be delegated. (See para. 116.)

267. A question has arisen whether money in the A. O.'s hands due for payment under an award can be attached by a creditor, or for G. revenue, or by a mortgagee who was not represented at the hearings. It seems that for revenue or by the mortgagee no such attachment is possible because both had their natural remedy in the proceedings themselves. A. O. can always deduct in the award any sum due to G.: and he would credit this to the Treasury by transfer payment in Form C. Of course the full amount will be debited to the work for which the acqn. is made. But if any creditor who had not any ground for being represented in the proceedings took out an attachment of the compn. money before payment, such an attachment would apparently be valid and payment would be made to the attaching Court on behalf of the party. See para. 139.

It is most important that A. O. should forward on the day the award is made a copy of the A. S. signed by himself to the Audit officer. (R. 10097—12.)

268. G. have frequently complained of the neglect to dispose of A. S. within a reasonable time. Every effort should be made to close the accounts before March 31st in each year by one or other of the methods of payment above mentioned. Unnecessary delays are caused by neglect of A. O. in the following respects :—

- (1) To make the cash payments promptly after drawing an advance.
- (2) To refund the undischarged balance of the advance as soon as he knows it cannot be paid.
- (3) To impress upon payees that their right to get more compn. on reference to the Court is not prejudiced by their receipt of the cash under protest.
- (4) To pay the remaining amounts into Civil Court or Revenue deposits as soon as it can be ascertained whether the parties are refusing or neglecting

to take payment. Time is often wasted in useless endeavours to secure their attendance *after* reasonable notice and reasonable opportunity have been given. It is not A. O.'s duty to provoke references, or to prevent limitation coming into operation, but only to afford conscientiously the statutory facilities.

(5) The money must be paid *into Court* when there is a refusal, even if no reference *has been made or demanded* (see para. 291). The G. Member should make an application and tender the deposit in open Court: it is irregular to proceed by correspondence. (R. 4213—18.)

This G. order is however opposed to the H. C. decisions summarised in para. 291. The best solution of the discrepancy is for A. O., when they grumble or refuse the money but will not request a reference, to point out the difficulty in which this places him; and if they still decline a reference, he would be justified in following para. 291, holding the money in Rev. deposit as unclaimed. Under the ruling in 44 Panj. R. (1904) G. is liable under Sec. 34 to pay 6 per cent. interest on money not paid into court. But this only means that G. lose about 1 per cent. and on the other hand, if the party does not take his money before limitation expires, may even gain the whole sum.

269. G. have fixed the end of the financial year or six months from the date of the A. S., whichever is earlier, as the *absolute limit* for the disposal of the A. S., and when an advance is drawn it must absolutely be adjusted within 30 days. In cases when the urgency clause has been applied, there is special need of promptitude, since interest is running against the applicant from the date of taking possession. (R. 10794—14; 8154—23.)

270. Payment into revenue deposit, though final so far as A. O. is concerned, is not a full disposal. Of course the payee cannot any longer claim a reference as he is barred by limitation. Still inspecting Revenue officers should scrutinize outstanding deposits during their inspections and endeavour to get the amounts disbursed.

271. If an award for which budget allotment has been made cannot be disbursed before March 31st, proper steps should be taken (see para. 126) to get the grants surrendered and renewed in the next year. (R. 501—03, 7210—12 and 6179—13.)

272. After the A. S. has been completed, the A. O. is usually required to report through C. to G. the total amount awarded and also certain items which fall outside the Act but are required for the adjustment of the accounts of the whole transaction. There will then issue a Resolution sanctioning the transfer of the land to the applicant. (The Act only provides for its acqn. by G.) This Resolution will also give A. G. and the Treasury their authority for the account adjustments. It should be filed as closing this portion of the case.

N.B.—It may here be noted that if it is proposed to adjust debit to Indian States by revision of treaty payments, reference must be made to the Political Dpt. of G.I. (R. 4149—85.)

273. The G. land will be valued like all private land. If the applicant contests the value placed upon it by A. O. and C., it must be decided by G. In the revised rules for the East India Ry. (G. I., P. W. D., 534 R. C.—9-6-85) it was ruled that the capitalised value of the abatement of L. R. is the amount which, invested in [4 per cent.] G. securities, at the market rate of the day, will produce interest equal to the abatement. If the land required for the Ry. Co. be the property of the State, its value shall be the value as appraised by the Revenue authorities at the time of its transfer to the undertaking, inclusive of incidental expenditure.

274. In view of the rate of interest on loans raised in the open market the capitalisation of assessment on lands acquired for railways and for other purposes should be made at 25 times the assessment. This rate will remain in force for a period of five years ending 31st July 1940 after which it will be reconsidered. (R. 3803/28—35.)

275. But this capitalisation is only permitted in the case of certain Ry. Cos. (*vide* para. 284) and Port Trusts.

In the case of Irrigation Works for which a capital account is maintained, the capitalised abatement is reported for administrative information, but not actually included in the capital on which interest is charged.

A payment for the extinction of L. R. in perpetuity is not "ordinary L. R." and not liable to L. F. But the redemption of L. F. should be made a further condition of the transfer of lands to any Body or Dept. not exempted (as Ry. Cos. and G. Depts. are) from such redemption of L. F. (and not itself the L. B. which receives the cess.) (R. 2452-87.)

The Bombay Port Trust was not permitted to compound for the assessment of certain brickfields in R. 1303-21.

276. Redemption of land tax by private individuals is not permissible. (R. 7432-76, 2958-86, approved in R. 4578-18.) Where land is acquired for a Muny. or a Co. they will still be held liable for the revenue, but *might* be allowed to compound for it (sci: where the amount is trifling?). (R. 1860-84.)

When the acquisition is for a public purpose, yielding no profit (*e.g.*, a road, or free public hospital), a grant of the revenue may be made: but that is a matter dealt with under the L.R. Rule 35. In cases where some profit or revenue will accrue to the L.B. the question was settled in R. 4578-18. No L.B. can compound for L.R. except when the annual collection would not be worth while. Therefore capitalised L.R. will not be charged against a L.B. and for Inam land they will pay only for the extinction of the alienation, but will continue to pay the ordinary revenue. See paragraph 278.

277. When inam or revenue-free land of any sort is acquired these orders apply to the capitalisation of the judi or salami.

278. The applicant will have paid to the party the value of his alienated income (whether it be paid over in cash or invested under G. control). The land would then pass to the possession of G. as (wholly or partly) revenue-free land. If the applicant (such as a Muny.) is not allowed to hold it revenue-free then the land would be again liable (I.L.R. 36 Mad. 373 and 15 Ind. Cas. 376), on being handed over to the applicant to full assessment: but the applicant has paid for the (total or partial) extinction of the revenue. Can full assessment again be imposed without compensating him *per contra* for at least part of what he has paid? It would seem in equity that G. should pay him 20 (or? 25) years purchase (F. 4169-98) of the reimposed revenue. The point was dealt with in R. 11920-14, and R. 12517-448 Confl. of 24-12-15: and it is ruled that when an assessment (agricultural or N.A.) is to be imposed on the land when handed over to the applicant, then the value of the extinguished alienation should be paid to the late owner by G. (or if already paid by applicant refunded to him by G.); but 15 per cent. thereon must be finally paid by the applicant. This course was taken in respect of inam lands acquired for the Tata Power Co. in Mulshi (R. 1347/28-30-10-28.)

279. The next question is, what rate of assessment should be capitalised? When land is used purely for agriculture it is the existing agrl. assessment or judi. No account is taken of possible future increments. If the G. assessment is going to increase, so too must the rental value be presumed to be rising; and we (sci: in this Court?) rarely enhance awards on that account (18 Cal. W. N. 531). The same principle—that only an existing assessment or such increase as can be properly regarded as immediately certain, may be capitalised and charged—is emphasised in more detail in R. B.—Misc. 1318-5-4-21 and 3574 E—16-12-21. But in R. 2900/24 of 18-1-26 an Inamdar was refused the capitalised value for revised assessment which was due, but had not been calculated and sanctioned (Savla case): when it had been calculated and sanctioned, though not introduced (Manjargaon, Nasik) it was allowed. When it is N. A. land bearing an actual N.A. assessment, or land forming part of a clearly N. A. block which will yield a N.A. assessment *immediately*, the N.A. assessment should be capitalised. Where the land is 'potentially' residential but not in immediate demand, even although its market value may be considerably enhanced in expectation of this demand, still not more than the agricultural assessment will be capitalised. The subject is fully discussed in R. (u.o.r.) 560-13. [See also (Order) R. 5051-12.]

280. When land is purchased out of loan funds for State Railways or Rlys. of class 3, to capitalise and pay revenue for ever to the Revenue Dept. would be equivalent to borrowing money in order to purchase future revenue and is financially inadmissible.

The cost of all lands provided, whether for the temporary or permanent use of Railways falls either immediately or ultimately on G. and under these circumstances the capitalisation of the L.F. Cess on such lands would amount to a bonus to L.F. at the expense of public revenues, and is inadmissible on the principles laid down in R. 9094—84. (R. 7887—93.)

The L. R. abated is not always only that on the acquired land. That lost upon land rendered uncultivable by severance or loss of irrigation must be included, whether the land-holders are compensated or not. (R. 10693—17.)

281. When the Audit officer receives the full A. S. together with a statement of the value of G. land and the capitalised abatements of revenue, together with information as to how much has been paid in cash, how much by exchange for other property, and how much by conversion into a pension, he will then proceed to charge these items to the acquiring Dept. When the acquisition is made for G. itself and for a Department which is not commercial and not charged with the cost of lands which it acquires, there will be no adjustment to be made after the first payment of the award. The value of G. land and capitalised assessment are disregarded and not required.

The capitalised value of cash allowances payable in respect of land acquired on behalf of the Army should be claimed (*i.e.*, by A. G. ?) from that Dept. (R. 9905—09.)

282. When C. has received orders for an acqn. for a Ry. Co. or other public works, he should, after verification and acceptance, report the award and value of G. land through the Comr. to G. in the Rev. Dept. who, if they approve it, will after consulting the P. W. D. Ry. issue orders debiting the capital account of the Ry. with the amount of the award and other charges, transferring the land and directing the correction of the demarcation plans (if any). (R. 5447—97.)

283. When forest lands have to be given free of rent for Ry. purposes, the claim of the Forest Dept. to compn. is inadmissible but when rent is paid for such lands the Forest Dept. should be credited with it. (R. 6586—91.)

284. For adjustment of accounts when land is acquired for Railways see paragraph 76. When lands are relinquished by Railways the proceeds of such lands less any charges properly incurred in their disposal will be credited as follows :—

(a) When the land was provided free of cost by the Govt. of India to Head XII subsidised Companies.

(b) In all other cases to the capital account of the Railway.

284A. In cases in which land is given in exchange for acquired land, whether khalsa or inam, the Railway concerned shall be debited with the market value of the acquired land (including the capitalised value of the nuksan in the case of inam land), without adding thereto the additional 15 per cent. for compulsory acqn. plus the capitalised value of the assessment or judi paid thereon. (R. 2241/28—3-5-1929.)

285. Each Local G. should ascertain from the Ry. officers whether any special provisions exist for land in any contract. (R. 1872—10.) This has been done in preparing para. 35.

286. For Class 4, 5, 6 and 7, full credit and debit will be passed on to the Co. or Indian State as a body financially outside the G. accounts. This will include capitalised assessment (see para. 275) except where otherwise provided in the arrangements with Indian States see para. 42. When not so charged there will of course be no credit to V—L.R. or Miscellaneous. With the above account adjustment A.O. and the District officers have little concern, except that A. G. usually directs the Treasury to credit to V—Land Revenue (under Miscellaneous Non-Tharavband items) and debit to the account of the applicant the value of G. lands and of capitalised assessment abated when this is to be realised. But after the final completion of the award and transfer of possession, information in the form in para. 312 should be furnished by A.O. to the Sub-Registrar. Every modification in an award made by a Court under

Parts III and IV of the Act and every alteration in the form of compn. made by A.O. under Sec. 31 (3) and (4) should be similarly intimated and paras. 313—317 must be observed as to correction of Land Records.

287. In lieu of the method of deposit in advance sometimes it is permitted for a Muny. or a D. L. B. to make budget provision and then after the award themselves to issue cheques, according to the A.S. and at the request of A. O. which he will deliver to the parties. In such a case the certified A.S. will be filed with the accounts of the L. B. for audit and the Treasury and the A. G. will not be concerned.

288. Payments into Civil or Revenue Deposits can in such cases be made by the proper endorsements on the cheques of the L. B. Any amount due to G. for costs, establishment value of G. land or capitalised assessment, etc., will similarly be recovered by a cheque. When an amount is not taken away by the party and cannot be paid to Civil Court deposits, still it must be paid into Revenue deposits. It cannot be left undischarged in the hands of the L. B. awaiting a claim.

CHAPTER IX.

REFERENCES TO THE COURT.

289. The legality of the acqn. or the propriety of A. O.'s proceedings cannot be raised in the Court (38 Cal. 230 and 30 Cal. 36). The Act itself now provides a means of challenging the former point (Sec. 5A). If there has been a material irregularity (omission of notice, etc.) and waiver by the affected party is not clearly established (34 Calc. 470) the Court could quash the whole proceedings. The provisions for reference to the Court are unilateral: there is no possibility of G. or the applicant invoking the Court if dissatisfied with a published award or any part of the procedure leading up to it (P. C. in 38 Calc. 230). But A. O.'s arguments do not limit or estop G. in any other way (9 Bom. L.R. 1232). No Court can reduce the award in the aggregate or for each property (30 Cal. 36; 22 Mad. L.J. 379). Consequently excessive payments cannot be recovered by this procedure. C. awarded, in H. C.'s opinion, Rs. 500 per acre too much for 20 acres: but the H.C. could not disturb the award (Bom. H.C. F.A. 115/1924 on 5-1-26) but characterised the Salsette acqns. as "windfalls" for the owners on account of "rash persons" coming forward to acquire the land for building purposes (Bom. H.C. F.A. 147/1924 on 8-2-26.)

A Court will not make trifling amendments (10 Bom. L.R. 660). It may find the award insufficient as to some items but sufficient as a whole for each property, and so uphold it (42 Ind. Cas. 905.)

It is doubtful whether a Court can remit a case to C. for revising his award. (12 Ind. Cas. 436.) References can be made on the following points:—

(a) As to the total amount of the compn. including crops, trees and damage, in urgency cases, Sec. 17 (3).

(b) As to the true area taken.

(c) As to the apportionment of the gross sum awarded: even when rivals claim each the whole (10 Bom. 585 and 16 ib. 525) under either Sec. 18 or 30.

(d) As to investments under Sec. 32.

(e) For settlement of minor disputes as to damages during temporary occupation [Sec. 35 (3)] or whether any land is part of a house or factory, etc. (Sec. 49.)

It should be noted that no reference can be made under Sec. 5 or 5A: nor if the party without good cause has made no claim or no appearance (see para. 133 and 12 C.W.N. 263).

Decisions have differed as to whether the Court can decide a question of title between a claimant and G.

Yes:—45 Bom. 277 (F. B.)

No:—64 Ind. Cas 95.

When an owner has a limited interest it is sometimes unavoidable to value the G. interest in order to fix the limited interest (64 Ind. Cas. 587).

The Court will take up the issues in this order: (i) the total compn. if questioned. When the reference is only as to the total award the Court cannot go into questions of title (9 Ind. Cas. 582; 10 Calc. W.N. 195); (ii) apportionment, if disputed (34 Calc. 606). C. and the A.O. drop out of (iii) if they have no interest.

290. *As to total compn.*—In dealing with requests for references under Part III, the A.O. is acting judicially and his proceedings can be revised by the High Court (12 Cal. W. N. 195) and are therefore clearly distinguished from his proceedings up to the announcement of award.

If he refuses to make the reference, an appeal lies to the revising Revenue authorities (I.L. Burma R. 132; 36 Ind. Cas. 213). He must see that the reference is properly made. Particularly the A.O.'s reasons for his award must be stated to the Court preferably by attaching a copy of the reasoned award (6 C.W.N. 406; 11 ib. 875). See Rules for Conduct of Legal Affairs; and also Sec. 18 (2) (a) and (b). There must be a request reasoned, written and lodged within the 6 weeks. It may be sent by post (2 All. L.J. 784). It must be made by a party interested whether A. O. recognised him or not (10 C.W.N. 195) provided he did not keep silence before A.O. C. cannot waive these conditions (30 Bom. 275 where the request was foreshadowed but not actually made) or make a reference in the absence of a proper award or request; if he does G. and the Court are not bound by his action. (19 Panj. L.R. 1909; 7 Nagpur L.R. 88.)

An objection that a person applying for a reference under section 18 is not a person interested and has no *locus standi* must be taken at the first opportunity. The Privy Council have ruled that otherwise the objection should be considered to have been waived. (33 Bom. L.R. 874.)

291. If a party neglects to claim or acquiesces in the award he is estopped from further claim (4 Ind. Cas. 1146; 8 W.R. 327; Contra 7 C.W.N. 538). He cannot come in on another's reference (9 Ind. Cas. 582), *e.g.*, a tenant on his landlord's reference; 8 Sind L.R. 18. A special jurisdiction created *ad hoc* excludes other remedies (65 Ind. Cas. 714). But a suit for a declaration of title to a (share in) the compn. (without any consequential relief) could be instituted at any time by any party (14 Mad. 46). New points cannot be raised before the Court (12 Calc. L.J. 505) but the arguments may be enlarged (30 Bom. 341); nor can fresh parties be added or joined (7 Ind. Cas. 10; 34 Calc. 451; 13 Calc. L.J. 159). (Contra 20 All. 133.)

In L. R. 57 I.A. 100 the Privy Council held that in a reference under section 18 the jurisdiction of the Court is confined to considering and pronouncing upon that objection which has been raised in the written application for the reference and the Court has no power to determine or consider anything beyond it.

But if the Court allows a higher rate it would apply even to a party who had withdrawn his objection only in the Court (1 Calc. W.N. 562). But Sec. 20 Cl. (b) (Notice of hearing) extends to interested parties who have not claimed a reference (Bom. Trib. of Appeal, 5 of 1902 and 3 of 1903).

When tenants accepted an award but the landlord claimed a reference and the Court awarded a larger total to be apportioned between them: held, that the tenants who had not claimed could not get any further sum. (53 Ind. Cas. 238.) But under the Bombay Improvement Act a party who adduced no evidence before A. O. and did not appeal to the Tribunal was allowed to bring a separate suit as he had no knowledge that his claim would be reduced till after the Tribunal award. (42 Bom. 54 and 35 Calc. 1104.) For late claims for severance, etc., see paras. 244-245.

291A. No one can ignore the award and bring a separate suit (against G.) for compn. (2 Cal. L. J. 359) or bring a suit if he appeared before the Court and did not press his claim (32 Ind. Cas. 922) except for injurious affection or severance not reasonably such as could be foreseen at the time of the enquiry (Numerous English cases). The Limitation Act, Article 62 or 120 applies (3 Cal. W. N. 202). A party can withdraw or resile from a reference (2 Cal. L.J. 506). If (as in most cases it is hoped will be the case) the award has been fairly and adequately thought out, when extravagant demands are made and the claimant has been negligent in stating his case [Sec. 27 (2)] A.O. should definitely *claim costs* against him.

in making the reference; the same note applies to appeals (17 Ind. Cas. 901). Costs were restored to G. though not allowed by the Distt. Court in Bom. H. C. F. A. 291/1924 on 26th March 1926. *Vide* also "the Assistant Collector, Salsette *v.* Damodardas Tribhowandas—30 Bom. L.R. 1622" which contains a discussion as to costs in land acquisition references. And if payment has been made he should also demand that security should be taken for the costs of G.; and care should be taken that sureties accepted hold land in British India, and not in States outside the jurisdiction. No reference can be made after the limitation period has expired. Emphasis has already been laid on the vital importance of fixing precisely the date from which this limitation runs (*vide* paragraph 258). Time occupied in getting a copy of the award is not deducted from the limitation period (133 Panj. L.R. 1904). This being so, it is morally incumbent on A.O. to give each party who requests a reference or desires to consider his position a copy as speedily as possible.

292. The applicant cannot demand a reference (4 Ind. Cas. 332). Nor can he appeal against the Court's order (9 Calc. W. N. 66) but G. can and often does. The assessment levied on (most) land by G. is not an interest in the land but a tax on it (10 Bom. L.R. 997). This seems however inconclusive on the moot point whether L. R. is a tax or a rent. The applicant entrusts his case entirely to G. and is bound by the award sanctioned by the officers of G. But as has been already explained (paragraph 143) a *locus pœnitentiæ* is afforded to him, and if G. concur that the cost is excessive the project can be dropped and the acqn. withdrawn.

293. The S. S. must be represented to render the proceedings valid (4 Ind. Cas. 332). Special notice of the reference is to be given to the (G. I. P., B. B. & C. I. and M. S. M.) Rly. Cos. and they are to be called upon to assist (not to conduct the case independently) and report must be made to the R. L. A. (R. 6953—19).

293A. As regards proceedings before the Court, there is no advantage in the Muml. Solicitors attending to uphold the award in preference to the G. Solicitor. But where a Muny. is interested, the Solicitor to G. should confer with the Muml. Solicitors, in order to place the case against increase before the Court. (R. 6503—91.)

294. Cancelled.

294A. If the same gentleman who performed the duties of A. O. remained for several years in the same charge, there would be no difficulty; but cases have occurred in which after a reference was made and the applicant wrote to the A. O. intimating that he had important fresh points and evidence to produce; but the District Court could not take up the reference for sometime. Two years or more later the reference was heard: the A. O. in the meantime had been transferred; also the Engineer representing the applicant. C. was informed of the hearing, but it was nobody's special duty to take any action, and the case was "heard." Neither the applicant nor the A. O. put in appearance or evidence: the decision was very naturally adverse. C. should primarily be the centre for watching all references; not only passive but active watch. The compilation clerk of this branch should be required to go to the District Court and to see the District G. Pleader from time to time and to keep himself in full touch. The D. G. P. will, from time to time, keep C. informed of the progress of the reference and of the date when the reference will finally come for hearing. But C. should keep a schedule of every Reference made and should watch it and if long periods elapse without a hearing, the G. P. should be addressed. As soon as notice of hearing is received C. should have it posted in the schedule and take active steps to see that the applicant and A. O. are informed and that they acknowledge the intimation and give him an assurance that the matter will be fully attended to [*see* paragraph 295 (1) to (3)]. Subsequent communications should be between A. O., D. G. P. and applicant (not necessarily through C. unless his advice is specially required). When the reference is finally decided, C. should strike off the schedule. (R. 887/24—19-6-28.)

295. The instructions of G. as to the conduct of References are:—

(1) C. should arrange for the defence of the award as if it were a suit against G. except that the sanction of G. to its defence under No. 90 *et seq.* of the Law Officers' Rules (1910) is not required; but pending further orders and *subject to*

sub-rule (2) C. should submit a report regarding every such reference, stating the lines on which it is proposed to defend it and the evidence it is intended to adduce, to the R. L. A. for scrutiny and instructions before the defence is actually entered on. In particular, care should be taken that reliable evidence is, as far as possible, adduced before the Court in support of the grounds on which the award is based, and ordinarily some Rev. officer of superior rank (*e.g.*, a Mamlatdar) who has himself seen the land should, among others, be called as a witness. A clear and accurate plan of the land should also be prepared and put in evidence. In accordance with No. 101 of the Law Officers' Rules, an officer thoroughly conversant with the facts of the case and able to explain any points of revenue practice that may arise should invariably be deputed to instruct the G. Pleader during the proceedings and to watch the case. When the sum involved is considerable or the compn. is claimed at very high rates, the case should generally be watched by an officer of not lower status than an Assistant or Deputy Collector. In important cases the consulting Surveyor to Government can be asked to appear in Court as an expert witness. Detailed orders on the subject are contained in G. D. 2708—29-11-30.

If the lines laid down in this Manual have been substantially followed, then A. O. himself is the best person to depute to watch the case. Moreover, he will learn much by attending the hearings and, in future cases he may have to deal with, will much benefit by his ability to appreciate the atmosphere of the Court. Since he has seen the land and understands his own basis of valuation, no one can give instructions to the G. Pleader more readily. Of course the map and all other papers will be with the reference. It will be necessary to prove judicially (by calling parties and sometimes by putting in certified extracts from Registration records) transactions and prices which in his proceedings A. O. admitted on secondary or other than strictly legal evidence. When no document has been passed, then an entry in the Record of Rights shall be presumed to be true (Sec. 135-J., L. R. C.); but if a document has been executed, then no secondary evidence can be given, but a certified copy of the document itself must be put in under the Evidence Act. (R. 52—17.) Evidence recorded by A. O. is not "evidence" in the Court, except by consent of parties (2 L. Burma R. 209).

A party claiming a reference is not obliged to adduce fresh evidence or indeed any evidence before the Court: but the omission will not help his case. The *onus probandi* is on the claimant so long as the award is reasoned and *prima facie* sound (34 Cal. 605; 27 Mad. L.J. 106). Another important point is that in any but the simplest cases, indeed in any case in which A. O. considers that a view of the land itself will help the Court to appreciate the evidence and understand the proper worth of the claims made and the arguments used in the award, he should instruct the G. Pleader to press the Court, if possible, to find time to inspect the land: I.L.R. 9 Cal. 363 (1883), Cal. W.N. 682 (1897), and Order 26, Rule 9, Civil Procedure Code; and Privy Council in 26 Bom. 1 (28 Ind. Appeals 121).

(2) Where the land is acquired for a L. B. or a Co. C. should at once give notice to the applicants, calling on them to assist in the defence of the award under Sec. 50 and should take all necessary steps for conducting the defence with their co-operation in accordance with sub-rule (1), except that a report should be sent to the R. L. A. only in cases of serious importance, owing to the amount involved or the likelihood of the Court's award forming a precedent detrimental to G. interests in the event of subsequent acqns. R. 6953—19 comments on a case in which this notice was not formally and properly given. When A. O. is not a P. W. D. disburser still law costs are to be debited to the work or to the acquiring Dept. and not to C.'s Law grant. R. 2976F.—12 and 23 and F. 2013 of 19-11-23. (C. A. C. Vol. I. 118.)

(3) When the District Judge's award exceeds that of A. O., C. should at once consider the advisability of an appeal under Sec. 54, and, if he decides in favour of this course, should apply to G. for sanction. In cases where an appeal is made by any claimant, C. can take steps for its defence without the sanction of G. but should in all cases of importance, or where a point of law is involved, consult the R. L. A. (Memo. R. 10415—07).

(4) If a second appeal is contemplated the officer concerned should move the trial or appellate Court either to require the claimant to give *substantial* security (as specified in Government Circular, Legal Department, No. 1204, dated 17th October 1928) before the enhanced award is paid to him, or to grant a stay order for the execution of the decree. (L. 1204 (circ.) dated 17-10-1928 and R. 30/33 dated 31-3-1933).

296. It is hoped that there will be no further necessity for the following criticisms which G. have recorded :—

Hitherto the result of cases brought before the Courts is far from satisfactory. G. very frequently fail to establish their position before the Courts, when sums are awarded enormously in excess of the amounts settled by the acquiring officer. These failures are mainly due to want of system in putting forward the evidence. What happens only too often is this : The A. O. makes what, on the meagre evidence before him, is a reasonable award, frequently based almost wholly on a consideration of the assessment. The case is then referred to the Court where the main object of the claimant is to prove that the compn. awarded is too little. The claimant, being keenly alive to his own interests, adduces all the evidence he can get hold of, while the G. case not being properly worked up is based almost entirely on the award which is in dispute. In the face of positive evidence the value based on the assessment—an uncertain test—can hardly be accepted by the Court. Cases of this kind occur over and over again. The practice has been to leave the cases almost entirely in the hands of G. Pleaders, who while for the most part doing their work well have not as a rule shown much initiative in working up such cases for G. The instructions which they will receive from the R. L. A. will doubtless effect a substantial improvement ; but a great deal must depend on the officer watching the case, and care should be taken to select for the purpose an officer of acuteness and judgment, and to impress upon him the importance of his duty.

297. A. O. should embody these qualities. If the award has been based on clear principles easily defensible by argument and by proof, such results should not recur. As an illustration, there was a case in which a large block of land and buildings was acquired for the Central offices at Poona. The parties were represented by lawyers from Bombay and they were evidently dissatisfied with the award and demanded a copy with the object of preparing a request for a reference, and seemed confident that they would get a large enhancement. But after considering the facts and arguments and calculations as worked out in the award and after taking a month to consider the point they intimated through their lawyers that they had been advised not to incur the risk of a reference ! The reasons given in the award were so conclusive that a reference would probably have saddled them with substantial costs without securing any enhancement. An award by the special L. A. Officer, Bombay, for salt pans, based on capitalised income as an industrial concern and rejecting potential building site value, was successfully defended in the Bombay High Court by Mr. H. Campbell (the author of the Commentary) on 3-2-15 against an appeal by Sir Dorab and Mr. Ratan Tata. A series of very successful defences in the H. C. in appeal by G. are discussed in R.L.A.'s 189 of 18-1-26 where in spite of the Dist. Court's enhancement not only did the claimants fail in upsetting the A. O.'s award but all came out the poorer by the costs of the proceedings.

298. *As to apportionment.*—It is not essential that the party should request this reference P.C. in 7 Calc. W. N. 538. But it is better to frame the award (*vide* para. 147) so as to throw upon the party who appears to have the inferior claim the *onus* of demanding a reference. Here too, if he demands it with insufficient justification, he may be saddled with costs ; and sometimes, on reflection, he will not think it worth while to press the claim. But though it is better to award in favour of one party and leave the opponents to their remedy, still A. O. may, if he thinks fit, refer the question of apportionment, without himself having decided it. Particularly when the dispute is hot and intricate he should remember that his decision is not likely to be final, and the unsuccessful party will go to the Court where it will all be fought out in full. It would be a waste of time to go deeply into such a dispute : as soon as its existence is disclosed, it should be left aside for reference to Court. For tenants see para. 225. A. O. cannot refuse a reference because he thinks the party has no good title (49 Ind. Cas. 659). If the A. O. omits or declines to make a reference the party is not precluded from going to the Court direct (7 Calc. W. N. 538 P.C. & 22 W.R. 38). If a party does not demand an apportionment reference he can still sue the recipient of the compn. (2 Calc. L.J. 359) within six years (8 W.R. 23 & 49 Ind. Cas. 657) under Sec. 31 (2). But it seems A. O. would not be a party. Here the jurisdiction is not exclusive, as it is in respect of the amount to be awarded. But contrariwise in 4 Calc. 757 it was held to be exclusive.

299. In any such case payment is not to be made to the parties [Sec. 31 (2)] but into Court. After payment has been made, an apportionment reference can be made, and if the result alters the payment the Court can effect recovery and pay the right party (33 Ind. Cas. 253 and 63 ib. I : and 17 Calc. W.N. 1057).

300. But after the Court has made its award as to the total amount of compn., there may again arise an apportionment dispute which did not arise out of A. O.'s award. In this case either the Court can take up the apportionment dispute after framing its award or A. O. when he is about to pay the additional award of the Court under Form B, on the request of the parties, or on knowledge of the dispute,

may suspend payment and make a further reference and pay the amount into Court by deposit.

301. In making an apportionment reference A. O. must add all legitimate parties, since the Court cannot join fresh parties. "If a Court intends that its decision shall bind any other party not before the Court, it should serve a notice upon them" (12 Calc. 32 which seems to permit an additional party to be joined ?) A party who has no notice is not bound by the proceedings (65 Ind. Cas. 71). Though a Reference is not a suit between parties still when a question of title as between two claimants (as it stood at the time of award : 4 Calc. L.J. 256 and 13 Ind. Cas. 550) is decided by the Court it is then "*res judicata*" and cannot be raised by them again (29 Mad. 173, overruling 20 ib. 269). If parties fail to appear and the reference is struck off, it can be re-instituted but a separate suit cannot (2 Calc. L.J. 359). No suit or objection to an apportionment can be maintained except as a reference (17 Ind. Cas. 684). The Court cannot shift the issues to another proceeding (except with the consent of parties : 13 Ind. Cas. 652) but must fully deal with it upon the reference (8 Calc. W.N. 321.)

302. Frequently the Court has to decide both the total amount of compn. and also its apportionment. In the first part of the reference C. and A.O. appear and are represented. But in the apportionment proceedings G. has no interest and usually does not appear, but leaves the parties to appear on their own behalf.

302A. The procedure in the Court follows the C. P. C. ; That part of a case is usually in the hands of the legal officers of G., and there are excellent law books devoted to the subject (*vide* para. 1).

302AA. When from the Court of an Asst. Judge an appeal was heard by the Dist. Judge in a claim not exceeding Rs. 5,000 no further appeal lay to the H. C. (33 Bom. 371 : 16 Bom. L.R. 74). Appeals lie as to the total amount and its apportionment and as to orders under Sec. 32 (29 Mad. 117) but not as to orders under Sec. 49 or other orders which are not awards (32 Calc. 921 : 39 Calc. 393). When on appeal the Judge's award is reduced the claimant must also repay proportionate interest (35 Bom. 255 C. of Ahmedabad *vs.* L. Mulji). In another case the challenged amount was ordered to be invested (to avoid interest running adversely to the victor) Civil appeal 261 of 1924 Bom. H. C.

CHAPTER X.

WITHDRAWALS.

303. Provided possession has not been taken, if G. think fit to withdraw after a notfn. under Sec. 4 or Sec. 6 C. will on receipt of G. orders issue notice of the withdrawal and, if the notification was under section 6, require any claims under Sec. 48 (2) to be submitted to himself. (R. 8086—16.) Such withdrawal must be sanctioned by G. alone, but need not be gazetted (R. 7372—07 and R. 807—44) unless the only Notfn was under Sec. 4.

The form when a whole Notfn. under Sec. 4 is withdrawn is :—

Whereas by Government Notification, Revenue Department, No. _____ dated _____ it was notified under section 4 of the Land Acquisition Act, 1894 (I of 1894), that the ^{land}/_{lands} specified in the schedule thereto ^{was}/_{were} likely to be needed to be taken by Government for a public purpose.

And whereas all persons interested in the said ^{land}/_{lands} were thereby warned that any contracts for the disposal of the said ^{land}/_{lands} by sale, lease, mortgage, assignment, exchange or otherwise, or any improvements made therein without the sanction of the Collector after the date of that notification would be disregarded in assessing compensation.

Now it is hereby notified that the ^{Government in Council is}/_{Government of Bombay (Transferred Departments) are} pleased to direct that the said notification shall be cancelled.

By order of the Governor in Council,
By order of the Government of Bombay. (Transferred Departments),

Assistant Secretary to Government.

The Advocate General considers that the Notfn. under Sec. 4 is a warning only; the real "notice to treat" and inception of action to acquire is the Notfn. under Sec. 6. Consequently Sec. 48 [especially 48 (2), damages] applies only when a Notfn. under Sec. 6 has issued.

But in justice to the public when a Notfn. under Sec. 4 is abandoned wholly then a notice of withdrawal should be gazetted. When the withdrawal is partial, it should be notified as part of the Notfn. under Sec. 6.

Whether G. should withdraw from an acqn. is simply a question of expediency, which sometimes cannot be determined till the award is fully framed and considered. There may be difficulties brought to light in the proceedings which were unknown before Notfn., and A. O. should always remember that there is a possibility of withdrawal after his work is complete. He should never take possession without weighing this possibility. If Urgency is notified, then possession is ordinarily taken of agricultural land without further hesitation, because in respect of this land very large and unforeseen enhancements of value are not very probable. But even so, if A. O., during the fortnight which elapses from the issue of his notices up to the time when possession is to be taken, becomes aware of any circumstance which renders possible a large excess over the estimate, he should consult with the applicant and with C. before actually taking possession. In ordinary cases, with no urgency notified, possession cannot be taken till the award is framed and announced. It will be wise, even then, to wait and see whether references are requested, and whether there is any reasonable probability of a large enhancement by the Court. If possession is not taken, there will be no liability for interest under Sec. 28. Moreover, even after the Court's award, it may still be possible to withdraw (*vide* para. 305.) if possession has not been taken.

303A. Withdrawal after Notfn. under Sec. 4 but before Notfn. under Sec. 6 has been held not to carry a title to damages under Sec. 48 (2).

But damages for mere delay after Notfn. under Sec. 4 followed by ultimate acqn. are not covered by any provision of the Act (60 Panj. R. 1917). If any could be proved, a separate suit against G. might lie.

304. On consideration of the final award, C. may concur that the enhancement is justifiable and unlikely to be reversed in appeal. But still he may agree with the applicant that at that enhanced price it is not desirable to acquire. If he forms such an opinion, he should refer the matter for the orders of G. The A. O. has a distinct duty to perform in accordance with the prescribed procedure. It is not open to him to proceed or not according to his discretion, or to delay or drop the matter *according to the convenience of the L. B.* at whose cost the land is to be acquired. If for any sufficient reason the necessity for the acquisition should disappear after Notfn. it is for G. alone to decide whether acquisition should be completed or not.

305. In a case in which a Co. desired to withdraw, G. refused to permit it. (R. 10262—13; and letter R. 5716—14.) It has been held that the discretion of withdrawal is absolutely vested in G.

No doubt in ordinary cases G. would assent to withdrawal when the cost was beyond the means of the applicant. But a case occurred in which, after reference, the Court largely increased the award. Fortunately possession had not been taken. The L. B. declined to take possession or pay the award. It seems probable that the party whose property was acquired could have taken out execution proceedings and compelled completion and payment, if the Court's award is an enforceable decree. [This view, however, has not been taken by the Bombay High Court (35 Bom. 146), but only in the Punjab (53 Panj. R. 1906), hence though the point is doubtful it is probable that in Bombay we can withdraw even after the Court's award if possession has not been taken. But not after a decision by the tribunal under the City Improvement Trust Act which is enforceable as a decree.] But since the party did not wish to enforce the award but to retain the property, no further action was taken on either side.

306. If an acquisition is abandoned and the costs of the party, if any, have been paid, it would still be open to G. to institute fresh proceedings at any subsequent time to acquire that land.

Hence if after notfn. but before possession is taken a building is destroyed by fire G. would first withdraw and leave the owner or his insurance Co. to bear the loss unless it could be shown that the fire was in any way due to the acqn. Then they can renotify and acquire on the basis of the value at the new date of Notfn., *i.e.*, without the superstructure. But if the original proceedings were complete (*i.e.*, possession taken) the value at the date of first Notfn. before the fire would have to be paid (R. 1819—21).

307. If there were a withdrawal after payment (but before taking possession), it seems the compn. money could be recovered by suit, if not otherwise recovered. But after possession has been taken (and payment made) G. cannot withdraw but may regrant; and the former owners may waive their rights and repay the whole or part of the compn.; *cuiuslibet licet renuntiare juri pro se introducto*. It would be a bargain for a fresh grant of the land on terms negotiated by G. and C. (R. 5031—23).

CHAPTER XI.

TAKING POSSESSION AND CORRECTION OF LAND RECORDS.

308. When the award has been paid including all the subsequent account adjustments, still A. O. has not finished his task. He must take possession (if not already taken under Urgency para. 117) after payment and then correct the Land Records and see that the land passes duly to the possession of the applicant. To take possession between award and payment is legal, but involves payment of interest.

309. Possession may not be taken direct by the applicant, except when Bombay City Muny. acquire under Sec. 91 of their Act (23 Bom. L. R. 35). A. O. personally, or by his agent, must take possession and see that the possession is clear and good; sometimes tenants have not vacated houses or huts; sometimes crops, trees, fences, etc., are still standing. No applicant should consent to accept and no A. O. should offer to give possession of land in such a condition. After possession is handed over to a Ry. Co. or other applicant, they would be powerless to take the necessary steps to evict tenants or remove occupied structures, etc. It is absolutely essential that A. O. should do this. When he has himself obtained perfectly clear possession, he can then hand it over to the applicant.

310. In acqns. for Rys. of class 1 to 3, except when the Ry. has agreed (para. 41) to accept them on the sanctioned terms, the A. O. must clear off and dispose in the best way possible of all materials, trees, crops, fences, etc., and apply the proceeds in reduction of the cost; *i.e.*, by credit into Treasury for this express purpose. (R. 6669—16.) A. O. will make this disposal as the agent of G. The Ry. if it accepts the materials, will debit the costs to their Construction Account and the credit however realised will go to "10 State or 11—Subsidised Cos."

311. The practice of exchanging receipts between the Revenue and the Ry. authorities when land is made over to the latter should continue (R. 6702—92.)

The practice of allowing Circle Inspectors or village officers to receive and hand over possession without proper instructions on the above points has been the cause of grave difficulties. A formal receipt should be obtained from every applicant or Dpt. for clear possession of the land.

312. Next a schedule of the lands transferred must be sent to the Sub-Registrar in whose jurisdiction they lie unless the village is subject to Record of Rights (R. 7601—23) in the form standardised as R. L. A. 9 by R. 4167—09 :—

If a whole village is acquired, no report need be made to the Sub-Registrar. If more than half a village is acquired, a schedule of the lands *not acquired* may be sent him, as a guide for dividing his index. (R. 7601—23.)

Record of lands acquired under the Land Acquisition Act in the District of
during the year 19 to be filed in the office of the Sub-Registrar of

Name and designation of A. O. Date and No. of award	Village	Survey No. and sub-division No. or house No. (if any). Khalsa or inam	Area and assessment	Name and addition (residence and profession, trade, rank, caste and title) of person or persons awarded compn. whether agriculturist or not, and amount of compn.	Dpt. of G., L. B. or Co. for which acquired
1	2	3	4	5	6

(R. 1318, 4167, 6712—09, 5976—14.)

Since the general introduction of the Record of Rights, this procedure is of doubtful utility since the title to the lands in no way depends upon Registration, and the object of giving notice to interested persons is equally attained by correction of the Record of Rights (or City Survey Registers).

313. There will have been (para. 104) a measurement made by the Land Records Dpt. Any change in boundary made during the proceedings or by any supplementary Notfn. must be incorporated in those plans under A. O.'s direction. Moreover, he cannot frame his award completely and report to G. the assessment to be capitalised or abated until the Land Records Dpt. has calculated according to its own rules the exact abatement. Calculations of proportionate assessment by Rule of Three will rarely suffice either for awarding capitalised abatements or for the survey corrections. It is obviously most inexpedient to have the least discrepancy between the assessments reported to G. and those actually abated in the Land Records.

During the interval which elapses from the Notfn. (Sec. 6) to the Award, A. O. should request the Land Records Dept. to complete these calculations and send to him the completed result without yet incorporating them as final. He must know the exact abatement of assessment and of judi whenever any measures under paras. 251—257 have to be taken. If the acqn. of any plot is abandoned or in *any way modified*, A. O. will see that the proposed Survey Corrections are also suitably modified, and by the time that he has completed everything and paid his awards and taken possession he can return the Survey Correction papers to that Dept. to be now carried out as finally settled. The sanction of G. to the acqn. confers on C. or on A. O. full power to correct and reduce assessments or judi (R. 6355—09, 10256—11) when the acqn. is for G. purposes so that it will be plainly impossible to continue the levy; but when the acqn. is for any outside body or Commercial Department (such as Military Grass Farms), then it will in each case have to be considered whether the assessment should be levied or not. If orders are given for its capitalisation, then its levy will plainly cease for the period for which it has been capitalised or in perpetuity, as the case may be. The remission of the L. R. in favour of any Co. or L. B. is regulated entirely by the rules under the L. R. Code. And when such a remission of revenue is sanctioned by the proper authority, whatever conditions have been attached to the revenue-free grant will be embodied in the entries made in the Land Records.

314. It is the experience of all Revenue officers that much confusion and trouble have been caused in the past by not regarding these corrections of Land Records as an integral part of the operation of acqn. Awards have been published and paid and possession taken, and yet years have elapsed before the proper abatement of assessment is made, or the maps are corrected. In one known case people whose land was acquired paid the assessment for 30 years afterwards through this neglect, and considerable difficulty was experienced in refunding the over-payments. Great care must be taken hereafter that such incomplete cases are not filed. No acqn. case should be admitted to the records until it is certain that all these corrections have been carried out and there is no reason why they should not be completed *within a few days* of taking possession. It is therefore unnecessary to frame any instructions for refunds of revenue over-collected in consequence of non-correction of accounts after acqn., and so on.

315. The records to be corrected are—(1) The Records of Rights through the Mutation Register; (2) the village or City Survey map, including the atlas of sub-divisions; (3) the land plans of the Ry. Co. or the demarcation plans of the P. W. road or canal, or whatever it may be; (4) the Land Register (V. F. I and any other village accounts affected such as V. F. I—A, II, III). Where a whole Survey number or mapped sub-division is acquired, there will be no need of correcting the map.

When land is acquired for a L. B. for public purposes (and its assessment is usually remitted) it should be entered in the abstract of V. F. I. under class B (ii), and not as though it were a private inam holding of the member of the L. B.

When inam land is acquired the sanad should be called up for endorsement. (R. 5589-92, 6003-94.)

316. The Mutation Register should be entered up under instructions from A. O. or through the Mamlatdar immediately upon taking possession, under the ordinary rules for giving effect to Mutations.

317. The correction of V. F. I. and the other Land Records and the map will be carried out on the basis of the papers already prepared through the Land

Records Dept. in the usual way, immediately after possession is taken. Detailed rules for the measurement of land proposed for acqn. and for the correction of records after acqn. will be found in the Compilation of Rules in the Land Records Dept.

318. All these orders as to correction of records can be given by A. O. if he is also exercising the powers of C. under the L. R. Code : if not, then he should send the orders through C.

319. The rights of G. cannot be acquired by any applicant under the Act, but only by grant. (36 Mad. 373.) When the capitalised value of the assessment is calculated and paid to G. (*vide* paragraphs 273-280), then C. could strike the assessment off the accounts without further order. If either the assessment or capitalised value of it is to be forgone, that constitutes a revenue-free grant which requires the sanction of G. subject to any powers to make revenue-free grants which have been delegated since 1905 (*see* L. R. Rules). (R. 1812-05.) This principle is applicable to all cases of abatement of assessment of acquired land. (R. 1143-12.)

320. After a Ry. Co. has taken possession of land, it must then correct its land plans and demarcate the land. The rules prescribed in 1861 are as follows :—

(1) A complete set of land plans should be recorded in the Chief Engineer's office of each Ry. and a copy forwarded to the Consulting Engineer to G. by whom a duplicate will be given to the Revenue Dept., which will supply C. with transcripts of parts included in his district.

(2) The Consulting Engineer and C. will respectively be held responsible for the punctual fulfilment of the foregoing orders and for the careful record of plans in their offices.

(3) All contemplated changes in the land in possession of a Ry. Co. should be promptly reported by the Ry. Agent to the Consulting Engineer, who will notify it to G. It will be for the latter to see that the necessary steps are taken by C. for entering such changes in his records, and for carrying out all further needful proceedings.

(4) It will be necessary for G. to see that a correct register and record of title of all Ry. lands is maintained, for the whole of such lands will one day revert to the Crown ; also that all rents or payment for clearances, etc., chargeable on behalf of G. against the Ry. Co. are duly realized.

(5) It is essential that there should be for each Ry. *one* set of plans, in a regular sequence, to show all the land ; and that the plans of each Ry. Co.'s estate, after they have once been prepared, should constantly be corrected and always be maintained complete.

321. Cases have occurred in which even after acqn. and payment, possession has not been taken. Whether such an acqn. were made for G. directly, or on behalf of a Co. or L. B., still no lapse of time short of 60 years' adverse possession would bar the right of G. to take possession and evict all occupants or tenants whenever the error is discovered. (R. 4998-16.)

If land has been acquired for the Irrigation Dept. and then unauthorisedly cultivated, the fine under section 61, L. R. C., is no longer to be entered in Canal Returns VI and VII to the credit of irrigation (P. W. D. I.-6890-11-7-1918 and P.W.-A.-I.-5897-18), but is to go to the credit of Misc. L. R. (P.W.-A. I.-11018-19.)

322. The following rules have been laid down by the G. of India under Sec. 13 (a) of the Rys. Act of 1890 (P. W. D. Circ. XIV—R. of 6-8-90) :—

(a) All land permanently occupied shall have its boundaries defined on the ground in such a manner as to enable such boundaries to be readily ascertained and identified.

(b) For this purpose the boundary may be defined by a continuous wall, fence, or ditch, or by detached marks, posts, or pillars.

(c) Where the boundary mark is continuous, the boundary is to be on the outer edge of the wall, fence or ditch, that is to say, the wall, fence, or ditch will be situated wholly on Ry. land.

(d) Where detached marks, such as isolated posts or pillars, are used, the boundary will pass through the centres of such marks. Between the marks the boundary will in each case be taken in a straight line from the centre of one mark to the centre of the next mark.

(e) Detached marks are in no case to be at a greater distance apart (centre to centre) than one-eighth of a mile (660 feet). They are to be of a substantial character, not easily destroyed or moved by accident or mischief, and are to be of such size and form as to be readily found and recognised.

(f) Each detached boundary mark is to bear a number, and the position and corresponding number of each detached boundary mark is to be shown on the Land Plan.

(g) Where a fence, wall, or ditch is for convenience situated at some distance within the boundary and does not mark the actual limit of the Ry. land, it will be necessary that, in addition to such fence, wall or ditch, the actual boundary shall be properly marked and defined in accordance with these rules.

Each Ry. Administration is responsible for the demarcation and periodical verification of the boundaries and the maintenance of proper records in connexion therewith of all land in its possession.

323. In the case of a Ry. constructed by a Co. the expression "land permanently occupied" is intended to include not only Permanent land, but also such Temporary land as may be required for a considerable period. In the event of any Temporary land enclosed by the boundary being afterwards relinquished the boundary is to be shifted to mark the new limit.

324. *Cancelled.*

CHAPTER XII.

DISPOSAL OF THE LAND AFTER ACQUISITION.

325. Under Sec. 16 acquired land vests absolutely in G. free from all incumbrances. Obviously therefore G. can do what they please with it. It would be inadvisable to acquire land ostensibly for one purpose and to use it for another, more particularly if the second purpose were one for which it could not be compulsorily acquired under the statute, but it does not appear that the former owner would have any legal remedy. Speaking generally and assuming that the change of purpose was due to a *bona fide* error and not to a desire to evade the law, land which has been acquired for a specified purpose can be used for any other purpose. (R. 9831—09.)

A public body (? a local authority) cannot use acquired land for a different purpose (18 Cal. L. J. 244). But they may use it for any other purpose within their statutory authority. They cannot transfer any right to exemption from L. R.

Land acquired in excess of requirements under the operation of Sec. 49 (1) or (2) would most naturally be sold off as soon as possession is got, in mitigation of the extra cost. The severed fragments might even combine among themselves or with other private or public properties to form valuable plots.

326. The general position in regard to all Crown lands in India is that the Government of India has the right to remain in undisturbed possession of all land in its occupation that is required for the effective discharge of the duties of any one of its Departments (e.g., Army Department, Commerce Department, Posts and Telegraphs Department, Railway Department, etc., etc.).

Any land no longer so required is to be offered to the Local Government of the Province in which it is situate. If the latter is unwilling to purchase it on the terms prescribed in the Secretary of State's Rules the land may be disposed of by the Government of India in such manner as it may deem suitable.

So far as Railway Land is concerned, the policy of the Railway Board is to limit holdings to actual requirements, present and prospective. Every Railway Administration must, therefore, be in a position to justify the retention of land

occupied by them, and where unable to do so, should classify it as "eligible for relinquishment" and arrange for its disposal agreeably to the following rules.

While land is not to be retained unreasonably, it is equally not to be disposed of at prices incommensurate with its value nor surrendered free of cost.

In deciding whether or not a certain area is eligible for relinquishment, Railway Administrations should be guided by the consideration that land may be said (without prejudice to the absolute right of a Local Government to represent to the contrary) to be required for the effective discharge of the duties of the Government of India (Railway Department) if it falls within one or the other of the following categories :—

(a) Land in the active occupation of a railway, i.e., land actually occupied by the permanent works of the railway, or required for their construction, maintenance or repair.

(b) Land not so occupied ; but to the permanent alien control of which specific objections exist, i.e., land in the midst of or adjoining that in active occupation and to separate which from such area would be detrimental to Railway interests.

(c) Land required in the interests of the health or welfare of the staff, or for the safety of Railway property (e.g., sanitary or fire zones, etc.).

(d) Land required for such future development as may properly be contemplated.

326A. When it has been decided that a certain area of land is no longer required by any Department of the Railway and is eligible for relinquishment, the procedure will be as follows :—

(1) If the land adjoins or is in the near vicinity of land belonging to any other Railway or Department of the Government of India, it shall first be offered thereto.

If one of these desires to acquire it, the land shall, on the terms being agreed upon, be made over by responsible authority to an officer of that Department or Railway deputed for the purpose. A formal record of the transfer will be made and the Local Government advised ; or, if willing, the latter may be entrusted with the work of transfer.

(2) If the land is not adjacent to or in the close vicinity of that held by other Railways or Departments of the Government of India, or, though so situate, is not required by such Railways or Departments, it shall be offered to the Local Government. If the Local Government are willing to purchase it, it shall, on the terms being agreed upon, be made over to the officer appointed for the purpose, in the same manner *mutatis mutandis* as that in which land is taken over in acquisition.

(3) If the Local Government is unwilling to exercise its option, the land should be disposed of to the best advantage as follows :—

(a) The Local Government may be asked to undertake the whole process of disposal, the Railway Administration merely concurring in the terms.

(b) If the Local Government is unwilling to undertake negotiations for sale, these should be carried out by the Railway Administration, and the Local Government may be requested to carry out the final transaction on the terms arranged.

(c) If the Local Government is unwilling to effect even the actual transfer on behalf of the Secretary of State, a formal deed of conveyance must be drawn up by the Railway Administration (ordinarily at the expense of the purchaser), submitted to the authority competent to execute it for signature, and registered, the land being thereafter made over, by responsible authority, to the purchasers.

In any case the Local Government must be consulted as to the manner of disposal, the conditions (if any) that should be laid down for the use of the land after sale, and the extent to which (if at all) the principles of the Resolution of the Government of India in the Department of Revenue and Agriculture, No. 13/44-13, dated 30th October 1896 should be applied.

(4) If neither another Railway nor a Department of the Government of India nor the Local Government desire to acquire the land, and if no reasonable offer is forthcoming from other parties, the land should be retained by the Railway Administration and managed until such time as one or the other of the above contingencies eventuate.

A Railway Administration may, at their discretion, effect an equitable exchange of land in their occupation for other land equally suited to their requirements, with or without a monetary adjustment; the method of transfer following, with the necessary changes, that prescribed for relinquishment.

326B. Should representations be made by a Local Government, either direct or through the Government of India to the effect that a certain area of railway land is not being used for the purposes originally intended and is, in addition no-longer required for the effective discharge of the duties of the Government of India, the Railway Administration will, if in a position to contest the claim, advise the Local Government, or the Government of India as the case may be, of the reasons for which it is considered that the land is still required by them or the fact that it is wanted by another Railway or Department of the Government of India. Otherwise the land will be considered to be eligible for relinquishment and dealt with in accordance with the rules relating thereto.

326C. *Terms of relinquishment.*—The terms on which railway land may be surrendered will be—

(a) in the case of a Local Government, those set forth in the Secretary of State's Land Transfer Rules;

(b) in the case of another Railway or Department of the Government of India, the market value of the land and buildings thereon;

(c) in all other cases, the highest offer which is considered reasonable; provided that in all cases conditions or restrictions of use agreed upon by both parties may be embodied; and provided also that, where the estimated value of the land exceeds Rs. 1 lakh, a prior reference shall be made to the Railway Board.

327. To enable management to be conducted on commercial lines, Railway Administrations are permitted to grant to outsiders or other Departments, under a lease or license, rights and facilities in respect of available land for such purposes, whether or not connected with Railway working, as they may deem suitable.

The leasing or licensing of available land agreeably to these rules, for purposes connected with the working of the railway (e.g., Bulk Oil Installations; Warehouses; Wharfs or other premises for storing goods on receipt from the railway after arrival or before being made over to the railway for despatch; Shops for Station Vendors; etc., etc.) does not require a reference to a Local Government or other authority; but, in the case of land leased or licensed for other purposes, the Local Government or other authority concerned should be consulted whenever the contingent circumstances are such as to render it relevant or advisable, particularly if the alienation is of a quasi-permanent nature.

The leasing or licensing of Railway land for religious or educational purposes will require the sanction of the Railway Board.

In addition to the lease or license of land itself, rights pertaining thereto, such as grass cutting, grazing, fruit, fishing, mooring, etc., may be let out.

328. When the Ry. Co. or other applicant no longer requires but relinquishes the land, or when G. relinquishes land acquired for its own purposes, the following rules apply:—

(1) Where it has been decided to dispose of any acquired land which for any reason has not been used, the occupancy shall, in the absence of special reasons to the contrary, be offered in the first instance to the person or persons from whom it was originally acquired or such of them as may have been chiefly interested therein, or to their representatives in interest, for a sum not less than the awarded compn. or on such other terms as Cmr. may consider reasonable. (R. 9886—07.)

(2) It will generally be expedient to restore service inam land but the arrangement will be tantamount to a regrant of a watan and the sanction of G. is necessary. (R. 5872—97.) For an instance, see R. 7249—17.

329. *Cancelled.*

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N.B.—This index has been compiled solely for the purpose of assisting references. No expression used in it should be considered in any way as interpreting the Sections, Rules or Orders.

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