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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Land Acquisition Act, 1870, was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 2nd February 1893:—

We, the undersigned, Members of the Select Committee to which the Bill to amend the Land Acquisition

- Act, 1870, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our preliminary Report, with the Bill as amended by us annexed thereto.
- Memorandum by Mr. P. R. Desai, Pleader, District Court, Ratnagiri, dated 7th April, 1892 [Paper No. 1].
- From Governor General's Agent in Baluchistan, No. 4402, dated 25th July, 1892 [Paper No. 2].
- From Secretary for Berar to Resident, Hyderabad, No. 237, dated 10th August, 1892, and enclosures [Papers No. 3].
- From Officiating Secretary to Chief Commissioner, Central Provinces, No. 5777, dated 20th August, 1892, and enclosures [Papers No. 4].
- From Secretary to Chief Commissioner, Coorg, No. 1322—68-92, dated 24th August, 1892 [Paper No. 5].
- From Secretary to Chief Commissioner, Assam, No. 3833 J., dated 29th August, 1892, and enclosures [Papers No. 6].
- From Chief Commissioner, Ajmere-Merwara, No. 43 C., dated 2nd September, 1892, and enclosures [Papers No. 7].
- From Secretary to Chief Commissioner, Burma, No. 295-8L.—1, dated 16th September, 1892, and enclosures [Papers No. 8].
- From Registrar, High Court, Calcutta, No. 2416, dated 6th September, 1892, and enclosures [Papers No. 9].
- Suggestions by Bewa Narain Singh, Pleader, Amritsar, dated 20th September, 1892 [Paper No. 10].
- From Chief Secretary to Government, North-Western Provinces and Oudh, No. 2699, dated 17th October 1892, and enclosures [Papers No. 11].
- From Officiating Junior Secretary to Government, Punjab, No. 907 S., dated 17th October, 1892, and enclosures [Papers No. 12].
- From Chief Secretary to Government, Madras, No. 1914, dated 10th October, 1892, and enclosures [Papers No. 13].
- Notes by Lala Nihal Chand, Muzaffarnagar, dated 18th October, 1892 [Paper No. 14].
- From Chief Secretary to Government, Madras, No. 2346, dated 19th December, 1892, and enclosure [Papers No. 15].
- From Secretary to Government, Bengal, No. 159, dated 12th January, 1893, and enclosures [Papers No. 16].

appears to us that all references from the Collector's authority should be to an independent judicial authority, and, now that the Punjab and Oudh have divided their judicial from their revenue establishments, there are few parts of India in which there are not judicial officers who have no concern with the executive administration. We think therefore that the time has now come, when the Court to which references under the Act will be made should be generally the principal Civil Court of original jurisdiction. To meet, however, the case of provinces which have still no Courts of separate civil jurisdiction, or the case in which pressure of business may require assistance to the ordinary Civil Court, we have retained the clause in the original definition which empowers Local Government to appoint special judicial officers to perform the functions of a Judge under the Act.

3. Section 7 of the Bill recasts sections 11 to 15, both inclusive, of the Act. To the draft section 11 we have added words requiring the Collector to enquire into the respective interests of the persons

claiming the compensation, as well as into the area and value of the land to be acquired. As regards draft section 12, we are of opinion that a claimant of compensation should not be precluded from taking exception to the measurements of the Collector, if he has good grounds for considering them incorrect; and we think that the Collector should give intimation of his award to any of the persons interested who may not be present when the award is made. We have altered the draft section 12 accordingly.

4. Section 8 of the Bill amends section 16 of the Act by requiring the Collector to take possession of the land immediately he has made the award, with a proviso permitting him to leave the occupants in occupation until possession of the land is required, upon such conditions as he and they may agree upon. We prefer the terms of the existing law, which leave to the Collector discretion as to immediate entry upon the land, and have changed section 8 of the Bill accordingly. Where the Collector postpones entry for any reason, he will ordinarily do so, as at present, on terms adjusted with the occupants; and in a later section we have provided for compensation to the occupant if his profits should be in any way *bonâ fide* reduced in the period between declaration under section 6 and the Collector's entry into possession.

5. In section 17 of the Act, which regulates the powers of the Collector in cases of urgency, we think that the special damage for which the persons interested are to be compensated should be expressly defined as the damages incident to such sudden dispossession, and have by section 9 of the Bill added some words to the section accordingly.

6. By sections 10 and 11 of the Bill, Parts III and IV of the present Act are repealed, and a new procedure substituted for that which now obtains in the decision of objections to the Collector's award. Under the Act, if any one of the persons interested does not attend in the proceedings before the Collector, or if the Collector is unable to agree with the persons interested as to the amount of the compensation, or if upon his enquiry questions arise respecting the title to the land or interests therein, the Collector is bound to refer the matter to the Court, which then proceeds to determine it with the help of assessors appointed by the Collector and the persons interested respectively. It was pointed out in the Statement of Objects and Reasons that these provisions entailed in a great number of cases unnecessary trouble, delay and expense to the owners of land acquired under the Act, for experience has shown that failure in attendance before the Collector is more frequently due to mere indifference than to any actual dissatisfaction with the award. In the acquisition of land for a railway, for example, it constantly happens that the interest of an individual owner is so insignificant that he finds it not worth his while to attend before the Collector. His absence, however, under the rigorous conditions of the Act necessitates a reference of the case to the Collector, with all the attendant trouble and expense, not merely to the proprietor who was absent, but to the many others who may be associated with him in the matter and who may be themselves perfectly satisfied with the award. The Bill accordingly proposed to make the Collector's award final, with the proviso that any person dissatisfied could sue the Collector in the Civil Court. The Committee are advised that in order to attain the end in view so radical a change in the procedure for the adjustment of the compensation is unnecessary. They think with more than one of the Governments consulted that it will be sufficient to provide that the Collector's reference to the Civil Court shall only be made when a person, dissatisfied with the award, asks that it be referred, the award being otherwise final. This change in the present law is reasonable, and the Committee are of opinion that it sufficiently corrects the main practical defect of the Act. They cannot leave out of sight that the valuations upon which a Collector proceeds are ordinarily made by Native subordinates whose official interests lead them to make the valuation on the lowest possible scale, and that in many cases the owners of land acquired under the Act are poor peasants who have neither the means nor the courage to undertake a formal suit against the Collector of their district, and who would accept very inadequate compensation rather than do so.

As to the discontinuance of the system of assessors all authorities are agreed. It is the universal remark that competent assessors are not easily procurable, and that there is an irresistible tendency for the assessor to become not an adviser but a partizan, adding very largely to the cost of the trial without assisting the Judge. In the words of Mr. Justice Parkar, "the nominees are faithful to their trust and deliver their opinion with minds altogether unaffected by the evidence."

The Committee have accordingly substituted for sections 10 and 11 of the Bill a revision of Parts III and IV of the Act effected in accordance with the views which have here been expressed. The Collector's award will be referred to the Court whenever any person interested asks that it be referred, but only then. The Judge will give his decision on it, and in all cases there will be a right of appeal from the Judge's award to the High Court.

7. In Part III we have made some alterations of the Act in detail. Section 24 of the Act defines the matters to be considered in determining compensation. The Committee are of the opinion that the Bill introduced last year rightly required market-value to be taken at the time of the declaration under section 6, and not, as in the Act, at the time of the award; but this change in the law required the addition to the section of a clause bringing under the consideration of the Court any diminution in the profits of occupation during the period between the declaration and the Collector's entry into possession, as also the value of any standing crops or trees that may be on the land when he takes possession.

It appears more convenient to insert here than in a later part of the Act the instruction contained in section 42 of the Act that, in addition to the amount of any compensation due to the owner of the land required, fifteen per centum on the market-value shall be given in consideration of the compulsory nature of the acquisition. We have accordingly added a clause to this effect in the section by which

we amend section 24 of the Act, and the Collector or Judge making the award will find embraced in a single section the whole of the details required for the completion of his estimate of compensation.

This section as drafted in the Bill contained a definition of market-value to which exception has been widely taken as inapplicable to many parts of the country and when applicable open to much objection. We agree with the Lieutenant-Governor of the Punjab and the High Court of Bengal that no attempt should be made to define strictly the term in the Act, and that the price which a willing vendor might be expected to obtain in the open market from a willing purchaser should be left for the decision primarily of the Collector and ultimately of the Court.

8. The Act (section 33) directs that when the Judge's award does not exceed that of the Collector the costs of the reference to the Judge shall be paid by the person interested, but that when the Judge's award exceeds the Collector's the whole of the costs of the reference shall be paid by the Collector. In the Statement of Objects and Reasons it was noticed that this provision led to extravagant and speculative claims, and in the Bill as introduced the adjudication of costs is left to the Courts in accordance with the ordinary rules of the Code of Civil Procedure. We think the rules which guide the adjudication of costs between litigants cannot fairly be employed in the decision of reasonable objections to the sufficiency of a Collector's award. We are of opinion that, when the Judge finds the Collector's award to have been inadequate, the Collector should ordinarily pay the costs of the reference, but we have inserted a clause giving discretion to the Court to give the Collector part of his costs whenever the claim of the objector proves to be extravagant. It will be remembered that reference to the Court will in future be much less frequent, and that if the system of assessors be discontinued the costs in such references will be much reduced.

9. In the sections which constitute Part IV of the Act (Apportionment of Compensation) we have inserted words which bring under the orders of the Court the issue as to the persons entitled to the compensation, as well as that of the share which each is entitled to receive.

10. Chapter V of the Act concerns the payment of compensation. We have added clauses to section 40 as amended by section 12 of the Bill, empowering on the one hand the Collector to deposit the amount of his award in Court, when for any reason there is no person able and willing to receive it, and on the other empowering the owner of the land, if dissatisfied with the award, to accept the amount under protest. To that extent it will no longer be to the advantage of the owner to protract proceedings and run on a claim for interest; for if notwithstanding the express privilege given to the owner, he refuses to take the compensation-money placed at his disposal, he has no claim to interest on it.

11. In Part VII of the Act (Acquisition of Land for Companies) two sections have been added to except from the provisions applicable to ordinary Companies those Companies for which under contract with the Secretary of State, Government is expressly bound to provide land. In Part VIII of the Act (section 51) we have, at the instance of the Lieutenant-Governor of Bengal, empowered Collectors and Judges to serve any notices under the Act by registered letter. We think it necessary, however, expressly to require that service can be proved only by production of the addressee's receipt.

12. Section 54 of the Act gives to the Government or the public bodies whom it represents power of withdrawal from land it has proposed to acquire. This power, however, must be exercised before the award is made. After award withdrawal is prohibited, whatever may be the circumstances. Experience has shown that the only occasions on which powers of withdrawal would be really useful are when an award has shown that the Government was seriously misled by an under-estimate of the value of the land. A case has been reported in which a municipality has been nearly ruined by being compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation. We think, therefore, that power to withdraw should be given after as well as before the award, but that if so exercised, it should only be on terms of the most liberal compensation to the owner, and that, if he is dissatisfied with the Collector's offer, he should have the same rights of reference to the Judge as in cases of acquisition.

13. To section 55 as amended by the Bill we have added a clause permitting references to the Court to determine summarily certain questions of fact arising under the section.

14. Before the Bill is finally passed we think it would be desirable that the Act of 1870 should be wholly repealed and re-enacted with the amendments now proposed or such of them as may be eventually adopted. We attach to this Report a copy of the Act of 1870 as it will stand if amended as we now propose.

15. The publication ordered by the Council has been made as follows:—

<i>Gazette.</i>	<i>In English.</i>	<i>Date.</i>
Gazette of India	12th March 1892.
Fort Saint George Gazette	29th March 1892.
Bombay Government Gazette	17th March 1892.
Calcutta Gazette	16th March 1892.
North Western Provinces and Oudh Government Gazette	15th March 1892.
Punjab Government Gazette	24th March 1892.
Central Provinces Gazette	26th March 1892.
Burma Gazette	26th March 1892.
Assam Gazette	26th March 1892.
Coorg District Gazette	1st April 1892.

<i>In the Vernaculars.</i>					
<i>Province.</i>	<i>Language.</i>				<i>Date.</i>
Madras	Kanarese	...	21st June 1892.
	Malayalam	...	28th June 1892.
	Hindustani	...	5th July 1892.
	Tamil	...	12th July 1892.
Bengal	Telugu	...	12th July 1892.
	Uriya	...	12th May 1892.
	Hindi	...	28th June 1892.
	Bengali	...	5th July 1892.
North-Western	Provinces	and			
Oudh	Urdu	...	13th July 1892.
Punjab	Urdu	...	30th June 1892.
Burma	Burmese	...	6th August 1892.
Assam	Bengali	...	9th July 1892.
Coorg	Kanarese	...	1st September 1892.

16. We recommend that the Bill as now amended, with our Report and its Appendix be re-published in English and sent to the several Local Governments for consideration. As the changes we propose in the Bill mainly restore the procedure of the present Act, we do not consider that the alterations made by us render necessary the republication of the Bill in the vernacular languages.

J. WOODBURN.
 PHIL. P. HUTCHINS.
 ALEX. EDW. MILLER.
 C. B. PRITCHARD.
 ODAY PERTAP SINGH.
 RASHBEHARY GHOSE.
 P. CHENTSAL RAO.*

The 1st February 1893.

* My remarks on the grounds on which I differ are annexed.

NOTE.

I sign the Report in token of my general approval of the main provisions contained in the Bill, but there are one or two points in it on which I wish to make a few remarks.

I consider that the "market-value," which will be the most important factor in determining the amount of compensation to be awarded, requires to be clearly defined both in the interests of uniformity of procedure in the various Courts and in the interests of owners of certain classes of landed property. In the ordinary acceptation of the term, "market-value" means the price which the land or building taken up for public purposes would fetch if taken into the market and sold by the owner himself, and this is no doubt ordinarily a fair method of estimating the value of the land or building. But at the same time there are cases in which the market-value as above interpreted does not represent the true value of the property. For instance, a man may build a house at a considerable cost in an out-of-the-way locality for his own personal enjoyment, but such a building, if sold in the market, might, owing to absence of demand, hardly realise half its cost of construction. In such cases it appears equitable and proper that the value of the property should be estimated, not with reference to the market-value, which depends upon the demand in the locality of its situation, but with reference to the actual cost of erecting a similar building less the sum to be set off on account of deterioration by time and user. It seems to me to be unfair that the owner of property should be compelled to part with it for a smaller amount than what it actually cost him simply because it is required for public purposes, or because, owing to its situation in a locality far removed from the centres of business and life, the property cannot realise its full value in the market. It may be urged that there is nothing in the law precluding the Collector or Judge making the award from taking the cost of construction into consideration in arriving at the market-value; but in my opinion the matter is too important to be left to the unfettered discretion even of Collectors and Judges, and the law should unmistakably lay down the course for them. Again, there is another class of owners whom the market-value of lands over which they have proprietary rights cannot adequately compensate. To such a class belong zamindárs who derive a fixed annual revenue from lands which they own but in which their tenants possess occupancy-rights. The market-value of such property will always depend upon the current rate of interest in the locality. The current rate of interest in the mofussil is invariably high, and the property would not ordinarily fetch more than ten or fifteen times the annual income if sold in the market. But to compel the owner of such property to part with it for such a consideration appears to me to be fraught with great hardship, even if it be not altogether unjustifiable. In such cases, we should, I think, capitalize his income in such a manner that the amount awarded would, if invested in the safest marketable securities, yield him an interest equivalent to his annual income from the land. This is the principle which the Government adopt when they allow individuals to redeem the land-tax. They demand twenty-five times the annual assessment as the price of redemption, and it seems to me to be only just that the income of the above-mentioned class of land-holders should be capitalized on the same principle in determining the amount of compensation due to them when their lands are compulsorily acquired by Government. For instance, if a zamindár was entitled to a fixed annual rental of Rs. 10 from the land acquired we must pay him as the cost of acquisition Rs. 250, which, if invested in four per cent. promissory notes of the Government of India, will yield him the equivalent of his annual rent in the shape of interest, and not Rs. 100 or 150 according to the market-value based upon insecure investments. For these reasons I should be glad to see 'market-value' defined in some such manner as follows:—

"Market-value" is the price which the property would fetch if taken into the market by the owner himself and leisurely and advantageously sold thereof effected; but where, owing to absence of demand in the locality, such value should fall below the actual cost of creating the property, then such actual cost, making allowance for deterioration by time or user, shall be deemed as 'market-value.' In any case, if the claimant prefers it the market-value shall be assumed to be twenty-five times the average annual income derivable from the property."

If twenty-five years' purchase is considered too much, I have no objection to its being reduced to twenty, which is the rate adopted in Madras for redeeming quit-rents on ináms or favourable tenures.

There is another point on which I venture to differ from the majority of the Committee. Section 25, sub-section (2), of the Bill says that, when an applicant has refused or omitted without sufficient reason to make a claim before the Collector, the Judge may award less, and in no case more, than the amount awarded by the Collector. I quite see the reason for not exceeding the Collector's award, but I see none for reducing it. This is however, not of much practical importance, as I do not believe that any Judge is likely to decree a smaller sum than the Collector's award to an applicant who claims more. But the question of market-value is an important one, and its clear definition in some such manner as that proposed by me will not only secure uniformity of procedure in the various Civil and Revenue Courts, but will also, I am convinced, be highly satisfactory to the public, and will largely minimise the number of references from Collectors' awards and the worry and expense attendant thereon.

I understood that it was agreed at the meeting of the Select Committee that, when the lands taken up for public purposes belong to temples or charitable institutions or to persons who have no power to alienate the lands, the compensation to be paid in such cases should be dealt with in the manner mentioned in section 69 of chapter 18, 8 & 9 Victoria; but I see no such provision in the draft Bill. I consider that either a provision of the kind should be inserted or the Collector be authorised to grant the compensation in such cases in the shape of other lands or remission of land-tax on other lands of the claimants.

The 1st February 1893.

P. CHENTSAL RAO.

No. II.

A Bill to amend the Land Acquisition Act, 1870.

WHEREAS it is expedient to amend the Land Acquisition Act, 1870; It is hereby enacted as follows:—

1. (1) This Act may be called the Land Acquisition Act, 1893; Title and commencement. and

(2) It shall come into force at once:

Provided that nothing in this Act contained shall affect any proceedings in respect to compensation for any land regarding which the Collector has made an award under section 14, or a reference under section 15, of the Land Acquisition Act, 1870, before the passing of this Act.

2. In section 1 of the Land Acquisition Act 1870, the words and figures "And it shall come into force on the first day of June, 1870," are hereby repealed.

3. (1) In section 3 of the said Act,—

(a) for the definition of the expression "Court" the following shall be substituted, namely—

"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 a Judge under this Act:";

(b) in the definition of the expression "Company", for the words "or formed in pursuance of an Act of Parliament" the words "or incorporated by an Act of Parliament or of the Governor General in Council" shall be substituted; and

(c) in the definition of the expression "entitled to act," after the words "the guardians of minors and the committees" the words "or managers" shall be inserted.

(2) To the same section the following shall be added, namely:—

" 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; and

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure 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.

4. In section 6 of the said Act, for the words "out of some municipal fund" the words "out of some fund controlled or managed by a local authority" shall be substituted.

5. In section 9 of the said Act there shall be added:—

(i) after the words "compensation for such interests" the words "and their objections (if any) to the measurements made under section eight"; and

(ii) after the word "post" the words and figures "in a letter addressed to him and registered under Part III of the Indian Post Office Act, 1866."

6. In section 10 of the said Act, before the words "deliver to him" the words "make or", and after the words "deliver to him" the words "at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition)", shall be inserted,

7. For sections 11 to 15, both inclusive, of the said Act, and for the headings "Enquiry into Value and Claims" and "Award by Collector", prefixed to sections 11 and 14 thereof respectively, the following shall be substituted, namely:—

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

11 On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section nine to the measurements made under section eight, and into the value of the land, 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.

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"12. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, 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 persons interested as are not present personally or by their representatives when the award is made.

"13. 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. For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses 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.

"15. In determining the amount of compensation, the Collector shall take into consideration the matters mentioned in section twenty-three, and shall not take into consideration any of the matters mentioned in section twenty-four."

8. (1) In section 16 of the said Act, for the words "fourteen or a reference to the Court under section fifteen", the word "eleven" shall be substituted.

9. In section 17 of the said Act,—

(i) for the words "though no such reference has been directed or award made" the words "though no such award has been made" shall be substituted;

(ii) after the words "on such land" the words "and for any other damage sustained by them caused by such sudden dispossession and not excepted in section twenty-four" shall be inserted; and

(iii) after the words "such crops and trees" the words "and the amount of such other damage" shall be inserted.

10. For sections 18 to 36, both inclusive, of the said Act, the following shall be substituted, namely:—

"18. 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, or the apportionment of the com-

pensation among the persons interested. 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 twelve, or within six months from the date of the Collector's award, whichever period shall first expire.

"19. 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;

(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 five and seventeen or either of them, and the amount of compensation awarded under section eleven; and,

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

"20. The Court shall thereupon cause a notice, specifying the day on which the Court will

proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(a) the applicant,

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

(c) if the objection is in regard to the apportionment of the compensation, all persons interested in the objection.

"21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

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

"23. (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 declaration relating thereto under section six;

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 six 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.

Matters to be neglected in determining compensation. "24. 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, after the date of the publication of the declaration under section six, is likely to be caused to the land acquired 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 the land acquired commenced, made or effected after the date of the publication of the declaration under section six.

"25. (1) When the applicant has made a claim to compensation pursuant to any notice given under section nine, 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 eleven.

"(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 may be less than, and 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.

"26. Every award under this part shall be in Form of awards. writing signed by the Judge, and shall specify the amount awarded under the first clause of section twenty-three, and also the amounts (if any) respectively awarded under each of the other clauses of the same section, together with the grounds of awarding each of the said amounts.

"27. (1) Every such award shall also state Costs. 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 that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

"(3). The costs (if any) payable by the applicant may be recovered as if they were costs incurred in a suit and as if the award of the Court were the decree therein.

"28. 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.

"29. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to proceedings under this Part. XIV of 1882.

"30. Subject to the provisions of the Code of Appeals in certain cases. Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Part."

11. (1) In section 38 of the said Act, after the words "or any part thereof," and in section 39 of the said Act, after the words "apportionment thereof," the words or as to the persons to whom the same or any part thereof is payable" shall be inserted.

(2) In the last clause of section 39 of the said Act, for the words "regular appeals in suits" the words "appeals from original decrees" shall be substituted.

12. For Part V of the said Act the following shall be substituted, namely:—

"PART V.

"PAYMENT.

"40. (1) On making an award under section eleven, 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 if they shall consent to receive it.

"(2). If they shall not consent to receive it, or if there be no person competent to receive it, or if there be any dispute as to the title to receive it 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 eighteen would be submitted:

"Provided that any person 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 eighteen:

"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.

"41. When the amount of such compensation is not paid or payment thereof tendered 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."

13. In section 45 of the said Act the words "and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred" are hereby repealed.

14. After section 45 of the said Act the following shall be added, namely:—

"45A. The Judge may pass such order as he may think fit in regard to the costs of a reference made under this Part, and from such order there shall be no appeal."

15. After section 50 of the said Act the following shall be added, namely:—

"50A. The provisions of sections forty-seven to fifty, both inclusive, shall not apply, and 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.

"50B. 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 50A may be proved by the production of a printed copy thereof purporting to be printed by order of Government."

16. To section 51 of the said Act, after the word "business" the following shall be added, namely:

"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 and registered under Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt."

17. For section 54 of the said Act the following shall be substituted, namely:—

"54. (1) Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land.

"(2) Whenever the Government declines to complete 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 proved to have been 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 to the determination of the compensation payable under this section."

18. To section 55 of the said Act the following shall be added, namely:—

"Provided that the owner may, at any time before the Collector has made his award under section eleven 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 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:

“ Provided also that either party may appeal to the High Court against the decision of the Court on any such reference, and the provisions of the Code of Civil Procedure shall apply to every such appeal as if it were an appeal from an original decree of the Court.

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

“In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections six to ten, both inclusive, shall be neces-

sary; 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 eleven.”

19. In section 56 of the said Act, for the words “any municipal fund” the words “any fund controlled or managed by a local authority” shall be substituted; and for the words “incurred by the Collector in such acquisition” the words “of and incidental to such acquisition” shall be substituted.

20. In section 58 of the said Act, the words “no suit shall be brought to set aside an award under this Act. And” are hereby repealed.

APPENDIX.

ACT No. X of 1870 AS MODIFIED BY LEGISLATION UP TO DATE, WITH THE MATTER NOW PROPOSED FOR REPEAL EXCLUDED AND THE AMENDMENTS NOW PROPOSED SHOWN IN ITALICS.

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

WHEREAS it is expedient to consolidate and 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

Preamble.

hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called “The Land Acquisition Act, 1870”:

Local extent.

It extends to the whole of British India.

2. On and from such day

Act No. VI of 1857 (*for the acquisition of land for public purposes*), Act No. II of 1861 (*to amend Act No. VI of 1857*) and Act No. XXII of 1863 (*to provide for taking land for works of public utility*

Repeal of Acts.

to be constructed by private persons or Companies and for regulating the construction and use of works on land so taken) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

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:

“Land.”

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:

“Person interested.”

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:

“Collector.”

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 func-

“Court.”

tions of a Judge under this Act:

the expression “Company” means a Company registered under the Indian Companies Act, 1866, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent:

“Company.”

“Entitled to act.”

and 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 "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; and
- (iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis* XIV of 1891 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.

PART II.

ACQUISITION.

Preliminary Investigation.

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

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 given such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorised 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, and such decision shall be final.

Declaration of intended Acquisition

6. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government 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 out of public revenues, *out of some fund controlled or managed by a local authority*, or by a Company.

The declaration shall be published in the local 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.

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 herein-after appearing.

7. 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. The Collector shall thereupon cause the land (unless it has been already marked out under section four) 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.

Land to be marked out and measured.
Plan.

9. 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.

Notice to persons interested.

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 eight.

Contents of notice.

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.

Notice to occupiers.

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 and registered under Part III of the Indian Post Office Act, 1866.

XIV of 1866.

10. 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 the year next preceding the date of the statement.

Power to require statements as to names and interests.

Every person required to make or deliver a statement under this section or section nine shall be deemed to be legally bound to do so within the meaning of sections one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

Persons required to make statements to be deemed legally bound to do so.

XIV of 1860.

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

11. On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section nine to the measurements made under section eight, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

Enquiry and award by Collector.

(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. (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.

Award of Collector when to be final.

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

Adjournment of enquiry.

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

XIV of 1882.

14. For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses 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.

Power to summon and enforce attendance of witnesses and production of documents.

15. In determining the amount of compensation, the Collector shall take into consideration the matters mentioned in section twenty-three, and shall not take into consideration any of the matters mentioned in section twenty-four.

Matters to be considered and neglected.

Taking Possession.

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

The Collector shall offer to the persons interested compensation for the 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 *twenty-four*; 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.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. 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, or the apportionment of the compensation among the persons interested. 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 *twelve* or within six months from the date of the Collector's award, whichever period shall first expire.

Collector's statement to the Court. 19. 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;
- (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 *five* and *seventeen* or either of them, and the amount of compensation awarded under section *eleven*; and
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

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

- (a) the applicant;
- (b) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector; and
- (c) if the objection is in regard to the apportionment of the compensation, all persons interested in the objection.

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

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

Matters to be considered in determining compensation. 23. (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 declaration relating thereto under section *six*;

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) bonâ fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section six 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.

Matters to be neglected in determining compensation.

24. But the Court shall not take in 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, after the date of the publication of the declaration under section six, is likely to be caused to the land acquired 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 the land acquired commenced, made or effected after the date of the publication of the declaration under section six.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section nine, 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 eleven.

(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 may be less than and 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.

26. Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under the first clause of section twenty-three, and also the amounts (if any) respectively awarded under each of the other clauses of the same section, together with the grounds of awarding each of the said amounts.

27. (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 that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

(3) The costs (if any) payable by the applicant may be recovered as if they were costs incurred in a suit and as if the award of the Court were the decree therein.

28. 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.

29. Save in so far as they may be inconsistent with anything contained in this Act the provisions of the Code of Civil Procedure shall apply to proceedings under this Part.

30. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Part."

PART IV.

APPORTIONMENT OF COMPENSATION.

37. 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.

Particulars of appointment to be specified.

38. When the amount of compensation has been settled under section 14, 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 shall refer such dispute to the decision of the Court.

Dispute as to appointment.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or as to the persons to whom the same or any part thereof is payable, or when a reference to the Court has been made under section 38, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

Determination of proportions.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided for appeals from original decrees.

PART V.

PAYMENT.

40. (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 if they shall consent to receive it.

Payment of compensation to whom to be made.

(2) If they shall not consent to receive it, or if there be no person competent to receive it, or if there be any dispute as to the title to receive it 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 eighteen would be submitted:

Provided that any person 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 eighteen:

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.

41. When the amount of such compensation is not paid or payment thereof tendered 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.

Payment of interest.

PART VI.

TEMPORARY OCCUPATION OF LAND.

43. 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.

Temporary occupation of waste or arable land.

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.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Difference as to compensation.

44. On payment of such compensation, or on executing such agreement,

Power to enter and take possession.

or on making a reference under section forty-three,

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.

And, 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:

Restoration of land taken.

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.

45. 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 for the final order of the Court.

45A. *The Judge may pass such order as he may think fit in regard to the costs of a reference made Cost on references under this Part, under this Part, and from such order there shall be no appeal.*

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

46. Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four.

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purpose of the Company" were substituted; and section five shall be construed as if, after the words "the officer," the words "of the Company," were inserted.

47. The provisions of sections six to section forty-five (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, and unless the Company shall have executed the agreement hereinafter mentioned.

48. Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—

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

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

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 Procedure in the case of a Civil Court.

49. Such officer shall report to the Local Government the result of the enquiry and, if the Local Government is satisfied 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, subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, 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;
- (4) the time within which, and the conditions on which, the work shall be executed and maintained; and
- (5) the terms on which the public shall be entitled to use the work.

50. 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.

50A. *The provisions of sections forty-seven to fifty, both inclusive, shall not apply and 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.*

Sections forty-seven to fifty not to apply where Government bound by agreement to provide land for Companies.

50B. *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 50A may be proved by the production of a printed copy thereof purporting to be printed by order of Government.*

When agreement between Company and Secretary of State need not be proved.

PART VIII.

MISCELLANEOUS.

51. 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 four, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

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

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 and registered under Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section four or section eight, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section four 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.

53. 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.

54. (1) *Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land.*

(2) *Whenever the Government declines to complete 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 proved to have been 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 to the determination of the compensation payable under this section.*

55. 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 eleven, 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 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:

Provided also that either party may appeal to the High Court against the decision of the Court on any such reference, and the provisions of the Code of Civil Procedure shall apply to every such appeal as if it were an appeal from an original decree of the Court.

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

In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections six to ten, 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 eleven.

56. When 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.

57. 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.

58. 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 of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.*

59. 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.

All such rules, alterations and additions shall, when sanctioned by the Governor General in Council, be published in the local official Gazette and shall thereupon have the force of law.

Publication of rules.

Power to make rules.

Limitation of suits for anything done in pursuance of Act.

Exemption from stamp-duty and fees.

Payment of Collector's charges by Municipal Body or Company.

Obstruction to survey, &c. Filling trenches. Destroying land-marks.

Magistrate to enforce surrender.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

Part of house or building not to be taken.

* Repealed, so far as relates to the limitation of suits, by Act IX of 1871, s. 2.