



Land Clauses Consolidation Act 1845

1845 CHAPTER 18

Purchase of Lands otherwise than by Agreement

And with respect to the Purchase and taking of Lands otherwise than by Agreement, be it enacted as follows:

XVI Capital to be subscribed before compulsory Powers of Purchase put in force.

Where the Undertaking is intended to be carried into effect by means of a Capital to be subscribed by the Promoters of the Undertaking, the whole of the Capital or estimated Sum for defraying the Expences of the Undertaking shall be subscribed under Contract binding the Parties thereto, their Heirs, Executors, and Administrators, for the Payment of the several Sums by them respectively subscribed, before it shall be lawful to put in force any of the Powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of Land for the Purposes of the Undertaking.

XVII A Certificate of Two Justices to be Evidence that the Capital has been subscribed.

A Certificate under the Hands of Two Justices, certifying that the whole of the prescribed Sum has been subscribed, shall be sufficient Evidence thereof, and on the Application of the Promoters of the Undertaking, and the Production of such Evidence as such Justices think proper and sufficient, such Justices shall grant such Certificate accordingly.

XVIII Notice of Intention to take Lands.

When the Promoters of the Undertaking shall require to purchase or take any of the Lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give Notice thereof to all the Parties interested in such Lands, or to the Parties enabled by this Act to sell and convey or release the same, or such of the said Parties as shall, after diligent Inquiry, be known to the Promoters of the Undertaking, and by such Notice shall demand from such Parties the Particulars of their Estate and Interest in such Lands, and of the Claims made by them in respect thereof; and every such Notice shall state the Particulars of

the Lands so required, and that the Promoters of the Undertaking are willing to treat for the Purchase thereof, and as to the Compensation to be made to all Parties for the Damage that may be sustained by them by reason of the Execution of the Works.

XIX Service of Notices on Owners and Occupiers of Lands.

All Notices required to be served by the Promoters of the Undertaking upon the Parties interested in or entitled to sell any such Lands shall either be served personally on such Parties, or left at their last usual Place of Abode, if any such can after diligent Inquiry be found, and in case any such Parties shall be absent from the United Kingdom, or cannot be found after diligent Inquiry, shall also be left with the Occupier of such Lands, or, if there be no such Occupier, shall be affixed upon some conspicuous Part of such Lands.

XX Service of Notice on a Corporation Aggregate.

If any such Party be a Corporation Aggregate such Notice shall be left at the principal Office of Business of such Corporation, or, if no such Office can after diligent Inquiry be found, shall be served on some principal Member, if any, of such Corporation, and such Notice shall also be left with the Occupier of such Lands, or, if there be no such Occupier, shall be affixed upon some conspicuous Part of such Lands.

XXI If Parties fail to treat, or in case of Dispute, Question to be settled as after mentioned.

If, for Twenty-one Days after the Service of such Notice, any such Party shall fail to state the Particulars of his Claim in respect of any such Land, or to treat with the Promoters of the Undertaking in respect thereof, or if such Party and the Promoters of the Undertaking shall not agree as to the Amount of the Compensation to be paid by the Promoters of the Undertaking for the Interest in such Lands belonging to such Party, or which he is by this or the special Act enabled to sell, or for any Damage that may be sustained by him by reason of the Execution of the Works, the Amount of such Compensation shall be settled in the Manner hereinafter provided for settling Cases of disputed Compensation.

XXII Disputes as to Compensation where the Amount claimed does not exceed 50l. to be settled by Two Justices.

If no Agreement be come to between the Promoters of the Undertaking and the Owners of or Parties by this Act enabled to sell and convey or release any Lands taken or required for or injuriously affected by the Execution of the Undertaking, or any Interest in such Lands, as to the Value of such Lands or of any Interest therein, or as to the Compensation to be made in respect thereof, and if in any such Case the Compensation claimed shall not exceed Fifty Pounds, the same shall be settled by Two Justices.

XXIII Compensation exceeding 50l. to be settled by Arbitration or Jury, at the Option of the Party claiming Compensation.

If the Compensation claimed or offered in any such Case shall exceed Fifty Pounds, and if the Party claiming Compensation desire to have the same settled by Arbitration, and signify such Desire by Notice in Writing to the Promoters of the Undertaking, before they have issued their Warrant to the Sheriff to summon a Jury in respect of

such Lands, under the Provisions herein-after contained, stating in such Notice the Nature of the Interest in respect of which such Party claims Compensation, and the Amount of the Compensation so claimed, the same shall be so settled accordingly; but unless the Party claiming Compensation shall as aforesaid signify his Desire to have the Question of such Compensation settled by Arbitration, or if when the Matter shall have been referred to Arbitration the Arbitrators or their Umpire shall for Three Months have failed to make their or his Award, or if no final Award shall be made, the Question of such Compensation shall be settled by the Verdict of a Jury, as herein-after provided.

XXIV Method of proceeding for settling Disputes as to Compensation by Justices.

It shall be lawful for any Justice, upon the Application of either Party with respect to any Question of disputed Compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by Two Justices, to summon the other Party to appear before Two Justices, at a Time and Place to be named in the Summons, and upon the Appearance of such Parties, or in the Absence of any of them upon Proof of due Service of the Summons, it shall be lawful for such Justice to hear and determine such Question, and for that Purpose to examine such Parties or any of them, and their Witnesses, upon Oath, and the Costs of every such Inquiry shall be in the Discretion of such Justices, and they shall settle the Amount thereof.

XXV Appointment of Arbitrator when Questions are to be determined by Arbitration.

When any Question of disputed Compensation by this or the special Act, or any Act incorporated therewith, authorized or required to be settled by Arbitration, shall have arisen, then, unless both Parties shall concur in the Appointment of a single Arbitrator, each Party, on the Request of the other Party, shall nominate and appoint an Arbitrator, to whom such Dispute shall be referred; and every Appointment of an Arbitrator shall be made on the Part of the Promoters of the Undertaking under their Hands of the said Promoters or any Two of them, or of their Secretary or Clerk, and on the Part of any other Party under the Hand of such Party, or if such Party be a Corporation Aggregate under the Common Seal of such Corporation ; and such Appointment shall be delivered to the Arbitrator, and shall be deemed a Submission to Arbitration on the Part of the Party by whom the same shall be made; and after any such Appointment shall have been made neither Party shall have Power to revoke the same without the Consent of the other, nor shall the Death of either Party operate as a Revocation; and if for the Space of Fourteen Days after any such Dispute shall have arisen, and after a Request in Writing, in which shall be stated the Matter so required to be referred to Arbitration, shall have been served by the one Party on the other Party to appoint an Arbitrator, such last-mentioned Party fail to appoint such Arbitrator, then upon such Failure the Party making the Request, and having himself appointed an Arbitrator, may appoint such Arbitrator to act on behalf of both Parties, and such Arbitrator may proceed to hear and determine the Matters which shall be in dispute, and in such Case the Award or Determination of such single Arbitrator shall be final.

XXVI Vacancy of Arbitrator to be supplied.

If, before the Matters so referred shall be determined, any Arbitrator appointed by either Party die, or become incapable, the Party by whom such Arbitrator was appointed may nominate and appoint in Writing some other Person to act in his Place, and if, for the Space of Seven Days after Notice in Writing from the other Party for

Status: This is the original version (as it was originally enacted).

that Purpose, he fail to do so, the remaining or other Arbitrator may proceed *ex parte*; and every Arbitrator so to be substituted as aforesaid shall have the same Powers and Authorities as were vested in the former Arbitrator at the Time of such his Death or Disability as aforesaid.

XXVII Appointment of Umpire.

Where more than One Arbitrator shall have been appointed such Arbitrators shall, before they enter upon the Matters referred to them, nominate and appoint, by Writing under their Hands, an Umpire to decide on any such Matters on which they shall differ, or which shall be referred to him under the Provisions of this or the special Act, and if such Umpire shall die, or become incapable to act, they shall forthwith after such Death or Incapacity appoint another Umpire in his Place, and the Decision of every such Umpire on the Matters so referred to him shall be final.

XXVIII Board of Trade empowered to appoint an Umpire on Neglect of the Arbitrators, in case of Railway Companies.

If in either of the Cases aforesaid the said Arbitrators shall refuse, or shall, for Seven Days after Request of either Party to such Arbitration, neglect to appoint an Umpire, the Board of Trade, in any Case in which a Railway Company shall be one Party to the Arbitration, and Two Justices in any other Case, shall, on the Application of either Party to such Arbitration, appoint an Umpire, and the Decision of such Umpire on the Matters on which the Arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

XXIX In case of Death of single Arbitrator the Matter to begin *de novo*.

If, when a single Arbitrator shall have been appointed, such Arbitrator shall die or become incapable to act before he shall have made his Award, the Matters referred to him shall be determined by Arbitration under the Provisions of this or the special Act in the same Manner as if such Arbitrator had not been appointed.

XXX If either Arbitrator refuse to act the other to proceed *ex parte*.

If, where more than One Arbitrator shall have been appointed, either of the Arbitrators refuse or for Seven Days neglect to act, the other Arbitrator may proceed *ex parte*, and the Decision of such other Arbitrator shall be as effectual as if he had been the single Arbitrator appointed by both Parties.

XXXI If Arbitrators fail to make their Award within Twenty-one Days the Matter to go to the Umpire.

If, where more than One Arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such Arbitrators shall fail to make their Award within Twenty-one Days after the Day on which the last of such Arbitrators shall have been appointed, or within such extended Time (if any) as shall have been appointed for that Purpose by both such Arbitrators under their Hands, the Matters referred to them shall be determined by the Umpire to be appointed as aforesaid.

XXXII Power of Arbitrators to call for Books, &c.

The said Arbitrators or their Umpire may call for the Production of any Documents in the Possession or Power of either Party which they or he may think necessary for determining the Question in dispute, and may examine the Parties or their Witnesses on Oath, and administer the Oaths necessary for that Purpose.

XXXIII Arbitrator or Umpire to make a Declaration.

Before any Arbitrator or Umpire shall enter into the Consideration of any Matters referred to him, he shall in the Presence of a Justice make and subscribe the following Declaration; that is to say,

I *A. B.* do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my Skill and Ability, hear and determine the Matters referred to me under the Provisions of the Act [*naming the special Act*]. *A. B.*

Made and subscribed in the Presence of

And such Declaration shall be annexed to the Award when made; and if any Arbitrator or Umpire having made such Declaration shall wilfully act contrary thereto he shall be guilty of a Misdemeanor.

XXXIV Costs of Arbitration how to be borne.

All the Costs of any such Arbitration, and incident thereto, to be settled by the Arbitrators, shall be borne by the Promoters of the Undertaking, unless the Arbitrators shall award the same or a less Sum than shall have been offered by the Promoters of the Undertaking, in which Case each Party shall bear his own Costs incident to the Arbitration, and the Costs of the Arbitrators shall be borne by the Parties in equal Proportions.

XXXV Award to be delivered to the Promoters of the Undertaking.

The Arbitrators shall deliver their Award in Writing to the Promoters of the Undertaking, and the said Promoters shall retain the same, and shall forthwith, on Demand, at their own Expence, furnish a Copy thereof to the other Party to the Arbitration, and shall at all Times, on Demand, produce the said Award, and allow the same to be inspected or examined by such Party or any Person appointed by him for that Purpose.

XXXVI Submission maybe made a Rule of Court.

The Submission to any such Arbitration may be made a Rule of any of the Superior Courts, on the Application of either of the Parties.

XXXVII Award not void through Error in Form.

No Award made with respect to any Question referred to Arbitration under the Provisions of this or the special Act shall be set aside for Irregularity or Error in Matter of Form.

XXXVI Promoters of the Undertaking to give Notice before summoning a Jury.

Before the Promoters of the Undertaking shall issue their Warrant for summoning a Jury for settling any Case of disputed Compensation they shall give not less than Ten Days Notice to the other Party of their Intention to cause such Jury to be summoned, and in such Notice the Promoters of the Undertaking shall state what Sum of Money they are willing to give for the Interest in such Lands sought to be purchased by them from such Party, and for the Damage to be sustained by him by the Execution of the Works.

XXXIX Warrant for summoning Jury to be addressed to the Sheriff.

In every Case in which any such Question of disputed Compensation shall be required to be determined by the Verdict of a Jury the Promoters of the Undertaking shall issue their Warrant to the Sheriff, requiring him to summon a Jury for that Purpose, and such Warrant shall be under the Common Seal of the Promoters of the Undertaking, if they be a Corporation, or if they be not a Corporation under the Hands and Seals of such Promoters or any Two of them; and if such Sheriff be interested in the Matter in dispute such Application shall be made to some Coroner of the County in which the Lands in question, or some Part thereof, shall be situate, and if all the Coroners of such County be so interested such Application may be made to some Person having filled the Office of Sheriff or Coroner in such County, and who shall be then living there, and who shall not be interested in the Matter in dispute; and with respect to the Persons last mentioned Preference shall be given to one who shall have most recently served either of the said Offices; and every Ex-Sheriff, Coroner, or Ex-Coroner shall have Power, if he think fit, to appoint a Deputy or Assessor.

XL Provisions applicable to Sheriff to apply to Coroner.

Throughout the Enactments contained in this Act relating to the Reference to a Jury, where the Term " Sheriff" is used, the Provisions applicable thereto shall be held to apply to every Coroner or other Person lawfully acting in his Place; and in every Case in which any such Warrant shall have been directed to any other Person than the Sheriff such Sheriff shall immediately on receiving Notice of the Delivery of the Warrant deliver over, on Application for that Purpose, to the Person to whom the same shall have been directed, or to any Person appointed by him to receive the same, the Jurors Book and Special Jurors List belonging to the County where the Lands in question shall be situate.

XLI Jury to be summoned.

Upon the Receipt of such Warrant the Sheriff shall summon a Jury of Twenty-four indifferent Persons, duly qualified to act as Common Jurymen in the Superior Courts, to meet at a convenient Time and Place to be appointed by him for that Purpose, such Time not being less than Fourteen nor more than Twenty-one Days after the Receipt of such Warrant, and such Place not being more than Eight Miles distant from the Lands in question, unless by Consent of the Parties interested, and he shall forthwith give Notice to the Promoters of the Works of the Time and Place so appointed by him.

XLII Jury to be impannelled.

Out of the Jurors appearing upon such Summons a Jury of Twelve Persons shall be drawn by the Sheriff, in such Manner as Juries for Trials of Issues joined in the Superior Courts are by Law required to be drawn, and if a sufficient Number of Jurymen do not appear in obedience to such Summons the Sheriff shall return other indifferent Men, duly qualified as aforesaid, of the Bystanders, or others that can speedily be procured, to make up the Jury to the Number aforesaid; and all Parties concerned may have their lawful Challenges against any of the Jurymen, but no such Party shall challenge the Array.

XLIII Sheriff to preside; Witnesses to be summoned.

The Sheriff shall preside on the said Inquiry, and the Party claiming Compensation shall be deemed the Plaintiff, and shall have all such Rights and Privileges as the Plaintiff is entitled to in the Trial of Actions at Law; and, if either Party so request in Writing, the Sheriff shall summon before him any Person considered necessary to be examined as a Witness touching the Matters in question, and on the like Request the Sheriff shall order the Jury, or any Six or more of them, to view the Place or Matter in controversy, in like Manner as Views may be had in the Trial of Actions in the Superior Courts.

XLIV Penalty on Sheriff and Jury for Default.

If the Sheriff make default in any of the Matters hereinbefore required to be done by him in relation to any such Trial or Inquiry he shall forfeit Fifty Pounds for every such Offence, and such Penalty shall be recoverable by the Promoters of the Undertaking by Action in any of the Superior Courts; and if any Person summoned and returned upon any Jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make Oath, or in any other Manner unlawfully neglect his Duty, he shall, unless he show reasonable excuse to the Satisfaction of the Sheriff, forfeit a Sum not exceeding Ten Pounds; and every such Penalty payable by a Sheriff or Jurymen shall be applied in satisfaction of the Costs of the Inquiry, so far as the same will extend; and in addition to the Penalty hereby imposed every such Jurymen shall be subject to the same Regulations, Pains, and Penalties as if such Jury had been returned for the Trial of an Issue joined in any of the Superior Courts.

XLV Penalty on Witnesses making default.

If any Person duly summoned to give Evidence upon any such Inquiry, and to whom a Tender of his reasonable Expences shall have been made, fail to appear at the Time and Place specified in the Summons, without sufficient Cause, or if any Person, whether summoned or not, who shall appear as a Witness, refuse to be examined on Oath touching the Subject Matter in question, every Person so offending shall forfeit to the Party aggrieved a Sum not exceeding Ten Pounds.

XLVI Notice of Inquiry.

Not less than Ten Days Notice of the Time and Place of the Inquiry shall be given in Writing by the Promoters of the Undertaking to the other Party.

XLVII If the Party make default the Inquiry not to proceed

If the Party claiming Compensation shall not appear at the Time appointed for the Inquiry such Inquiry shall not be further proceeded in, but the Compensation to be paid shall be such as shall be ascertained by a Surveyor appointed by Two Justices in manner herein-after provided.

XLVIII Jury to be sworn

Before the Jury proceed to inquire of and assess the Compensation or Damage in respect of which their Verdict is to be given they shall make Oath that they will truly and faithfully inquire of and assess such Compensation or Damage, and the Sheriff shall administer such Oaths, as well as the Oaths of all Persons called upon to give Evidence.

XLIX Sums to be paid for Purchase of Lands and for Damage, to be assessed separately.

Where such Inquiry shall relate to the Value of Lands to be purchased, and also to Compensation claimed for Injury done or to be done to the Lands held therewith, the Jury shall deliver their Verdict separately for the Sum of Money to be paid for the Purchase of the Lands required for the Works, or of any Interest therein belonging to the Party with whom the Question of disputed Compensation shall have arisen, or which, under the Provisions herein contained, he is enabled to sell or convey, and for the Sum of Money to be paid by way of Compensation for the Damage, if any, to be sustained by the Owner of the Lands by reason of the severing of the Lands taken from the other Lands of such Owner, or otherwise injuriously affecting such Lands by the Exercise of the Powers of this or the special Act, or any Act incorporated therewith.

L Verdict and Judgment to be recorded.

The Sheriff before whom such Inquiry shall be held shall give Judgment for the Purchase Money or Compensation assessed by such Jury, and the Verdict and Judgment shall be signed by the Sheriff, and being so signed shall be kept by the Clerk of the Peace among the Records of the General or Quarter Sessions of the County in which the Lands or any Part thereof shall be situate in respect of which such Purchase Money or Compensation shall have been awarded; and such Verdicts and Judgments shall be deemed Records, and the same or true Copies thereof shall be good Evidence in all Courts and elsewhere, and all Persons may inspect the said Verdicts and Judgments, and may have Copies thereof or Extracts therefrom, on paying for each Inspection thereof One Shilling, and for every One hundred Words copied or extracted therefrom Sixpence, which Copies or Extracts the Clerk of the Peace is hereby required to make out, and to sign and certify the same to be true Copies.

LI Costs of the Inquiry how to be borne.

On every such Inquiry before a Jury, where the Verdict of the Jury shall be given for a greater Sum than the Sum previously offered by the Promoters of the Undertaking, all the Costs of such Inquiry shall be borne by the Promoters of the Undertaking; but if the Verdict of the Jury be given for the same or a less Sum than the Sum previously offered by the Promoters of the Undertaking, or if the Owner of the Lands shall have failed to appear at the Time and Place appointed for the Inquiry, having received due

Notice thereof, one Half of the Costs of summoning, impannelling, and returning the Jury, and of taking the Inquiry, and recording the Verdict and Judgment thereon, in case such Verdict shall be taken, shall be defrayed by the Owner of the Lands, and the other Half by the Promoters of the Undertaking, and each Party shall bear his own Costs, other than as aforesaid, incident to such Inquiry.

LII Particulars of the Costs.

The Costs of any such Inquiry shall, in case of Difference, be settled by One of the Masters of the Court of Queen's Bench of *England* or *Ireland*, according as the Lands are situate, on the Application of either Party, and such Costs shall include all reasonable Costs, Charges, and Expences incurred in summoning, impannelling, and returning the Jury, taking the Inquiry, the Attendance of Witnesses, the Employment of Counsel and Attornies, recording the Verdict and Judgment thereon, and otherwise incident to such Inquiry.

LIII Payment of Costs.

If any such Costs shall be payable by the Promoters of the Undertaking, and if within Seven Days after Demand such Costs be not paid to the Party entitled to receive the same, they shall be recoverable by Distress, and on Application to any Justice he shall issue his Warrant accordingly; and if any such Costs shall be payable by the Owner of the Lands or of any Interest therein, the same may be deducted and retained by the Promoters of the Undertaking, out of any Money awarded by the Jury to such Owner, or determined by the Valuation of a Surveyor under the Provision herein-after contained; and the Payment or Deposit of the Remainder, if any, of such Money, shall be deemed Payment and Satisfaction of the whole thereof, or if such Costs shall exceed the Amount of the Money so awarded or determined, the Excess shall be recoverable by Distress, and on Application to any Justice he shall issue his Warrant accordingly.

LIV Special Jury to be summoned at the Request of either Party.

If either Party desire any such Question of disputed Compensation as aforesaid to be tried before a Special Jury, such Question shall be so tried, provided that Notice of such Desire, if coming from the other Party, be given to the Promoters of the Undertaking before they have issued their Warrant to the Sheriff; and for that Purpose the Promoters of the Undertaking shall by their Warrant to the Sheriff require him to nominate a Special Jury for such Trial; and thereupon the Sheriff shall, as soon as conveniently may be after the Receipt by him of such Warrant, summon both the Parties to appear before him, by themselves or their Attornies, at some convenient Time and Place appointed by him for the Purpose of nominating a Special Jury (not being less than Five nor more than Eight Days from the Service of such Summons); and at the Place and Time so appointed the Sheriff shall proceed to nominate and strike a Special Jury, in the Manner in which such Juries shall be required by the Laws for the Time being in force to be nominated or struck by the proper Officers of the Superior Courts, and the Sheriff shall appoint a Day, not later than the Eighth Day after striking of such Jury, for the Parties or their Agents to appear before him to reduce the Number of such Jury, and thereof shall give Four Days Notice to the Parties; and on the Day so appointed the Sheriff shall proceed to reduce the said Special Jury to the Number of Twenty, in the Manner used and accustomed by the proper Officers of the Superior Courts.

LV Deficiency of Special Jurymen.

The Special Jury on such Inquiry shall consist of Twelve of the said Twenty who shall first appear on the Names being called over, the Parties having their lawful Challenges against any of the said Jurymen; and if a full Jury do not appear, or if after such Challenges a full Jury do not remain, then, upon the Application of either Party, the Sheriff shall add to the List of such Jury the Names of any other disinterested Persons qualified to act as Special or Common Jurymen, who shall not have been previously struck off the aforesaid List, and who may then be attending the Court or can speedily be procured, so as to complete such Jury, all Parties having their lawful Challenges against such Persons; and the Sheriff shall proceed to the Trial and Adjudication of the Matters in question by such Jury, and such Trial shall be attended in all respects with the like Incidents and Consequences, and the like Penalties shall be applicable, as herein-before provided in the Case of a Trial by Common Jury.

LVI Other Inquiries before same Special Jury, by Consent.

Any other Inquiry than that for the Trial of which such Special Jury may have been struck and reduced as aforesaid may be tried by such Jury, provided the Parties thereto respectively shall give their Consent to such Trial.

LVII Jurymen not to attend more than once a Year.

No Jurymen shall, without his Consent, be summoned or required to attend any such Proceeding as aforesaid more than once in any Year.

LVIII Compensation to absent Parties to be determined by a Surveyor appointed by Two Justices.

The Purchase Money or Compensation to be paid for any Lands to be purchased or taken by the Promoters of the Undertaking from any Party who, by reason of Absence from the Kingdom, is prevented from treating, or who cannot after diligent Inquiry be found, or who shall not appear at the Time appointed for the Inquiry before the Jury as herein-before provided for, after due Notice thereof, and the Compensation to be paid for any permanent Injury to such Lands, shall be such as shall be determined by the Valuation of such able practical Surveyor as Two Justices shall nominate for that Purpose as herein-after mentioned.

LIX Two Justices to nominate a Surveyor.

Upon Application by the Promoters of the Undertaking to Two Justices, and upon such Proof as shall be satisfactory to them that any such Party is, by reason of Absence from the Kingdom, prevented from treating, or cannot after diligent Inquiry be found, or that any such Party failed to appear on such Inquiry before a Jury as aforesaid, after due Notice to him for that Purpose, such Justices shall, by Writing under their Hands, nominate an able practical Surveyor for determining such Compensation as aforesaid, and such Surveyor shall determine the same accordingly, and shall annex to his Valuation a Declaration in Writing subscribed by him of the Correctness thereof.

LX Declaration to be made by the Surveyor.

Before such Surveyor shall enter upon the Duty of making such Valuation as aforesaid he shall, in the Presence of such Justices, or One of them, make and subscribe the Declaration following at the Foot of such Nomination; (that is to say,)

I *A.B.* do solemnly and sincerely declare, That I will faithfully, impartially, and honestly, according to the best of my Skill and

Ability, execute the Duty of making the Valuation hereby referred to me. *A.B.*

Made and subscribed in the Presence of .

And if any Surveyor shall corruptly make such Declaration, or having made such Declaration shall wilfully act contrary thereto, he shall be guilty of a Misdemeanor.

LXI Valuation, &c. to be produced to the Owner of the Lands, on Demand.

The said Nomination and Declaration shall be annexed to the Valuation to be made by such Surveyor, and shall be preserved together therewith by the Promoters of the Undertaking, and they shall at all Times produce the said Valuation and other Documents, on Demand, to the Owner of the Lands comprised in such Valuation, and to all other Parties interested therein.

LXII Expences to be borne by Promoters.

All the Expences of and incident to every such Valuation shall be borne by the Promoters of the Undertaking.

LXIII Purchase Money and Compensation, how to be estimated.

In estimating the Purchase Money or Compensation to be paid by the Promoters of the Undertaking, in any of the Cases aforesaid, regard shall be had by the Justices, Arbitrators, or Surveyors, as the Case may be, not only to the Value of the Land to be purchased or taken by the Promoters of the Undertaking, but also to the Damage, if any, to be sustained by the Owner of the Lands by reason of the severing of the Lands taken from the other Lands of such Owner, or otherwise injuriously affecting such other Lands by the Exercise of the Powers of this or the special Act, or any Act incorporated therewith.

LXIV Where Compensation to absent Party has been determined by a Surveyor, the Party may have the same submitted to Arbitration.

When the Compensation payable in respect of any Lands, or any Interest therein, shall have been ascertained by the Valuation of a Surveyor, and deposited in the Bank under the Provisions herein contained, by reason that the Owner of or Party entitled to convey such Lands, or such Interest therein as aforesaid, could not be found, or was absent from the Kingdom, if such Owner or Party shall be dissatisfied with such Valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for Payment or Investment of the Monies so deposited under the Provisions herein contained, by Notice in Writing to the Promoters of the Undertaking, to require the Question of such Compensation to be submitted to Arbitration, and thereupon the same

shall be so submitted accordingly, in the same Manner as in other Cases of disputed Compensation herein-before authorized or required to be submitted to Arbitration.

LXV Question to be submitted to the Arbitrators.

The Question to be submitted to the Arbitrators in the Case last aforesaid shall be, whether the said Sum so deposited as aforesaid by the Promoters of the Undertaking was a sufficient Sum, or whether any and what further Sum ought to be paid or deposited by them.

LXVI If further Sum awarded, Promoters to pay or deposit same with 14 Days.

If the Arbitrators shall award that a further Sum ought to be paid or deposited by the Promoters of the Undertaking, they shall pay or deposit, as the Case may require, such further Sum within Fourteen Days after the making of such Award, or in default thereof the same may be enforced by Attachment, or recovered, with Costs, by Action or Suit in any of the Superior Courts.

LXVII Costs of the Arbitration.

If the Arbitrators shall determine that the Sum so deposited was sufficient, the Costs of and incident to such Arbitration, to be determined by the Arbitrators, shall be in the Discretion of the Arbitrators, but if the Arbitrators shall determine that a further Sum ought to be paid or deposited by the Promoters of the Undertaking, all the Costs of and incident to the Arbitration shall be borne by the Promoters of the Undertaking.

LXVIII To be settled by Arbitration or Jury, at the Option of the Party claiming Compensation.

If any Party shall be entitled to any Compensation in respect of any Lands, or of any Interest therein, which shall have been taken for or injuriously affected by the Execution of the Works, and for which the Promoters of the Undertaking shall not have made Satisfaction under the Provisions of this or the special Act, or any Act incorporated therewith, and if the Compensation claimed in such Case shall exceed the Sum of Fifty Pounds, such Party may have the same settled either by Arbitration or by the Verdict of a Jury, as he shall think fit; and if such Party desire to have the same settled by Arbitration, it shall be lawful for him to give Notice in Writing to the Promoters of the Undertaking of such his Desire, stating in such Notice the Nature of the Interest in such Lands in respect of which he claims Compensation, and the Amount of the Compensation so claimed therein; and unless the Promoters of the Undertaking be willing to pay the Amount of Compensation so claimed, and shall enter into a written Agreement for that Purpose within Twenty-one Days after the Receipt of any such Notice from any Party so entitled, the same shall be settled by Arbitration in the Manner herein provided; or if the Party so entitled as aforesaid desire to have such Question of Compensation settled by Jury, it shall lawful for him to give Notice in Writing of such his Desire to the Promoters of the Undertaking, stating such Particulars as aforesaid, and unless the Promoters of the Undertaking be willing to pay the Amount of Compensation so claimed, and enter into a written Agreement for that Purpose, they shall, within Twenty-one Days after the Receipt of such Notice, issue their Warrant to the Sheriff to summon a Jury for settling the same in the Manner herein provided, and in default thereof they shall be liable to pay to the Party so entitled as

Status: This is the original version (as it was originally enacted).

aforesaid the Amount of Compensation so claimed, and the same may be recovered by him, with Costs, by Action in any of the Superior Courts.