# AN ACT

## For consolidating in one Act certain provisions usually inserted in Acts authorizing the taking of Lands for undertakings of a Public nature.

WHEREAS It is expedient to establish certain conditions and provisions upon and in accordance with which Land required for undertakings or works of a public nature may be acquired and the manner of obtaining compensation for the same.

And whereas by an Act passed in the Imperial Parliament in the eighth year of the reign of Her present Majesty, and entituled "The Land Clauses Consolidation Act, 1845," the provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature were comprised in one general Act, and it was by the said Act enacted that the said Land Clauses Consolidation Act, 1845, should apply to every undertaking authorized by any Act which should be thereafter passed and which should authorize the purchase or taking of lands for such undertaking, and that the said Land Clauses Consolidation Act, 1845, should be incorporated with such Act. And it was also enacted that

all the clauses and provisions of the said Land Clauses Consolidation Act, 1845, (save so far as they should be expressly varied or excepted by any such Act) should apply to the undertaking authorized thereby so far as the same should be applicable to such undertaking and should as well as the clauses and provisions of every other Act which should be incorporated with such Act form part of such Act and be construed together therewith as forming one Act.

And whereas it is expedient that the Land Clauses Consolidation Act, 1845, should apply to undertakings or works of a public nature in Vancouver Island and its dependencies, save where such Land Clauses Consolidation Act is inapplicable from the difference of local circumstances.

Be it therefore enacted by His Excellency the Governor on Her Majesty's behalf by and with the advice and consent of the Legislative Council and Assembly, as follows :—

**Application of Land Clauses Consolidation Act, 1845.**

I. That the Land Clauses Consolidation Act, 1845, as modified by the provisions hereinafter contained, shall apply to any undertaking authorized by any Act which shall be hereafter passed by the Legislature of Vancouver Island and its Dependencies, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby so far as the same shall be applicable to such undertaking and shall, as well as all the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

**Definitions not to apply.**

II. The definitions of "Superior Courts," "County," "the Sheriff," "the Clerk of the Peace," "Justices," and the "Bank," given in the third section of the Land Clauses Consolidation Act, 1845, shall not apply.

**The eight clause of the Act not to apply.**

III. The eighth clause of the Land Clauses Consolidation Act shall not apply.

**Monies to be deposited in the Treasury in lieu of the Bank.**

IV. All monies directed to be deposited in the Bank by the said Act shall be deposited in the Treasury, in lieu of being deposited in

the Bank specified in the said Act, and the Treasurer shall perform all the duties and functions directed to be performed by the Cashier of the Bank in the said Act.

**The Governor to approve in lieu of the Commissioners of the Treasury.**

V. The approbation mentioned in the fifteenth clause of the Land Clauses Consolidation Act, 1845, to be given by the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland shall not be required, but in lieu thereof the approbation of the Governor for the time being of Vancouver Island and its Dependencies shall be required.

**Notices with whom to be left.**

VI. The notices mentioned in the nineteenth section of the Land Clauses Consolidation Act, 1845, may be left with the occupier of the lands therein mentioned in case any of the parties therein referred to shall be absent from the Colony or cannot be found after diligent enquiry.

**Chief Justice to nominate Umpire in lieu of the Board of Trade.**

VII. The power vested by the twenty-eighth section of the said Act in the Board of Trade to nominate an umpire shall in any case in which a Railway or Water Company, or company for the formation of a Cemetery shall be one party to the arbitration be vested in the Chief Justice for the time being.

**The Thirty ninth Section not to apply.**

VIII. The thirty-ninth section of the said Act shall not apply, but in lieu thereof the section following.

**Juries how to be summoned in cases of disputed compensation.**

IX. 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 person to be nominated *pro hac vice* in that behalf by the Chief Justice, who shall not be interested in the matter in dispute, and such person when nominated shall fulfil all the functions delegated to the Sheriff by the Land Clauses Consolidation Act, 1845.

Verdict and Judgment mentioned in Fiftieth section of the said Act shall be kept by Register of Supreme Court.

X. The verdict and judgment mentioned in the fiftieth section of said Act to 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," shall be kept by the Registrar of the Supreme Court of Civil Justice, and such verdicts and judgments shall be deemed records.

Taxation of Costs.

XI. The person whose duty it shall be to settle the costs of any inquiry referred to in the fifty-second section of the said Act, or to tax any costs directed to be taxed under the eighty-third section of this Act shall be the person for the time being acting as Taxing Master in the Supreme Court of Civil Justice, in lieu of "one of the Masters of the Court of Queen's Bench of England or Ireland" mentioned in the said section.

The rate of Interest payable under clause eighty five to be twelve per cent. per annum in lieu of Five

XII. The rate of interest payable under clause eighty-five of the Land Clauses Consolidation Act, 1845, shall be twelve per cent. per annum, instead of five per cent. per annum.

Surveyor to be appointed to estimate compensation where owner is absent.

XIII. The power given to two Justices to nominate an able practical Surveyor to determine the value of land and the compensation to be paid for any permanent injury to land of any party who by reason of his absence from the Kingdom is prevented from treating is hereby extended to the case of any person absent from Vancouver Island and its Dependencies, or the case of any person who cannot, after diligent enquiry, be found ; or who shall not appear at the time appointed for the enquiry before the jury, as therein before provided for.

Such Surveyor to be appointed on satisfactory proof to two Justices that owner is absent.

XIV. The nomination of an able practical Surveyor to be made by two Justices, in the fifty-ninth section mentioned, shall be made upon such proof as shall be satisfactory to them that any such party has failed to appear on such enquiry before a jury as aforesaid, after due notice to him for that purpose.

Monies to be aid into the reasury.

XV. All monies directed by the said Act to be paid into the Bank to the account of the Accountant General shall be paid into the Treasury to the account of the Registrar of the Supreme Court to be placed to the account there of the said Registrar *ex parte* the parties mentioned in the said Act, in lieu of being paid into the Bank to the account of the Accountant General and shall not be invested until otherwise provided by some Acts which may be passed in the present or any future session of Parliament.

XVI. All orders, powers and discretions of the Court of Chancery in England, the Court of Exchequer in Ireland, mentioned or referred to in the said Act may be made by the said Supreme Court of Civil Justice.

Orders, Powers, &c., to be made by Supreme Court Civil Justice.

XVII. The sections 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 shall not apply.

Sections not to apply.

XVIII. The one hundred and thirty-third clause shall not apply, and in lieu thereof it is enacted :

The 133d clause not to apply.

XIX. That if the promoters of the undertaking become possessed by virtue of this, or the special Act, or any Act incorporated therewith, of any lands charged with any tax rate or assessment whatsoever, they shall from time to time until the works shall be completed and assessed, be liable to make good the deficiency in the several assessments by reason of such lands being taken up or used for the purposes of the works.

Deficiency in Assessments by reason of lands being taken up to be made good.

XX. The one hundred and forty-eighth, one hundred and fiftieth and one hundred and fifty-second clauses shall not apply.

Clauses not to apply.

XXI. The power of appeal given by the one hundred and forty-sixth section shall not apply, but any party who shall feel aggrieved, as in the said section mentioned, may appeal to the Chief Justice at the next Assizes, but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal should be brought, nor unless the appellant forthwith after such notice enter into recognizances with two sufficient sureties before a Justice, duly to prosecute such appeal and to abide the order of the Court thereon.

Appeal to be made to the Chief Justice.

XXII. Where any land reserved for Government or other purposes may be required by the promoters of any undertaking, the same shall not be taken save with the consent of the Governor for the time being, who is hereby authorized to permit such promoters to acquire such land on such terms as he may think proper, and to execute such instruments under his hand and the seal of the Colony as may be necessary for that purpose.

Government Reserve Land.

This Act may be cited as the "Vancouver Island Land Clauses Consolidation Act, 1863."

Citation of Act

Read a third time and passed the Council, the eleventh day of February, A.D., 1863.

RODK. FINLAYSON,
President.

Read a third time and passed the House of Assembly, the twentieth day of February, A.D., 1863.

EDWIN JAMES NESBITT,
Acting Clerk of the House of Assembly.

Received my assent the twenty-fifth day of February, A. D., 1863.

JAMES DOUGLAS,
Governor.