

New Zealand.

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1902, No. 15.—*Local.*

- Title. AN ACT to amend "The Dunedin District Drainage and Sewerage Act, 1900." [26th September, 1902.]
BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—
- Short Title. 1. The Short Title of this Act is "The Dunedin District Drainage and Sewerage Act 1900 Amendment Act, 1902."
- Interpretation. 2. In this Act and the Act hereby amended, if not inconsistent with the context, the following words and expressions shall be deemed to have and to have had from the passing of the said Act the meanings hereby given thereto:—

“The said Act” or “the principal Act” means “The Dunedin District Drainage and Sewerage Act, 1900”; and all references herein and in any future amending Act to the said Act shall include a reference to this and all other amending Acts.

“Borough” shall include city.

“District” shall extend to and include all extensions which may be lawfully made of the district as defined in the said Act.

“Local authority,” where intended to refer to a local authority outside the district, shall include any Borough Council, County Council, Road Board, Town Board, and the Ocean Beach Public Domain Board, and the expression shall include any local body whose district or part of whose district has been added to the district by the said Act constituted.

“Public drain” does not include a street-channel.

References in the said Act to “The Municipal Corporations Act, 1886,” or to any section of the said Act, shall be read as references to “The Municipal Corporations Act, 1900,” and its amendments.

Whenever any powers, duties, or functions conferred or imposed by “The Municipal Corporations Act, 1900,” which, prior to the passing of the principal Act hereby amended, were vested in Borough Councils, are by the said last-mentioned Act or this Act vested in the Board, the sections of “The Municipal Corporations Act, 1900,” or of any Schedule thereto, creating the same shall be read as sections of the principal Act and this Act, and the word “Board” shall be deemed to be substituted for the word “Council” and the word “Corporation” where the same occur in any such section, and such sections shall be otherwise modified to suit the requirements of the principal Act and this Act.

ELECTION OF BOARD.

3. The ballot firstly mentioned in section ten of the said Act shall not be held until the first meeting which the Board shall hold in the month of December, one thousand nine hundred and two; and the one-third of the members of the Board firstly mentioned in the said section shall not vacate their offices until the third Wednesday in the month of January, one thousand nine hundred and three; and the subsequent ballot and the subsequent retirements of the second and third sets of one-third of the members shall in each case be similarly postponed for one year, and thereafter the retirement of one-third of the members of the Board shall take place every year.

Election of Board.

4. When a casual vacancy shall occur by reason of the death, resignation, or disqualification, incapacity, or ouster from office of any member, or from any other cause, the Board may fill up such vacancy by electing a successor to the member whose office has

Casual vacancy.

Proviso. become vacant, and the member so elected shall hold office until the period at which the person whose successor he is would have ceased to be a member had such vacancy not occurred: Provided that, unless the Board shall by resolution find some reason for not so doing, it shall give a preference to the person who at the last preceding election of members by the electors received the nearest number of votes to any person who was elected.

Further provisions rendering persons ineligible for election. 5. There shall be added to the proviso to subsection two of section thirteen of the Act the following words, namely: after the words "leasing of land from the Board," the words "or to the Board"; and after the words "by the holding of any debenture," the words "or by making advances to the Board under section seventy of the said Act, or under any provision enabling the Board to borrow money."

Forfeiture of membership. 6. In case any member shall, after the passing of this Act, fail or cease to have the qualification required by the said Act, or if he shall without the leave of the Board absent himself from four consecutive ordinary meetings, the Board may declare his office vacant, and such vacancy shall be deemed a casual vacancy: Provided that any such person or any ten electors may within fourteen days, but not later, by summons appeal to any Stipendiary Magistrate, who shall, after hearing such evidence as he shall think necessary, affirm or reverse the decision of the Board.

Proviso,

COMMITTEES—DELEGATION OF POWERS.

Committees—Delegation of powers.

7. The Board may form committees of its own members, and may generally or in any particular matter confer upon and delegate to them such of its powers, duties, and functions as it shall from time to time think fit, and may associate with such committees such of its officers as it shall think fit, and may similarly define the powers, duties, and functions of such persons.

CONTRACTS AND POWERS.

Further powers of contract.

8. In addition to the powers conferred by section seventeen of the said Act, the Board shall have, and as from the date of its first election be deemed to have had, full power to contract or agree with the Council of any borough or other local body in the district for the performance by such Council or its officers of any of the duties or the exercise of any of the powers and functions of the Board, upon such terms as may be mutually agreed upon.

Form of contract.

9. Any contract made by the Board which, if made between private persons,—

Firstly, must be by deed,

Secondly, must be in writing signed by the parties thereto or some agent thereunto lawfully authorised,

Thirdly, may be made verbally without writing when made by the Board,—

in the first case shall be in writing under the seal of the Board; in the second case shall be signed by two members of the Board, some officer, agent, or delegate of the Board, on behalf and by direction of the Board; in the third case may be made verbally by the Board

or any committee or two members thereof, or by the Drainage Engineer on behalf and by direction of the Board; but, save in the case of evident emergency, no verbal contract shall be made for any sum exceeding twenty pounds.

No contract, agreement, receipt, or other instrument made or executed by or for the Board shall be liable to stamp duty.

EXTENSION OF DISTRICT.

10. The Governor shall have power, upon the requisition of the Board, by Proclamation to declare that any area described in such Proclamation not now included within the district shall form part thereof: Provided that no such Proclamation shall issue until the Governor is satisfied that the inclusion of such area within the district will prove beneficial to the inhabitants and the owners of property therein.

Extension of district.

Whenever any area shall have been so included within the district the following consequences shall ensue:—

- (1.) All the powers of the Board shall apply to such area.
- (2.) The local authority having jurisdiction therein shall have power to make, levy, and collect, and shall make, levy, and collect, the rates therein under the powers contained in section fifty-four of the said Act, and for the purpose of exercising the aforesaid powers the said local authority shall be deemed to be a local authority having rating-powers within the county in which such area is situated within the meaning of section five of "The Rating Act, 1894"; and, similarly, when the Board shall determine to make, levy, and collect its own rates it shall be deemed to be such a local authority.
- (3.) The local authority having jurisdiction therein shall from time to time furnish to the Board a list or roll signed by its Chairman containing the names of all persons residing or having property within the said area who possess a qualification entitling them to vote for the election of members of the said local authority, and such list or roll shall form part of the district electoral roll.
- (4.) Any person whose name is on such list or roll shall, if not otherwise disqualified, be qualified to be elected as a member of the Board.

SPECIAL ORDERS.

11. Section twenty-one of the said Act shall be amended as follows:—

Amendment of provisions in Act of 1900.

- (1.) The confirmation of a special resolution intended to operate as a special order may be made at any meeting held not sooner than twenty-seven days after the passing of the said resolution.
- (2.) The public notice required by subsection three may be given on any four days in the period between the earliest and latest of the said meetings, provided that twenty days at least shall intervene between its earliest and latest appearances.

POWERS OF BOARD.

Amendment of section 26 of Act of 1900.

12. Section twenty-six of the said Act shall apply, notwithstanding that any such private drain is wholly or partly laid in a street or private street.

Mode of collecting moneys payable by instalments.

13. For the purpose of requiring any local body to collect any sum payable under the provisions of section twenty-eight of the said Act no special order shall be necessary, but it shall be sufficient if the Board shall forward to such local body a request under the hand of the Drainage Engineer or the Board's secretary requesting it to collect the sums set forth in such request from the persons named therein.

Further powers under section 34 of Act of 1900.

14. The powers conferred by section thirty-four of the said Act, save in so far as they are powers exclusively vested in the Board by virtue of section nineteen of the said Act as amended by this Act, shall continue to be also exercisable by the Councils of the boroughs and other local bodies within the district in so far as they are within the powers conferred by law on such local bodies.

SPECIAL POWERS.

Provision as to drains.

15. The Board shall have full power and authority, in addition to all other powers conferred by the said Act or this or any other Act, to construct and lay under the streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves in the district all such main and other drains and other works as it shall think fit, and to use and manage the same, and all drains and works vested in or belonging to it.

Powers to Board in regard to laying drains.

16. In addition to the powers in that behalf conferred by section fifteen hereof, and to all other powers in that behalf vested in or conferred on it by the said Act or this Act or any other Act, the Board shall have power to construct and lay under all streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves beyond the district such main and other drains and other works as it shall deem necessary; provided that before exercising the powers conferred by the said section, or by this section, or by section thirty-four of the said Act, so far as the same relates to acts in streets, or under any public or private street, public place, park, square, or recreation or other reserve, it shall give one month's notice to the local authority of the city, borough, county, road district, or other district having control of such road, street, place, or reserve, of its intention to construct or execute any such works; and shall, after having constructed and executed the same, restore any such street, private street, road, place, or reserve to its former condition so far as is consistent with the existence or maintenance of such work, and shall during the progress of such works and of such restoration relieve and indemnify such local body from and against any loss or cost it may suffer in consequence of the construction or execution of such works; and the Board shall in like manner have power to construct and execute such works through, under, and upon the foreshore of the sea, or any harbour or estuary, or any other Crown lands, or through or under any river, stream, or water; provided that this section shall in no case entitle it to commit any offensive

nuisance; and in exercising the aforesaid powers or any of the powers by the said Act or this Act conferred on it the Board shall have full power to take possession of any such road, street, private street, place, or reserve, or Crown land it shall deem necessary, and to open up the same, and to temporarily close the same, and to fence in such portion thereof as it shall deem necessary.

17. When any works authorised by the said Act or this or any other Act, and contemplated by the Board, interfere with or affect any railway or other work the property of His Majesty the King, the Board shall before commencing the same give notice of its intention so to do to the Minister for Railways, together with a plan and section showing the nature of such interference. Unless the Minister, within one month after the service of such notice, deliver to the Board a notice of any objections he may have to the proposed works, the said Minister shall be taken to have approved thereof. In the event of the Minister requiring a modification of such work the Board shall modify its plan in accordance with the suggestions of the said Minister.

Crown property—
Notice to Minister
for Railways.

18. If the Board at any time deems it necessary for the purpose of its works, or to enable it properly to exercise its functions, to raise or lower or otherwise to alter the position of any gaspipes or gasworks, or of any water, hydraulic, or steam pipes, electric or telephone wires, works or appliances, or tubes, tunnels, or tramways laid in or under any street, road, place, or land, the Board may by notice in writing require the person, company, or corporation owning or having control thereof, or, in case of property belonging to His Majesty the King, the Minister for Public Works, to raise, lower, or otherwise alter the position of the same, at the cost of the Board, in the manner and within such reasonable time as is specified in such notice, and if such notice shall not be complied with the Board may make the alterations required, without incurring any responsibility to such owner or person having the control thereof. Unless the local body or the said Minister, as the case may be, shall within one month after service of such notice deliver to the Board a notice of any objections it or he may have to the proposed works, the said local body or Minister shall be taken to have approved thereof. In the event of the said local body or Minister requiring a modification of such work the Board shall modify its plans in accordance with the suggestions of the said Minister or local body.

Notice to be given
where existing
services interfered
with.

19. The Board shall have further power to carry any ventilating shaft, pipe, or tube up or upon any external wall of any building, whether private or public, and affix the same thereto, provided that the mouth of every such shaft, pipe, or tube shall be at least six feet higher than any window situated within a distance of thirty feet therefrom, and where attached to a house shall be higher than the eaves or parapet thereof; and also to pierce and use as a ventilating shaft or tube the chimney of any factory or tramway; and in like manner may, during the construction of its works, use any private drain or watercourse within or without the district to carry water from such works.

Ventilating-
shafts, &c.

20. Any person whose property is used or injuriously affected in or by the exercise of the powers conferred by the last preceding

Claim for
compensation.

section shall have a claim for compensation in respect thereof under the provisions of "The Public Works Act, 1894."

Borough works,
value of.

21. The value of the works in any borough which are subject to the provisions of section forty-seven of the said Act may form the subject of an agreement between the Board and the Council of any such borough, and if no such agreement is arrived at the same shall be fixed in manner in the said section provided.

Electrical and
pumping works.

22. The Board shall have authority, for the purpose of obtaining power for pumping-works and other works connected with or incidental to its operations, and for lighting premises used by it, to generate and use electricity, and for that purpose purchase or take under the provisions of "The Public Works Act, 1894," all such lands, streams, waters, easements, and other rights as it shall think requisite, and to erect, construct, and use such dams, weirs, buildings, and appliances for generating the same as it shall think fit, and to conduct the same across or through all roads, streets, places, and lands within and without the district, and for that purpose to erect and maintain such posts, conductors, and appliances as it may find necessary: Provided that for all such things as it may do in or over private lands, and for all injury it may cause to such lands, streams, waters, easements, and other rights, it shall be liable to compensate the owners and all persons having any estate or interest therein, in manner provided by the said last-mentioned Act. And for the afore-said purposes it shall also have power to contract with any person, company, or local body for the supply of electricity: Provided that no such work shall interfere with the property or works of any borough.

Provisions of
"Public Works Act,
1894," to apply.

Provisions where
interest of Board
and any borough
affected.

23. As between the Board and any borough or local body in the district, the following arrangement is instituted:—

- (a.) The Board is responsible for the state of the sewers and public drains vested in it, and will cleanse, repair, and manage them, and will construct and maintain all inlet appliances.
- (b.) The local body is responsible for the streets, including the channels, and will cleanse, repair, and manage them.
- (c.) The Board shall have power by by-law to regulate the management and use of inlet-appliances giving access to the sewers and public drains, including grids, and to prevent the putting of anything into the sewers or public drains; or allowing anything to enter such sewers or public drains by means of such appliances, save such matter as may be carried in with water entering in the course of the legitimate use of such appliances.
- (d.) This section shall not be deemed to impose on the Board or any local body any greater liability than otherwise arises under the principal Act or "The Municipal Corporations Act, 1900," respectively.

RATING-POWERS—FINANCIAL YEAR.

Amendment of
section 49 of Act of
1900.

24. Section forty-nine of the said Act is amended by the addition of the following words: "Upon receipt of a recommendation from the local authority, accompanied by a statement by such local

authority that any portion of the district within the outer drainage area, though capable of being benefited by the construction and maintenance of drains, is presently receiving no actual benefit from the operations of the Board, the Board, after making due inquiry into the grounds of such statement, shall from time to time exempt the properties within such portion of the district from rating for such period as shall be mentioned in the resolution effecting such exemption."

25. Section fifty of the principal Act is hereby amended by adding the following words: "Nor shall they include within any rating-area the lands situated within the watershed of the Kaikorai Stream." Amendment as regards Kaikorai Stream watershed.

26. After a rate shall have been made or ordered to be made by special order, it shall not be necessary in subsequent years to repeat such special order, but a resolution of the Board shall suffice, save when it is intended to increase the rate or rates for the year or to levy a further rate in any year. Special order for rate need not be repeated.

27. The financial year of the Board shall commence on the first day of April and end on the thirty-first day of March in every year. Financial year of Board

AGGREGATE FUND—FINANCE.

28. Subject to the opinion and decision of the Auditor-General, the Board shall determine what items or proportion of its expenditure are or is properly payable out of loan-moneys, and what items or proportion are or is properly chargeable against annual revenue: Provided that it shall be entitled to pay out of loan-moneys all the cost of drainage or sewerage works and other permanent works, and of the purchase of land, and all preliminary and other expenditure incident to the construction of such works, including the cost of experiments; such part of the salaries of officers and servants as it shall consider applicable to such works, and such legal and other expenses as are incurred in connection therewith, or with matters incidental thereto, including legislation; such rents and other expenses connected with land as relate to the temporary occupation thereof for the purpose of such works, and also the first year's interest on the cost of all works, together with such further interest as the Auditor-General shall in his discretion, on the representation of the Board, allow to be so charged. And the Board shall pay out of annual revenue all expenditure on account of the annual work of the Board, and operations, and its officers, including repairs and maintenance of works, and interest not chargeable against loan-money: Finance.

Provided that this section shall be deemed to have been in force as from the commencement of the Board's operations, and it may revise its past expenditure in accordance herewith.

29. It shall be lawful for the Board to obtain in anticipation the opinion of the Auditor-General on any question as to the incidence of any expenditure, and to act on such opinion. Opinion of Auditor-General to be obtained.

MISCELLANEOUS.

30. A writ or process shall not be issued against or served on the Board or any member thereof, or any officer or servant or workman thereof, or any person acting under its or his directions or in Notice of action.

its or his aid, for anything done or intended to be done or omitted to be done after the passing of this Act, under the provisions of the said Act or this or any other Act, or of any by-law or regulation made or in force thereunder or hereunder, until one month after notice in writing has been served on the Board, or such member, officer, or person, clearly stating the cause of action, or ground, or proceeding, and the name and address of the intended plaintiff or prosecutor, and his solicitor or agent in the action or proceeding; and on the trial or hearing of any such action or proceeding the plaintiff shall not be permitted to go into any cause of action or ground of proceeding which is not stated in the notice so served, and unless such notice is proved there shall be judgment for the defendant.

Commencement of
action.

31. Every such action or proceeding shall be commenced within twelve months next after the accruing of the cause of action or proceeding, and not afterwards, and shall be tried in the district, and not elsewhere. In any such action or proceeding the defendant may plead generally that the act or thing complained of was done or omitted under the authority or in the execution or intended execution or in pursuance of the said Act or this Act, or of any by-law or regulation made or in force thereunder or hereunder, and may give all special matter in evidence.

Any person to whom such notice of action is given as aforesaid may tender amends to the plaintiff, his solicitor or agent, at any time within one month after service of such notice, and in case the same be not accepted may plead such tender in bar; and in case amends shall not have been tendered, or in case the amends tendered are insufficient, the defendant may within the time allowed for filing a statement of defence, or thereafter at any time before trial, by leave of the Court, pay into Court, in accordance with the practice of the Court in which the action is pending, and in the case of an action in a Court in which no defence need be filed, at any such time as may be allowed by the practice of such Court, such sums of money as it or he may think proper, whereupon such consequences shall ensue as, under the practice of the Court in which the action is brought, ensue in an ordinary action.

In any case arising out of injury to property, the property injured, and the accounts and vouchers in respect of the injury, may be examined by any person appointed by the Board, and all proceedings shall be stayed until any order for such examination has been complied with.

Enforcement of
provisions of Act.

32. The provisions of the said Act and of this Act, and of all by-laws made by the Board, shall be enforced by the Board or its officers: Provided that the District Health Officer may, if he shall think fit, enforce such provisions, or may direct the Board to enforce them.

Board property not
liable to be rated.

33. No property of the Board owned or used by it for the purposes for which it is incorporated shall be liable to be rated by any local body.

Dispute may be
referred to a
Stipendiary
Magistrate.

34. Any dispute which may from time to time arise between the Board and any borough or local authority within or without the district, with respect to carrying into effect the provisions of the said

Act or this Act, or incidental thereto, may at the instance of either party be referred to a Stipendiary Magistrate, who shall hear and determine such dispute, and whose decision shall be final and conclusive, subject to an appeal by either party to a Judge of the Supreme Court in the manner provided by subsection six of section forty-seven of the principal Act.

35. Any person doing anything contrary to the provisions of the said Act or of this Act, or any by-law or regulation made thereunder or hereunder, or omitting or failing to perform any duty imposed on him by or arising under the said Act or this Act, or any such by-law or regulation, shall be guilty of an offence, and in cases where no other penalty is provided shall be liable to a penalty not exceeding twenty pounds, and whenever such act or omission is of a continuous nature a further offence shall be deemed to be committed on each day on which it is continued; and whenever power is given by any Act, by-law, or regulation to order anything to be done or omitted, an offence shall be deemed to be committed on each day on which any person disobeys or fails to comply with any such order; and in all cases in which property is damaged, destroyed, or lost, or pecuniary loss is suffered, by reason of an offence, the Court may add to the penalty compensation for any loss the Board may have sustained: Provided that such compensation, unless awarded at the express request of the Board, shall not, excepting to the amount thereof, relieve such person of any civil liability in respect of his Act or omission. Penalty.

36. Nothing contained in this Act or the principal Act shall be deemed to authorise the Board to establish any system of drainage for the district, or any part thereof, by which sewage or solid matter of any kind shall be discharged into the Otago Harbour, and in establishing every such system of drainage as aforesaid the Board shall be bound to make proper provision for preventing all sewage and solid matter from being discharged thereby into the Otago Harbour. Sewage not to be discharged into harbour.

37. Before any such system of drainage shall be established for the district, or any part thereof, it shall be submitted by the Board to the Governor for his approval, in such manner and with such information as shall fully show what provision is made thereby for preventing the discharge of sewage and solid matter into the Otago Harbour, and the Board shall at the same time give full information to the Otago Harbour Board upon the same subject; and the Governor, after considering any objection the said Harbour Board may make to such system, may signify his approval of the same, whereupon the Board may proceed to establish and carry out the same. The Governor's approval to be obtained.

38. If the said Harbour Board shall have signified its approval of any such system, the Board may proceed to establish and carry out the same as if the same had been approved of by the Governor. Approval of Harbour Board sufficient.