

(Mr. Rolleston.)

Canterbury Water Supply.

ANALYSIS.

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A BILL INTITULED

“The Canterbury Water Supply Act, 1873.” Title.

WHEREAS it is expedient to make provision for the purpose of Preamble.
supplying certain portions of the Province of Canterbury with
water :

BE IT THEREFORE ENACTED by the General Assembly of New
5 Zealand in Parliament assembled, and by the authority of the same,
as follows :—

1. The Short Title of this Act shall be “The Canterbury Water Short Title.
Supply Act, 1873.”

2. The following words and expressions in this Act shall have the Interpretation.
10 meanings assigned to them, unless there be something in the subject
or context repugnant to such construction, that is to say—

The word “land” shall include messuages lands tenements and
hereditaments of any tenure, and any estate or interest
therein.

15 The word “streams” shall include springs brooks and other
running waters.

The word “road” shall include any highway lane road
thoroughfare or public passage or place within the Province
of Canterbury.

The expression "waterworks" shall mean any waterworks authorized to be constructed by this Act, and the works connected therewith.

The expression "water rate" shall include any rent rate fees reward or payment to be made for a supply of water. 5

The expression "two Justices" shall mean two or more Justices of the Peace met and acting together, or a Resident Magistrate.

The word "Superintendent" shall mean the Superintendent for the time being of the Province of Canterbury. 10

Superintendent to act with advice of Executive Council.

3. Every Act which the Superintendent is hereby authorized or required to perform he shall perform solely in accordance with the advice of his Executive Council for the time being, and such advice shall be recorded on the minutes of the Council.

Superintendent may make &c. waterworks.

4. It shall be lawful for the Superintendent to make construct 15 complete and maintain such waterworks as may be required for the purpose of supplying any portion or portions of the said Province with water.

Superintendent may exercise certain powers.

5. Subject to the provisions restrictions and conditions contained in this Act, the Superintendent and his successors may by themselves 20 their deputies officers agents servants workmen and assistants exercise the following powers, and may execute or cause to be executed any of the following works, that is to say—

He may, without any previous agreement with the owner or occupier, enter upon any lands or other places in the said 25 Province, and take the levels of the same.

He may take and hold any lands required for the purposes of this Act.

He may from time to time sink such wells or shafts, or make maintain alter or discontinue such waterworks reservoirs 30 water races dams cisterns tanks aqueducts drains cuts sluices pipes culverts engines and other works, and erect such buildings, as he shall think proper for supplying any portion of the said Province with water.

He may from time to time, for the purposes aforesaid, divert 35 take convey away dam up and impound the whole or any portion of the water of any river stream or watercourse in any portion of the said Province as shall be required for the purposes of this Act, and may alter the course of any stream in the said Province. 40

He may without previous payment tender or deposit enter upon and use any land within the said Province for the purpose of taking any earth stone or clay therefrom, and he may enter upon and use any lands adjacent for making temporary roads or approaches to the works: Provided 45 always that before he shall make such temporary use of any such lands he shall give ten days' notice of such his intention to the occupiers of such lands, except in the case of accidents to the works requiring immediate reparation: Provided also that the Superintendent shall, until any land 50 taken by him for temporary use be given up to the owner, pay to the owner or occupier half-yearly reasonable compensation for the use of such lands, and for any damage or injury done to the crop or to the surface of the land or otherwise; and such compensation shall, if the parties 55 cannot agree, be settled by arbitration in manner herein-after provided.

He may from time to time reserve any portion or portions of the waste lands of the Province which may be required or which he may consider will be benefited by the 60

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execution of any of such waterworks, and he may contract with any person for the execution of such works, and agree to make payment therefor either in money or in waste lands of the Crown, or by conveying or transferring any land so reserved, or any part thereof.

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6. In exercising the powers of taking lands hereinbefore conferred, the Superintendent shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of this Act, or injuriously affected by the construction or maintenance of the waterworks, or otherwise, by the extension of the powers hereby conferred, full compensation for all damages sustained by such owners occupiers and other persons by reason of the exercise as to such lands of the powers vested in the Superintendent by this Act.

Compensation to be made.

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7. All claims for compensation shall be made in writing to the Superintendent within eighteen months from the time when such claims shall have arisen, when the person claiming compensation shall reside within the said Province, and when residing elsewhere within three years.

Claims to be made within a certain time.

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8. The amount of compensation shall, unless the parties can agree thereon, be ascertained in the manner pointed out and set forth in "The Lands Clauses Consolidation Act, 1863," which Act, for that and other purposes is, so far as the same may be applicable to and not inconsistent with the provisions of this Act, incorporated with and shall be deemed to form part of this Act.

Amount how ascertained.

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9. In the case of any infant claimant having no legal guardian resident within the Colony, the word "guardian," when used in "The Lands Clauses Consolidation Act, 1863," shall, for the purposes of this Act, be held to mean the Curator of Intestate Estates for the District of Canterbury acting under the provisions of "The Intestate Estates Act, 1865."

Infant claimants.

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10. The Superintendent or any person authorized by him may open and break up the soil of any roads streets bridges and reserves within the said Province, and may open and break up any sewers drains or tunnels within or under any such roads streets and bridges, and lay down and place pipes conduit service pipes and other works and engines, and from time to time repair alter or remove the same, and for the purposes aforesaid may remove and use all earth and materials in and under such roads bridges and reserves, and do all other acts which the Superintendent shall from time to time deem necessary for supplying water to any portion of the said Province, doing as little damage as can be in the execution of the powers hereby granted, and making compensation for any damages which may be done in the execution of such powers.

Superintendent may break up roads.

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11. Every person who shall wilfully obstruct any person acting under the authority of the Superintendent in setting out the line of the works, or pull up or remove any pole or stake driven into the ground for the purpose of setting out the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding twenty pounds for every such offence.

Obstruction of works.

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12. After any stream or supply of water hereby authorized to be taken by the Superintendent shall have been so taken, every person who shall illegally divert or take the water supplying or flowing into the stream so taken or any part thereof, or who shall do any unlawful act whereby the said stream or supply of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him on being required so to do, so as to restore the said waters to the state in which they were before such act, shall forfeit and pay any sum which shall be awarded by two Justices of the Peace, not exceeding one hundred pounds for every day during which the said supply of water shall be diverted or diminished by reason of any act

Penalty for diverting water.

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done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the Superintendent for any damage which may be sustained by reason of the supply of water being diminished, and the payment of the sum so forfeited shall not bar or affect the right of the Superintendent to bring an action at law against such person for the damage so committed.

Rates to be made.

13. It shall be lawful for the Superintendent from time to time to make and levy such water rate or rates as he may think necessary for the purpose of repairing and maintaining any such waterworks. 10

Before making and levying any such water rate, the Superintendent shall cause to be prepared a regulation or regulations setting forth the names of the owners and occupiers of any land benefited by such waterworks who are liable to pay such water rate, and the respective amounts for which they are severally liable. 15

Notice to be given.

14. When any such regulation shall be made the Superintendent shall cause public notice thereof, and of the place in the said Province where the same may be inspected, for a period of twenty-one days, to be given in some newspaper published in the Province, and the person having the custody of such regulations shall permit the same to be inspected by any person during office hours. 20

Appeals.

15. If any person think himself aggrieved by such water rate, he may, at any time within one month after such rate is made, appeal to the Resident Magistrate's Court or Court of Petty Sessions holden nearest to the property for which he is rated, but no such appeal shall be entertained by such Court unless seven days' notice, in writing, of such appeal be given by the aggrieved party to the Superintendent, and at the sitting of the Court for which such notice is given, or any adjournment thereof, the Resident Magistrate or Justices there present shall hear and determine all matters of complaint, and their decision shall be final, but such Resident Magistrate or Justices shall not have power to quash or set aside any water rate. 25

Power to amend rates.

16. Upon any such appeals as aforesaid where there shall appear to be just cause for giving relief, the Resident Magistrate's Court or Court of Petty Sessions shall have the power to amend the water rate in respect of which the appeal is made, by altering the sum at or upon which any person is rated therein, and such Court shall have similar power by inserting therein, or striking out therefrom, the name of any person, or in any other manner which such Court shall think necessary for giving relief and without quashing or wholly setting aside such rate. 30 40

Costs of appeal.

17. It shall be lawful for the Resident Magistrate's Court or Court of Petty Sessions, upon any such appeal as aforesaid, to order and award to the party for whom such appeal shall be determined, or upon proof there to be made of notice of any appeal having been given under the provisions hereinbefore contained, where the person giving such notice has not afterwards prosecuted such appeal, to order and award to the person to whom such notice shall appear to have been given such costs and charges as by the Court in its discretion shall be thought reasonable and just, to be paid respectively by the party against whom such appeal shall be determined, or by the party so giving notice and not prosecuting, as the case may be; and all such costs and charges may be recovered by the like means and in like manner respectively as any costs awarded by such Court respectively in cases of appeal may lawfully be recovered: Provided that no such Resident Magistrate's Court or Court of Petty Sessions shall order or award any costs to be paid to any person having appealed to it as aforesaid in any case in which the sum at or upon which such person was rated shall have been by such Court reduced by an amount less than one-fifth thereof. 55 60

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18. No order of the said Resident Magistrate's Court or Court of Petty Sessions upon any such appeal shall be removed by *certiorari* or otherwise into the Supreme Court.

Certiorari taken away.

19. Upon any suit for the recovery of any rate from any person, the invalidity or badness of the rate as a whole shall not avail to prevent such recovery.

Invalidity not to prevent recovery.

20. In any proceeding to levy and recover or consequent on the levying or recovering of any water rate made by the Superintendent under the authority of this Act, the regulations which he shall cause to be prepared, and all entries made therein, shall by the production thereof alone, under the hand of the Superintendent, be evidence of such water rate and of the contents thereof.

Evidence of rate.

21. In addition and without prejudice to any other mode of recovery of any water rates made by the Superintendent, if any person quit or be about to quit any house or rateable property before he have paid any such rates as aforesaid, and then payable by him in respect thereof, and do not pay the same to the Superintendent or his collector on demand, any Justice may, on the complaint of the Superintendent or any such collector as aforesaid, or any other officer of the Superintendent, and upon such proof as shall appear satisfactory to such Justice, *ex parte* or otherwise, make an order directing the same to be paid by such person to the Superintendent, or such collector or officer as aforesaid, either forthwith or at such time or times as to such Justice shall seem fit, and in default of immediate payment to levy for the same by distress and sale of the goods and chattels of such person.

Power to levy by distress.

22. No water to be supplied under the powers of this Act shall be used as a water-power for the purpose of working any machinery without authority in writing from the Superintendent for that purpose; and it shall be lawful for the Superintendent to charge such sum of money by way of rate for the use of water for such purposes as he shall think fit. And any person who shall use any water so to be supplied as aforesaid for any such purpose without such authority first had and obtained, shall forfeit and pay for every day the water shall be so used any sum not exceeding twenty pounds, and it shall be lawful for the Superintendent to stop the supply of water to such person.

Water not to be used as water-power.

23. It shall also be lawful for the Superintendent to supply water for such other purposes as may be required, and to charge such sum of money by way of rate for the use of such water as he may think fit.

Power to charge for use of water.

24. The water rate shall be paid by the occupier of such lands on which the said rate is imposed, or in case there shall be no occupier by the owner thereof.

Rates by whom payable.

25. The water rate shall be paid to the Superintendent by the persons liable to the payment thereof on a day and at a place to be fixed for that purpose by public notice in some newspaper published in the Province, not being less than twenty-one days from the time of giving such notice; and if the rate, or any part thereof, shall not be paid on the day so to be fixed for that purpose, the same may be recovered as a debt at the suit of the Superintendent.

Rates when payable.

26. If any person supplied with water as aforesaid shall neglect to pay the water rate at the time appointed for the payment thereof, it shall be lawful for the Superintendent to stop the water from flowing into the premises of such person by such means as may be thought fit.

Power to stop water.

27. Any person who shall permit, without authority in writing from the Superintendent for that purpose, any water to be supplied under the powers of this Act to be taken from premises so occupied by such person, or to be used elsewhere than upon the land so occupied,

Penalty for supplying water to persons not entitled to it.

shall for every such offence forfeit and pay any sum not exceeding ten pounds.

Penalty for wasting water.

28. Any person who shall wilfully cause or permit any water to be supplied as aforesaid to be wasted, shall for every such offence forfeit and pay any sum not exceeding ten pounds.

Penalty for fouling water.

29. Any person who shall commit or cause any act whereby the water in any reservoir tank cistern aqueduct drain or pipe constructed under the authority of this Act shall be fouled or corrupted, shall for every such offence forfeit and pay any sum not exceeding fifty pounds.

Penalties how recovered.

30. All penalties incurred under the authority of this Act may be recovered in a summary manner before any Justice or Justices of the Peace.

Moneys where paid.

31. All moneys collected under the authority of this Act shall be paid into the Provincial Treasury, and shall be appropriated by the Superintendent, by warrant under his hand, in carrying out the provisions of this Act.

Act to be retrospective.

32. All things done and all acts and proceedings commenced taken or completed before the passing of this Act for the purpose of constructing waterworks in the district between the River Pareora, in the Timaru District, in the Province of Canterbury, and the neighbourhood of the Town of Timaru, in the Province aforesaid, or for the purpose of constructing waterworks in the Malvern, East Malvern, and Courtenay Road Districts, shall from the time of the doing of such acts, or the commencement taking or completion of such acts, or the commencement taking or completion of such proceedings, be deemed to have been and be as valid and binding as if done commenced taken or completed after the passing of this Act; and as to all such acts and proceedings as shall have been commenced before the passing of this Act the same shall and may be continued and completed as if this Act had been passed before the commencement thereof. And all estates interests rights and privileges which by reason of any act done or proceeding taken before the passing of this Act for the purpose of constructing the said waterworks would have been acquired if such Act had been passed, shall be deemed to have been and shall be as legally fully and sufficiently acquired as if such act had been done or proceeding had been taken under or in pursuance of this Act. And it is hereby expressly provided that the Superintendent shall be deemed to have had until the passing hereof and thenceforth to have full power and authority to make construct and maintain the waterworks specified in this section: Provided that all persons who would have been entitled to have and bound to accept compensation under "The Lands Clauses Consolidation Act, 1863," for any lands taken or injuriously affected by the Superintendent for the purposes of the waterworks specified herein, shall on the passing of this Act be entitled to have and be bound to accept compensation determined under the provisions of "The Lands Clauses Consolidation Act, 1863," unless the same shall have previously to the passing hereof been otherwise determined.