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*Mr. Murray.*

**DRAINAGE.**

[AS AMENDED IN COMMITTEE OF THE WHOLE.]

ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Adjoining lands may be entered.</li> <li>3. Plans, &amp;c., must be made.</li> <li>4. Notice to be given to adjoining owners.</li> <li>5. Application to be made to nearest Resident Magistrate's Court.</li> <li>6. Justices may issue summonses.</li> <li>7. Service of summonses on absentees.</li> <li>8. Justices to take evidence.</li> <li>9. Conditions under which Justices may make order.</li> </ol> | <ol style="list-style-type: none"> <li>10. How Justices shall award costs.</li> <li>11. Justices shall assess compensation, if any, and may allow for improvements made.</li> <li>12. Outfall drains and works to be cleaned and kept in order.</li> <li>13. Owner of adjoining lands may divert drains.</li> <li>14. Alterations of plans, &amp;c., by Justices not to invalidate transactions or securities.</li> <li>15.</li> </ol> |
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A BILL INTITULED

AN ACT relating to the Drainage of Lands by Private Owners.

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

Title.

1. The Short Title of this Act is "The Drainage Act, 1881."

Short Title.

5 2. Any person (hereinafter called "the applicant") having an interest in lands which require to be drained, but have no communication readily available with any stream, watercourse, or drain, except through lands belonging to other owner or owners (~~hereinafter called "adjoining lands"~~) may drain his land through such ~~adjoining~~ *the lands of such owner or owners*, subject to the following

10 conditions, ~~if he shall fail to arrange privately with the owners of such adjoining lands.~~

Adjoining lands may be entered.

15 3. He shall cause a description to be prepared of any proposed new work or drain, or of any alteration in any existing work or drain, which he desires to make upon such ~~adjoining~~ *land belonging to other owner or owners*, together with a plan showing the course, dimensions, and levels of such drainage works, and shall append a statement of the time at which he proposes to commence the works and to complete the same.

Plans, & must be made.

20 4. He shall give notice in writing to the owner, and, where the owner is not the occupier, also to the occupier of such ~~adjoining~~ *lands to be affected by the proposed works*, that he desires such drainage works to be made, and shall append to such notice a copy of the description and plan above mentioned.

Application to be made to nearest Resident Magistrate's Court.

5. After giving such notice, he shall make an application in writing to the nearest Resident Magistrate's Court for an order to make such drainage works, and shall append to such application the description and plan aforesaid; and he shall state in such notice the names and addresses of the owners and occupiers of ~~such adjoining~~ lands to be affected by the proposed works, and of all persons whom he believes to have any interest therein, or in any existing drain or work which may be affected thereby. 5

Justices may issue summons.

6. Upon the receipt of such application, any Justice may issue a summons requiring applicant and the owner and occupier of ~~such adjoining~~ lands to be affected by the proposed works, and all persons so stated to have any interest therein, to appear before a Resident Magistrate and two Justices of the Peace (not being personally interested) at a time and place named in such summons, being not less than thirty days after the issue thereof. 10

Service of summons on absentees.

7. If such owner or occupier or person interested be absent from the colony, it shall be sufficient to serve such summons upon the agent or attorney, if any, of such owner, occupier, or persons interested, or to advertise such summons once weekly for four successive weeks in some newspaper circulating in the district. 15

Justices to take evidence.

8. The said Resident Magistrate and Justices, hereinafter called "the Court," having before them the parties so summoned, or, in their absence, upon proof of the service of summons, shall make full inquiry into the case, and hear all such evidence as any of the parties or the Justices Court may require. 20

Conditions under which Justices may make orders.

9. Before making any order the Justices Court shall satisfy themselves,—

(a.) That the proposed drainage works are necessary for the drainage of applicant's land;

(b.) That such land may be drained in the manner proposed with the least possible injury or inconvenience to ~~any adjoining lands~~ other owners or occupiers of land to be affected by the proposed works; 25

(c.) That no injury will be done thereby to any parties for which compensation may not be made in money;

(d.) That due notice has been given to all interested parties, including mortgagees; and 30

the Justices Court shall require the applicant to enter into a bond to the person whose land may be affected, with sufficient securities, that he will carry on to completion the proposed works within a reasonable time.

How Justices shall award costs.

10. The Justices Court shall award the amount of costs of such application and assessment, and by whom and to whom such costs, if any, shall be paid. 35

Justices shall assess compensation, if any, and may allow for improvements made.

11. The Justices Court shall assess the compensation to be paid by the applicant to all persons having an interest in such adjoining lands for any damage caused by such outfall and drainage works. 40

Clause Erased.

12. If it shall appear to the Justices that the value of the improvement to such adjoining lands shall exceed the amount of such damage thereto, such Justices shall apportion the amount of the value of such improvement over such damage to be paid by the persons interested in the adjoining lands. 45

Outfall drains and works to be cleaned and kept in order.

~~13.~~ 12. The cost of cleaning and maintaining in good order and repair any such outfall drains and works shall be borne in such proportion as, ~~failing such private arrangement the Justices shall determine~~ the Court at the hearing of the application shall have determined, and shall be recoverable in a summary way by the party who has completed such work from the party refusing, failing, or neglecting to perform his part of such cleaning, maintenance, and keeping such 50

works in good order and repair; and for such purpose the owner may, ~~enter upon any adjoining lands~~ after forty-eight hours' notice given by him to the owner or occupier of the adjoining lands *affected or intersected by such works, enter upon such lands.*

5 ~~14.~~ 13. The owner for the time being of the adjoining lands *affected by such works* may, subject to an order being first obtained from the *Justices Court*, or the consent in writing of all parties interested in the maintenance of the drainage work, divert or alter any of the said drainage works; and any dispute as to the efficiency of the drains so altered shall be decided  
10 by any two Justices in cases where the consideration involved shall be under one hundred pounds in value; but, where the interests involved shall exceed that amount, any dispute as to such diversion or alteration shall be decided by the Judge of the District Court and two Justices, who shall have power to award costs, and order how and in what manner such alteration or diversion  
15 shall be made, or shall order that the works shall not be altered or diverted.

Owner of adjoining lands may divert drains.

15- 14. Where any works have been commenced or shall be carried on under this Act according to any plan, specification, or estimate originally approved by the *Justices Court*, and it shall appear to the said *Justices Court* that, by any alteration of circumstances or otherwise, such plans, specifications, or estimates  
20 may be improved by modification or alteration, such modification or alteration shall not invalidate any act, matter, or thing made, done, or given under this Act.

Alterations of plans, &c., by Justices not to invalidate transactions or securities.

*New Clause.*

25 15. All sums awarded or payable under this Act shall, if not paid within thirty days from the date of such award or the time when they shall be due or payable, be recoverable in a summary manner, under the provisions of "The Justices of the Peace Act, 1866."