

Hon. Mr. Millar.

DUNEDIN DISTRICT DRAINAGE AND SEWERAGE
ACT 1900 AMENDMENT.

ANALYSIS.

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A BILL INTITULED

AN Act to amend "The Dunedin District Drainage and Sewerage Act, 1900," and "The Dunedin District Drainage and Sewerage Act 1900 Amendment Act, 1902." Title.

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

1. The Short Title of this Act is "The Dunedin District Drainage and Sewerage Act 1900 Amendment Act, 1906." Short Title.

10 2. In this Act and the Acts 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 Acts respectively the meanings hereby given thereto in addition to any meaning given to the same words or expressions by the said Acts respectively:— Interpretation.

15 "The principal Act" means "The Dunedin District Drainage and Sewerage Act, 1900":

"The Amendment Act" means "The Dunedin District Drainage and Sewerage Act 1900 Amendment Act, 1902":

20 "The said Acts" means and includes the principal Act, the Amendment Act, and this Act:

"Secretary" shall include the Secretary for the time being of the Board, and any person for the time being appointed by the Board to perform the duties of the Secretary, and whether designated as acting-Secretary or not:

“ Owner ” includes the person for the time being who would be entitled to receive the rack-rent of the premises in respect of which the word is used if the same were let to a tenant at a rack-rent; and includes the person receiving or so entitled to receive such rack-rent, whether he is entitled beneficially or in trust: 5

“ Public drain ” includes a drain vested in the Board:

“ By-laws ” means and includes the by-laws for the time being of the Board:

“ Premises ” includes buildings and parts of buildings, and also lands: 10

“ Works ” and “ work ” include the providing and doing of all such materials and things as shall be required by the Board or deemed by it necessary in or incidental to the execution of works required or executed by the Board pursuant to the said Acts or the by-laws. 15

Acts to take effect together.

3. The principal Act, the Amendment Act, and this Act, and all Acts hereafter passed amending or extending the same respectively, shall be read together and take effect as one Act.

Amendments of principal Act.

4. The principal Act is hereby amended as follows:— 20

(a.) As to section thirty-seven: By adding thereto after the word “ city ” the words “ or of *any* of the boroughs within the district or of the Board.”

(b.) As to section forty-five: By deleting the words “ of the debtor.” 25

Amendment of Amendment Act.

5. Section twelve of the Amendment Act is hereby amended by substituting for the words “ section twenty-five *six* ” the words “ sections twenty-five, twenty-six, and twenty-seven.”

Powers of Board to execute works on default of owner.

6. Section thirty-six of the principal Act is hereby repealed, and in lieu thereof it is enacted as follows:— 30

“ Whenever under the said Acts, or any other Act, or the by-laws the owner of any premises in the district shall be required by the Board or be otherwise liable to execute, provide, or do any works, materials, or things on or in connection with such premises with respect to the drainage, sewerage, or sanitation thereof, and shall make default in executing, providing, or doing such works, materials, or things, or any of them, or any part thereof respectively, within the time limited for that purpose by any notice served on such owner by the Board, then the Board may itself execute, provide, or do such works, materials, or things, or such part thereof respectively, as shall not have been executed, provided, or done by the owner; and in connection therewith the following provisions shall have effect:— 35

“ (a.) The Drainage Engineer shall certify in writing under his hand the cost of the works, materials, or things so executed, provided, or done by the Board, and the date when the same shall have been so executed, provided, or done, and such certificate shall be *conclusive prima facie* evidence of such cost and date. 45

“ (b.) Such cost, together with interest thereon after the rate of ~~ten~~ *six* pounds per centum per annum, shall be paid by the owner to the Board subject as provided in the next succeeding paragraph: 50

New proviso.

5 | Provided that no suit or other legal proceeding shall be instituted for recovery of such cost until after the expiration of three months from the date when the works, materials, or things shall have been executed, provided, or done.

10 | “(c.) In any case in which the works, materials, or things executed, provided, or done by the Board as aforesaid shall be so executed, provided, or done on or in connection with the drainage, sewerage, or sanitation of two or more separately owned premises (including works, materials, or things executed, provided, or done pursuant to section twenty-five of the principal Act), the Drainage Engineer shall at the time of giving any certificate of the cost thereof, or subsequently, certify under his hand what share and proportion of the said cost shall be borne and paid by the respective owners of such separately owned premises, and the said cost (together with interest thereon as aforesaid) shall be borne and paid by such owners to the Board in the shares and proportions stated in such certificate, which shall be conclusive evidence of the shares and proportions payable by such owners.

25 | “(d.) The cost of works, materials, and things executed, provided, and done respectively by the Board as aforesaid, together with interest thereon as aforesaid, shall until payment thereof be a first charge upon the premises on or in connection with which the same shall be executed, provided, or done.

30 | “(e.) The Board may, in addition to all other remedies, elect to recover such cost and interest under section twenty-eight of the principal Act.

35 | “(f.) The said cost and interest shall also be recoverable by the Board or by the local authority, as the case may be, under the provisions of “The Rating Act, 1894,” in the same manner as if the same were rates within the meaning of that Act.”

40 | 7. The provisions of paragraphs (a) to (f), both inclusive, of section six of this Act shall apply to work, materials, and things executed, provided, and done by the Board under or by virtue of any agreement with an owner.

Application of preceding section extended.

40 | 8. A memorandum of charge under the said Acts may be in the form in the Schedule hereto, and when incurred the same shall be registered in the office of the Drainage Board.

Form of memorandum of charge.

45 | 9. (1.) The provisions of section twenty-eight of the principal Act shall only be exercised with the consent of the Board.

Section 28 of principal Act amended.

45 | (2.) The interest payable under or by virtue of such section shall be paid on the amount for the time being owing.

New subclause.

50 | (3.) No demand shall be necessary as a condition precedent to enforcing payment of any instalment payable under or by virtue of such section.

Section 48 to apply to properties using or which may use sewers although not abutting on the street.

10. Section forty-eight of the principal Act shall apply to sewers taken over by the Board as well as to sewers constructed by the Board, and also to each and every property which or any part of which is drained into any such sewer, or which ~~it is possible to drain into any such sewer,~~ *is situated within three hundred and thirty feet of a sewer, into which it is possible to drain such property,* with or without the consent of any other person, although no part of such property abuts on the street or part of street in which such sewer is laid, in like manner as if such property did in fact abut on such street. 5

"The Land Drainage Act, 1904," applied to lands in the district.

11. The provisions of Part III of "The Land Drainage Act, 1904," and of so much of Part IV of the same Act as are applicable to the provisions of Part III, shall extend and apply to the drainage within the meaning of the said Acts of lands in the district, and for this purpose "drain" where used in the said provisions as a noun shall include a drain communicating with a public drain or sewer, and where used as a verb shall include the discharge of drainage and sewage into a public drain or sewer. 10 15

Struck out.

Cost of works under section 27 of the principal Act to be borne by owners.

12. The cost of works, materials, and things executed, provided, or done by the Board in pursuance of section twenty-seven of the principal Act shall be repaid to the Board by the owner or owners of the premises from which any drain or drains shall communicate with the stream or watercourse therein mentioned, and also interest thereon after the rate of ~~ten~~ *six* pounds per centum per annum, and if there shall be more than one such premises, then in such shares and proportions as shall be certified by the Drainage Engineer. The provisions of subsections *one* to *six*, both inclusive, of section *six* hereof as to the certificates to be given by the Drainage Engineer as to the charge of the said cost and interest upon the said premises, and as to the recovery thereof, shall apply to this section and to the said cost and interest thereon in like manner as if the same subsections were, *mutatis mutandis*, herein repeated: *Provided that this power shall not be exercisable in the case of any stream or watercourse constructed or laid down by the Board to which two or more properties drain or are connected therewith.* 20 25 30 35

New clause.

Drainage Engineer to give assent to filling in of any natural watercourse &c.

12. (1.) No person shall fill in or cover over, or in any way (whether by filling in or otherwise) obstruct or cause to be filled in, covered over, or obstructed, any natural watercourse, stream, creek, or gully, or part thereof, in the district without having first made provision to the satisfaction of the Drainage Engineer for the disposal of the storm-water now flowing, or which under the conditions existing at the time of the passing of this Act would flow, or but for such obstruction would have flowed in such watercourse, stream, creek, or gully. 40 45

(2.) If any natural watercourse, stream, creek, or gully, or part thereof, in the district shall be filled in, covered over, or obstructed without provision having been made to the satisfaction of the Drainage Engineer for the disposal of storm-water as aforesaid, the Board shall be at liberty to make provision for the disposal of such 50

storm-water in, along, or through the land in which such watercourse, stream, creek, or gully, or part thereof is situated, and either in the line thereof or in any other line, by such means and in such manner as the Board shall think fit.

5 (3.) The cost of all works, materials, and things executed, provided, or done by the Board under or by virtue of this section, together with interest thereon after the rate of six pounds per centum per annum, shall be paid to the Board by the owner of the land on
10 which the watercourse, stream, creek, or gully, or part thereof is situated; and the provisions of paragraphs (a), (d), (e), and (f) of section six hereof shall extend and apply to works, materials, and things executed, provided, or done under or by virtue of this section in the same manner as if such paragraphs were *mutatis mutandis* herein repeated.

15 (4.) Supervision of any such works by the Drainage Engineer, or the execution thereof by the Board, shall not impose upon the Board any liability whatever in respect of such watercourse, stream, creek, or gully, or storm-water, or the provision made for the disposal of such storm-water; and any such works if executed by the Board
20 shall be deemed to be executed as agent for and on behalf of the owner of the land on which such watercourse, stream, creek, or gully or part thereof is situated.

25 (5.) In addition to any other remedies the Board shall be entitled to apply to the Supreme Court to restrain any person from doing or causing to be done anything in contravention of this section, and the Court may on any such application make such order as to it shall seem just.

30 (6.) If the Board shall at any time make use of the works executed by virtue of this section for the purpose of conveying sewage therein, the Board shall thereupon pay to the owner of the land on which such works are executed the then value of such works, such value in case of dispute to be decided by a Stipendiary Magistrate in the same manner as is provided by section forty-seven of the principal Act.

35 13. (1.) The Board and the officers and servants of the Board may enter upon any premises in the district for the purpose of examining as to the existence of any nuisance thereon, or as to the breach of any of the provisions of the said Acts or the by-laws (with
40 power to examine any drain or other sanitary apparatus or appliances), or for the purpose of enforcing the provisions of the said Acts and the by-laws, or for the purpose of executing, providing, or doing any works, materials, or things which the Board is authorised or empowered to execute, provide, or do under or by virtue of the said Acts or the by-laws. Power of entry.

45 (2.) Any owner or occupier of premises who shall refuse to permit or allow the Board or any of its officers or servants to enter thereon for any of the purposes mentioned in the *last preceding* subsection, and every person who shall obstruct the Board or any of its officers or servants in the exercise of any of the powers mentioned in the *last*
50 *preceding* subsection, shall be guilty of an offence, and shall be liable to a penalty not exceeding *twenty* pounds for each such offence.

Acts enforceable notwithstanding by-laws not made.

14. The provisions of the said Acts shall take effect and be enforceable notwithstanding that no by-laws relating thereto shall have been made by the Board, but nothing in this Act contained shall be deemed to limit or affect the power of the Board to make by-laws relating to the same subject-matters.

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Recovery of penalty not to limit power of Board to execute works.

15. The recovery of a penalty in respect of the breach of any of the provisions of the said Acts or of the by-laws shall not prejudice or affect the power of the Board to execute, provide, or do any works, materials, or things which the person from whom such penalty shall have been recovered shall have made default in executing, providing, or doing.

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Owners to be jointly and severally liable.

16. The several owners of premises *owned in joint tenancy or tenancy in common* shall be jointly and severally liable for the performance of the obligations imposed on such owners by the said Acts and the by-laws; and any notice, demand, order, or direction by the said Acts or the by-laws required or authorised to be given or made by the Board, or any of its officers, to or upon such owners shall be deemed to have been effectually given or made if given or made to or upon any one of such owners.

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Signature of notices.

17. Subject and without prejudice to the provisions of the said Acts, any notice, demand, order, or direction may be signed on behalf of the Board by the Secretary or Drainage Engineer; and any notice, demand, order, or direction purporting to be so signed shall be *prima facie* evidence that the same has been so signed, and of the appointment and authority of the person signing the same.

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Service of notices, &c.

18. Any notice, demand, order, or direction by the said Acts or the by-laws required or authorised to be given or made by the Board or any officer thereof may be served personally upon the person to or upon whom the same is to be given or made, or by being sent through the post-office as a registered letter addressed to such person at his usual address, or the address last known to the Board, or may be left upon the premises (if any) to which such notice, demand, order, or direction relates.

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Evidence of ownership, &c.

19. In any proceedings instituted by or on behalf of the Board against the owner of any premises for the recovery of any moneys, or any penalty, or otherwise, a copy of a certificate of title under "The Land Transfer Act, 1885," or of any document registered under that Act or "The Deeds Registration Act, 1868," shall be *prima facie* evidence that such owner is seised or possessed of the estate or interest purporting to be vested in, or granted to, or conferred on him by such certificate or document, without proof of the signatures to such documents or any other matter whatsoever; provided that such copy be certified as a true copy by the District Land Registrar or Registrar of Deeds, as the case may be, at Dunedin, and such Registrar is hereby authorised to give such certificate upon payment of a fee of five shillings.

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Appointment of officers, &c.

20. Section sixteen of the principal Act is hereby repealed, and in lieu thereof it is enacted as follows:—

"(1.) The Board may by resolution from time to time appoint and remove and reappoint a Drainage Engineer, a Secretary, and all such other officers, servants, and workmen as may in the opinion of the Board be necessary or desirable.

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“(2.) Any such appointment may be made for such period and on such terms as the Board may deem proper.

“(3.) One person may be appointed to fill several offices or positions.

5 “(4.) The Board may, when making any such appointment, or at any time afterwards, define the duties of any officer, servant, or workman so appointed, and may from time to time revoke and redefine such duties.

10 “(5.) The production of any document purporting to be a copy of a resolution appointing the person therein named to be an officer, servant, or workman of the Board, and to be sealed with the common seal of the Board, shall be conclusive evidence of the fact of such appointment and of such resolution having been duly passed.”

15 21. (1.) All fines and penalties recovered under the provisions of the said Acts or the by-laws shall be paid to the Board. Penalties to be paid to Board.

(2.) The Clerk or other proper officer of the Court in which any fines or penalties are recovered, and which are payable to the Board, shall pay the same to the Board.

20 (3.) Whenever any fines or penalties which ought to be paid over to the Board are by law required to be paid in stamps, and have been so paid, the Clerk or other proper officer aforesaid shall certify to the Colonial Treasurer the amount of the same, and thereupon the Colonial Treasurer, without the necessity of any appropriation by Parliament, shall pay the amount of such fines
25 or penalties out of the Consolidated Fund to the Board.

22. Debentures and coupons issued under the said Acts may be signed in the manner provided in the form of debenture contained in the Schedule to the principal Act. Signature of debentures and coupons.

SCHEDULE.

Schedule.

MEMORANDUM OF CHARGE.

In the matter of the Dunedin District Drainage and Sewerage Acts.

PURSUANT to the above-mentioned Acts, the land mentioned or referred to in the schedule hereto is charged with the payment of the sum of £ , together with interest thereon at the rate of £10 6 per centum, computed from the day of , 19 .

SCHEDULE.

(Insert description of lands to be charged.)

The common seal of the Dunedin Drainage and Sewerage Board was hereunto affixed in the presence of—