

1113

## LAND DRAINAGE.

### ANALYSIS.

- Title.  
1. Short Title.  
2. Interpretation.

#### PART I.

##### CONSTITUTION OF DISTRICTS AND BOARDS.

3. Governor may constitute districts.
4. Acts incorporated.
5. Board of Trustees.
6. Ratepayers' list.
7. Appeal from list.
8. Qualifications of electors and trustees.
9. Elections.
10. Chairman of Board.
11. Meetings of Board. Quorum.
12. Board incorporated.

##### POWERS OF THE BOARD.

13. To subdivide districts.
14. To construct and maintain drains and water-courses.
15. May enter lands, &c., for survey, &c.
16. May enter and take earth, &c.
17. May make drains from private lands.
18. May relinquish lands or rescind contracts.
19. Watercourses and drains not to be allowed to become a nuisance.
20. Penalty for interfering with drains, &c.
21. Board not liable for consequential damage.

##### COMPENSATION.

22. Compensation for injury or damage.
23. Claim to be made within twelve months.
24. How compensation to be ascertained.

##### RATES.

25. Board may levy rate.
26. Differential rates on land.
27. Board to classify land.
28. Classification-lists to remain in force till another issued.
29. Invalidity of rate no bar to its recovery.
30. Application of moneys received.

##### BORROWING POWERS.

31. Board may borrow by overdraft.
32. On non-payment of overdraft Receiver may be appointed. Powers of Receiver.
33. Powers of Receiver not affected by non-election of Board.
34. Provisions of Rating Act applied to Receiver.
35. Valuation rolls.
36. When powers of Receiver to cease.

##### CONTRACTS.

37. Mode in which Board may make contracts.

##### OFFICERS.

38. Appointment of officers, &c. Security.
39. Member of Board cannot be paid officer.
40. Officer accepting or exacting fees.

41. Collectors to pay over moneys.
42. Officer failing to account or to pay balance or deliver property. Penalty.
43. Proceeding not to deprive Board of other remedies.

##### ACCOUNTS.

44. Books of accounts to be kept.
45. Moneys received to be paid into bank. Audit.

##### NOTICES AND LEGAL PROCEEDINGS.

46. Service of notices and legal proceedings.
47. Authentication of documents by Board.
48. Proceedings in estates of bankrupts.
49. Proceedings in Resident Magistrates' Court &c.
50. Reimbursement of officer.

##### LIMITATION OF ACTIONS, ETC.

51. No action against Board if tender of sufficient amends be made.
52. Notice of action.
53. Limitation of actions. Place of trial. Board may plead general issue.
54. Action not to delay works.

#### PART II.

##### IRRIGATION WORKS.

55. Interpretation.
56. Application of Part I. for construction of water-races in districts of limited area.

#### PART III.

##### POWER OF PRIVATE OWNERS TO PROCURE OUTFALL.

57. Application for outfall to adjoining owner.
58. Mode of making application.
59. Assent of adjoining owner.
60. Dissent of adjoining owner. Reference to Resident Magistrate.
61. Result of decision of Magistrate.
62. Application of compensation in case of owners under disability.
63. Duty of Resident Magistrate, &c.
64. Power of applicant to clear drains.
65. Power of adjoining owner to divert drains.
66. Penalty for obstructing or injuring drains.
67. Costs of application.
68. Provision in case of damage of natural outfall.

#### PART IV.

##### MISCELLANEOUS.

69. Judges and Justices to hear and determine though liable to be rated.
70. Malicious destruction of property.
71. Penalty for obstruction.
72. Penalties recoverable summarily.
73. Repeals.

## A BILL INTITULED

Title.

AN ACT to provide for the Drainage of Agricultural and Pastoral Lands.

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

Short Title.

1. The Short Title of this Act is "The Land Drainage Act, 1892."

Interpretation.

2. In this Act, if not inconsistent with the context,—

"Board" means a Board of Trustees for a drainage district constituted under this Act:

"Drain" includes every passage or channel on or under ground through which water flows, except a navigable river: 10

"Drainage district" or "district" respectively mean a district constituted under this Act:

"Drainage works" mean drainage works of any sort, including the making of drains for receiving water in its natural flow on or from any hills or other sloping lands, and diverting the same to prevent its overflow on to any other lands on a lower level, as well as drains for carrying off water from any lands: 15

"Owner" in the provisions of this Act relating to rating means the person for the time being entitled to receive the rack-rent of rateable property; and when otherwise used in this Act means any person seised, possessed of, or entitled to land, or to any estate or interest therein, whether such person has or has not the power to sell or convey the same: 20

"Public notice" or "advertisement" means a public notice or advertisement inserted in a newspaper published in the district to be affected by the matter in such notice or advertisement, or, if none be published therein, then in some newspaper circulating therein: 30

"Rateable property" and "rateable value" mean respectively rateable property and rateable value under "The Rating Act, 1882:"

"Watercourse" includes all rivers, streams, and passages through which water flows. 35

## PART I.

## CONSTITUTION OF DISTRICTS AND BOARDS.

Governor may constitute districts.

3. The Governor from time to time, by Order in Council, may, on petition in that behalf from a majority of the ratepayers therein, constitute and declare any part of the colony to be a district for the purposes of this Part of this Act. 40

Any such district may comprise any entire county or counties, or parts of counties only, or any entire road district or road districts with part or parts of another or others, and or any county or part of a county together with any road district or part of a road district, also with or without any borough or town district or any part thereof respectively. 45

Acts incorporated.

4. Immediately on the constitution of such district, "The Regulation of Local Elections Act, 1876," Parts I., II., III., IV., and X:

of "The Public Works Act, 1882," and "The Rating Act, 1882," shall be in force respectively in such district; and

For the purposes of this Part of this Act, "The Rating Act, 1882," shall supersede "The Rating Act, 1876," within any portion of a borough or town district which may become included within a district under this Part of this Act; and the necessary change in the valuation of rateable property within any portion of a borough or town district as aforesaid, from the annual value to the capital value, shall be made for all purposes of rating therein and for fixing the qualifications, disqualifications, and the voting at elections under this Part of this Act.

Every Board of Trustees constituted under this Act shall be deemed to be a local authority or a local body within the meaning of the Acts incorporated herewith.

5. For every district there shall be a Board of Trustees, to consist of not less than five nor more than seven members, as shall be fixed in the aforesaid or any subsequent Order in Council, who shall be elected in the manner hereinafter directed. Board of Trustees.

(1.) The Governor shall appoint such person as he shall think fit to be the Returning Officer to hold the first election of Trustees.

(2.) The Governor shall appoint the day for the first election of the Trustees, and shall have full power to do all things of what kind soever necessary to provide for bringing this Part of this Act into operation in such district, according to the true intent and purpose thereof.

(3.) The Trustees elected at such first election shall hold office until the month of November in the year following the year in which they are elected, or until the election of their successors at the first triennial election held as hereinafter mentioned.

All provisions relating to the qualifications, disqualifications, and voting at elections for members of a County Council shall apply, *mutatis mutandis*, and be in force in respect to elections of Trustees for a district under this Part of this Act.

6. The Returning Officer forthwith on his appointment, and thereafter on or before the thirty-first day of August in every year, shall cause to be made out a list, to be called the "ratepayers' list," of every person whose name appears on the valuation-roll of the county, borough, or town district wherein any part of the district is respectively included, and shall insert on such list opposite the name of each person therein the amount at which his property is valued on such roll, and shall deposit such list, or a true copy thereof, at the office of the Resident Magistrate's Court in the most central place in the district for inspection without fee; and shall publicly notify the place where the said list is deposited as aforesaid, and in such notice shall also notify the day and place on and at which the Resident Magistrate of such Court will sit to hear objections, and finally revise such list. Ratepayers' list.

7. Any person who considers himself aggrieved by reason of the insertion or incorrectness of any matter in any such list, or the omission of any matter therefrom, may object as herein provided. Appeal from list.

- (1.) The Resident Magistrate aforesaid, on the day fixed for hearing objections, shall hear and determine all objections, and may alter the list in respect of anything objected to, by correcting anything therein, or by inserting any matter therein, or erasing any matter therefrom, which it is proved to his satisfaction ought to be altered, inserted, or erased, as the case may be; and his decision shall be final and without appeal. 5
- (2.) The list, when so corrected, shall be signed by the Magistrate hearing such objections, and when so signed shall, for the purpose of this Part of this Act, be conclusive evidence that the persons named therein are ratepayers, and of the valuation of their property; and such list shall come into force immediately after the same is so signed, and shall be the roll of ratepayers for the district until a new roll comes into force in like manner. 10 15

Qualifications of electors and trustees.

8. Every person whose name appears on the above-mentioned roll of ratepayers shall be deemed to be a "ratepayer" within the meaning of this Part of this Act; and shall be an elector, and entitled to vote in the election of Trustees, and shall exercise at every such election the same number of votes as he could exercise in respect of the same qualification at the election of a member of a County or Borough Council or Town Board respectively; and, if of full age, shall be qualified to be elected as a Trustee. 20

Elections.

9. On the first Monday in the month of November in the year following the year in which the first Trustees for any district are elected, and on the same day in each succeeding third year thereafter, the ratepayers of the district shall elect the required number of persons to be members of the Board of Trustees of such district, who shall hold office till the election of their successors. 25 30

(1.) If at any such appointed day no election is held, or if at any election of Trustees no persons are duly elected as such, or if a less number is elected than by law required to be elected, then the Governor may appoint such and so many as are qualified to be such Trustees as the occasion may require. 35

(2.) If any Trustee shall die, or by writing addressed to the Chairman shall resign his office as such Trustee, or shall cease to reside permanently in the colony, or shall absent himself from four consecutive meetings of the Board without leave being granted, or shall otherwise become incapable to act as such Trustee, an election shall be held of a person in lieu of the Trustee so dying, resigning, ceasing to reside, absenting himself, or otherwise becoming incapable to act as aforesaid; and the person so elected shall hold office as Trustee for the period or residue of the period his predecessor in such office would have held the same had he remained a member. 40 45

Notice of every election of a Trustee shall be gazetted, and the *Gazette* containing such notice shall be conclusive evidence that the person, notice of whose election is gazetted, has been duly elected a Trustee. 50

10. The Board shall from time to time appoint any one of their number who may be willing to act in such capacity as Chairman, who shall have a casting as well as a deliberative vote, who shall hold office until the appointment of his successor.

Chairman of Board.

5 11. The Chairman or any two Trustees may, by giving seven days' public notice, or by notice in writing delivered to each of the Trustees, convene a meeting of the Board.

Meetings of Board.

10 All acts, matters, and things authorised by this Part of this Act to be done and performed by the Board of a district may be done and performed by any three of the members thereof at a duly-convened meeting.

Quorum.

15 Nothing done at any meeting of the Board shall be held to be irregular or illegal if all the members of the Board are present, or afterwards confirm the proceedings of such meeting; or if such meeting shall have been called by notices, signed by the Secretary, posted to the members of the Board not less than seven days before such meeting specifying the time and place of such meeting.

20 12. The Board shall be a body corporate under the name of "The Drainage Board," with perpetual succession and a common seal, having a capacity to hold lands, and to do and suffer all things which a body corporate may do and suffer.

Board incorporated.

## POWERS OF THE BOARD.

25 13. The Board may from time to time by public notification, as they think fit, divide the district into subdivisions, and may prescribe the boundaries of any such subdivisions and assign names thereto, and by similar notification, may amend, alter, extend, or limit any such subdivisions.

To subdivide districts.

30 14. The Board may for the purposes of this Act, from time to time, by themselves, their surveyors, agents, officers, and workmen, exercise the following powers or any of them, and may execute, do, or cause to be executed or done any of the following matters, works, or acts, namely :—

To construct and maintain drains and watercourses.

35 (1.) The Board may cleanse, repair, or otherwise maintain in a due state of efficiency any existing watercourse or outfall for water, or any existing bank or defence against water.

40 (2.) The Board may deepen, widen, straighten, divert, or otherwise improve any existing watercourse or outfall for water, or remove obstructions to watercourses or outfalls for water, or raise, widen, or otherwise alter any existing defence against water.

45 (3.) The Board may make any new watercourse or new outfall for water, or erect any new defence against water, erect any machinery, or do any other act not hereinbefore referred to required for the drainage of the district.

50 (4.) The Board may construct any drains of such construction and in such manner as the Board may think necessary or proper for carrying the purposes of this Act into execution, and may break up the soil of any roads, ways, or footpaths within the district, and excavate and sink trenches for the purpose of laying down, making, and constructing drains

therein, and may cause such drains to communicate with the sea or any arm thereof, or with any stream or watercourse either within or without the limits of the district, and also from time to time may open, cleanse, and repair such drains, or alter the position thereof; and may do all such acts, matters and things as the Board shall judge expedient, necessary, or proper for making, amending, repairing, completing or improving any watercourse or drain or other works to be made done and provided for the purposes of this Act :

Provided that before interfering with any such highway, road, or footpath, the Board shall give one month's notice in writing to the local authority having control thereof; and if such local authority object to the proposed work, the matter shall be referred to the Minister for Public Works, whose decision shall be final.

- (5.) The Board may take, purchase, and hold any lands or any estate or interest therein within or without the district which in the Board's opinion may be required for the purposes of this Act.
- (6.) Without any previous payment, tender, or deposit, the Board may enter upon and use any land within the district for the purpose of taking any earth, stone, or clay therefrom, and the Board may enter upon and use any lands adjacent for making temporary roads or approaches to any works connected with any works constructed under this Act: Provided always that the Board shall pay reasonable compensation for the use of such land or otherwise, and such compensation if the parties cannot agree shall be settled by or before a Resident Magistrate or two Justices of the Peace in the district, who is or are hereby authorised to hear and determine the same.
- (7.) The Board may make, maintain, alter, or discontinue all such works of any kind or description, and may erect such buildings and machinery within the district as the Board may think proper for the purposes of this Act.

May enter lands,  
&c., for survey, &c.

15: For the purposes of any inspection, survey, or inquiry directed as necessary under any of the provisions of this Act, the Board may by themselves, their surveyors, agents, officers, and workmen, enter upon any lands or premises in the district within or upon which it is proposed that any works shall be executed under this Act, or any lands and premises adjoining thereto, and if necessary, may dig or bore therein, and also examine any weir, sluice, or floodgate erected in or upon any river or stream which it may seem to them to be necessary to examine, and may open or raise any such floodgate or sluice for the purposes of any such inquiry, and make any soundings, or bore the bed or channel of any part of any such river, or any mill-course connected therewith, making reasonable compensation for any damage done thereby.

The amount of such compensation shall be ascertained by any Resident Magistrate or by two or more Justices of the Peace in the district, and they are hereby authorised and required to inquire into and

determine the same, and for that purpose to examine on oath or otherwise all such witnesses as shall be produced before them, and to make such order as to them shall seem just for the payment of the amount of such damage by the Board to the party aggrieved, which said order shall be final and conclusive :

Provided always that the said Board, their surveyors, agents, engineers, officers, and workmen, may enter upon such lands as aforesaid, and do all necessary matters and things by this Act authorised previously to, or pending the decision of, such Resident Magistrate or Justices.

16. The Board, or any officer or officers who shall be appointed by the Board, may from time to time cut, dig, take, and carry away, or cause to be cut, dug, taken, or carried away, any quantity of earth or materials in, upon, out of, or from any lands within the district of any person or persons whomsoever, and such reasonable satisfaction for digging and taking of earth or other materials therefrom for the purposes of this Act shall be made to the owner or owners, occupier or occupiers, of such land for the damages he, she, or they shall thereby sustain as shall be agreed upon between the Board and the owner or owners, occupier or occupiers, of such land ; and if such owner or owners, occupier or occupiers, cannot agree concerning the amount of such damages, then the same shall be assessed, adjudged, and finally determined by any Resident Magistrate or any two Justices of the Peace within the district, upon complaint thereof made by such owner or owners, occupier or occupiers, notice thereof in writing being given by him, her, or them to the Board fourteen days before such complaint be made.

May enter and take earth, &c.

17. If any land within the district shall not, as to the drainage of surface and storm water, be drained by some efficient drain communicating with some public watercourse or drain used or made under the authority of this Act, the Board may construct, through any land lying between the first-mentioned lands and the nearest such watercourse or drain, an open drain, paved or otherwise suited for draining therefrom and from the intermediate lands such surface and storm water as aforesaid, but so that such drain shall not pass through or under any house, building, or other like structure ; and all expenses incurred by the Board in respect of any such drain or any part thereof made through the land of any separate owners shall be repaid to the Board by such owners.

May make drains from private lands.

18. If it shall seem expedient to the Board, at any time or times within six months after any notice or contract shall be given or entered into under the provisions of this Act, not to take or injure the whole or any part of any land or other matter or things named or described in such notice or contract, the Board may serve a notice upon or cause the same to be left at the usual place of abode of the person or persons who are or appear by the said notice or contract to be interested in such land or other matters or things, stating that the same and what part thereof will not be taken for, or injured by, anything to be done under this Act ; and the notice or contract mentioned in the said notice, or such part thereof as shall relate to the part not required to be taken or injured as aforesaid, at the option of

May relinquish lands or rescind contracts.

the Board, shall be utterly void and of none effect to all intents or purposes whatsoever; and

In case a part only of any notice or contract shall become void as aforesaid, the Board shall fix and ascertain the portion of the sum mentioned in any such notice or contract which should be deducted 5 on account of the part not required to be taken or injured, and, if necessary, apportion the residue amongst the persons entitled thereto, and the Board shall amend such notice or contract accordingly, and such amended notice or contract shall have all the force and effect as 10 any other notice or contract under this Act :

In all cases where the Board shall serve notice that it is not intended to take or injure the whole or any part of such land, matters, or things, the person or persons interested therein and incurring any loss or expense in consequence of the Board having previously required the same, shall be entitled to compensation for such loss and expenses; 15 and, in case the amount thereof cannot be agreed upon the same shall be ascertained and fixed by any Resident Magistrate or two Justices of the Peace within the district.

Watercourses and drains not to be allowed to become a nuisance.

19. The Board shall cause all watercourses or drains which shall from time to time be vested in them or under their management to be 20 constructed and kept so as not to be a nuisance or injurious to health, and to be properly cleared and cleansed.

Penalty for interfering with drains, &c.

20. Every person, not being authorised for that purpose by the Board, who shall, without the consent of the Board, make any drain into any watercourse or drain vested in the Board by this Act, or who 25 shall, without any such consent, stop or obstruct any such last-mentioned watercourse or drain, shall be liable for every such offence to a penalty not exceeding *fifty* pounds, and the Board may cause such branch drain to be re-made as they think fit, and all expenses incurred thereby shall be repaid to the Board by the person making such branch 30 drain, and may be recovered before any Justice in a summary way.

Board not liable for consequential damage.

21. Nothing herein contained shall be construed to render the Board liable for any consequential damages which may happen to any land or other property through or by the accidental overflowing of any river, stream, or watercourse, or by the sudden breaking of any bank, 35 dam, sluice, or reservoir whatsoever which, under the provisions of this Act, the Board may take upon them the duty of regulating, maintaining, or making. But if the owner or occupier of such land shall have given notice in writing to the Board, warning them of the probability of such damage, or the weakness or deficiency of any such 40 dam, reservoir, bank, or sluice, and requiring them to strengthen, amend, or repair the same, and the Board shall not within a reasonable time after the delivery of the said notice take proper precautions to prevent the same, then and in such case the amount of the consequential damages which shall happen through neglect thereof shall be 45 made good out of the rates to be levied by the Board under this Act.

#### COMPENSATION.

Compensation for injury or damage.

22. The Board shall make to the owners of, and to all other persons having any less estate or interest in, any land or water taken 50 or used for the purposes of this Act, or which may be damaged or



injuriously affected by the construction or maintenance of any works for the purposes of this Act, compensation for such land, water, occupation, or damage.

23. All claims for compensation shall be made in writing to the Board within twelve months from the time when such claim shall have arisen, and no claim for compensation shall be allowed unless made within that period.

Claim to be made within twelve months.

24. The amount of compensation shall, unless the parties can agree thereon, be ascertained in the manner provided and set forth in Part III. of "The Public Works Act, 1882."

How compensation to be ascertained.

#### RATES.

25. The Board, after not less than ten days' public notice by advertisement in a newspaper having general circulation within the district has been given of their intention, may levy on all lands in the district (except as hereinafter mentioned) in each year for the purposes of this Part of this Act a rate not exceeding *six* farthings in the pound on the rateable value in the district, and may appoint a time and place for the payment of rates levied under this Part of this Act, and all rates not so paid may without further notice be recovered by the Board in any Court of competent jurisdiction.

Board may levy rate.

The roll of ratepayers hereinbefore required to be made up shall be conclusive evidence of the liability of the persons whose names are therein respectively for the rate to be levied as aforesaid.

26. Any such rate may be levied in manner as may be directed by the advertisement thereof, which may from time to time be altered or revoked by the Board, either—

Differential rates on land.

(1.) On a uniform scale; or

(2.) On a graduated scale according to the classification of lands in the district or subdivision as hereinafter mentioned.

30 All lands in any district or subdivision which by their configuration or other physical causes are excluded from deriving any possible benefit from the drainage works, shall be exempted from all rates to be levied in respect of such works.

27. Within any district or subdivision where rates are to be levied on lands according to their classification, the Board may from time to time, as they shall think fit, classify or cause to be classified all lands in the district or subdivision into the following classes, that is to say,—

Board to classify land.

(1.) Lands receiving or supposed to receive immediate and direct benefit;

(2.) Lands receiving or supposed to receive less direct benefit;

(3.) Lands receiving only an indirect benefit from the construction of drainage-works;

(4.) All other lands;

and the rates shall be levied upon the three classes of lands first aforesaid in such proportion as the Board in each case may appoint.

(1.) The Board may from time to time, by warrant under their hands at a meeting to be held for that purpose, appoint one or more fit person or persons to examine and report upon all lands to be classified, or to classify the same in manner aforesaid; and such person or persons shall

within thirty days after the delivery to him or them of the warrant of appointment, report to the Board thereon; and the classification of such lands shall thereupon forthwith be made, either by the Board or by such person or persons as aforesaid as the Board may direct;

(2.) When any classification is made as aforesaid the Chairman shall sign the same at a meeting of the Board; and the Board shall immediately thereafter cause public notice of such classification to be given, and of the place where the same may be inspected for a period of twenty-one days; and the person in whose custody such classification list shall be shall permit the same to be inspected by the owner or occupier of any land included therein during office hours.

(3.) Any person who thinks himself aggrieved by such classification may appeal against the same on the grounds following, and no other:—

That the classification does not fairly classify the land of the appellant;

That any land liable to be classified is omitted from the classification, or is not fairly classified.

(4.) A notice of appeal setting forth the matter objected to, and the cause of objection, must be given to the Clerk of the nearest Resident Magistrate's Court within seven days next after the expiration of the twenty-one days appointed for the publication of the classification list; and not less than seven clear days' notice of such appeal must be given to the Board before the time of hearing appeals.

(5.) Within three days after the expiration of such seven days as last aforesaid, the Resident Magistrate of the aforesaid Court shall give public notice of a day for the hearing of such appeals, and such appeals may be heard at the Resident Magistrate's Court to be notified in such notice; and such Court may, after hearing such appeals, cause the classification to be amended in such manner as may appear to it to be reasonable, and the Resident Magistrate shall sign such amended classification, and the determination of the said Court shall be final and conclusive.

(6.) The Court by which any appeals shall be heard shall have full power to award the costs incidental to such appeal and the hearing thereof to either of the parties.

28. Every classification-list, when signed by the Board as aforesaid in case there be no appeal, and when signed by the Court as aforesaid after any appeal, shall, for the purpose of any proceedings for the recovery of rates payable under this Act, be conclusive evidence for the liability of the person named therein; and every such list shall remain in force until another is made under the provisions of this Act.

29. The invalidity of any rate or assessment as a whole shall not avail to prevent the recovery of the rate, unless such invalidity be on the ground that such rate is a rate at a greater amount than the Board is empowered to levy.

Classification-lists to remain in force till another issued.

Invalidity of rate no bar to its recovery.

30. All moneys whatsoever levied, received, or recovered under the authority of this Part of this Act shall be at the sole and absolute disposal of the Board, to be by them applied in such manner as they see fit for the purposes of this Part of this Act in the district, and generally in carrying out the administration and purposes of this Part of this Act in the district, and to no other purpose.

Application of moneys received.

## BORROWING POWERS.

31. The Board may, in anticipation of its current revenue, from time to time borrow moneys from the bank by way of overdraft, but the amount of such overdraft shall never at any time exceed in the aggregate at any one time the sum of *three* thousand pounds.

Board may borrow by overdraft.

32. When and so often as the Board fails to pay any debt due by it to any bank for moneys borrowed by way of overdraft under the authority of this Act, the bank to which such debt is due or owing may apply *ex parte*, by petition in a summary way, to a Judge of the Supreme Court for relief, and the Judge may, if satisfied of the truth of the matters alleged in such petition, appoint, upon such terms as to security and remuneration as he shall think fit, a Receiver; and in every such case—

On nonpayment of overdraft Receiver may be appointed.

(1.) The Receiver shall have and may exercise all the powers of the Board in respect of or incidental to the making, levying, and recovery of rates; and including also the power of recovering rates in arrear, and of making, levying, and recovering rates which ought to have been made and levied and were not so levied.

Powers of Receiver.

(2.) Upon the appointment of such Receiver all unpaid rates and all rates levied by him shall, when levied, vest in the Receiver, and shall cease to be vested or to vest in the said Board; and all powers for the recovery of any such rate shall, upon the appointment of the Receiver, cease to be exercised by the Board and shall be exercised by the Receiver.

(3.) All moneys received by the Receiver shall be applied as follows:—

(a.) In payment of the costs, charges, and expenses of, and incidental to and consequent upon, the application for the appointment of a Receiver:

(b.) In payment of the Receiver's remuneration and his reasonable and necessary expenses:

(c.) In payment in order of priority of all debts due and payable by the Board at the date of the appointment of the Receiver:

(d.) The residue, after payment of the above, to the said Board.

And the Receiver shall account for all such moneys as the Judge directs.

(4.) The Receiver may, with the sanction of the Judge, appoint a solicitor to assist him in the performance of his duties.

33. The failure, from any cause whatever, at any time to elect a member or members of the Board shall not affect the powers of the Receiver, or invalidate any rate made or levied by him. Any rate

Powers of Receiver not affected by non-election of Board.

made or levied by the Receiver shall be valid notwithstanding that at the time of the making or levying of any rate there were no members of the Board elected and holding office.

Provisions of Rating Act applied to Receiver.

34. All the provisions contained in "The Rating Act, 1882," and any Act amending the same, relating to the making and delivering of valuation-rolls, rates, and rate-books, and all other provisions of the said Act or of any other Act providing for the making and collection and recovery of rates by the said Board, shall apply and extend to the Receiver. 5

Valuation-rolls.

35. Whenever a Receiver shall be appointed at any time intervening after the making-up of any valuation-roll under "The Rating Act, 1882," or any Act amending the same, and before the making-up of another, the Commissioner of Taxes shall supply to the Receiver, as soon as possible, valuation-rolls as described in the said Act for the district, which shall remain in force till the making-up of the next valuation-roll. 10 15

When powers of Receiver to cease.

36. When all the debts then due and payable shall be paid, or at any time by an order of a Judge of the Supreme Court on the application of the said Board, if such Judge shall think fit to make such order, the powers of the Receiver shall cease, and he shall forthwith pay any moneys in his hands to the Board, which shall again be capable of exercising the powers of which the appointment of the Receiver had deprived it. 20

#### CONTRACTS.

Mode in which Board may make contracts.

37. The Board from time to time may enter into such contracts with any such persons as they think fit for the execution of any works directed or authorised by this Act to be done by the Board, or for furnishing materials, or for any other thing necessary for the purposes of this Act; and every such contract for the execution of any work shall be in writing, and shall specify the work to be done, and the materials to be furnished, and the price to be paid for the same, and the time or times within which the work is to be completed, and the penalties to be suffered in case of non-performance thereof; and the power hereby granted to the Board to enter into contracts may lawfully be exercised as follows, that is to say,— 25 30 35

- (1.) Any contract which if made between private persons would be by law required to be in writing and under seal, the Board may make in writing and under the common seal of the Board, and in the same manner may vary or discharge the same. 40
- (2.) Any contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, the Board may make in writing signed by the members or any two of their number acting by the direction and on behalf of the Board, and in the same manner may vary or discharge the same. 45
- (3.) And all contracts made according to the provisions herein contained being duly executed by the persons contracting to perform the works therein comprised respectively shall be effectual in law, and shall be binding on the Board and their successors and all other parties thereto, their suc- 50

cessors, heirs, executors, or administrators, as the case may be, and, in case of default in the execution of any such contract either by the Board or by any other party thereto, such actions or suits may be maintained therein, and damages and costs recovered by or against the Board or the other parties failing in the execution thereof, as might have been maintained and recovered had the same contracts been made between private persons only.

## OFFICERS.

- 5           38. The Board may from time to time appoint and employ a treasurer, clerk, surveyor, engineers, valuers, collectors, and all such other officers to assist in the execution of this Act as they shall think proper and necessary, and from time to time to remove any of such officers and appoint others in the room of such as shall be so removed, or as  
 15 may die, resign, or discontinue their offices, and may pay such salaries and allowances to the said officers respectively as the Board shall think reasonable, which said officers shall before they act in the execution of their respective offices give such security for the due execution thereof as the Board shall require. Appointment of officers, &c.
- 20           39. No member shall be capable of being or continuing a paid clerk or treasurer or any other such officer of the Board as in the last preceding section mentioned. Member of Board cannot be paid officer.
- 25           40. Every officer employed by the Board who shall exact or accept on account of anything done by virtue of his office, or in relation to the matters to be done under this Act, any fee or reward whatsoever other than the salary or allowance allowed by the Board, or who shall be in anywise concerned or interested in any bargain or contract made by the Board, shall be incapable of being afterwards employed by the Board, and shall forfeit the sum of *one hundred*  
 30 pounds, and any person may sue for such penalty by action of debt in any Court of competent jurisdiction, and shall on recovery thereof be entitled to full costs of suit. Officer accepting or exacting fees.
- 35           41. Every collector appointed or employed by the Board by virtue of this Act to collect any rate shall, within seven days after he shall have received any moneys on account of any such rates, pay over the same to the Board, or in such manner as the Board shall direct; and shall render to the Board, within such time and in such manner as they shall direct, true and faithful accounts in writing under his hand of all moneys received by him, and of all moneys paid over by  
 40 him, by virtue of this Act, and also a list of the names of all persons who have neglected or refused to pay any rate or money owing to the Board, with a statement of the moneys due from such persons respectively, and in respect of what several periods and rates the same are due respectively. Collectors to pay over moneys.
- 45           42. If any such officer fail to render such accounts as aforesaid, or to produce and deliver up the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for five days after being thereunto required any officer of the Board fail to deliver up to the Board or to any person  
 50 appointed by them to receive the same, all papers and writings, property, matters, and things in his possession or power relating to the Officer failing to account or to pay balance or deliver property.

execution of this Act or belonging to the Board, any two Justices may hear and determine the matter in a summary way, and may order such officer to render such accounts, or to deliver up such vouchers and receipts as aforesaid, or to pay over the balance owing by him, or to deliver up all such papers, writings, property, matters and things; and if such officer shall neglect or refuse to obey such order he may by such Justices be committed to prison for any period not exceeding *six* months. 5

Penalty.

Proceeding not to deprive Board of other remedies.

43. No such proceeding against or dealing with any officer as aforesaid shall deprive the Board of any remedy which they might otherwise have against any surety of such officer. 10

#### ACCOUNTS.

Books of accounts to be kept.

44. The Board shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid under authority of this Part of this Act, and of the several purposes for which such sums of money shall have been received and paid, which books shall at all reasonable times be open to the inspection of any ratepayer without fee or reward; and the persons aforesaid, or any of them, may take copies of or extracts from the said books gratis; and any person having the custody of the said books who does not, on the reasonable demand of any person as aforesaid, permit him to inspect the said books or to take such copies or extracts therefrom as aforesaid, shall for every such offence be liable to a penalty not exceeding *five* pounds. 15 20

Moneys received to be paid into bank.

45. All moneys received by the Treasurer of the Board shall be paid by him into some one of the public banks of the colony to the account of the Board of the district, and no part of such moneys shall be drawn out of such bank except by cheque, signed by the Treasurer and countersigned by a member of the Board. 25

Audit.

(1.) The accounts of the Board for the past year shall be audited in the month of January in each year by an auditor to be appointed by the Governor. 30

(2.) The Board of every district shall, before the end of the second week in January in each year, cause the accounts of the Board for the past year, up to and including the last day of December, to be balanced, and also a full and true statement and account to be prepared of the amount of all rates made and levied, and of all moneys received and expended during the past year, and also of all debts then owing by and to the Board; and such statement and account, signed by the Chairman and one other member of the Board at least, shall be submitted by such Chairman to the Auditor. 35 40

(3.) The Treasurer of every district shall forthwith after such audit make out and cause to be printed and published, in any newspaper circulating in the district, a full abstract of the accounts for the year as audited. 45

#### NOTICES AND LEGAL PROCEEDINGS.

Service of notices and legal proceedings.

46. Any summons or notice of any writ or other legal proceedings requiring to be served upon the Board may be served by the same being left at their office, or by being given personally to the Chairman or the clerk of the Board. 50

1127

47. Every order, summons, notice, or other such document requiring authentication by the Board shall be sufficiently authenticated if signed by two members, or by the clerk of the Board, and it need not be under the common seal of the Board, and may be in writing or in print, or partly in writing or partly in print.

Authentication of documents by Board.

48. If any person against whom the Board has any claim or demand become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, the Chairman or clerk of the Board, in all proceedings against the estate of such bankrupt or insolvent, or under any petition, sequestration, or act of insolvency, or any other proceeding respecting or against such bankrupt or insolvent, may represent the Board, and act in their behalf in all respects as if such claim or demand had been the claim or demand of such Chairman or clerk, and not of the Board.

Proceedings in estates of bankrupts.

49. In all proceedings in any Resident Magistrate's Court, or before any Justice, under this Act in which the Board shall be concerned, the Chairman or the clerk of the Board may represent the Board and act in their behalf in all respects as though he, and not the said Board, had been the party concerned.

Proceedings in Resident Magistrates' Courts, &c.

50. The Chairman or clerk shall be reimbursed all damages, costs, charges, and expenses to which he shall be put, or with which he may become chargeable, by reason of anything contained in either of the two last preceding sections.

Reimbursement of officer.

LIMITATION OF ACTIONS, ETC.

51. No plaintiff shall recover in any action to be brought against the Board or any other person for anything done in execution of the powers vested in the Board under this Act if tender of sufficient amends shall be made by or on behalf of the Board or other person before such action is brought; and, in case no tender shall have been made, the defendant in any action, by leave of the Court in which such action shall depend, at any time before issue joined, may pay into Court such sum of money as they or he shall think fit, whereupon such proceedings, order, and adjudication shall be had and given in and by such Court as in actions where the defendant is allowed to pay money into the Court.

No action against Board if tender of sufficient amends be made.

52. No action, suit, or information shall be brought, commenced, or prosecuted by any person for anything done in pursuance of this Act, or in execution of the powers or authorities herein contained, unless notice in writing of such action, suit, or information, specifying the ground or cause thereof and signed by the plaintiff or his attorney, shall be given to the Board or person against whom proceedings are intended to be commenced at least one month before such action, suit, or information shall be commenced.

Notice of action.

53. If any action, suit, or information shall be commenced or prosecuted against any person or persons for anything done or to be done in pursuance of this Act, or in execution of the powers and authority hereby given, every such action, suit, or information shall be commenced or made within twelve months next after the act committed and not afterwards, and shall be tried in the provincial district where the cause of action shall have arisen, and not elsewhere; and

Limitation of actions.

Place of trial.

Board may plead  
general issue.

The defendant and defendants in such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence without specially pleading the same otherwise than as aforesaid, at any trial to be had thereupon, and that the act alleged to have been done, was done in pursuance and by the authority of this Act; and if the same shall appear to have been so done, or if any action or suit shall be brought after the time hereinbefore limited for bringing the same, or shall be brought and tried in any other place than as aforesaid, the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit or forbear prosecution, or discontinue his, her, or their action or actions, suit or suits, or if judgment shall be given against him, her, or them, then and in any of the said cases the defendant or defendants shall recover double costs, for which he, she, or they shall have the like remedy as where costs by law are awarded.

Action not to delay  
works.

54. If any action or actions, suit or suits, shall be commenced or prosecuted touching or concerning the right, title, or interest of any owner or proprietor of or in any lands taken or injuriously affected by anything done in pursuance of this Act, or in execution of the powers or authorities herein contained, such action or actions, suits or suits, shall not impede, delay, or hinder the Board from proceeding in the execution of the powers vested in them by this Act, but that the works or the exercise of the powers and authorities shall be proceeded with, notwithstanding such action or actions suit or suits.

## PART II.

### IRRIGATION WORKS.

Interpretation.

55. In this Part of this Act,—

“Irrigation works” mean irrigation works of any sort for the supply of water to land :

“Water-race” means the land occupied by any channel, natural or artificial, for the supply of water, and all branch-races taken or made through private lands, and includes all dams, sluices, or reservoirs.

Application of Part  
I. for construction  
of water-races in  
districts of limited  
area.

56. On the petition of a majority of the ratepayers in any limited area of the colony, comprising part of one or more counties or ridings of counties, or one or more road districts or subdivisions of a road district, in either case, together with or without any town district or portion of a borough, and wherein the provisions of “The Water-supply Act, 1891,” could not conveniently be adopted, the Governor by Order in Council may declare such area to be a district under this Part of this Act, for the purpose of the maintenance and construction therein of water-races for the supply of water for irrigation of land and otherwise for the use and convenience of the public in any manner other than for domestic use.

On the coming into effect of any such Order in Council in a district, the provisions of Part I. of this Act shall have operation in such district for the objects last above-mentioned, and shall be read, *mutatis mutandis*, as if the words “irrigation works” were substituted for “drainage works,” “water-races” for “drains,” and “irrigation district” for “drainage district.”



1127

PART III.

POWER OF PRIVATE OWNERS TO PROCURE OUTFALL.

57. Any person having any interest in land who is desirous to drain the same, and in order thereto deems it necessary that new drains should be opened through lands belonging to another owner, or that existing drains in lands belonging to another owner should be cleansed, widened, straightened, or otherwise improved, may apply to such owner (who is hereinafter referred to as "the adjoining owner,") for leave to make such drains or improvements in drains through or on the lands of such owner.

Application for outfall to adjoining owner.

58. Any such application as aforesaid shall be by notice in writing under the hand of the applicant, and shall be served on the owner, and also on the occupier if the owner be not the occupier. The notice shall state the nature of such drains or improvements in drains, be accompanied by a map on which the length, width, and depth of the proposed drains or improvements in drains shall be delineated, and shall further state the compensation (if any) which the applicant proposes to pay.

Mode of making application.

59. The adjoining owner may, by deed under his hand and seal, assent to such application upon such terms and on payment of such compensation as he may require; and any assent so given shall be binding on all parties having any estate or interest in the land, subject to the following provisions:—

Assent of adjoining owner.

Firstly—That any arrangement entered into by any adjoining owner under any disability or incapacity, or not having power to assent to such application except under the provisions of this Act, shall not be valid unless the same is approved by two surveyors, one of whom is to be nominated by the applicant and the other by the adjoining owner; and each of such surveyors, if they approve of the arrangement, shall annex to the document containing the same a declaration to that effect subscribed by them.

Secondly—That any compensation to be paid by the applicant to the adjoining owner, in cases where such owner is under any disability or incapacity, or has not power to assent to such application except under the provisions of this Act, shall be applied in manner in which the compensation coming to parties having limited interests, or prevented from treating and not making title, is applicable under Part III. of "The Public Works Act, 1882."

Thirdly—That any owner or person other than the owner interested in the lands shall be entitled to compensation for any injury he may sustain by the making of the proposed drains or improvements in drains, so that the claim therefor be made within twelve months after completion of such drains or improvements in drains, the amount of such compensation to be determined, in case of dispute, in the manner in which disputed compensation for land is required to be determined by "The Public Works Act, 1882."

The applicant shall deposit in the office of the Registrar of Deeds or Land Registrar for the district wherein the land to be affected by such deed is situate, the deed containing the assent of the adjoining owner to the proposed drains or improvements in drains, who shall keep the same in his office as a record of the proceedings between the parties, the applicant paying the deposit fees (if any). 5

Dissent of adjoining owner.

60. The adjoining owner shall be deemed to have dissented from the application made to him if he failed to express his assent thereto within one month after the service of the notice of application on him; and in the event of such dissent, there shall be decided by any Resident Magistrate or two or more Justices, unless the adjoining owner require the same within such period of one month to be decided by arbitration, the questions following, that is to say,— 10

Reference to Resident Magistrate.

(1.) Whether the proposed drains or improvements in drains will cause any injury to the adjoining owner or to the occupier or other person interested in the lands; 15

(2.) Whether any injury that may be caused is or is not of a nature to admit of being fully compensated for by money.

Result of decision of Magistrate.

61. The result of any such decision shall be as follows: that—

(1.) If the decision is that no injury will be caused to the adjoining owner, or to the occupier, or other parties interested in the lands, the applicant may proceed forthwith to make the proposed drains or improvements in drains. 20

(2.) If the decision is that injury will be caused to the adjoining owner or other parties interested in the lands, but that such injury is of such a nature as to admit of being fully compensated by money, the Resident Magistrate, Justices, or arbitrators shall proceed to assess such compensation, and to apportion the same amongst the parties in their judgment entitled thereto; and, on payment of the sum so assessed, the applicant may proceed to make the proposed drains or improvement in drains. 25 30

(3.) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, and that such injury is not of a nature to admit of being fully compensated by money, the applicant shall not be entitled to make the proposed drains or improvements in drains. 35

Application of compensation in case of owners under disability.

62. Where the compensation assessed by the Resident Magistrate, Justices, or arbitrators under the *last preceding* section is payable to any owner or other person who is under any disability or incapacity, or is not entitled to receive the same for his own benefit, such compensation shall be applied in the manner in which the compensation coming to parties having limited interests, or prevented from and not making title, is applicable under "The Public Works Act, 1882." 40 45

Duty of Resident Magistrate, &c.

63. The Resident Magistrate, Justices, or arbitrators, as the case may be, in the event of their approving of a scheme of drainage as proposed by the applicant, or as modified by themselves, shall cause a map thereof to be prepared, and it shall be the duty of the applicant to forward the same to the Registrar of Deeds or Land Registrar for the district wherein the lands are situate, who shall, upon the payment of the fee of *ten* shillings, keep the same in his office as a record of the proceedings between the parties. 50

64. After drains have been opened or improvements in drains made in pursuance of this Act, it shall be lawful for the applicant, his heirs and assigns for ever, thereafter from time to time as it becomes necessary to enter upon the lands through which such drains
- 5 have been opened or improvements in drains made, for the purpose of clearing out, scouring, and otherwise maintaining the same in a due state of efficiency; and if such drains or improvements in drains are not kept so cleared, scoured, or maintained in a due state of efficiency, the owner or occupier for the time being of the lands through or on
- 10 which such drains or improvements in drains are made may clear out, scour, and otherwise maintain the same in a due state of efficiency, and recover the expenses incurred in such clearing out, scouring, or maintenance in a summary manner from the applicant, his heirs or assigns.
- 15 65. The owner for the time being of the land through or in which any drain may be opened or improvements in drains made, in pursuance of this Part of this Act, may fill up, divert, or otherwise deal with such drains or improvements in drains on condition of first making and laying down in lieu thereof drains equally efficient; and
- 20 any dispute as to the efficiency of drains so laid down shall be decided by any Resident Magistrate or by two or more Justices.
66. Any person who wilfully obstructs any person making any drain or improvements in drains in pursuance of this Part of this Act, and any person who wilfully dams up, obstructs, or in any way injures
- 25 any drains or improvements in drains so opened or made, shall for each offence incur a penalty not exceeding *ten* pounds to be recovered in a summary manner.
67. All costs, charges, or expenses reasonably incurred by the adjoining owner in respect of any application made in pursuance of
- 30 this Part of this Act shall be defrayed by the applicant.
68. Where any person is desirous, in pursuance of this Part of this Act, of constructing any drain by means whereof any brook, river, or other natural watercourse will be diverted from its ordinary channel into any other brook, river, or natural watercourse, he shall cause a
- 35 copy of the notice hereby required to be served on the adjoining owner to be published by advertisement, once at least in each of three successive weeks, in some local newspaper circulating in the district, and to be served on all owners of land abutting upon the brook, river, or other natural watercourse into which the diversion is to be made, and
- 40 situate within four miles of the point of junction; and it shall be lawful for any person, being the owner of land capable of being injured by the proposed drain, within eight weeks after the first notice of the proposed drain appears in the newspaper, to serve notice that he apprehends injury from such drain on the person proposing to make
- 45 the same, and thereupon such owner shall be deemed to have dissented, and shall be entitled to the same rights and privileges under this Part of this Act as if he were the adjoining owner.

Power of applicant to clear drains.

Power of adjoining owner to divert drains.

Penalty for obstructing or injuring drains.

Costs of application.

Provision in case of damage of natural outfall.

## PART IV.

## MISCELLANEOUS.

Judges and Justices  
to hear and  
determine though  
liable to be rated.

69. Any Justice or Resident Magistrate, and any Judge of any District Court, and any Judge of the Supreme Court, notwithstanding that such Justice or Resident Magistrate or Judge is or is liable to be rated within the district under any of the provisions of this Act contained, or is a resident or is owner or occupier of land within the district, may hold any Court, or do any act, matter, or thing, or adjudicate in the recovery of rates, and in appeals against rates, and in revising lists of voters, and may hear and determine informations and complaints, and hear and adjudicate upon all other matters and things which such Justice, Resident Magistrate, Judge of a District Court, or a Judge of the Supreme Court might hold, do, or adjudicate upon if he had not been liable to be so rated or had not been such resident owner or occupier.

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Malicious  
destruction of  
property.

70. If any person or persons whomsoever shall at any time or times wilfully and maliciously cut, break down, destroy, or damage any bank, drain, sewer, dam, mill, engine, building, sluice, or any of the works which shall be erected or made for the purposes of this Act or any part thereof, such person or persons shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding three years or a penalty not exceeding *five hundred* pounds.

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Penalty for  
obstruction.

71. Every person who shall at any time obstruct the Board, or any person appointed by them, in the performance of anything which they are respectively empowered or required to do by this Act shall be liable to a penalty not exceeding *ten* pounds.

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Penalties  
recoverable  
summarily.

72. Every offence hereby made punishable by a penalty shall be prosecuted, and all fines and penalties imposed by this Act shall be recoverable, in a summary way before any two Justices of the Peace in the manner provided by "The Justices of the Peace Act, 1882."

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Repeals.

73. "The Drainage Act, 1881," and section two hundred and eighty-nine of "The Counties Act, 1886," are hereby repealed; and, in all districts wherein Part I. of this Act is brought into force, sections two hundred and sixty-six to two hundred and eighty-eight, and subsections two and three of section three hundred and eleven of "The Counties Act, 1886," so far as all the said sections and subsections respectively relate to the drainage of land or drainage works, shall be repealed.

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