

LAND DRAINAGE.

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## A BILL INTITULED

Title.

AN ACT to consolidate and amend the Law relating to the Drainage of Land.

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

Short Title.

1. The Short Title of this Act is "The Land Drainage Act, 1904."

Interpretation.

1893, No. 46, sec. 2

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

"Board" means a Board of Trustees for a district constituted under this Act: 10

"District" means a district constituted under this Act:

"Drain" includes every passage or channel on or under ground through which water flows, except a navigable river, but does not include a water-race as defined in section *fifty-five* hereof: 15

"Drainage works" means 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: 20

"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 used elsewhere in this Act means any person seised or 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: 25

"Rateable property," and "rateable value," mean respectively rateable property and rateable value under "The Rating Act, 1894": 30

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

## PART I.

35

## DRAINAGE DISTRICTS AND BOARDS.

Governor may constitute districts. Ibid, sec. 5

3. (1.) The Governor may from time to time, by Order in Council, on petition in that behalf from a majority of the rate-payers in any part of New Zealand, constitute and declare that part to be a district for the purposes of this Part of this Act, and may, on a like petition, alter the boundaries of any such district: 40

Provided that no part of any borough shall be included in any such district.

Board of Trustees. Ibid, sec. 9

(2.) The Governor, by Order in Council, may, if he thinks fit, abolish any district. 45

4. (1.) For every district there shall be a Board of Trustees, consisting of such number of persons, being not less than five nor more than seven, as is fixed in the aforesaid or any subsequent Order in Council, and such Trustees shall be elected in the manner hereinafter directed. 50

First election of Trustees.

5. (1.) The Governor shall appoint such person as he thinks fit to be the Returning Officer to hold the first election of Trustees, appoint the day for such first election, and make full provision for bringing this Part of this Act into operation in the district.

(2.) The Trustees elected at such first election shall hold office until the election of their successors at the first triennial election held as hereinafter mentioned.

5 (3.) All provisions relating to the qualifications, disqualifications, and elections of members of a County Council shall apply, *mutatis mutandis*, and be in force in respect to elections of Trustees under this Part of this Act.

10 6. (1.) 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," containing the name of every person whose name appears on the valuation roll made under "The Government Valuation of Land Act, 1896," as the occupier of any rateable property within the district, and shall insert on such list opposite the name of each person therein the amount at which his property is valued on such roll.

Ratepayers' list.  
1893, No. 46, sec. 10;  
1894, No. 54,  
sec. 2 (1)

20 (2.) Such list, or a true copy thereof, shall be deposited at the office of the Board, and if such office is not situate within the district, then a true copy of the list shall also be deposited at some public office or elsewhere, in the most accessible place in some central part of the district, for inspection without fee, and public notice shall be given of the place where the said list is deposited.

25 7. In such notice the Returning Officer shall notify the day, not being earlier than fourteen days after the date of the notice, and the place when and where the Magistrate will sit to hear objections and finally revise such list.

Objections.

30 8. (1.) 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.  
1893, No. 46, sec. 11

(2.) The Magistrate, 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 that appears to him ought to be altered, inserted, or erased, as the case may be; and his decision shall be final and without appeal.

40 (3.) The list, when so corrected, shall be signed by the Magistrate, 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.

45 9. 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 Council; and, if of full age, shall be qualified to be elected a Trustee.

Qualifications of  
electors and  
Trustees.  
Ibid, sec. 12

50 10. (1.) On the first Monday in the month of November in the year following the year in which the first Trustees for any district are

Elections.  
Ibid, sec. 13

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.

(2.) If at any such appointed day no election is held, or if at any election of Trustees no persons are duly elected, or a less number is elected than is by law required, then the Governor may appoint such and so many qualified persons to be Trustees as the occasion may require. 5

(3.) If any Trustee dies, or by writing addressed to the Chairman resigns his office as such Trustee, or ceases to reside permanently in New Zealand, or is absent without leave from three consecutive meetings of the Board, or otherwise becomes incapable of acting, an election shall be held of a Trustee in his stead; and the person so elected shall hold office as Trustee for so long only as his predecessor would have held office had he remained a Trustee. 10 15

(4.) Notice of every election of a Trustee shall be gazetted, and the *Gazette* containing such notice shall be conclusive evidence that such election has been duly made.

Chairman of Board.  
1893, No. 46, sec. 14

11. (1.) The Board shall from time to time appoint as Chairman any one of their number willing to act, and such Chairman shall preside at all meetings of the Board, and shall have a casting as well as a deliberative vote, and shall hold office until the appointment of his successor. 20

(2.) The Board may also from time to time appoint an Acting Chairman, to act in the absence or incapacity of the Chairman. 25

(3.) The Chairman may, by writing addressed to the Secretary, resign his office as Chairman, and thereupon the Board shall appoint another member to the office.

Meetings of Board.  
Ibid, sec. 15; 1894,  
No. 54, sec. 2 (2)

12. (1.) The Chairman or any two Trustees may convene a meeting of the Board by a notice delivered to each of the Trustees or left at their usual place of residence, or by giving three days' public notice of the time appointed for such meeting. 30

Quorum.

(2.) 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. 35

(3.) 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 was called by notice, signed by the Secretary, posted to each member of the Board not less than seven days before such meeting, specifying the time and place of the meeting. 40

Board incorporated.  
1893, No. 46, sec. 16

13. 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 that a body corporate may do and suffer. 45

Board within  
drainage district to  
have powers of  
County Council.  
Ibid, sec. 17

14. The Board, for the purposes of the administration of this Act, shall have and may exercise, within the area of the drainage district, all the powers and authorities conferred upon a County Council. 50

*Assessors.*

15. (1.) The Governor may from time to time appoint fit and proper persons to be Assessors for the purposes of this Act in any district.

Appointment of Assessors.  
1893, No. 46, sec. 7

5 (2.) Any two Assessors for a district shall be qualified to sit with the Magistrate in the hearing of any matter under this Act in which they have no personal interest, but not otherwise.

*Powers of the Board.*

10 16. The Board may from time to time by special order, as it thinks fit, divide the district into subdivisions, and prescribe the boundaries of any such subdivisions and assign names thereto, and by similar notice may alter the boundaries of any such subdivision.

To subdivide districts.  
Ibid, sec. 18

15 17. The Board may for the purposes of this Act, from time to time, by itself, its 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.  
Ibid, sec. 19; 1894, No. 54, sec. 2 (3)

20 (a.) Cleanse, repair, or otherwise maintain in a due state of efficiency any existing watercourse or outfall for water, either within or beyond the district, or any existing bank or defence against water.

25 (b.) Deepen, widen, straighten, divert, or otherwise improve any existing watercourse or outfall for water, either within or beyond the district, or remove obstructions to watercourses or outfalls for water, or raise, widen, or otherwise alter any existing defence against water.

(c.) Make any new watercourse or new outfall for water, or erect any new defence against water, erect any machinery, or do any other act required for the drainage of the district.

30 (d.) Construct any drains of such materials and in such manner as it thinks necessary or proper for carrying the purposes of this Act into execution, and 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 cause such drains to communicate with the sea or any arm thereof, or with any stream or watercourse either within or beyond the district, and also from time to time open, cleanse, and repair such drains, or alter the position thereof, and do all such acts, matters and things as it deems 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.

45 (e.) Take, purchase, and hold any lands, or any estate or interest therein, within or beyond the district that in its opinion may be required for the purposes of this Act.

50 (f.) Without any previous payment, tender, or deposit, enter upon and use any land within the district for the purpose of taking any earth, stone, or clay therefrom, and enter upon and use any adjacent lands 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 the land or otherwise, and such compensation, if the parties cannot agree, shall be settled by or before a Magistrate, sitting with two Assessors, one of whom at least must concur with the Magistrate in determining the same.

- (g.) Make, maintain, alter, or discontinue all such works of any kind or description, and erect such buildings and machinery within the district as it thinks proper for the purposes of this Act. 10
- (h.) Without any previous agreement with the owner or occupier of any land within the district, upon giving twenty-four hours' notice, enter upon any such lands, whether the same be Crown lands or not, and take levels of the same. 15
- (i.) Enter upon, take, and hold any land within the district for the purposes of this Act.
- (j.) In the making, widening, deepening, cleansing, or repairing of any drain or ditch, remove the soil thereof, and place it on the bank on either side of such drain or ditch. 20

May enter lands,  
&c., for survey, &c.  
1893, No. 46, sec. 20

18. (1.) For the purposes of any inspection, survey, or inquiry directed as necessary under any of the provisions of this Act, the Board or its surveyors, agents, officers, and workmen, may 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 may also examine, where necessary, any weir, sluice, or floodgate erected in or upon any river or stream, and open or raise any floodgate or sluice for the purposes of any such examination, 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. 25

(2.) The amount of such compensation shall be ascertained by a Magistrate, sitting with two Assessors, and such Magistrate is 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 may be produced before him, and to make such order as he deems just for the payment by the Board to the party aggrieved of the amount of such damage. 40

(3.) No such order shall be made without the concurrence of one at least of such Assessors.

(4.) Pending the decision of the Magistrate, the Board, its surveyors, agents, engineers, officers, and workmen, may enter upon such lands as aforesaid and do all necessary matters and things authorised by this Act. 45

May enter and take  
earth, &c.  
Ibid, sec. 21

19. (1.) The Board, or any officer 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. 50

(2.) 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 occupier of such land for the damage thereby sustained, as agreed on between the Board and the owner or occupier of the land.

5 (3.) If such owner or occupier cannot agree with the Board concerning the amount of such damage, then the same shall be assessed and finally determined by a Magistrate, sitting with two Assessors, upon complaint thereof by such owner or occupier.

10 (4.) Notice in writing of such complaint shall be given to the Board by such owner or occupier fourteen days before such complaint is made

20. Before interfering with any 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 objects to the proposed work, the matter shall be referred to the Minister for Public Works, whose decision shall be final. Notice to local authority before interfering with road or footpath. 1893, No. 46, sec. 19 (4)

25 21. (1.) Before constructing any drain or other work through private land the Board shall give one month's notice in writing to the owner of such land of the intention to construct the work, and shall deposit at its office for public inspection plans of the proposed work. Owner of private land may object to construction of works. 1894, No. 54, sec. 3

30 (2.) If the owner does not lodge with the Clerk of the Board within the said month a notice of objection to the work, it may be proceeded with; but if an objection is lodged, either to the work or to the mode of executing it, then the matter shall be referred to the decision of a duly qualified engineer, to be appointed jointly by the Board and the owner, whose decision shall be final.

35 (3.) If the Board and owner cannot agree as to the engineer so to be appointed, the matter shall be referred to the decision of a Magistrate sitting with two Assessors, appointed one by the Board and one by the owner; and the decision of the Magistrate shall be final.

40 22. (1.) For the execution of any works either wholly or partially within its district, or outside thereof, the Board may join with the Board of any other district, or, if the lands through which the works are to be constructed are not within the jurisdiction of any Board, then with the owner of such lands, or with any local authority, and may agree for the apportionment of the cost of such works among the parties thereto in such proportions as are deemed fair and equitable by the said parties, or as any person whom they appoint as referee in the case decides. The Board may join with other Boards for execution of works, &c. Ibid, sec. 4

45 (2.) Any dispute shall, on the application of either party, be heard and decided, and the cost of the works and their future maintenance between the parties to the dispute apportioned, by a Magistrate sitting with two Assessors.

50 23. (1.) If any land within the district is not drained of surface and storm water by some efficient drain communicating with some public watercourse or drain used or made under this Act, the Board may construct through any land lying between the first-mentioned land and the nearest watercourse or drain as aforesaid an efficient drain, 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. May make drains from private lands. 1893, No. 46, sec. 22

(2.) All expenses incurred by the Board in respect of any such drain, or any part thereof, made through the lands of any separate owners shall be apportioned by the Board among such separate owners in proportion to the amount of benefit, if any, derived from the construction of the drain by the land of each such separate owner, and shall be repaid to the Board by such separate owners respectively in the aforesaid proportions, and the same may be sued for and recovered as a debt due to the Board in any Court of competent jurisdiction. 5

May relinquish  
lands or rescind  
contracts.  
1893, No. 46, sec. 23

24. (1.) Where it seems expedient to the Board, at any time within six months after any notice or contract has been given or entered into under this Act, not to take or injure the whole or any part of any land or other matter or thing named or described in such notice or contract, the Board may serve a further notice upon or cause the same to be left at the usual place of abode of the person who appears by the first-mentioned notice or contract to be interested in such land, matter, or thing, stating that the same or that a part thereof will not be taken for, or injured by, anything to be done under this Act; and in such case the said first-mentioned notice or contract, or, at the option of the Board, so much thereof as relates to the part not required to be taken or injured as aforesaid, shall be void. 10 15 20

(2.) Where a part only of any notice or contract becomes void as aforesaid, the Board shall fix and ascertain the portion of the sum mentioned in any such notice or contract that should be deducted on account of the part not required to be taken or injured, and, if necessary, apportion the residue amongst the persons entitled thereto, and shall amend such notice or contract accordingly, and such amended notice or contract shall have the same force and effect as any other notice or contract under this Act. 25 30

(3.) Where the Board serves notice that it is not intended to take or injure the whole or any part of such land, matter, or thing, the 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; and, in case the amount thereof cannot be agreed upon, the same shall be ascertained and fixed by any Magistrate or two Justices within the district. 35 40

Watercourses and  
drains not to be  
allowed to become  
a nuisance.  
Ibid, sec. 24

25. The Board shall cause all watercourses or drains from time to time vested in them or under their management to be constructed and kept so as not to be a nuisance or injurious to health, and to be properly cleared and cleansed and maintained in proper order; and in default shall be liable to the owners or occupiers of any land for damage done thereto in consequence of or through the disrepair of any such watercourse or drain. 45

Penalty for  
interfering with  
drains, &c.  
Ibid, sec. 25

26. Every person, not being authorised for that purpose by the Board, who, without the consent of the Board, makes any branch drain into any watercourse or drain vested in the Board by this Act, or without such consent stops or obstructs any such last-mentioned watercourse or drain, is liable for every such offence to a fine not exceeding fifty pounds; and the Board may cause such branch drain to be re-made as it thinks fit, and all expenses incurred thereby shall 50



be repaid to the Board by the person making such branch drain, and may be recovered before any Justice in a summary way.

27. (1.) Nothing herein shall render the Board liable for any consequential damages for injury 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, dam, sluice, or reservoir made or maintained by the Board under the authority of this Act.

Board not liable for consequential damage unless arising from neglect. 1893, No. 46, sec. 26

(2.) If the owner or occupier of such land or other property gives notice in writing to the Board, warning it that such injury is likely to occur, or that any such dam, reservoir, bank, or sluice is weak or deficient, and requiring it to strengthen, amend, or repair the same, and the Board within a reasonable time after the delivery of the said notice fails to take proper and reasonable precautions to prevent such injury, or efficiently to strengthen or repair such dam, reservoir, bank, or sluice, then the amount of the consequential damages sustained through such failure shall be made good out of the rates to be levied by the Board under this Act.

Compensation.

28. (1.) 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 or used for the purposes of this Act, or 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.

Compensation for injury or damage. Ibid, sec. 27

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

Claim to be made within twelve months. Ibid, sec. 28

(3.) The amount of compensation shall, unless the parties agree thereon, be ascertained in the manner provided by "The Public Works Act, 1894."

How compensation to be ascertained. Ibid, sec. 29

29. On the application in a summary manner of any person entitled to compensation for injury sustained through the construction of any proposed work, if it appears to the satisfaction of the Supreme Court or any Judge thereof that such compensation has not been paid, or that the Board is unable to pay the same when assessed, the said Court or Judge may issue an injunction to restrain the Board from proceeding with the work until the said compensation is assessed and paid, or security given to the satisfaction of the Court or Judge for its payment within a limited time.

Supreme Court may stay construction of works if compensation not paid. 1894, No. 54, sec. 6

Rates.

30. (1.) The Board may for the purposes of this Part of this Act levy on all lands within the district (except as hereinafter mentioned) a rate not exceeding six farthings in the pound on the rateable value, 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. 1893, No. 46, sec. 30

(2.) Not less than ten days' public notice of the intention to levy such rate shall be given by advertisement in a newspaper circulating in the district.

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

(4.) The provisions of "The Rating Act, 1894," shall, so far as the same are applicable, *mutatis mutandis*, extend and apply to all rates made by the Board. 5

Differential rates  
on land.  
1893, No. 46, sec. 31

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

(a.) On a uniform scale; or 10

(b.) On a graduated scale according to the classification of lands in the district or subdivision set forth in the next succeeding section.

(2.) All lands in any district or subdivision that, 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. 15

Board to classify  
land.  
Ibid, sec. 32

32. 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 it thinks fit, classify or cause to be classified all lands in the district or subdivision into the following classes, that is to say:— 20

(a.) Lands receiving or supposed to receive immediate and direct benefit from the construction of the drainage-works;

(b.) Lands receiving or supposed to receive less direct benefit therefrom; 25

(c.) Lands receiving only an indirect benefit therefrom;

(d.) 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 appoints. 30

Procedure.  
Ibid, sec. 32

33. (1.) The Board may from time to time, by warrant, at a meeting held for that purpose, appoint one or more fit 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 directs. 35

(2.) Where 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 to be given public notice of such classification, and of the place where the same may be inspected for a period of twenty-one days; and the person having the custody of such classification list shall permit the same to be inspected during office hours by the owner or occupier of any land included therein. 40 45

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

(a.) That the classification does not fairly classify the land of the appellant; 50

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

(c.) That any land is improperly included within the drainage district.

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

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

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

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

Classification list to remain in force till another issued. 1893, No. 46, sec. 33

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

Invalidity of rate no bar to its recovery. Ibid, sec. 34

36. All moneys levied or received under the authority of this Act shall be at the sole and absolute disposal of the Board, to be applied in the district in such manner as it sees fit for the purposes of this Part of this Act, and generally in carrying out in the district  
35 the administration and purposes of this Part of this Act, and for no other purpose.

Application of moneys received. Ibid, sec. 35

*Borrowing Powers.*

37. (1.) The Board may, in the manner prescribed by and subject to the provisions of Part I. of "The Local Bodies' Loans Act,  
40 1901," from time to time raise a special loan for the purpose of exercising within any district, or any subdivision thereof, any of the powers conferred on the Board by this Act.

Board may, with consent of ratepayers, raise special loan. Ibid, sec. 36

(2.) The aggregate amount of all loans to be raised for such purposes shall not exceed in any district or subdivision a sum equal  
45 to one-fourth the value of the fee-simple of all the land in the district or subdivision, as appearing in the valuation-roll for the time being in force.

38. At any poll taken for the purpose of any special loan it shall be lawful for the attorney of any ratepayer absent from the  
50 district or subdivision of a district in which the poll is being taken to vote in the name and on behalf of such ratepayer; and every vote

Ratepayers may vote by attorney.

so given by any such attorney shall be as effectual as if the rate-payer had voted in person.

Special rate may be levied.

39. The Board may by special order make and levy, on all lands in the district or subdivision rateable under this Act, a special rate to secure and pay the interest on and provide a fund for the repayment of any such loan. 5

In case of extraordinary damage special loan may be raised without consent of rate-payers. 1893, No. 46, sec. 37

40. For the purpose of repairing any extraordinary damage done by flood, tempest, or accident to any drainage works, the Board may from time to time raise a special loan without obtaining the consent of the ratepayers of the district, or of any subdivision of a district, to the doing of such work or to the raising of such loan ; and, to secure the interest and repayment of such loan, may make and levy a rate in the manner provided in the *last preceding* section. 10

Board may borrow by overdraft. Ibid, sec. 38

41. 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 not at any time exceed the total amount of the ordinary income of the Board for the year ending the thirty-first day of March previous. 15

Officers.

Appointment of officers &c. Ibid, sec. 44.

42. (1.) 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 it thinks proper and necessary, and may pay such salaries and allowances to the said officers respectively as it thinks reasonable. 20

(2.) All such officers shall, before acting in the execution of their respective offices, give such security for the due execution thereof as the Board requires. 25

Member of Board may not be paid officer.

Ibid, sec. 45

(3.) No member shall be capable of being or continuing a paid clerk or treasurer or any other such officer of the Board as is mentioned in this section. 30

Officer accepting or exacting fees. Ibid, sec. 46

43. (1.) Every officer employed by the Board who exacts or accepts on account of anything done by virtue of his office, or in respect of the matters to be done under this Act, any fee or reward other than the salary or allowance allowed by the Board, or who is in anywise concerned or interested in any bargain or contract made by the Board, is liable to a fine not exceeding one hundred pounds, and shall be incapable of being afterwards employed by the Board. 35

(2.) Such fine, together with full costs of suit, may be recovered by any person who sues for the same. 40

Collectors to pay over moneys. Ibid, sec. 47

44. (1.) Every collector appointed or employed by the Board under this Act to collect any rate shall, within seven days after he has received any moneys on account of any such rates, pay over the same to the Board, or in such manner as the Board directs.

(2.) He shall also render to the Board, within such time and in such manner as it directs, true and faithful accounts in writing under his hand of all moneys received by him, and of all moneys paid over by him, under this Act, and also a list of the names of all persons who have failed to pay any rate or money owing to the Board, with a statement of the moneys due from such persons respectively, and 50

of the several periods and rates for or on account of which the same are due respectively.

(3.) If any such officer fails 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 owing by him when thereunto required, or if for five days after being thereunto required any officer of the Board fails to deliver up to the Board, or to any person appointed by it to receive the same, all papers and writings, property, matters, and things in his possession or power relating to the 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 fails to obey such order, he may by such Justices be committed to prison for any period not exceeding six months.

(4.) No such proceeding against or dealing with any officer as aforesaid shall deprive the Board of any remedy it may otherwise have against any surety of such officer.

Officer failing to account or to pay balance or deliver property.

1893, No. 46, sec. 48

Proceeding not to deprive Board of other remedies.

Ibid, sec. 49

20

#### Accounts.

45. (1.) 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 this Part of this Act, and of the several purposes for which such sums of money have been received and paid.

Books of account to be kept.

Ibid, sec. 50

(2.) Any ratepayer may at all reasonable times inspect such books and take copies of or extracts from the same free of charge.

(3.) Every person having the custody of the said books who does not, on the reasonable demand of any ratepayer, permit him to inspect the same, or to take such copies or extracts therefrom as aforesaid, is liable to a fine not exceeding five pounds.

46. All moneys received by the Treasurer of the Board shall be paid by him into some bank to the account of the Board, 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.

Moneys received to be paid into bank.

Ibid, sec. 51

47. (1.) The Board shall, before the end of the second week in April in each year, cause the accounts of the Board for the past year ending the last day of March to be balanced, and 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 of all debts then owing by and to the Board.

Accounts and audit.

Ibid; 1894, No. 54, sec. 2 (4)

(2.) Such statement and account shall be signed by the Chairman and the Treasurer of the Board, and submitted by the Chairman to the Audit Office for audit.

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

*Miscellaneous.*

Service of notices  
and legal process.  
1893, No. 46, sec. 52

48. Any notice or legal process may be served on the Board by leaving the same at the office of the Board, or by delivering the same personally to the Chairman or the Clerk of the Board.

Authentication of  
documents by  
Board.  
Ibid, sec. 53

49. 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, without being under the common seal of the Board. 5

Proceedings in the  
estates of  
bankrupts.  
Ibid, sec. 54

50. (1.) If any person against whom the Board has any claim or demand becomes bankrupt, the Chairman or Clerk of the Board may represent the Board in all proceedings against the estate of such bankrupt, and act in its 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. 10

Proceedings in  
Magistrates' Courts,  
&c.  
Ibid, sec. 55

(2.) In all proceedings under this Act in any Magistrate's Court, or before any Justice, in which the Board is concerned, the Chairman or the Clerk of the Board may represent the Board and act in its behalf in all respects as though he, and not the said Board, had been the party concerned. 15

Reimbursement  
of officer.  
Ibid, sec. 56

(3.) The Chairman or Clerk shall be reimbursed all damages, costs, charges, and expenses to which he is put, or with which he may become chargeable, by reason of anything in this section. 20

No action against  
Board if tender  
of sufficient  
amends be made.  
Ibid, sec. 57

51. (1.) A plaintiff shall not recover in any action 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 is made by or on behalf of the Board or other person before action brought. 25

(2.) If no tender is made, the defendant in any such action may, by leave of the Court in which the action is pending, at any time before issue joined, pay into Court such sum of money as he thinks fit, whereupon such proceedings, order, and adjudication shall be had and given in and by such Court as may be had and given in actions where the defendant is allowed to pay money into Court. 30

Notice of action.  
Ibid, sec. 58

52. (1.) No action or other proceeding 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, unless at least one month's notice in writing of such action or proceeding, specifying the ground or cause thereof, and signed by the plaintiff or his solicitor, is given to the Board or person against whom proceedings are intended to be commenced. 35 40

Limitation of  
actions.  
Ibid, sec. 59  
Place of trial.

(2.) Every such action or other proceeding shall be commenced within twelve months next after the act complained of was committed, and shall be tried in the district where the cause of action arose, and not elsewhere.

Board may plead  
general issue.

53. (1.) At the trial of any such action the defendant may plead the general issue and that the act alleged to have been done was done in pursuance and by the authority of this Act, and may give this Act and the special matter in evidence. 45

Verdict.

(2.) If the same appears to have been so done, or if any action is brought after the time hereinbefore limited for bringing the same, or is brought and tried in any other place than as aforesaid, the jury shall find for the defendant. 50

(3.) If the plaintiff is nonsuited, or discontinues his action, or if judgment is given against him, then and in any of the said cases the defendant shall recover, at the discretion of the Court, a sum not exceeding double costs, for which he shall have the like remedy as where costs are awarded by law.

Costs.

54. If any action is 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, such action shall not impede, delay, or hinder the Board from proceeding in the execution of the powers vested in them by this Act.

Action not to delay works.  
1893, No. 46, sec. 60

## PART II.

## IRRIGATION WORKS.

15 55. In this Part of this Act,—

Interpretation.  
Ibid, sec. 61

“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.

20 56. (1.) On the petition of a majority of the ratepayers in any limited area of the colony wherein the provisions of “The Water-supply Act, 1891,” cannot conveniently be adopted, the Governor may, by Order in Council, declare such area to be a district under this Part of this Act for the purpose of the construction and maintenance

25 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.

Application of Part I. for construction of water-races.  
Ibid, sec. 62

30 (2.) On the coming into effect of any such Order in Council in a district the provisions of Part I. of this Act shall, *mutatis mutandis*, apply in such district for the purpose aforesaid.

## PART III.

## POWERS OF PRIVATE OWNERS.

35 57. (1.) Any person having any interest in land who desires to prevent the overflow of water thereon, or to drain the same, and in order thereto deems it necessary that new drains should be opened through or between lands belonging to another owner or owners, or that existing drains in or between lands belonging to another owner or owners should be cleansed, widened, deepened, straightened, or otherwise improved, may apply in writing under his hand to such

40 owner or owners (hereinafter included in the expression “adjoining owner”) for leave to make such drains or improvements in drains through, on, or between the lands of the adjoining owner.

Application to adjoining owner.  
1893, No. 46, sec. 63;  
1894, No. 54,  
sec. 2 (5)

45 (2.) Such application shall be served on the adjoining owner, and also on the occupier if the owner is not the occupier, or, if there is no occupier and the owner is absent from New Zealand, on the owner’s

Mode of making application.  
1893, No. 46, sec. 64

agent in New Zealand, or, if there is no such agent, or the owner is unknown, shall be posted on some conspicuous place on the land to be affected by such application.

(3.) The application shall state the nature of the drains or improvements in drains proposed to be made, and shall be accompanied by reference to a map deposited at some public office in the district, 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. 5

Assent of adjoining owner.  
1893, No. 46, sec. 65

58. The adjoining owner may, by deed, assent to such application upon such terms and on payment of such compensation as he requires; and any assent so given shall, subject to the provisions of the next succeeding section, be binding on all parties having any estate or interest in the land. 10

Where adjoining owner under disability.

59. Any arrangement entered into by or on behalf of 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 or on behalf of 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. 15 20

Compensation to other persons interested.

60. Any person interested other than the adjoining owner shall be entitled to compensation for any injury he may sustain by the making of the proposed drains or improvements in drains, if the claim therefor is 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, 1894." 25 30

Deed of assent to be filed in Registry Office.  
Ibid, sec. 65

61. The applicant shall deposit in the office of the Registrar of Deeds or Land Registrar for the district wherein the land affected by such deed is situate the deed containing the assent of the adjoining owner to the proposed drains or improvements in drains, and the Registrar, on receipt of the deposit fees (if any), shall file the same in his office as a record of the proceedings between the parties. 35

Dissent of adjoining owner.  
Ibid, sec. 66

62. (1.) The adjoining owner shall be deemed to have dissented from the application made to him if he fails to express his assent thereto within one month after the service of the application on him. 40

Reference to Magistrate.

(2.) In the event of such dissent, the Magistrate, sitting with two Assessors, shall (unless the adjoining owner has, within such period of one month, required the same to be decided by arbitration) decide whether or not 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. 45

Result of decision of Magistrate.  
Ibid, sec. 67

63. (1.) If the decision is that no injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, the applicant may proceed forthwith to make the proposed drains or improvements in drains. 50

(2.) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, the Magis-



trate, with the concurrence of at least one of the Assessors, shall assess such compensation and 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  
5 drains or improvement in drains.

64. Where any compensation assessed under section *sixty* hereof, or under the *last preceding* section, is payable to any person under disability or incapacity, or not entitled to receive the same for his own benefit, such compensation shall be applied in the manner in  
10 which compensation awarded to parties having limited interests, or prevented from treating and not making title, may be applied under "The Public Works Act, 1894."

Application of compensation in case of owners under disability. 1893, No. 46, sec. 68

65. The Magistrate and Assessors, in the event of their approving of a scheme of drainage as proposed by the applicant, or  
15 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, and such Registrar shall, upon payment of a fee of ten shillings, file the same in his office as a record of the pro-  
20 ceedings between the parties.

Duty of Magistrate, &c. Ibid, sec. 69

66. After drains have been opened or improvements in drains made under this Part of this Act, it shall be lawful for the applicant, and his successors in title, for ever thereafter from time to time, as it becomes necessary, to enter upon the lands through which such drains  
25 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 owners or occupiers for the time being of the lands through, on,  
30 or between which such drains or improvements in drains are made may, after giving seven clear days' notice of their intention so to do, clear out, scour, and otherwise maintain the same in a due state of efficiency, and recover in a summary manner from the applicant, or his successors in title, a fair and equitable proportion of the expenses  
35 incurred by them in so doing.

Power of applicant to clear drains. Ibid, sec.

67. The owners for the time being of the lands through, on or between which any drain may be opened or improvements in drains made under this Act, may fill up, divert, or otherwise deal with such drains or improvements in drains, on condition of first making and  
40 laying down in lieu thereof drains equally efficient; and any dispute as to the efficiency of drains so laid down shall be decided by a Magistrate sitting with two Assessors.

Power of adjoining owner to divert drains. Ibid, sec. 71

68. Every person who wilfully obstructs any person making any drain or improvements in drains under this Part of this Act, or who  
45 wilfully dams up, obstructs, or in any way injures any drains or improvements in drains so opened or made, is liable for each offence to a fine not exceeding fifty pounds.

Penalty for obstructing or injuring drains. Ibid, sec. 72

69. All costs, charges, or expenses reasonably incurred by the adjoining owner in respect of any application made under this Part  
50 of this Act shall be borne by the applicant.

Costs of application. Ibid, sec. 73

70. (1.) Where any person is desirous of constructing under this Part of this Act any drain by means whereof any brook, river, or other natural watercourse will be diverted from its ordinary channel

Provision in case of diversion of outfall. Ibid, sec. 74

into any other brook, river, or natural watercourse, he shall cause a copy of the notice hereby required to be served on the adjoining owner or occupier 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 or occupiers of land abutting upon the brook, river, or other natural watercourse into which the diversion is to be made, and situate within four miles of the point of junction. 5

(2.) Any person, being the owner or occupier of land that might be injured by the proposed drain, may, within eight weeks after the first notice of the proposed drain appears in the newspaper, serve notice that he apprehends injury from such drain on the person proposing to make the same, and thereupon such owner or occupier shall be deemed to have dissented, and shall be entitled to the same rights and privileges under this Act as if he were the adjoining owner. 10 15

Appointment of Assessors by private owners. 1894, No. 54, sec. 8

71. Assessors sitting with a Magistrate under this Part of this Act shall be appointed by the parties to the dispute, each of whom shall appoint one Assessor; and in case either of the parties has failed to appoint an Assessor in his behalf when any case comes on for hearing before the Magistrate, the Magistrate may appoint an Assessor in behalf of the party so in default; but if neither of the parties has appointed an Assessor, then the Magistrate alone shall decide the matter in dispute. 20

#### PART IV. 25

##### MISCELLANEOUS.

Judge not deemed to be interested merely because a ratepayer. 1893, No. 46, sec. 75

72. No Judge, Magistrate, or Justice shall be deemed to be interested in any case under this Act in which he is judicially concerned merely on the ground that he is liable to be rated within any district under any of the provisions of this Act, or is a resident or is an owner or occupier of land within the district. 30

Malicious destruction of property. Ibid, sec. 76

73. Every person who wilfully and maliciously cuts, breaks down, destroys, or damages any bank, drain, sewer, dam, mill, engine, building, sluice, or any of the works erected or made for the purposes of this Act is liable, at the discretion of the Court, to three years' imprisonment, or to a fine not exceeding five hundred pounds. 35

Penalty for obstruction. Ibid, sec. 77

74. Every person who at any time obstructs the Board, or any person appointed by it, in the performance of anything that the Board or such person is empowered or required by this Act to do, is liable to a fine not exceeding fifty pounds. 40

Penalties recoverable summarily. Ibid, sec. 78

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

Remuneration of Assessors. 1894, No. 54, sec. 5

76. The remuneration of Assessors appointed by the Governor under Part I. of this Act shall be paid by such party as the Court directs.

77. (1.) Where a district under this Act is abolished, enlarged, or curtailed, the Audit Office, or such person as the Governor may appoint, shall hold an inquiry and make an award apportioning the property of the Board, and the debts, liabilities, and engagements thereof, amongst the counties, road districts, and town districts, or portions thereof respectively, in the district so abolished, enlarged, or curtailed.

Financial arrangements on abolition or severance of district.

1893, No. 46, sec. 6

(2.) Any such award may provide for all or any of the matters included in the subject for inquiry, and may declare in whom any property shall be vested, and by whom any moneys shall be paid, or other acts or things done, including the payment by either party of the whole or any part of the expenses of the inquiry; and the person making the award may make and give such directions generally as may be necessary for giving full effect to the objects of the inquiry.

(3.) Every such award shall be final, and shall from the date thereof have the operation of and be enforceable as a judgment of the Supreme Court.

(4.) Nothing in this section shall in any way affect the rights or interests of any bondholder or other creditor of the Board, or shall relieve the ratepayers for the time being in the area comprised in the drainage district from their liability to pay any special rate made under this Act as a security for any loan.

78. Nothing in this Act shall—

(a.) Authorise the Board of any district, without the consent in writing of the Minister for Public Works, to interfere with any public work carried on or executed by or under the control of the Government; or

Government works not to be interfered with.

Ibid, sec. 3

(b.) Prejudice or affect any power or authority vested in His Majesty, or in the Governor, or in any other person on behalf of His Majesty or the Governor, under any Act authorising the erection, construction, or maintenance of any such public works.

79. (1.) Where any Native land is required to be taken for the purposes of this Act, it shall be taken by the Governor under Part IV. of "The Public Works Act, 1894."

Application of Act to Native lands. Ibid, sec. 4

(2.) Native lands rateable under "The Rating Act, 1894," shall be rateable for the purposes of this Act:

Provided that Native lands the title to which has been ascertained by the Native Land Court, and of which the occupier, as defined in the last mentioned Act, is a Native, shall be liable to be rated to one-half only of the amount of any rate that may be levied.

(3.) Subject to the provisions of this section this Act shall apply to all Native lands.

80. The enactments mentioned in the Schedule hereto are hereby repealed: Provided that all districts and appointments declared and made by the Governor under any Act hereby repealed and existing at the commencement of this Act, and all loans, rates, and other lawful acts of the Board raised, made, or done under any such repealed Act, and existing or continuing at the commencement of this Act, shall be deemed to have been declared, raised, made, or done under this Act.

Enactments repealed.

Schedule.

SCHEDULE.

Section 80.

ENACTMENTS REPEALED.

1893, No. 46.—“The Land Drainage Act, 1893.

1894, No. 54.—“The Land Drainage Amendment Act, 1894.”

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