

(Mr. Bunny.)

## Te Aro Reclamation.

### ANALYSIS.

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### A BILL INTITULED

AN ACT to provide for the Reclamation of part of the Foreshore at Te Aro, in the City of Wellington, and to enable the Corporation of the City of Wellington aforesaid to raise a Sum of One Hundred and Fifty Thousand Pounds. Title.

WHEREAS by a grant under the Seal of the Colony of New Zealand, and under the hand of the Right Honorable Sir James Fergusson, Baronet, Governor of the said Colony, dated the twenty-fourth day of June, one thousand eight hundred and seventy-four, the piece of land described in the Schedule to this Act was granted to the Mayor Councillors and Citizens of the City of Wellington, upon trust for reclamation and purposes of public utility: And whereas the said land is situated below high watermark, and the greater part thereof is usually covered by water, and the Corporation is desirous of reclaiming the same: And whereas for the purpose of enabling the Corporation to carry out such proposed reclamation, it is expedient that they should be empowered to raise money as hereinafter mentioned: Preamble.

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

1. The Short Title of this Act shall be "The Te Aro Reclamation Act, 1874." Short Title.

Interpretation.

2. In the construction of this Act the words "The Corporation" and "The Council" shall respectively mean "The Mayor Councillors and Citizens of the City of Wellington" incorporated under "The Municipal Corporations Act, 1867;" and the words "the undertaking" shall mean the works to be carried out under the provisions of this Act, and any necessary works in connection therewith. 5

Corporation may re-claim land and enter into contracts for such purpose.

3. The Corporation may from time to time fill up and reclaim any part of the land granted to them by the said grant, and may for that purpose enter into any contract or contracts with any person or persons upon such terms and conditions as may seem to them fit and expedient, and may also from time to time carry out all such other works as they may think expedient or which may be necessary in connection with and for the purposes of such reclamation. 10

Power to borrow money for undertaking.

4. The Council may, for defraying the cost of the undertaking, from time to time borrow and take up at interest on mortgage any sum or sums not exceeding altogether the sum of one hundred and fifty thousand pounds, and for the purpose of securing the repayment of any sums borrowed, together with interest thereon, the Council may mortgage to the person or persons by or on behalf of whom such sum or sums are advanced, the lands granted to them by the said recited grant, and each mortgagee shall be repaid the moneys advanced by him with the interest agreed upon without any preference over the others of them by reason of any priority of advance or the date of his mortgage, and the money which the Council are hereby authorized to borrow shall be in addition to any moneys which they are authorized to raise or borrow for any other purpose by "The Municipal Corporations Act, 1867," or any Act supplemental thereto or otherwise relating to Municipal Corporations in New Zealand. 15 20 25

Mortgages to have priority.

5. All mortgages which may be granted under the authority of this Act shall, so far as regards the land comprised therein, have priority over all mortgages or charges subsisting at the time of the passing of this Act, and granted by the Council under the authority of "The Municipal Corporations Act, 1867," or any Act supplemental thereto or otherwise relating to Municipal Corporations in New Zealand, and over all mortgages or charges to be hereafter granted by the Council under the like authority. 30 35

Further power to borrow in certain events.

6. If at the time appointed by any mortgage deed for the payment of the principal money secured thereby the Council are unable to pay off the same, they may, if they shall think fit, borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of the said principal money, and may secure the repayment of the same and the interest to be paid thereon in manner aforesaid. 40

Mortgages, how to be made.

7. Every mortgage authorized to be made under this Act shall be by deed, truly stating the date consideration and the time and place of payment, and shall be sealed with the common seal of the Council, and there shall be kept at the office of the Council a register of the mortgages granted under this Act; and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and the date thereof, and of the names and descriptions of the parties thereto as stated in the deed, and every such register shall be open to public inspection during office hours at the said office without fee or reward; and any clerk or other person having the custody of the same refusing to allow such inspection, shall be liable to a penalty not exceeding twenty pounds. 45 50

Transfers.

8. Any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed truly stating its date and the consideration for the transfer, and there shall be kept at the office of the Council a register of the transfers of mortgages under this Act; and within thirty days after the date of such deed of transfer if executed within the Colony of New 55 60

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Zealand, or within thirty days after its arrival in the Colony of New Zealand if executed elsewhere, the same shall be produced to the Council or to the person having charge of the register, who shall, upon payment of two shillings and sixpence, cause any entry to be made in

5 such register of its date, and of the names and description of the parties thereto as stated in the transfer; and upon any transfer being so registered, the transferee, his executors administrators or assigns, shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and every such transferee may in

10 like manner transfer his estate and interest in any such mortgage, and no person except the person to whom the same shall have been last transferred and whose transfer shall have been registered, his executors administrators or assigns, shall be entitled to release or discharge any such mortgage or any money secured thereby.

15 **9.** If at the expiration of six months from the time when any principal money or interest has become due upon any mortgage made under this Act, and after demand in writing, the same be not paid, the mortgagee or other person entitled thereto may without prejudice to any other mode of recovery, apply to the Supreme Court of New

20 Zealand for the appointment of a Receiver, and the said Court is hereby empowered, after hearing the parties, to appoint some person to collect and receive the whole or a competent part of any revenue arising from the lands comprised in the said recited grant, until such principal or interest or both, as the case may be, together with the costs of the

25 application and the costs of the collection are fully paid; and upon such appointment being made, all such moneys or such competent part thereof as aforesaid shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees, and shall be rateably apportioned between them:

30 Provided always that no such application shall be entertained unless the sum or sums due amount to one thousand pounds, or unless a joint application be made by two or more mortgagees or other persons to whom there may be due after such lapse of time, and demand as last aforesaid, moneys collectively amounting to that sum.

Power of mortgagees on default in payment of interest.

35 **10.** The Council may, in lieu of raising and taking up the whole or any part of the moneys authorized to be raised by this Act by means of a mortgage or mortgages as hereinbefore provided, raise and take up the same by means of debentures to be issued in such manner as the Council shall think fit, but subject nevertheless to the regulations

40 hereinafter set forth; such debentures to be secured on the credit of the moneys to arise from the sale of the land granted as aforesaid, and from all annual and other revenues to be derived therefrom: Provided always,—

Council may raise money by debentures in lieu of mortgage, subject to regulations.

- 45 (1.) That the debentures shall be for sums not exceeding five hundred pounds each.
- (2.) That the principal and interest moneys secured by the debentures shall be payable at the offices of the Council, in the City of Wellington; and the principal moneys of any such debentures shall be payable at
- 50 such time as is mentioned therein, not being later than ten years from the issue thereof.
- (3.) That such debentures shall be made payable in such manner and at such times that a proportion thereof to be fixed by the Council, and the payment thereof to be determined by lot, shall be redeemable at intervals
- 55 after the first advance of money.

**11.** The provisions of the ninth section of this Act shall be deemed to extend and apply to debenture-holders in like manner as if they had been specifically mentioned therein.

Provisions of section 9 to apply to debenture-holders.

Council may cause securities to be sold in order to liquidate mortgages or debentures become due.

12. As often as any moneys shall become due and payable as principal money secured by any mortgage or debenture as aforesaid, the Council shall cause so much of the securities in which the accumulated fund applicable to the payment of the securities granted under this Act is invested as may be required for the purpose, to be sold or otherwise converted into money, and shall apply the moneys arising from such sale or conversion, and any other moneys for the time being in their hands available for that purpose under this Act to the payment of the mortgage or debenture upon which such principal moneys shall have so become due and payable.

Interest, how paid.

13. The interest secured by any mortgage or debenture under this Act shall, unless otherwise provided therein, be paid half-yearly; and in order to pay off any moneys secured by any such mortgage or debenture, the Council shall in every year until the same be paid off appropriate and set apart all moneys to be received upon the sale of, or by way of rent for, or otherwise howsoever in respect of any of the land comprised in the said recited grant, which shall remain after first paying out of the entirety of such moneys the interest of all moneys borrowed, and all other charges and expenses which shall from time to time be due and payable on the credit or on account of the undertaking, as a sinking fund for the purpose of repaying the money borrowed and secured by any such mortgage or debenture; and the Council shall from time to time cause such sinking fund and the interest thereon to be invested on Government securities, and to be increased by accumulation in the way of compound interest or otherwise; and whenever the Council are enabled to pay off one or more of the mortgages or debentures and are not able to pay off the whole of the mortgages or debentures, they may in default of arrangement with the mortgagees or debenture-holders decide by lot the order in which the same shall be paid off.

Mortgagees and debenture-holders' security under Act to extend only to land granted in exoneration of other city property.

14. Notwithstanding anything in this Act contained, the land comprised in the said recited grant and the moneys which shall from time to time be in anywise receivable in respect thereof, either upon the sale thereof or of any part thereof or by way of annual or other revenue or otherwise, shall, as between the Council and any mortgagee or debenture-holder under the provisions of this Act, be the only security for the payment of the moneys secured thereby, and neither the Council nor the property estates or rates of the said City of Wellington or of the Council other than the said land, shall be liable to make good the said moneys or any part thereof.

Power to sell.

15. The Council may from time to time, so long as any money shall be owing by them on mortgage or debenture made or issued under this Act, at their discretion, sell all or any part or parts of the said land for such price or prices in money as they shall with the previous sanction of the Superintendent of the Province of Wellington determine, and upon payment of the purchase money for the same the Council may convey the same to the purchaser or purchasers. And every such conveyance made as last aforesaid shall vest the land comprised therein in such purchaser or purchasers absolutely, freed and discharged from all mortgages or debentures made and issued for the payment of any moneys borrowed by the Council under this Act.

Power to lease.

16. The Council may from time to time, so long as any moneys shall be owing by them on mortgage or debenture made or issued under this Act with the previous consent of the Superintendent of the said Province of Wellington, demise or let all or any part or parts of the said lands for such term of years in possession not exceeding forty-two years, and at such annual rent or rents, as they shall with the previous sanction of the said Superintendent determine. And every lease made as last aforesaid with such consent shall be deemed to have been made with the consent of the mortgagees of the said land, and of all other persons claiming any moneys charged thereon by virtue of this Act.

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17. So soon as by any means all moneys borrowed for the purposes of the undertaking under this Act shall have been fully paid off and discharged, the land granted by the said recited grant or such part thereof as shall not have been sold by the Council under this Act, shall remain and be part of the estates and property of the Council, to be dealt with and disposed of by them for the benefit of the said city in such manner as the Council shall in its discretion think fit, without the necessity of any consent on the part of the Superintendent aforesaid.

After repayment of borrowed money, land undisposed of to be held for the benefit of the city.

18. All moneys from time to time borrowed by the Council on mortgage under the authority of this Act, shall be applied as follows, that is to say,—

Application of mortgage moneys.

(1.) In payment of the costs charges and expenses attending or incident to obtaining and passing of this Act.

(2.) In defraying the cost of the undertaking, and of all works and conveniences connected therewith.

19. Notwithstanding anything contained in any Act relating to building or any other benefit societies in New Zealand, or in the rules of any such society to the contrary, it shall be lawful for the governing body of any such society to invest in any mortgage to be made under this Act any accumulated funds which under the provisions of any Act relating to building or other benefit societies, or any rules thereof, may be invested in real or Government securities.

Accumulated funds of Benefit Societies may be invested under this Act.

20. The Council shall cause a separate account to be kept of all sums of money borrowed and expended by them for the purposes of the undertaking, and of the matters and things for which sums of money shall have been disbursed and paid, and such account shall be balanced once in every year at least, and a balance-sheet in respect thereof, exhibiting a true statement of the credits and property of every description belonging to and of the debts due by the Council relating to the undertaking at the date of making such balance-sheet, together with a distinct separate statement of the profit or loss which shall have arisen in respect of the undertaking during the period to which such account shall extend or relate, shall also at least once in every year be prepared and made out, and both of such accounts shall be audited in like manner as other accounts of the Council, and shall be examined by the Council and signed by the Mayor for the time being.

Account to be kept of all moneys borrowed and spent.

21. The Council shall also keep a separate account, to be called "The Te Aro Reclaimed Land Account," and all moneys received or payments made in respect of the lands comprised in the said recited grant, or from any source whatever connected with or relating thereto or to the undertaking, other than as mentioned in the last preceding section, shall be carried to such account, and shall be applied and disposed of in manner directed by this Act.

Te Aro Reclaimed Land Account.

22. All the provisions of Part XI. of "The Municipal Corporations Act, 1867," relating to accounts, shall, so far as the same are not repugnant to or inconsistent with the provisions of this Act, apply to all accounts to be kept by the Council under the provisions of this Act.

Part XI. of Municipal Act to apply.

23. It shall be lawful for the Council, by any instrument under the seal of the Council, to appoint any officers or persons whom they shall think necessary for the purpose of carrying out or conducting the undertaking, and every person so appointed shall have and possess and may exercise, so far as may be necessary for the purposes of the undertaking, all the powers and authorities by this Act given to the Council.

Council to appoint officers.

24. No writ or process shall be sued out against the Council or any member thereof, or any officer or person whomsoever appointed as aforesaid, and acting under the direction of the Council for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing shall have been

Suits against Council.

delivered to him or left at their or his office or usual place of abode, clearly and explicitly stating the cause of action and the name and place of abode of the intended plaintiff and of his attorney or agent in the action, and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice; and unless such notice be proved, the jury shall find for the defendant, and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be tried in the jurisdiction where the cause of action occurred and not elsewhere, and the defendant shall be at liberty to plead a general denial of the material allegations in the declaration (hereafter called "the general issue") and give this Act and all special matter in evidence thereunder; and any person to whom such notice of action is given as aforesaid may tender amends to the plaintiff his attorney or agent, at any time within one month after service of such notice, and in case the same be not accepted may plead such tender in bar (by leave of the Court), with the general issue or other plea or pleas; and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinued, or if judgment be given for the defendant, then the defendant shall be entitled to the full amount of costs of defence, and have judgment accordingly; and in case amends have not been tendered as aforesaid, or in case the amount tendered be insufficient, the defendant may by leave of the Court, at any time before trial, pay into Court under plea such sum of money as he may think proper, and by the like leave may plead the general issue or other plea or pleas—any rule of Court or practice to the contrary notwithstanding.

False oath perjury.

25. Every person who upon any examination on oath under the provisions of this Act shall wilfully and corruptly give false evidence, shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury.

Offences.

26. The following shall be deemed to be offences against this Act, in addition to any other offences therein specified:—

Wilfully or carelessly breaking or injuring any of the property or works belonging to or under the management or control of the Council, or of any contractor with the Council under this Act.

Generally, the doing or permitting or suffering to be done any act or thing whatsoever whereby the undertaking or any works connected therewith shall be injured.

And every person guilty of any such offence shall for every such offence be liable to a penalty not exceeding fifty pounds, and a further penalty not exceeding ten pounds for each day whilst the offence is continued.

Penalties, how to be recovered.

27. All penalties imposed by this Act may be sued for and recovered in manner for the time being provided by law for the recovery of penalties by any Act of the General Assembly of New Zealand; but no such penalty shall be recovered at the suit of any person other than a party aggrieved or the Council without the consent in writing of the Attorney-General of New Zealand first had and obtained.

*Certiorari* taken away.

28. No proceeding under or in pursuance of this Act shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into the Supreme Court.

Limitation of proceedings.

29. No penalty imposed by this Act shall be recovered unless proceedings for the recovery thereof shall have been commenced within six months after the commission or occurrence of the offence upon which the penalty attaches.

Application of penalties.

30. The Court by which any penalty under this Act shall be

imposed on any person shall in all cases award one half of the same to be paid to the Council, to be by them placed to "The Te Aro Reclaimed Land Account" hereinbefore mentioned; and the other half shall be paid to Her Majesty, and be applied in manner provided by law for the application of penalties of the like nature.

5     **31.** Notwithstanding the liability of any person to any penalty under the provisions of this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

Offender not exonerated.

10    **32.** Nothing in this Act contained shall prejudice or be deemed to prejudice or affect any right title or interest of Her Majesty, her heirs and successors.

Right of Crown saved.

### SCHEDULE.

ALL that parcel of land in the Province of Wellington and Colony of New Zealand containing by admeasurement 70 acres, more or less, situate in the Harbour of Port Nicholson, and being the reserve marked "K" on the plan of the City of Wellington, bounded towards the North-east by land included in a Crown grant to His Honor the Superintendent of Wellington, dated June twentieth, one thousand eight hundred and sixty-two, one hundred and sixty (160) links, and by other parts of the said Harbour of Port Nicholson, one thousand two hundred and two (1202) links, one thousand two hundred and two (1202) links, one thousand two hundred and two (1202) links, and one thousand two hundred and two (1202) links; towards the East by other part of the said harbour, nine hundred and seven (907) links; towards the South-east by Clyde Quay, nine hundred and forty-one (941) links, and by Sections Nos. 222, 223, 224, and 225, eight hundred and sixteen (816) links; towards the South-west by Sections Nos. 218, 219, 220, and 221, eight hundred (800) links; by Sections Nos. 212, 213, 214, 215, 216 and 217, and by Reserve No. 9, one thousand four hundred and thirty-five (1435) links; by Sections Nos. 208, 209, 210, and 211, eight hundred and fifty-four (854) links, and by Sections Nos. 205, 206, and 207, five hundred and fifty (550) links; and towards the North-west by land reclaimed by Sir George Grey, six hundred and thirty-six (636) links, by said land granted to His Honor the Superintendent of Wellington, one thousand eight hundred and seventy-three (1873) links, and by other part of the said harbour, five hundred and thirty-two (532) links—except always the piece of land one hundred and fifty (150) links wide thereby reserved.