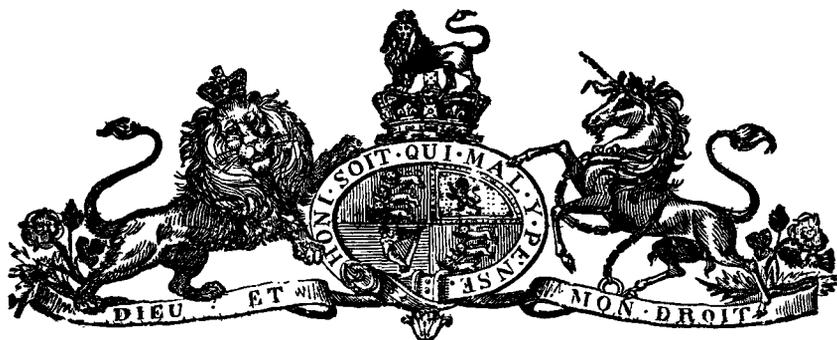


NEW ZEALAND.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ

Local and Personal.

No. 6.

ANALYSIS

|   |  |
|---|--|
| Title.  |  |
| Preamble.   |  |
| 1. Short Title.   |  |
| 2. Interpretation in Act.   |  |
| 3. Interpretation of Acts incorporated with this Act.   |  |
| 4. Further Interpretation.  |  |
| 5. Interpretation of Provincial Acts.   |  |
| 6. Undertakers incorporated.  |  |
| 7. Power to take and hold land and streams, and construct Works.  |  |
| 8. Undertakers to make Compensation.  |  |
| 9. Compensation to be made by Undertakers for lands taken or injuriously affected.  |  |
| 10. Reservation of existing rights.   |  |
| 11. Certain sections of Lands Clauses Consolidation Act, 1845, incorporated.  |  |
| 12. Certain Sections of said Lands Clauses Consolidation Act, 1845, incorporated.   |  |
| 13. Alteration in Section 22 thereof.   |  |
| 14. Certain other Clauses of said Act incorporated.   |  |
| 15. Power to break up Streets, &c., under superintendence, and to open Drains.  |  |
| 16. Not to enter private lands without consent.   |  |
| 17. Notice to be served on Persons having control, &c., before breaking up Streets or opening Drains.   |  |
| 18. Streets or Drains not to be broken up except under superintendence of persons having control of the same, if persons having the control, &c., fail to superintend, Undertakers may perform the work without them. |  |
| 19. Streets, &c., broken up to be reinstated without delay.   |  |
| 20. Penalty for delay in reinstating streets, &c.   |  |
| 21. In case of delay other parties may reinstate and recover expenses.  |  |
| 22. Penalty for obstructing construction of Works.  |  |
| 23. Penalty for illegally diverting water.  |  |
| 24. Railways Clauses Consolidation Act, 1845, as to damages &c., to be incorporated with this Act.  |  |
| 25. Persons giving false evidence liable to penalties of perjury.   |  |
| 26. Tender of amends.   |  |
| 27. Undertakers not exempt from provisions of any future general Act as to health of towns.   |  |
| 28. Limits of Act may be extended.  |  |

**AN Act to make provision for enabling certain persons to make and maintain Waterworks for the Supply of the City and Neighbourhood of Auckland with Water.** [3rd, November 1860.]

**WHEREAS** the construction of Water Works to furnish a constant supply of Water to the Town and Neighbourhood of Auckland, and to such localities as may be in the vicinity of the

*Auckland Waterworks.*

proposed line of such Water Works would be productive of great benefit to the inhabitants of such places, and to the community at large, and it is therefore advisable to make provision for the making and maintenance of such Waterworks :

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same as follows :—

Short Title. I. The Short Title of this Act shall be “ The Auckland Waterworks Act, 1860.”

*Interpretation.* INTERPRETATION OF THIS AND INCORPORATED ACTS.

Interpretation in Acts. II. The following words and expressions in this Act and any Act incorporated herewith shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, (that is to say,)

|                |  |
|----------------|--|
| Person.        | The word “ person ” shall include a Corporation whether aggregate or sole.   |
| Lands.         | The word “ lands ” shall include messuages, lands, tenements, and hereditaments of any tenure.   |
| Streams.       | The word “ Streams ” shall include springs, brooks, and other running waters.  |
| Street.        | The word “ Street ” shall include any wharf, quay, jetty, square, court, alley, highway, lane, road, thoroughfare, or public passage, or place within the limits of this Act, or projecting from any part thereof into the sea.  |
| Waterworks.    | The expression, “ the Waterworks ” shall mean the Waterworks and the works connected therewith authorised to be constructed by this Act and by an Act of the Superintendent and Provincial Council of the Province of Auckland to be passed as hereinafter mentioned.      |
| Water rate.    | The expression “ Water rate ” shall include any rent, reward, or payment to be made to the Undertakers for a supply of water.  |
| Two Justices.  | The expression “ Two Justices ” shall mean two or more Justices met and acting together or a Resident Magistrate.  |
| Superintendent | The word “ Superintendent ” shall mean the Superintendent for the time being of the Province of Auckland.  |
| Inspector.     | The word “ Inspector ” shall mean an officer appointed under any Local Act relating to the district supplied with Water under this Act for the purpose of inspecting or superintending works connected with the paving drainage or supply of water of such district or any |

*Auckland Waterworks.*

part thereof, or an officer appointed under any General Act for executing the like duties with respect to such district together with other districts ; and until such officer be appointed shall mean the Inspector of Public Works for the time being.

The word "Undertakers" shall mean the Superintendent alone or along with other persons as the case may be, undertaking the making and maintenance of the Waterworks under this Act and an Act of the said Superintendent and Provincial Council to be passed as hereinafter mentioned. Undertakers incorporated.

The word "Directors" shall mean the persons duly charged with the direction and management of the Waterworks. Directors.

The expression "Limits of this Act" shall mean the district included within a line starting from the Junction of Karangahape Road with Symonds Street thence Westward along the said Road to its Junction with Pitt Street thence along the said Street to its Junction with Wellington Street thence Westward along Wellington Street to its Junction with Union Street thence along Union Street to the sea at Freeman's Bay at the West end of Drake Street thence along the Coast to Mechanic's Bay at the Foot of Stanley Street and thence Westward along the Road leading to the Presbyterian Church at the Foot of Symonds Street and Southward along the same Street to the starting point together with such district as may from time to time be declared by the Governor in Council in manner hereinafter mentioned to be placed within the operation of this Act. Limits of this Act.

The expression "Secretary" shall mean the Secretary of the Undertakers for the time being, and shall include the word "Clerk." Secretary.

III. The Supreme Court shall have and exercise in the execution of any Imperial Act incorporated herewith the same jurisdiction as the Court of Chancery or any superior Court in England is empowered or directed to have or exercise in any section of such Acts ; and whenever any sum of money shall be payable by the said Undertakers under this Act or any Act incorporated herewith in virtue of any purchase or other transaction for the purposes hereof and the same is directed by any of the Acts herewith incorporated to be paid into the Bank, or into the Bank of England, with the privity or consent of the Accountant General of the Court of Chancery, it shall be lawful in any such case for the Undertakers, with the privity and consent of the Registrar of the Supreme Court in the Northern District to pay such sum of money into the Savings' Bank in Auckland aforesaid to the account of the Undertakers and to the credit of the person interested therein, if any such be known, and the receipt of the proper officer of such Savings' Bank shall be of the same validity as the receipt of the Cashier of the Bank of England has in Eng- Interpretation of Acts Incorporated with this Act.

*Auckland Waterworks.*

land, and the words "United Kingdom" and the word "England" and the word "Kingdom" shall be taken to mean and apply to the Colony of New Zealand, and the expression "General Quarter Sessions of the Peace" shall be taken to mean the Supreme Court; and the expression "Clerk of the Peace" shall be construed to mean the Registrar of the Supreme Court for the Northern District.

Further Interpretation.

IV. The Sections and Schedules of the Imperial Acts incorporated with this Act wherever the words of the same would from their being framed with reference to the Kingdom of England be inapplicable to the circumstances of the Colony of New Zealand, are to be read and interpreted so as to make them applicable to the circumstances of this Colony, and so as to ensure that the operation of the said Imperial Acts shall be secured by this Act, for the benefit of the said undertaking, and also for the controlling of the same to the full extent and meaning of this Act.

Interpretation of Provincial Acts.

V. For the purposes of interpretation, any Act of the Superintendent and Provincial Council as hereinafter mentioned shall be deemed to be incorporated with and to form part of this Act.

*Powers of Undertakers.*

## GENERAL POWERS AND DUTIES OF THE UNDERTAKERS.

Undertakers incorporated.

VI. It shall be lawful for the Superintendent either alone or in connexion with any other persons who shall hereafter become subscribers to the said undertaking, and their several and respective successors, executors, administrators, and assigns, upon such terms and conditions as shall be sanctioned and specified in an Act to be passed by the said Superintendent and Provincial Council to make, construct, complete, and maintain such Waterworks for the supply of the town and neighbourhood of Auckland with water as may be specified in such Provincial Act, and for that purpose and for the other purposes of this Act and of such Provincial Act the undertakers of such Waterworks shall be one Body Corporate by the name and style of the "Undertakers of the Auckland Waterworks," and by that name shall have perpetual succession, and shall have a common seal, and by that name shall, and may sue and be sued, plead and be impleaded, defend and be defended in all Courts and places whatsoever: Provided that no such Act of the Superintendent and Provincial Council of Auckland shall be passed, except after compliance with such rules and orders of the said Provincial Council, as are applicable to Private Bills of that class.

Power to take and hold land and streams and construct Works,

VII. Subject to the provisions, restrictions, and conditions contained in this Act, or in any Act wholly or in part incorporated herewith, or contained in such Provincial Act as aforesaid, the Undertakers may exercise any of the following powers and execute any of the following works, (that is to say),

They may without any previous agreement with the owner or occupier of such lands enter upon any lands or other places in the County of Eden, and take the levels of the same.

---

*Auckland Waterworks.*

---

They may enter upon, take, and hold any such lands for the purposes of this Act.

They may from time to time sink such wells or shafts, and make, maintain, alter, or discontinue such Reservoirs, Water Works, Cisterns, Tanks, Aqueducts, Drains, Cuts, Sluices, Pipes, Culverts, Engines, and other works, and erect such buildings upon the lands and streams authorised to be taken by them as they shall think proper for supplying with water the district within the limits of this Act.

They may from time to time divert, impound, and take such water as may be found in and under, or on the lands to be taken under the powers of this Act, and may alter the course of any streams.

They may without previous payment tender or deposit enter upon and use any land within the County of Eden for the purpose of taking earth or clay therefrom, and they may as aforesaid enter upon and use any lands adjacent for making temporary roads, or approaches thereto or to the works: Provided always that before they make such temporary use of any such lands they shall give twenty-one days notice of such their intention to the owners and occupiers of such lands, except in the case of accident to the works requiring immediate reparation: Provided also that the Undertakers shall, until any land taken by them for temporary use be given up to the owner, pay to the owner half-yearly reasonable compensation for the use of such land, and for any damage or injury done to the crop or to the surface of the land or otherwise, and such compensation shall be settled if they cannot agree with the owner as in cases of disputed compensation.

Provided that if the Undertakers shall obtain the whole or any portion of the Water from the springs at Onehunga, commonly known as Bycroft's Springs, allotments 6, 8, and 10 of section 14 and shall by so doing, either altogether prevent or materially interfere with the working of the Flour Mill, now belonging to Mr. John Bycroft, as the same has been accustomed to be worked, such compensation shall be paid to the owner for the time being of such Flour Mill as may be determined upon under the terms of the "Lands Clauses Consolidation Act, 1845:" And provided further, that if the Undertakers shall obtain the whole or any portion of the water from the springs at Onehunga, they shall erect in some convenient place near the main works and keep in repair a Stand Pipe of not less than  $\frac{1}{2}$ -inch bore, for the free supply of water to the inhabitants of Onehunga aforesaid, and shall also supply and keep in repair a trough of not less than two yards long, two feet wide, and two feet deep, through which water shall be constantly kept running for the free supply of water to the cattle and horses of such inhabitants.

*Auckland Waterworks.*

Undertakers to make  
Compensation.

VIII. Provided always that in the exercise of the said powers the Undertakers shall do as little damage as can be and in all cases where it can be done shall provide other watering places drains and channels for the use of adjoining lands in places of any such as shall be taken away or interrupted by them.

Compensation to be  
made by Undertakers  
for lands taken or in-  
juriouly affected.

IX. In exercising the powers of compulsory taking of lands and streams hereinbefore conferred upon them the Undertakers shall make to the owners and occupiers of and all other parties interested in any lands or streams taken or used for the purposes of this Act or injuriouly affected by the construction or maintenance of the Waterworks or otherwise by the execution of the powers hereby conferred full compensation for the value of the lands and streams so taken or used and for all damages sustained by such owners occupiers and other persons by reason of the exercise as to such lands or streams of the powers vested in the Undertakers by this Act or any Act incorporated herewith.

Reservation of existing  
rights.

X. Nothing herein contained shall prevent the owners and occupiers for the time being of any lands through or by which such streams shall flow from using the water thereof in such manner and to such extent as they might have done before the passing of this Act unless they shall have received compensation in respect of their right of so using such water.

*Purchase of Lands by  
agreement.*

## PURCHASE OF LANDS BY AGREEMENT.

Certain Sections of  
Lands Clauses Conso-  
lidation Act, 1845, in-  
corporated.

XI. With respect to the purchase of lands by agreement the sections of the Act of the Imperial Parliament called the "Lands Clauses Consolidation Act, 1845," numbered respectively from six to fourteen both inclusive shall be incorporated with this Act.

*Compulsory taking of  
lands.*

## PURCHASE AND TAKING OF LANDS OTHERWISE THAN BY AGREEMENT.

Certain Sections of  
Lands Clauses Conso-  
lidation Act, 1845, in-  
corporated.

XII. The sections of the said "Lands Clauses Consolidation Act, 1845," marked respectively 18 to 68 both inclusive shall be incorporated in this Act.

Alteration in Section  
twenty-two thereof.

XIII. Provided that section 22 of such Act shall apply to cases where no claim is made as well as to cases where the Compensation claimed shall not exceed fifty pounds.

Certain other Clauses  
of said Act incorpora-  
ted.

XIV. Subject to the provisions of this Act the following sections of the said "Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act, *mutatis mutandis* :

With respect to the purchase money or compensation coming to parties having limited interests or prevented from treating or making title, sections numbered respectively 69 to 80 both inclusive:

With respect to conveyances of land sections numbered respectively 81 to 83:

*Auckland Waterworks.*

With respect to entry upon lands by the promoters of the undertaking, sections numbered respectively 84 to 87 both inclusive, and 89 to 92 both inclusive:  
 With respect to lands subject to mortgage, sections numbered respectively 108 to 114 both inclusive:  
 With respect to lands subject to leases, sections numbered respectively 119 to 122 both inclusive; and  
 With respect to interests omitted to be purchased, sections numbered respectively 124 to 126 both inclusive.

## BREAKING UP STREETS FOR THE PURPOSE OF LAYING PIPES.

*Laying of Pipes.*

XV. The Undertakers under such superintendence as is hereinafter specified may open and break up the soil and pavement of the several streets and bridges within the limits of this Act and may open and break up any sewers drains or tunnels within or under such streets and bridges and lay down and place within the same limits pipes conduit service pipes and other works and engines and from time to time repair alter or remove the same, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges and do all other Acts which the Undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits doing as little damage as can be in the execution of the powers hereby granted and making compensation for any damages which may be done in the execution of such powers.

Power to break up Streets, &c., under superintendence and to open drains.

XVI. Nothing herein contained shall authorise or empower the Undertakers to lay down or place any pipe conduit service pipe or other work in any land not included in the land to be defined and specified in and by such Provincial Act as aforesaid, or not dedicated to public use, or not being waste lands of the Crown, without the consent of the owners and occupiers thereof, except that the Undertakers may at any time enter upon and lay or place any new pipes in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this Act and may repair or alter any pipe so laid down.

Not to enter private lands without consent.

XVII. Before the Undertakers open or break up any street bridge sewer drain or tunnel they shall give to the superintendent or to the persons under whose control or management the same may be, or to his or their clerk surveyor or other officer notice in writing of their intention to open or break up the same not less than three clear days before beginning such works except in cases of emergency arising from defects in any of the pipes or other works and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

Notice to be served on Persons having control &c., before breaking up Streets or opening Drains.

XVIII. No such street bridge sewer drain or tunnel shall except in the cases of emergency aforesaid be opened or broken up except under the superintendence of the persons having the control or management thereof or of their officer and according

Streets or Drains not to be broken up except under superintendence of Persons having control of the same.

*Auckland Waterworks.*

to such plan as shall be approved of by such persons or their officer or in case of any difference respecting such plan then according to such plan as shall be determined by two Justices, and such Justices may on the application of the persons having the control or management of any such sewer or drain or their officer require the Undertakers to make such temporary or other Works as they may think necessary for guarding against any interruption of the drainage during the execution of any Works which interfere with any sewer or drain: Provided always that if the persons having such control or management as aforesaid and their officer fail to attend at the time fixed for the opening of any such street bridge sewer drain or tunnel after having had such notice of the intention of the Undertakers as aforesaid or shall not propose any plan for breaking up or opening the same or shall refuse or neglect to superintend the operation, the Undertakers may perform the Work specified in such notice without the superintendence of such persons or their officer.

If persons having the control, &c., fail to superintend, Undertakers may perform the work without them.

Streets, &c., broken up to be reinstated without delay.

XIX. When the Undertakers open or break up the road or pavement of any street or bridge or any sewer drain or tunnel they shall with all convenient speed complete the work for which the same shall be broken up and fill in the ground and reinstate and make good the road or pavement or the sewer drain or tunnel so opened or broken up and carry away the rubbish occasioned thereby and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded and shall cause a light sufficient for the warning of passengers to be set up and kept there throughout every night during which such road or pavement shall be continued open or broken up and shall after replacing and making good the road or pavement which shall have been so broken up keep the same in good repair for three months thereafter and such further time if any not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Penalty for delay in reinstating Streets, &c.

XX. If the Undertakers open or break up any street or bridge or any sewer drain or tunnel without giving such notice aforesaid or in a manner different from that which shall have been approved of or determined as aforesaid or without making such temporary or other works as aforesaid when so required, except in the cases in which the Undertakers are authorised to perform such works without any superintendence or notice, or if the Undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement or the sewer drain or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced guarded and lighted or neglect to keep the road or pavement in repair for the space of six months next after the same is made good or such further time as aforesaid they shall forfeit to the persons having the control or management of the street bridge sewer drain or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence and an additional sum of five pounds for every day during which any such delay as aforesaid shall continue after they shall have received notice hereof

*Auckland Waterworks.*

XXI. If any such delay or omission as aforesaid shall take place the persons having the control or management of the street bridge sewer drain or tunnel in respect of which such delay or omission shall take place may cause to be executed the works so delayed or omitted, and the expense of executing the same shall be repaid to such persons by the Undertakers and such expenses may be recovered in the same way as damages are recoverable under this Act or any Act incorporated herewith.

In case of delay other parties may reinstate and recover expenses.

## PENALTIES.

*Penalties.*

XXII. Every person who shall wilfully obstruct any person acting under the authority of the Undertakers in setting out the line of the Works or pull up or remove any poles or stakes driven into the ground for the purpose of setting out the line of such Works or deface or destroy any works made for the same purpose shall be liable to a penalty not exceeding £100 for every such offence.

Penalty for obstructing construction of Works.

XXIII. After the streams or supplies of Water hereby authorised to be taken by the Undertakers shall have been so taken every person who shall illegally divert or take the Waters supplying or flowing into the streams so taken or any part thereof or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity and who shall not immediately repair the injury done by him on being required so to do by the Undertakers so as to restore the said Waters to the state in which they were before such act shall forfeit to the Undertakers any sum which shall be awarded by two Justices not exceeding £100 for every day during which the said supply of Water shall be diverted or diminished by reason of any act done by or by the authority of such person and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the Undertakers for any damage which they may sustain by reason of their supply of Water being diminished and the payment of the sum so forfeited shall not bar or affect the right of the Undertakers to bring an action at Law against such person for the damage so committed.

Penalty for illegally diverting Water.

RECOVERY OF DAMAGES NOT SPECIALLY PROVIDED FOR AND OF PENALTIES AND THE DETERMINATION OF ANY OTHER MATTER REFERRED TO JUSTICES.

*Recovery of Damages and Penalties.*

XXIV. Subject to the provisions of this Act the sections of the Act of the Imperial Parliament called "The Railways Clauses Consolidation Act, 1845," with respect to the recovery of damages not specially provided for and of penalties, and to the determination of any other matters referred to Justices sections 140 to 158 both inclusive shall be incorporated with this Act and such selections shall apply to the Waterworks and to the Undertakers respectively *mutatis mutandis*.

Railways Clauses Consolidation Act, 1845, as to damages &c., to be incorporated with this Act.

XXV. Every person who upon any examination upon Oath under the provisions of this Act or any Act incorporated herewith shall wilfully and corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

*Auckland Waterworks.**Tender.*

## TENDER OF AMENDS.

Tender of amends.

XXVI. If any person shall have committed any irregularity trespass or other wrongful proceeding in the execution of this Act, or any Act incorporated herewith, or by virtue of any power or authority hereby or thereby given, and if before action brought in respect thereof such person make tender of sufficient amends to the person injured, such last mentioned person shall not recover costs in any such action, and if no such tender shall have been made the defendant may by leave of the Court where such action is pending at any time before issue joined or before the trial if in a Resident Magistrate's Court pay into Court such sum of money as he shall think fit and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

## MISCELLANEOUS PROVISIONS.

Undertakers not exempt from provisions of any future general Act as to health of towns.

XXVII. Nothing herein contained shall be deemed to exempt the Undertakers from any general Act of any legislature to be passed for improving the sanitary condition of towns and populous districts.

Limits of Act may be extended.

XXVIII. It shall be lawful for the Governor in Council on the application of the Undertakers from time to time by Order in Council to extend the limits of this Act to any part of the County of Eden, but not less than fourteen days previous to such order being made notice of the application shall be advertised in the *Gazette* of the Provincial Government of Auckland, and twice in two Newspapers published in the City of Auckland.