

New Zealand.



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1905, No. 13.—*Local.*

AN ACT to validate and confirm a Settlement made by the Petone Borough Council of a Claim for Compensation. Title.

[23rd September, 1905.]

WHEREAS the Petone Borough Council lately constructed waterworks for the supply of water to the inhabitants of the Borough of Petone, and in constructing such works diverted water from the Korokoro Stream, in which the Wellington Woollen-manufacturing Company (Limited) was possessed of riparian rights, and by such diversion has injuriously affected the property of the said company upon which is erected the mill and other buildings of the company : Preamble.
And whereas the said Council, in order to lessen the injury to the company's property, has constructed the works recited in the deed of agreement a copy whereof is set out in the Schedule hereto, and defrayed the cost thereof out of the moneys raised by way of special loan for the purpose of such waterworks, and has contracted and agreed in the said deed of agreement with the said company to take such measures as will as far as possible insure the company an adequate supply of water for the conduct of the company's business, the company on its part agreeing to abandon its claim for compensation under " The Public Works Act, 1894 " : And whereas doubts have been expressed as to the power of the said Council to execute such works and enter into the contract above mentioned, and it is desirable that such doubts should be set at rest in the interests of both contracting parties :

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 is " The Petone Corporation Waterworks Act, 1905." Short Title.

Agreement made
between Corpora-
tion and company
to be binding.

2. The Corporation of the Borough of Petone shall be deemed to have had full power and authority to execute the several works recited in the deed of agreement a copy whereof is set out in the Schedule hereto, and to enter into the covenants contained in the said deed of agreement; and the said deed of agreement shall bind both parties thereto, their successors and assigns, as fully and effectually as if entered into and executed by two private persons, anything in "The Municipal Corporations Act, 1900," or any other Act to the contrary notwithstanding.

Schedule.

SCHEDULE.

AGREEMENT made this fifth day of July, one thousand nine hundred and five, between the Mayor, Councillors, and Burgesses of the Borough of Petone (hereinafter called "the Corporation") of the one part, and the Wellington Woollen-manufacturing Company (Limited) (hereinafter called "the company") of the other part: Whereas the Corporation some time since, in exercise of the powers vested in it by "The Municipal Corporations Act, 1900," and "The Public Works Act, 1894," constructed waterworks for the supply of the inhabitants of the Borough of Petone with water, and constructed a dam and reservoir (hereinafter referred to as "the Corporation dam" and "the Corporation reservoir") upon the Korokoro Stream, from which water has been conducted to the said borough by a line of pipes, and by such pipes water has been diverted from the said stream: And whereas the company is the owner of land through which the said stream runs and upon which are erected the mill and works of the company, and the said land of the company has been injuriously affected by the diversion of the water from the said stream through the Corporation's pipes: And whereas the company has served upon the Corporation a claim under "The Public Works Act, 1894," for compensation in respect of the construction of the said works and in respect of the injurious affection thereby of the company's land: And whereas, in order to lessen the injury to the company's property, the Corporation has constructed upon land of the Corporation a second dam and reservoir at a lower level on the said stream than the reservoir hereinbefore mentioned (such second dam and reservoir being herein referred to as "the company's dam" and "the company's reservoir"), and thence to the company's mill has laid a line of twelve-inch iron pipes, through which the company draws water and uses it, both for developing power and for the other purposes of the company's business, and has also laid a three-inch cast-iron main from the Corporation's high-pressure main to the company's mill for fire-extinguishing purposes only: And whereas the company, in order to facilitate the completion of the said waterworks, has permitted the Corporation to lay its main line of pipes from the reservoir to the borough through the company's property: And whereas the parties hereto have agreed to execute this agreement in order that its provisions and the construction of the works hereinbefore recited may compensate the company for the injuries to its land as hereinbefore recited, and render unnecessary the prosecution of the said claim of the company for compensation: Now these presents witness, and each of the parties hereto doth hereby covenant and agree with the other of them, as follows, that is to say:—

1. The Corporation shall maintain in good order and condition the company's dam and reservoir and the said pipes and other works which the Corporation has constructed and executed as hereinbefore recited, and the company shall pay to the Corporation on the first day of December next, and thereafter on the same day yearly, the sum of ten pounds (£10) as a fixed contribution towards the cost of maintenance of the company's dam and works connected therewith.

2. From and after the date hereof the company is to be solely entitled to the whole of the water from time to time running into the Korokoro Stream immediately below the Corporation reservoir, and the Corporation shall not take any part thereof.

3. In case the quantity of water which shall from time to time flow into the company's reservoir shall fall below one million gallons per day, the Corporation is, on notice thereof from the company, daily to add to such flow by causing or allowing to run from the Corporation's reservoir or pipes to the company's dam a quantity of

water which will bring the flow into the company's dam up to a million gallons per day :

Provided always that if there shall not be sufficient water flowing into the stream supplying the Corporation reservoir to make up the said deficiency, then the said Corporation shall allow to flow into the company's reservoir a quantity equal to the quantity flowing in the stream supplying the Corporation reservoir.

4. Notwithstanding the last foregoing clause, if it shall happen that less than a million gallons per day be running into the company's dam, and that less than the actual amount so running in is being used by the company for purposes other than water-power, then the Corporation shall not be obliged to any longer supplement from the Corporation reservoir or pipes the water naturally so running into the company's dam up to a million gallons per day, if and provided the Corporation has, previously to ceasing to so supplement the natural flow to the company's dam, supplied and installed a fifteen-horse power gas-engine at the company's mill at a place to be indicated by the mill-manager, and renewed the same from time to time when it becomes inefficient, and made the necessary connections with the gas main at its own expense, and if the Corporation shall give notice in writing to the company requiring the company to cease using the water for water-power, and shall supply gas for use with the said engine free of cost under the conditions hereinafter mentioned.

5. Upon receipt of such notice to cease using the water-power the company will do so, and on so ceasing shall be entitled to use in lieu thereof the said engine and the necessary gas therefor until there shall again be a million gallons of water running into the company's dam, when the Corporation may, by notice in writing, require the company to cease using the said gas-engine and revert to water-power. After any such gas-engine shall have been installed, and when in use, it shall be properly cared for and used in a workmanlike manner, and ordinary repairs thereto shall be effected by and at the expense of the company.

6. The Corporation is to insure the company access from the company's land to the company's dam.

7. The company is to use the three-inch fire main, already laid by the Corporation as before recited, solely for fire-extinguishing purposes, and it shall be kept under sealed valve.

8. While the company is receiving into the company's reservoir water from the Corporation reservoir for purposes other than power, the company shall take all reasonable precautions to avoid waste of water ; and when no water is flowing from the Corporation reservoir to the company's reservoir, the company will not wilfully waste the same so as by such waste to accelerate the time when the Corporation will be called upon to supplement from the Corporation reservoir the supply to the company's reservoir.

9. The said gas-engine may be used by the company at all times when the flow of water to the company's mill is below a million gallons per day, or in case of breakdown of the turbine from any cause during repair thereof, but if the gas-engine shall be used for any reason other than that a defect in supply of water for power is caused by the flow from the company's reservoir being cut off, then, during the time the same is used for such reasons other than defective water-supply, the company shall pay the Corporation for the gas used in the said engine at ordinary rates charged by the Corporation for gas for power.

10. The company is to grant to the Corporation, as an easement under the Land Transfer Act, the right to lay conveniently such water-pipes as may, in the opinion of the Corporation, be necessary for supplying the borough with water, and that either on, under, or over the property of the company, and for that purpose, and for the purpose of effecting alterations, additions, or repairs to such pipes, and for the purpose of access to the works and land acquired by the Corporation in connection with the waterworks, a perpetual right of way over a part of the company's property convenient to both parties, with or without carts or carriages, the Corporation on its part undertaking not to interfere with the company's use of the land more than necessary, and not to fence off the right-of-way and pipe-track, and not to make a public road through the company's land for the purposes of the waterworks or access thereto, or to the Corporation's land acquired in connection with the waterworks, so long as the Corporation shall be afforded the facilities and rights of way hereby agreed to be granted.

11. All costs, charges, and expenses of and incidental to this agreement and the carrying-out of the terms thereof, and all costs incidental to an agreement between

the same parties dated the thirteenth day of May, one thousand nine hundred and three, and to the carrying-out of the terms thereof so far as they have been carried out, and to the approval of a local Bill to be prepared and promoted by the Corporation confirming this agreement, as well of the company as of the Corporation, are to be borne and paid by the Corporation.

12. The parties hereto shall apply to Parliament at its present session for an Act of Parliament validating or confirming this agreement.

13. Should the application to Parliament be unsuccessful or this agreement be held to be *ultra vires* and void, then the Corporation will not oppose but support a motion under "The Public Works Act, 1894," section forty-five (45), subsection three (3), for the leave of the Court to proceed with its claim for compensation notwithstanding the lapse of time, and in that case each party shall appoint an assessor, the Corporation appointing its assessor within twenty-one (21) days after being duly notified of the appointment by the company of its assessor.

14. Should any dispute occur between the parties hereto as to anything to be done or suffered hereunder, or as to the conduct of either party hereto in carrying out the same, or as to the proper meaning and construction of these presents, the same shall be referred to arbitration under the provisions of the Arbitration Act and its amendments.

15. As touching such of the agreements and conditions of the said agreement between the same parties dated the thirteenth day of May, one thousand nine hundred and three, as have not already been carried into effect, the provisions of this agreement shall be deemed to supersede those of the said prior agreement which are inconsistent herewith, and the same shall be no longer binding on the parties.

In witness whereof the seals of the Corporation and of the company have been hereto affixed.

(Seal.) G. LONDON, Mayor.
G. D. MACFARLANE, Councillor.

The common seal of the Mayor, Councillors, and Burgesses of the Borough of Petone has been hereto affixed by order of the Council in the presence of—

Witness: ALEX. WEBSTER, Town Clerk.

The seal of the Wellington Woollen-manufacturing Company (Limited) was hereunto affixed, pursuant to a resolution of the directors of the company passed on the fifth day of July, one thousand nine hundred and five, in the presence of—

(Seal.) W. BARBER,
ARTHUR E. GIBBS, } Directors.
A. E. DONNE, Secretary.