

New Zealand.



ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Governor may notify what streams may be used under this Act. 3. Commissioner of Crown Lands, after hearing objections, may grant or refuse license for use of stream. Conditions of application, notices, service of notices, objections. 4. Licensee to enter into bond for payment of damages. 5. Power to float timber, &c., down rivers and tidal creeks. 6. Licensee to avoid doing damage. 7. Compensation for damage. 8. Limitation of right of damage. | <ol style="list-style-type: none"> 9. Claims for damage to be decided in Resident Magistrate's Court. 10. Magistrate may sit with Assessors. Concurrence of one assessor necessary. 11. Awards of costs in compensation cases. 12. Full damage to be paid for property destroyed. 13. Laying of booms in navigable waters deemed to be a harbour work not authorized by license. 14. Public works not to be interfered with. Licensee to have no redress against the Crown. 15. Penalty for floating timber, &c., or constructing new dams, without license. 16. Repeals. |
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1884, No. 36.

Title. AN ACT to authorize the Use of Rivers, Streams, and Tidal Creeks for floating Timber and other Substances.

[8th November, 1884.]

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 Timber-floating Act, 1884."

Governor may notify what streams may be used under this Act.

2. The Governor may from time to time, by notification in the *Gazette*, notify what rivers, streams, and tidal creeks within the colony may be used for the purposes of this Act under license hereinafter mentioned, and may from time to time, by a like notification, withdraw any river, stream, or tidal creek from such user, and upon such withdrawal all licenses affecting the same shall cease and determine.

Commissioner of Crown Lands, after hearing objections, may grant or refuse license for use of stream. Conditions of application, notices, service of notices, objections.

3. Any person desirous of using any river, stream, or tidal creek for the purposes of this Act may apply to the Commissioner of Crown Lands of the land district within which the same is situated for a license to do so; and the said Commissioner may, with the consent of the Land Board of the district, grant such license, subject to such conditions and stipulations as the Board may deem expedient, and to the conditions following, that is to say,—

(1.) Any person intending to apply for a license under this Act shall serve notice in writing of such intention on the owner, lessee, or occupier of any land on the banks or along the course of the rivers, streams, or creeks which

it is intended to use; and, if it is intended to use any navigable waters, such notice shall also be served on the Secretary of the Marine Department.

- (2.) The notice shall describe all such rivers, streams, and creeks specifically, or in as noticeable way as circumstances may permit, together with the situation of all existing dams thereon it is intended to continue in use, and shall, if it is intended to construct thereon any dam in any place where none previously existed, define accurately the position of every such dam, and shall be published twice in a newspaper circulating in the district.
- (3.) A notice may be duly served upon any person by causing such notice to be personally served upon such person, or by leaving the same at, or by forwarding the same by post addressed to, his usual or last known place of abode or business in this colony.

If any owner, lessee, or occupier of land is unknown, or cannot after due inquiry be found, or has no known agent in the colony, a notice posted on some conspicuous part of such land shall be a sufficient service.

- (4.) A copy of such notice, signed by the applicant or any one duly authorized to sign the same on his behalf, shall be lodged with the Commissioner aforesaid, who shall note thereon the date of the receipt of the same by him; and to such copy of the notice shall be annexed a copy of the newspaper containing the notice published as aforesaid, and a statutory declaration to the effect that all notices required to be served on owners or occupiers of lands have been duly served, and the Commissioner may require such other proof of the service of any such notice as he shall think fit.
- (5.) Any owner, lessee, or occupier of any land on the banks or along the course of the rivers, streams, or creeks which it is intended to use, and any person whose interests may be affected by the construction thereon of any new dam as aforesaid, may, within fourteen days after receiving service of any such notice, serve upon the Commissioner aforesaid a notice of objection to the issue of a license, or to the construction of any dam as applied for.
- (6.) If any objection made by any person appears to the Commissioner to be of a frivolous or vexatious nature, he may award such sum as he thinks fit as costs to be paid by the person making such objection to the applicant; and any such sum may be recovered in a summary manner in any Resident Magistrate's Court.
- (7.) The Commissioner shall be the sole judge as to the validity of any objection lodged with him, and may overrule any such objection or admit the same, and either refuse to grant the license or may issue a license in such modified terms as he thinks fit.
- (8.) In any case of doubt as to the propriety of granting or refusing any license, the Commissioner, before refusing

the license, shall, on the applicant's request, and payment of such sum as the Commissioner shall think sufficient for necessary expenses, appoint two such persons as he shall think experienced to view the locality wherein the license is intended to operate, or where any dam is proposed to be constructed, and to report to him as to the circumstances of the case.

- (9.) At any time after the expiration of fourteen days from the day of the receipt of such notice by the aforesaid Commissioner, if no objection or no sufficient objection be lodged, and no reason be known to the Commissioner why a license should not issue, the Commissioner shall, on receipt of a fee of five pounds for the same, submit the case to the aforesaid Land Board for its approval, and on obtaining the same shall issue to the person signing such notice a license under this Act.

Every license shall describe all rivers, streams, and creeks, and the situation of all existing dams thereon authorized to be used, and the position of every new dam authorized to be constructed under such license.

- (10.) Every such license shall be in force for a term of three years from the date of the granting thereof, and shall not be in force for any longer term unless the same shall after the expiration thereof be renewed from year to year by the Commissioner, who may, at his discretion, but subject to the approval of the Board aforesaid, grant such renewal, or absolutely refuse to grant the same. The fee to be paid in respect of each renewal shall be a sum of ten shillings.

Every license that is renewed shall date from the day of the expiration of the license in force immediately previous to the day of the grant of the renewal, and shall continue in force for twelve months from such day and no longer.

- (11.) If any license is allowed to lapse for a period exceeding two months without being renewed, such license shall not be renewed, but application must be made as hereinabove mentioned for the issue of a new license, for which a full fee of five pounds shall be paid.

- (12.) If any license is obtained by fraud or misrepresentation of any kind, such license shall be absolutely void.

4. Before issuing any license as aforesaid, the Commissioner shall require the licensee and two sufficient sureties to enter into a bond to Her Majesty, conditioned for the payment from time to time of the damages which may be recovered against such licensee under the provisions under this Act; and Her Majesty may sue upon or assign such bond.

5. Every license issued under this Act shall entitle the licensed owner of any logs, lumber, timber, firewood, posts, rails, or other wood, substances, or materials, either by himself or by his servants or workmen,—

- (1.) To raft, float, or drive the same, or to cause the same to be rafted, floated, or driven down and along the course

Licensee to enter into bond for payment of damages.

Power to float timber, &c., down rivers and tidal creeks.

of any river, stream, or tidal creek mentioned in his license, and to construct any dam at the respective places mentioned in his license.

- (2.) To enter upon any land and remove therefrom any logs, lumber, or other material above mentioned, which may have become deposited on such land by such rafting, floating, or driving, or through any overflow of the waters of any such river, stream, or tidal creek as aforesaid.

No such owner shall be deemed a trespasser by entry on any such land in virtue of the authority hereby granted, but he shall nevertheless be liable to pay for any injury, spoil, or damage done to such lands, or to any buildings or fences erected thereon by or through the removal of such logs, lumber, or other materials.

6. In the exercise of his license, the licensee and his servants or workmen shall not injuriously interfere with the ordinary navigation of any such river, stream, or tidal creek, and shall do, permit, or suffer, or cause to be done, permitted, or suffered, as little injury, spoil, or damage as possible to the lands on the banks or along the course of any such river, stream, or tidal creek.

Licensee to avoid doing damage.

7. The owner of the timber, or other wood, substances, or materials, rafted or otherwise floated or driven as aforesaid, shall be liable to pay to the owners and occupiers of any such lands compensation in damage for any actual injury, spoil, or damage which shall be done, permitted, or suffered in the exercise of any of the powers granted by this Act.

Compensation for damage.

8. The remedy of the owners and occupiers of lands on the banks or along the course of any such river, stream, or tidal creek for any injury, spoil, or damage which they or any of them may sustain by reason of the exercise of any of the powers granted by the license shall be in damages only, and shall not extend beyond the amount in value of injury, spoil, or damage actually proved to have been done, permitted, or suffered as aforesaid.

Limitation of right of damage.

9. Any claim for damages as aforesaid may be sued for and recovered in the nearest Resident Magistrate's Court, whether the amount of such claim do or do not exceed the ordinary jurisdiction of such Court.

Claims for damage to be decided in Resident Magistrate's Court.

10. For the purpose of deciding upon any such claim and making an award thereon, if desired by either party, two experienced persons shall sit with the Resident Magistrate as Assessors, and the said Assessors may, in any case, personally inspect the locality where any damage is said to have been done, to enable them to arrive at a just determination in the matter; and all expenses incident to such inspection shall be deemed to be costs in the case.

Magistrate may sit with Assessors.

One of the Assessors in each case shall be appointed by the claimant, and the other by the person against whom the claim is made, but on failure of either party in making any such appointment, the Resident Magistrate shall appoint a person as an Assessor to sit with him in the case.

The concurrence of one Assessor with the opinion of the Resident Magistrate shall be necessary to make a valid decision.

Concurrence of one Assessor necessary.

But in case no Assessors are required to be appointed to sit with

the Resident Magistrate, his sole decision in the case shall be valid and sufficient.

Awards of costs in compensation cases.

11. The Court shall fix and determine the amount of the costs of the inquiry, and shall include the same in their award, and shall direct by whom such costs shall be paid.

The Court may in any case declare that no costs shall be awarded, and the fact shall be stated in the award.

If costs are given in favour of either party, the payment thereof may be enforced in like manner as a judgment of the Resident Magistrate's Court.

Full damage to be paid for property destroyed.

12. Notwithstanding anything in this Act contained, or any license issued thereunder, the owner of any timber or other substances or materials, rafted, floated, driven, or otherwise carried down any river, stream, or tidal creek, shall be liable to pay the full cost of the repair or reconstruction of any bridge or other construction or erection whatever which may be damaged or destroyed by such rafting, floating, driving, or carrying down as aforesaid; and such cost may be recovered in any Court of competent jurisdiction.

Laying of booms in navigable waters deemed to be a harbour work not authorized by license.

13. The laying-down of booms in navigable waters for the security of timber or other substances or materials shall be deemed to be a harbour work within the meaning of "The Harbours Act, 1878;" and nothing in this Act, or in any license issued under this Act, shall authorize the laying of booms or the construction of any work whatever in any navigable or tidal waters except in conformity with the said Act.

- (1.) All the provisions of the Act last mentioned shall apply to the laying down of any such booms, and for this purpose the said Act shall be read where necessary as if the words "person" or "any person" had been inserted therein instead of the words "Harbour Board."
- (2.) The Governor in Council shall have power under "The Harbours Act, 1878," to authorize the laying down of booms in navigable waters by any Harbour Board, local body, or person, in the same manner as he is empowered to authorize the construction of harbour works by sections one hundred and fifty-four to one hundred and fifty-nine, both inclusive, of the said Act, subject to such conditions and to such preliminary notices to be given to all persons whose interests are likely to be affected thereby as he shall think fit.
- (3.) The Minister mentioned in the one hundred and fifty-ninth and one hundred and sixtieth sections of the Act last aforesaid shall have the same powers, authorities, duties, and privileges in respect of booms laid down in navigable waters by any person as are respectively granted to him by the aforesaid sections in respect of any harbour work constructed by a Harbour Board.
- (4.) Every holder of a license under this Act who under due authority shall have laid down booms in navigable waters shall forthwith, on the expiration of such license, and at his own cost, remove such booms; and, if he fail to do so, the same may be removed by authority of the Minister

aforesaid under the one hundred and sixtieth section of the Act aforesaid.

- (5.) Every person who is authorized to lay down booms for the purposes aforesaid shall be liable to pay compensation, in manner provided by section twelve of this Act, for any damage or destruction caused by the negligent construction or insufficient repair thereof, or by the breaking or carrying away thereof from any cause howsoever.

14. Nothing in this Act contained—

- (1.) Shall interfere with the rights of Her Majesty, the Governor, the Minister for Public Works, or other public authority having the power and duty of constructing public works within or along the boundaries of which any such river, stream, or tidal creek shall be situated, to construct any bridges or other public works which may be necessary for ordinary public purposes across or along the course of any such river, stream, or tidal creek; and, if the exercise of the power granted by any license issued under this Act shall injuriously affect or be otherwise inconsistent with the construction, maintenance, or necessary use of any such bridge or other public work, then such power shall absolutely cease and determine to all intents and purposes whatsoever; or

- (2.) Shall entitle the holder of any license under this Act to any claim against Her Majesty, or the public revenues of the colony, for compensation in respect of any loss or damage accruing to the licensee or any other person whomsoever by the grant or renewal of any such license, or by the refusal of any license or of any renewal thereof.

15. Any person who, without being the holder of a license under this Act,—

Shall raft, float, or drive, or cause to be rafted, floated, or driven, either by himself or his servants or workmen, any logs, lumber, timber, firewood, posts, rails, or other wood substances, or materials, down or along the course of any river, stream, or tidal creek; or, without special authority in that behalf in such license, shall construct thereon any dam in any place where none previously existed,

shall be liable to a penalty of not more than five pounds for every day on which he shall so raft, float, or drive, or cause to be rafted, floated, or driven, as aforesaid, or during which any such dam shall remain on any such river, stream, or tidal creek.

The provisions of this section are without prejudice to all the rights and remedies conferred by this Act upon the owners, lessees, and occupiers of lands on the banks or along the course of any such river, stream, or tidal creek as aforesaid.

16. "The Timber-Floating Act, 1873," and section seventy-two of "The Land Act 1877 Amendment Act, 1882," are hereby repealed, without prejudice however to any license issued under the said Act and in force at the commencement of this Act, and subject that all rivers, streams, or creeks notified under the said Act shall be deemed to have been notified under this Act.

Public works not to be interfered with. Licensee to have no redress against the Crown.

Penalty for floating timber, &c., or constructing new dams, without license.

Repeals.