

NEW ZEALAND.



ANNO VICESIMO TERTIO

VICTORIÆ REGINÆ.

No. .

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AN ACT to enable the Superintendent of the Province of Auckland, to raise Money by way of Debentures on security of the Harbour Endowments of the said Province. Title.

WHEREAS by an Act of the General Assembly of New Zealand, intituled "The Public Reserves Act, 1854," it was amongst other things provided that it should be lawful for the Governor of the said Colony, with the advice of his Executive Council, to grant any land reclaimed from the sea, and any land below high-water mark in any harbour, arm, or creek of the sea, or in any navigable river, or on the seacoast within the said Colony, either to the Superintendent of the Province and his successors in or to which such land might be situate or adjacent, or in such other manner to such other persons and upon such terms as should be thought fit, and for such purposes as should be specified in any such Grant, subject to the provisos thereafter contained: And it was further provided that for the purposes of the said Act, such Superintendent Preamble.

and his successors should be deemed and taken to be a Body Corporate : And it was further provided that no such lands to be granted as aforesaid to the Superintendent of any Province and his successors should be alienated by way of sale or mortgage, or by lease for any longer term than three years, except by the authority of some Act or Ordinance of the Provincial Council of such Province, to be passed in that behalf, nor except by deed signed by the Superintendent and sealed with the Public Seal of the Province : And whereas by deed of grant made in pursuance of the said recited power bearing date the twenty-third day of March, one thousand eight hundred and fifty-eight, the lands hereinafter described were granted to the Superintendent of the Province of Auckland and his successors, upon trust for the improvement of the Harbour of Auckland, and the construction and maintenance of such docks, piers, and other works therein as might be deemed advisable by the said Superintendent, for facilitating the trade and commerce of the City and Port of Auckland : And whereas by an Act of the Superintendent and Provincial Council of the said Province, intituled "The City and Harbour Endowments Act, 1858," power was given to the said Superintendent, by and with the advice and consent of the Executive Council of the said Province from time to time for the purposes therein mentioned, to alienate all or any of the said lands either by mortgage or lease for any term not exceeding twenty-one years : Provided that no portion of the said lands situated below high-water mark should be so alienated either by mortgage or lease until reclaimed from the sea : And whereas by an Act of the said Superintendent and Provincial Council, intituled "An Act to amend the City and Harbour Endowments Act, 1858," the said last recited proviso was repealed :

And whereas in the ninth Session of the Provincial Council of Auckland, an Act or Ordinance was passed by the Superintendent and Provincial Council of the said Province, whereby the Superintendent was authorized to raise from time to time in the manner thereafter prescribed, by the sale of Debentures, all such sums of money not exceeding in the whole £25,000, as should be required for the purpose of carrying on and completing public works and improvements within the Harbour of Auckland ; and it was further enacted that the sale of such Debentures by the said Superintendent should be effected by means of Public Tender, and not otherwise : Provided that it should not be lawful for the said Superintendent to sell any such Debentures for any sum of money that should be less in amount than the sum for which such Debenture should be issuable ; And whereas the said Act or Ordinance was disallowed by the Governor of the Colony ;

And whereas by an Act or Ordinance of the Superintendent and Provincial Council of Auckland, Session 11, No. 2, entitled the "Harbour Endowments Act, 1859," after reciting the several Deed and Acts hereinbefore recited it was amongst other things enacted as follows :—

The said recited Acts of the said Superintendent and Provincial Council were thereby repealed so far as they related to the said lands so granted to the said Superintendent by the said recited deed of Grant : And it was enacted that it should be lawful for the Superintendent from time to time, to offer for lease by public auction to the highest bidder, at an annual rental for any term not exceeding ninety nine years, all or any portion of the land mentioned and described in the Schedule B to the now reciting Act annexed, and to execute all necessary Deeds for demising and leasing every portion of the said lands so let as aforesaid to the purchaser thereof, his Executors, Administrators, and Assigns, for the term for which the same shall be so let : And that it should be lawful for the Superintendent from time to time, to offer for sale by public auction, the lease for any term not exceeding ninety-nine years, at a nominal rental of the whole of or any portions of the lands mentioned and described in Schedule A to the now reciting Act annexed, and upon payment of the premium of purchase money from time to time to execute all necessary deeds for demising and leasing every portion of the said lands so disposed of to the purchaser thereof, his Executors, Administrators, and Assigns, for the term for which the same should have been so let : Provided always, that no greater quantity than two acres of the land set forth in Schedule B to the said Act annexed,

nor any greater quantity than three acres of any other portion of the said land so granted as aforesaid should be disposed of under the now reciting clause in any one year: And that it should be lawful for the Superintendent from time to time, to borrow and take up at interest not exceeding the rate of eight pounds per centum per annum on the security of the whole or of a portion of the land so granted as aforesaid such sum or sums of money as he should from time to time think proper, and to mortgage by way of conveyance in fee or by way of demise for any term of years, such lands or any part or parts thereof respectively, as a security to any person or persons who should advance such sum or sums of money: And that copies of all Mortgages and Leases made under the said Act should be entered in Books to be kept for that purpose by the said Superintendent which Books might at all reasonable times be perused, inspected, and copied without fee or reward by any person whomsoever: And that all covenants and powers implied in a conveyance of land by way of mortgage by virtue of an Ordinance of the Governor and Legislative Council of the Colony of New Zealand Session 2 No. 10 intituled "An Ordinance to facilitate the Transfer of Real Property and to simplify the Law relating thereto" should be implied in any Mortgage made under the said Act and any notice or demand of payment required by the said Ordinance to be served on the mortgagor might be served on or left at the office of the said Superintendent: And that all monies received by the Superintendent by reason of the exercise by him of any of the powers contained in this Act should be applied in the first instance (after defraying all necessary expenses of raising the same) to refund to the General Revenue of the Province all monies due and owing or which might have been advanced from the said Revenue for or towards the improvement of the Harbour of Auckland and the construction and maintenance of any works therein for facilitating the trade and commerce of the City and Port of Auckland and the balance if any to the reclaiming of the said lands or some part thereof from the sea and subject thereto to the other purposes set forth in the said Grant thereof: And that it should not be lawful for the said Superintendent to raise under or by virtue of the now reciting Act by way of mortgage any greater sum than Twenty five Thousand Pounds: And that the power of leasing and mortgaging given by the said Act should be exercised by offering the land to be leased or mortgaged by public auction or tender and not otherwise. Provided always that it should not be necessary for any lessee or mortgagee to enquire whether any part of the said land had been so offered or to see to the application of any premium rent or mortgage money raised by virtue of the said Act.

And whereas the Schedules to the said last recited Act were as follows:—

SCHEDULE A.

All that portion of Section Number 2 of the City of Auckland in the parish of Waitemata in the County of Eden containing by admeasurement four acres and three roods (more or less) bounded on the North by Custom House-street one thousand one hundred and eighty links on the East South East and South by Fore-street two hundred and sixteen links six hundred and thirty-nine links and five hundred and fifty-three links and on the West by allotments Nos. 1 2 3 4 and 5 of the same Section No. 2 five hundred and ten links. Also all that piece or parcel of land in our said Colony situated below highwater mark in the Harbour of the Waitemata in the said Province of Auckland bounded on the West by a line from Acheron Point bearing North to its intersection with another line drawn between the Watchman and the Bastion. On the North by the last mentioned straight line drawn between the Watchman and Bastion to its intersection with another line bearing South to Resolution Point. On the East by the said line bearing South to Resolution Point and on the South from Resolution Point by the seaward boundary of Section Nos. 2 and 1 of the Suburbs of Auckland and by the seaward termination of all roads in the said Suburban Sections to the West of Resolution Point by the seaward boundaries of lot No. 1 of Section No. 31 of the City of Auckland; thence by the stream or water course to the strand in Mechanic's Bay by the seaward boundary of Sections Nos. 12 and 8 of the City of Auckland, and by the seaward terminations of the streets in the said Sections by the seaward boundary of the Ordnance ground known as Point Britomart by Custom House Street by the seaward boundary of Sections Nos. 18 25 20 and 19 in the City of Auckland and by the seaward terminations of all streets thereon by Drake Street by the seaward

boundary of a Government Reserve in Freeman's Bay thence crossing the mouth of the Western Creek in the said Bay by the seaward boundary of Section No. 8 of the Suburbs of Auckland to Acheron Point abovenamed.

SCHEDULE B.

All that portion of Section No. 2 of the City of Auckland in the Parish of Waitemata in the County of Eden containing by admeasurement four acres and three roods (more or less) bounded on the North by Custom House-street one thousand one hundred and eighty links on the East South East and South by Fore-street two hundred and sixteen links six hundred and thirty-nine links and five hundred and fifty-three links and on the West by allotments Nos. 1 2 3 4 and 5 of the same Section No. 2 five hundred and ten links.

And whereas the Superintendent of the Province of Auckland in order to raise money for the purposes specified in the said recited Ordinance of the Superintendent and Provincial Council, Session 11, No. 2, duly caused advertisements to be inserted in the *Provincial Government Gazette*, calling for Tenders for the sum of £15,000, to be raised upon Mortgage of the lands or Harbour Endowments described in the said Ordinance, pursuant to the provisions of the said Ordinance; and the Oriental Bank Corporation accordingly tendered at par for a Mortgage on the said Harbour Endowments for £15,000, with interest at the rate of eight per cent. per annum, which tender was accepted; and whereas by a Deed bearing date the 4th day of July, 1860, made between the Superintendent of the Province of Auckland of the one part, and the Oriental Bank Corporation of the other part; in consideration of the sum of £15,000 due and owing by the said Superintendent to the said Oriental Bank Corporation, the said Superintendent did

Whereas large sums of money have at various times been voted by the Provincial Legislature of the Province of Auckland, and advanced from the Provincial Treasury of the said Province for the purpose of carrying on works and making improvements in the Harbour of Auckland.

And of such sums £25,000 at least were specifically voted on the security of the Harbour Endowments granted to the Superintendent of the said Province, under the authority of the Public Reserves Act, 1854, and on the understanding that the amount should be repaid to the said Provincial Treasury.

And whereas the Provincial Government of the Province of Auckland is indebted to the Oriental Bank Corporation, and it is expedient that it should be enabled to repay the said sum so due to the said Bank without forcing a lease or sale of the said Harbour Endowments in exercise of the powers vested the said Superintendent in that behalf by an Act of the Provincial Council of the Province of Auckland, Sess. XI, No. 2.

And whereas the said Provincial Legislature in its [XII] Session passed an Act authorising the said Superintendent to raise a sum not exceeding £25,000 by the issue of Debentures to be a charge on the said Harbour Endowments, but which Act was disallowed.

And whereas money may be more advantageously raised by Debentures than by mortgage, but a doubt may exist on the construction of the "Public Reserves Act, 1854," as to the power of the Provincial Legislature to authorise the said Superintendent to raise a sum of money by the issue of Debentures, the payment of which is to be charged upon the Harbour Endowments and secured by the sale thereof.

Be it enacted by the General Assembly of New Zealand, as follows, that is to say:—

Superintendent may raise 25,000l. upon Debentures.

1. It shall be lawful for the Superintendent of the said Province to raise from time to time, in the manner hereinafter prescribed, by the sale of Debentures, ~~all such sums of money, not exceeding in the whole the sum of £25,000, as shall be necessary for the purpose of paying off the said sum of £15,000 so due to the Oriental Bank Corporation, and of repaying any moneys now due, or hereafter to be found due, to the General Revenue of the said Province, for or on account of such Works and Improvements as aforesaid.~~

By the Provincial Government of the Province of Auckland

Debentures to be sold by tender, and not to be sold at less than par,

2. The sale of such Debentures by the said Superintendent shall be effected by means of Public Tender, and not otherwise: Provided that it shall not be lawful for the said Superintendent to sell any such Debentures for any sum of money which shall be less than the sum for which such Debenture shall be issuable. *ed*



3. Every such Debenture shall be in the form contained in the Schedule to this Act, and shall bear the respective signatures of the said Superintendent and of the Treasurer of the said Province, and shall be numbered consecutively, and shall have interest coupons attached.

Form of Debenture, or to the like effect

4. No such sale shall take place unless public notice of such intended sale shall have been given ^{of debentures} ~~through the medium of the Provincial Government Gazette~~ ^{and} in two or more of the public newspapers thereof, or in case of such sale being made in London then in two or more of the public newspapers published in London, once in ~~successive weeks for at least one month previous to such sale.~~ ^{thence}

Notice to be given of sale.

5. ~~The Purchaser of every such Debenture shall pay the purchase money thereof into the Public Treasury of the said Province, and the Treasurer of the said Province shall at the same time write on such Debenture the day, month, and year of the purchase money thereof being so paid into the said Public Treasury.~~

Purchase money how payable.

4 6. No such Debenture so sold and purchased shall be ~~payable or~~ ^{made} redeemable until the first day of January 1876

Debentures when payable.

8 7. Every such Debenture so sold and purchased shall ~~from and after the day of the payment of the purchase money thereof, in manner aforesaid, bear interest after a rate to be therein fixed, and such interest shall be payable half-yearly on and after the first days of January and July in each and every year. Provided always that no such Debenture shall bear interest after a higher rate than eight per centum per annum.~~ ^{shall be at 100 and} ^{shall not exceed}

Interest how and at what rate payable.

9 8. The said Debentures shall be a first charge upon the said several allotments or parcels of land hereinbefore described, and it shall be lawful for the holder of any such Debenture in case the money advanced upon the same shall not be paid at the time fixed in the said Debenture for the payment thereof, or in case any interest due in respect thereof shall be in arrear for the space of six calendar months to ~~cause a written demand of payment thereof to be served on the Superintendent for the time being of the said Province by leaving the same at his usual office or at the office of the Provincial Treasurer for the Province of Auckland, and if default shall be made in payment of the said money for the space of one month from the service of such demand, then and at any time after the expiration of the said last-mentioned period, it shall be lawful for any such Debenture-holder to apply summarily by petition to the Supreme Court of New Zealand, praying a decree to the effect that the said lands or a sufficient part thereof may be sold and the moneys arising from such sale may be paid into the said Court to be administered for the benefit of all the holders of the said Debentures, and it shall be lawful for the said Court to make such order upon such petition as to the Court shall seem fit; and in particular to make such order for sale of the said lands or a sufficient part thereof to raise money for payment of all unpaid Debentures issued under this Act, and all costs and arrears of interest thereon, and such sale shall be altogether and in one lot or in parcels and several lots, and either by auction or private contract, and generally in such manner as to the Court shall seem fit, with liberty for the Court to order the same to be bought in and resold in like manner; and to direct the Registrar of the said Court or such other person as the Court may direct to convey the lands sold to the purchaser or purchasers thereof in fee-simple, or for such less estate as the Court shall direct, which conveyance shall be binding and conclusive on the said Superintendent and all other persons whomsoever, and to direct the payment of the purchase money of the lands sold into the said Court, (the receipt of the Registrar of the said Court being a sufficient discharge to the purchaser for the same), and out of the proceeds of the lands sold to direct payment of all costs and expenses attending the sale, or in any manner incident thereto, or to such proceedings as aforesaid; and also the costs of the petitioner in the matter of the petition, and all such other costs as the Court shall direct; and subject thereto to direct that the proceeds of such sale shall be carried to the account of a fund in the said Court, to be called "The Auckland~~

Debentures to be secured on the Harbour Endowments.

Comprised in the said deed of March of the 23 day of March 1858 — heretofore referred to and particularly described in the Schedule annexed to this Act.

Harbour Debenture Fund;" and from time to time to make such order upon petition as to the Court shall seem fit for payment out of the said fund to any holder of a Debenture issued under this Act of all money due on such Debenture for principal and interest; and of all costs incident to the petition, or incurred by reason of the non-payment of such money; and it shall be lawful for any holder of any such Debenture to apply summarily by petition to the said Court for payment out of the said Fund of the amount due on such Debenture, with interest and costs as aforesaid, and that without regard to the rights or interests of other persons interested in such monies; and the said Court may, upon application by petition of any party, make such order and decree in the premises for relief of such party, without regard to the rights and interests of other parties as to the Court shall seem fit; and generally may make such order as to it shall seem fit for securing and giving effect to the rights and interests of all parties interested in the said Debentures; and, after satisfaction of all monies due upon such Debentures and interest and costs as aforesaid, the Court shall, upon application of the Superintendent of the Province of Auckland, direct that the balance of the said fund shall be paid to the said Superintendent, to be applied for the purposes expressed in the said Act or ordinance, session 11, No. 2.

Power to Superintendent to grant leases.

See s. 102 hereinafter referred to
 10. ~~Provided that, notwithstanding the charge hereby authorized to be created on the said lands, nothing in this Act contained shall prevent the said Superintendent from exercising the powers vested in him by the said recited Acts or ordinances of granting by way of lease the said lands or any part thereof, without the concurrence of the Debenture holders, in like manner as if this Act had not been passed. But all sums of money received by the said Superintendent upon any such grant or lease, by way of purchase money, fine premium, or foregift, shall (till a fund be realized sufficient in the judgment of the Court to cover the outstanding Debenture Debt with interest and costs,) be paid into the Supreme Court to the credit of the said Fund, called "The Auckland Harbour Debenture Fund;" and all such monies shall be from time to time disposed of and invested, as the Court shall order and direct; and the same, and all investments thereof shall be held subject to the direction of the Court in the first place as a security to the Debenture holders for all money due or which may become due to them for principal, interest and costs respectively; and after satisfaction thereof, then the balance of the said fund, if any, shall be paid over to the said Superintendent for the purposes of the said Act or ordinance, Session 11, No. 2; and the said Court shall from time to time make such order in the premises as to it shall seem fit.~~

Power to pay money into Court in discharge of Debenture Debt.

to be issued
 11. If the said Superintendent of the said Province shall at any time be desirous of discharging the said lands from Liability in respect of the Debentures authorized by this Act, he may apply to the said Court for liberty to pay into Court to the credit of the said Fund, a sum sufficient in the judgment of the Court to satisfy all liability in respect of outstanding Debentures, Interest, and Costs, and of all incidental charges, and the Court shall if it shall so think fit, order such payment to be made accordingly and such payments may be made accordingly, (the receipt of the Registrar for the same being sufficient), and upon such payment being so made the said lands shall be discharged from the said Debentures, Interest, and Costs, and the said Fund shall be applied in the first place, towards satisfaction of the said Debentures, Interest, and Costs, on the days and times, and at the places appointed for payment thereof, and after payment of such Debentures, Interest, and Costs, any surplus of the said Fund shall be paid over to the said Superintendent to be applied for the purposes expressed in the said recited Act or Ordinance, Sess. 11, No. 2, and the said Court shall from time to time make such order in the premises as to it shall seem fit for effectuating the objects hereinbefore mentioned.

Debentures to be payable to bearer.

11. All such Debentures and Coupons shall be made payable to the bearer thereof, and shall pass by delivery only, and without any conveyance, assignment, or endorsement.

Place of payment.

from time to time
 12. The said Superintendent may make all such arrangements for the payment of any Debentures or Coupons at any office or banking establishment in London or elsewhere as to the said Superintendent may seem desirable.

~~13. The person for the time being entitled to any such Debenture may from time to time alter the place of payment of the principal or interest thereof to either Auckland, London, Sydney, or Melbourne, by giving at the office of the said Superintendent six calendar months previous notice in writing, terminating on a first day of January or a first day of July, of his wish to make such alteration; and a memorandum of such alteration shall be endorsed on the Debenture by the person receiving the notice at the time of such receipt.~~

Place of payment may be altered on notice.

~~12 14. The said Superintendent shall in each and every year ^{until payment} so long as any money shall be due and owing on account of any Debentures issued under authority of this Act invest on the security of Debentures issued by the General Government or upon security of real property within the Province of Auckland, a sum equal to two pounds per centum on the amount due at the time of investment ^{under authority of} upon the security of the Debentures issued under this Act for the purpose of forming a sinking fund to pay off the said Debentures, and the interest to accrue upon all moneys so invested shall from time to time be re-invested in the like manner for the like purpose.~~

Sinking Fund.

from the repurchase of any debentures issued under this Act

of money out of the annual income or proceeds from the lands comprised in the debt or part of the 23 day of March heretofore referred to.

~~13 15. All monies received by the Superintendent ^{under authority of} by reason of the exercise by him of any of the powers contained in this Act shall be applied in the first place (after defraying all necessary expenses of raising the same) to pay the said sum of £15,000 to the Oriental Bank Corporation, and, after payment thereof, to refund to the General Revenue of the Province all monies due and owing or which may have been advanced from the revenue of the said Province on account of the said Harbour Improvements, and the balance (if any) shall be applied for the purpose expressed in the said-recited Deed of Grant.~~

Application of monies raised.

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~~14 16. This Act shall come into operation on the first day of ensuing the passing hereof, and it shall be known and may be called by the short title of "The Harbour Debenture Act, 1860."~~

Commencement and Title.

SCHEDULE A.

All that portion of Section Number 2 of the City of Auckland in the parish of Waitemata in the County of Eden containing by admeasurement four acres and three roods (more or less) bounded on the North by Custom House-street one thousand one hundred and eighty links on the East South East and South by Fore-street two hundred and sixteen links six hundred and thirty-nine links and five hundred and fifty-three links and on the West by allotments Nos. 1 2 3 4 and 5 of the same Section No. 2 five hundred and ten links. Also all that piece or parcel of land in our said Colony situated below highwater mark in the Harbour of the Waitemata in the said Province of Auckland bounded on the West by a line from Acheron Point bearing North to its intersection with another line drawn between the Watchman and the Bastion. On the North by the last mentioned straight line drawn between the Watchman and Bastion to its intersection with another line bearing South to Resolution Point. On the East by the said line bearing South to Resolution Point and on the South from Resolution Point by the seaward boundary of Section Nos. 2 and 1 of the Suburbs of Auckland and by the seaward termination of all roads in the said Suburban Sections to the West of Resolution Point by the seaward boundaries of lot No. 1 of Section No. 31 of the City of Auckland, thence by the stream or water course to the strand in Mechanic's Bay by the seaward boundary of Sections Nos. 12 and 8 of the City of Auckland, and by the seaward terminations of the streets in the said Sections by the seaward boundary of the Ordnance ground known as Point Bittomait by Custom House Street by the seaward boundary of Sections Nos. 18 25 20 and 19 in the City of Auckland and by the seaward terminations of all streets thereon by Drake Street by the seaward boundary of a Government Reserve in Freeman's Bay thence crossing the mouth of the Western Creek in the said Bay by the seaward boundary of Section No. 8 of the Suburbs of Auckland to Acheron Point abovenamed.



All that portion of Section No. 2 of the City of Auckland in the Parish of Waitemata in the County of Eden containing by admeasurement four acres and three roods (more or less) bounded on the North by Custom House-street one thousand one hundred and eighty links on the East South East and South by Fore-street two hundred and sixteen links six hundred and thirty-nine links and five hundred and fifty-three links and on the West by allotments Nos. 1 2 3 4 and 5 of the same Section No. 2 five hundred and ten links.

for £100. interest on that date on Debenture No.

Superintendent of the Province of Auckland.