

*Mr. Murray.*

## Drainage.

### ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Adjoining lands may be entered.</li> <li>3. Plans, &amp;c., must be made.</li> <li>4. Notice to be given to adjoining owners.</li> <li>5. Application to be made to nearest Resident Magistrate's Court.</li> <li>6. Justices may issue summons.</li> <li>7. Service of summons on absentees.</li> <li>8. Justices to take evidence.</li> <li>9. Conditions under which Justices may make order.</li> <li>10. How Justices shall award costs.</li> </ol> | <ol style="list-style-type: none"> <li>11. Justices shall assess compensation, if any.</li> <li>12. Excess of value of improvements to be payable to applicant.</li> <li>13. Outfall drains and works to be cleaned and kept in order.</li> <li>14. Owner of adjoining lands may divert drains.</li> <li>15. Alterations of plans, &amp;c., by Justices not to invalidate transactions or securities.</li> <li>16. All moneys, &amp;c., recoverable summarily.</li> <li>17. Owners may elect to pay interest on principal sum adjudged to be paid. Recovery of interest.</li> </ol> |
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### A BILL INTITULED

AN ACT *relating to the Drainage of Lands by Private Owners.* Title.

*Struck out.*

AN ACT to authorize the advance of Public Money, to a limited amount, to promote the Improvement of Land in New Zealand by Works of Drainage.

**W**HEREAS the productiveness and value of much of the land in New Zealand are capable of being greatly increased by drainage, and the extension of the operation of drainage is calculated to promote the employment and effectiveness of agricultural labour: And whereas it is expedient to facilitate works of drainage, by advances of public money to a limited amount, on the security of the land to be improved:

Preamble.

**B**E 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 Drainage Act, 1880."

Short Title.

Appointment of Commissioners.

2. Subject to confirmation by resolution of either House of Assembly, the Governor shall appoint two Commissioners to carry out the purposes of this Act, who shall be paid such salaries as may be voted by Parliament, and such Commissioners may be suspended from their functions by the Governor, but can only be dismissed by resolution of either House.

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Interpretation.

3. "Owner" shall mean any person who is registered as owner of the land under "The Land Transfer Act, 1870," and any Acts amending the same, and any trustee or attorney acting for such owner in that behalf.

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Where the word "Commissioners" occurs it shall mean one or more Commissioners appointed under this Act.

Governor may make regulations. Appointment and removal of officers.

4. The Commissioners may by consent of the Governor, and under regulations made by him in Council, appoint persons as Assistant Commissioners and surveyors respectively for the purposes of this Act, and may from time to time remove any such Assistant Commissioners and surveyors; and the allowances and travelling expenses of such Assistant Commissioners and surveyors shall be regulated and paid in manner provided by the Governor in Council, and out of moneys to be appropriated by Parliament.

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Commissioners may take evidence.

5. For the purposes of this Act the Commissioners may summon witnesses and examine them on oath, and may receive voluntary evidence and declarations.

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False evidence punishable.

6. Every person upon examination on oath or affirmation before the said Commissioners respectively, or any officer by them appointed as aforesaid, who shall wilfully and corruptly give false evidence, or shall in such affirmation, declaration, or deposition wilfully or corruptly swear, affirm, or allege any matter or thing which shall be false or untrue, shall be subject to the pains and penalties of persons convicted of wilful and corrupt perjury by any law in force for the time being.

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Commissioners may make advances.

7. It shall be lawful for the said Commissioners, upon application to them under this Act, and subject to such rules and regulations as may from time to time be made under it by the Governor in Council, to make loans under this Act for the following purposes (that is to say) for the drainage of any lands by any such means as the said Commissioners shall approve, or for improving the drains, streams, or watercourses of any land; but no loan under this Act shall be made until the application has been submitted to and sanctioned by the Commissioners of Audit, and shall be in manner hereinafter prescribed.

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Form of application defined in Schedule A.

8. Any owner of land within the meaning of this Act who may propose to improve the same under the provisions of this Act, may apply to the said Commissioners by memorial for a loan, and such memorial shall be in the form in Schedule A. to this Act annexed, or as near thereto as in the opinion of the said Commissioners the circumstances of the case will admit, and shall contain the names and the descriptive particulars of the lands proposed to be charged and on which any such improvements as aforesaid are proposed to be made, the estate or interest which such applicant may have in such lands, the amount of rates, burdens, and mortgages chargeable on such lands, the estimated cost of effecting such improvements, the estimated annual value of such lands, and the estimated increase in the annual value expected to arise to such lands from such improvements; and every such memorial shall be accompanied by a plan of such lands, as well as by an estimate and specification in detail of the proposed works,

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Specifications, plans, &c., to be sent to Commissioners.

together with such plans and particulars (if any) as the said Commissioners by any rules or regulations to be made by them from time to time may require.

5 Provided that no advances shall be made under this Act unless upon such application shall be written the assent thereto of any mortgagee of such lands.

Mortgagee's consent requisite.

10 9. The applicant shall pay to the Commissioners such sum as shall be required by them to cover costs of any preliminary investigations to verify the accuracy of the statements made in such application.

Costs of preliminary investigation to be paid by applicant.

15 10. In case any advance under this Act shall be made on the security of the lands the subject of such application as aforesaid, the costs and expenses of the investigation by the said Commissioners may, in their option, upon the application of the party liable to pay the same, be included in the sum in respect of which a rent-charge shall be charged on such lands under the provisions of this Act.

Expenses of investigation, if any, how to be paid.

20 11. The said Commissioners, if they shall think fit, shall cause the land, and the plans, estimates, and specifications of the works proposed in any application to be inspected and examined by a competent person, who shall report his opinion thereon, and also whether the proposed or any other works will effect immediately or prospectively an improvement in the annual value of the land to an amount exceeding the utmost annual amount to be charged thereon under this Act in respect of the advance applied for, or the sum necessary to be expended; and he shall annex to such report either the plan, specification, or estimate for effecting and carrying out the works in a substantial and durable manner; and the said Commissioners may make such further and other inquiries in relation to any application as they may think fit, and may alter or modify any such plans, specifications, and estimates in such manner as they may think fit: Provided always that no charge, security, or proceeding under this Act shall be impeached or questioned, at law or in equity, by reason that the annual value of any lands may not actually be improved by the works effected.

Commissioners may cause land, plans, &c., to be reported upon.

35 12. The Commissioners shall cause to be published in the *New Zealand Gazette*, in the first week of January in each year, a statement showing the class, nature, and description of works for the execution of which applications will be received by them under this Act, and also copies of all regulations in force under this Act.

Definition of works and regulations to be published.

40 13. For the purposes of this Act it shall be lawful for the said Commissioners, by themselves or by their officers, workmen, or persons appointed by them, to enter upon any lands with respect to which any works shall be executed, or shall be proposed to be executed, under this Act, or any lands adjoining thereto, and to dig or bore therein, and to take levels and surveys, and also to examine any river, sluice, or floodgate erected in or upon any river or stream, and to open or raise, or shut or close, and to keep open or raised, shut or closed, for a reasonable time, any such floodgate or sluice for the purposes of any such inquiry; and any compensation for damage done thereby shall, if not previously agreed upon, be determined and charged by two Justices as in manner provided by this Act with regard to outfall drains.

Lands may be entered upon.

50 14. When the Commissioners shall be satisfied by the report of an Assistant Commissioner, surveyor, or agent, or otherwise, that the works described and defined in any such application have been executed according to the terms and conditions of such application, or that such part thereof as, under the terms of such certified application, would authorize an advance on account has been so executed, and shall be satisfied by such report or otherwise that such expense has been

Works constructed to be inspected.

actually and reasonably incurred as will justify the advance according to the terms of such certified application, the Commissioners shall forward certified copies of such reports and of such certified application to the Commissioners of Audit, and shall specify the land upon which such advance is to be made, and shall declare under their seal that the works mentioned in such application have been duly and faithfully executed, and that all the conditions required by this Act have been complied with, and that the whole or part of such expenditure mentioned in such report has been actually and reasonably incurred; then, upon order of such Commissioners, the Commissioners of Audit shall authorize the Colonial Treasurer, from any moneys voted and set apart by Parliament for the purposes of this Act, and placed to a special account to be called the "Drainage Advances and Repayment Account," to pay to the applicant the amount of such expenditure which has been so certified to by the Commissioners.

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Advances on account may be made.

A rent-charge of £810s. for every £100 advanced payable to Treasury for twenty-two years to be charged upon lands improved.

Rent-charge may be recovered.

Rent-charge to have priority.

Trust-funds may be invested.

If owner desires, rent-charge may be apportioned.

15. Upon the issue as aforesaid of any advance by virtue of such Commissioner's order under this Act, the land mentioned in such certified application shall be charged with the payment to the Treasury, to the credit of the said Drainage Advances and Repayment Account, in respect of such advance of a rent-charge after the rate of eight pounds ten shillings rent-charge for every one hundred pounds of such advance, and so in proportion for any lesser amount, and to be payable in twenty-two years, to be computed from the sixth day of April or sixth day of October which shall next happen after the issue of such advance; such rent-charge to be paid by equal half-yearly payments on the sixth day of April and the sixth day of October in every year, the first of such payments to be made on the second of such days which shall happen next after the issue of such advance in respect of which the rent-charge shall be charged.

16. Every rent-charge which shall become charged on land by virtue of this Act shall be recoverable by the said Commissioners, as and by the same means and in like manner provided in "The Land Transfer Act, 1870;" and the amount of such arrears of rent-charge when recovered, together with arrears of interest thereon at the rate of per centum per annum, shall be paid by the said Commissioners to the credit at the Treasury of the said account.

17. Every rent-charge under this Act shall be registered under "The Land Transfer Act, 1870," and amendments of the same, and shall have priority over all other burdens, debts, charges, or incumbrances whatever.

18. The rent-charge by virtue of this Act to be charged upon land shall not be deemed such an incumbrance as shall preclude a trustee of money held in trust to be invested in the purchase of land or to be invested on mortgage of such lands so charged, unless the terms of such trust shall expressly provide that the land to be so purchased or taken in mortgage shall not be subject to any rent-charge under this Act.

19. If it shall be made to appear to the Commissioners that the land charged with any rent-charge under this Act shall have become the property of separate owners, or that the owner thereof is entitled thereto under separate titles, or for distinct and separate interests, or is desirous to sell or dispose of a part or parts of such land, or that for any other reason it will be desirable that such rent-charge should be apportioned, it shall be lawful for the Commissioners, with the consent and approval of the Commissioners of Audit, and with the consent of the owners of the land charged with such rent-charge, by order under the seal of the Commissioners, to apportion such rent-charge, so that a separate and distinct rent-charge may become charged on the land of each owner, or on the land held under each separate title, or for each distinct and

separate interest, or on the part or on each part which the owner is desirous to sell or dispose of and the part intended to be retained by him, or on other separate parts of the said lands, but so that no rent-charge charged under such apportionment shall be less than *twenty* shillings; and the Commissioners shall transmit every such order of apportionment to the Colonial Treasurer, who shall cause the rent-charges charged by such apportionment to be collected instead of the original rent-charge charged on the land to which such apportionment shall relate, and as if the same were separate rent-charges originally charged under this Act.

20. Subject to regulations as hereinafter mentioned, any owner of land charged with such rent-charge shall be at liberty, at any time before the expiration of *twenty* years after the commencement thereof, to redeem such rent-charge, or any part thereof, not being less than *ten* pounds annual charge, on payment to the Treasury to the credit of the said Drainage Advances and Repayment Account; and the Commissioners of Audit, by and with the consent and approval of the Governor, shall cause tables to be framed, showing the rate at which the said rent-charges may be so redeemed in the several years during which the same are made redeemable, and may make regulations limiting the times of the year in which they may be redeemed.

21. No bond or other security given to the Commissioners under this Act, and no certificate or other instrument made under this Act, shall be chargeable with any stamp duty.

22. The Commissioners shall keep true and accurate accounts of all transactions by them under this Act, and such accounts shall be audited by the twice at least in each year.

23. The Commissioners shall cause to be made up for examination and audit an annual document, certified by them in detail, of the amounts for which orders have been issued by them under this Act, and also the amounts of rent-charge repaid, and a record of all transactions made by them under this Act, and shall deliver the same to the Commissioners of Audit, to be by them inquired into and audited, and such documents shall be deemed to be public accounts.

24. No advance shall be made under this Act for a less sum than *one hundred* pounds, nor to a greater amount than *five thousand* pounds, to any one owner.

25. No advance shall be made under this Act upon any land that is not registered under "The Land Transfer Act, 1870," or amendments of the same.

26. No advance shall be made under this Act to a greater amount than of the value thereof, exclusive of buildings and fences.

27. On the expiration, redemption, or discharge of any rent-charge, and on payment of all arrears thereof, and of all costs, charges, and expenses (if any) incurred in any proceedings to recover the same, or for any sale under this Act in relation thereto, the said Commissioners shall execute and cause to be registered as in manner provided by "The Land Transfer Act, 1870," and any Acts amending the same, a release of the lands so charged with such rent-charge.

Rent-charges redeemable.

Exemption from stamp duties.

Accounts to be kept and audited.

Yearly statement of accounts, &c., to be made and audited.

To be deemed public accounts.

Advances not to be less than £100 nor more than £5,000 to one owner.

Advances only under "Land Transfer Act, 1870."

Advances not to exceed half net value of land.

Releases may be granted.

#### AS TO OUTFALL DRAINS.

28. 2. Any person (hereinafter called the "applicant") having an interest in lands which require to be drained but have no communi-

Adjoining lands may be entered.

cation readily available with any stream, watercourse, or drain, except through lands belonging to other owner or owners (hereinafter called "adjoining lands"), may drain his land through such adjoining lands subject to the following conditions, if he shall fail to arrange privately with the owners of such adjoining lands.

Plans, &c., must be made.

29. 3. He shall cause a description to be prepared of any proposed new work or drain, or of any alteration in any existing work or drain, ~~not being a public drain under "The Public Works Act, 1876,"~~ which he desires to make upon such adjoining land, together with a plan showing the course, dimensions, and levels of such drainage works, *and shall append a statement of the time at which he proposes to commence the works and to complete the same.*

Notice to be given to adjoining owners.

30. 4. He shall give notice in writing to the owner, and, where the owner is not the occupier, also to the occupier of such adjoining lands, that he desires such drainage works to be made, and shall append to such notice a copy of the description and plan above-mentioned.

Application to be made to nearest Resident Magistrate's Court.

31. 5. After giving such notice, he shall make an application in writing to the nearest Resident Magistrate's Court for an order to make such drainage works, and shall append to such application the description and plan aforesaid, and he shall state in such notice the names and addresses of the owners and occupiers of such adjoining lands, and of all persons whom he believes to have any interest therein, *or in any existing drain or work which may be affected thereby.*

Justices may issue summons.

32. 6. Upon the receipt of such application, any Justice may issue a summons requiring applicant and the owner and occupier of such adjoining lands, and all persons so stated to have any interest therein, to appear before two Justices of the Peace (not being personally interested) at a time and place named in such summons, being not less than *thirty* days after the issue thereof.

Service of summons on absentees.

33. 7. If such owner or occupier or person interested be absent from the colony, it shall be sufficient to serve such summons upon the agent or attorney, if any, of such owner, occupier, or persons interested, or to advertise such summons once weekly for four successive weeks in some newspaper circulating in the district.

Justices to take evidence.

34. 8. The said Justices, having before them the parties so summoned, or, in their absence, upon proof of the service of summons, shall make full inquiry into the case, and hear all such evidence as any of the parties or the Justices may require.

Conditions under which Justices may make order.

35. 9. Before making any order the Justices shall satisfy themselves,—

- (a.) That the proposed drainage works are necessary for the drainage of applicant's land;
- (b.) That such land may be drained in the manner proposed with the least possible injury or inconvenience to any adjoining lands;
- (c.) That no injury will be done thereby to any parties for which compensation may not be made in money;
- (d.) *That due notice has been given to all interested parties, including mortgagees; and*

*The Justices shall require the applicant to enter into a bond with sufficient sureties that he will carry on to completion the proposed works within a reasonable time.*

How Justices shall award costs.

36. 10. The Justices shall award the amount of costs of such application and assessment, and by whom and to whom such costs, if any, shall be paid.

Justices shall assess compensation, if any.

37. 11. The Justices shall assess the compensation to be paid by the applicant to all persons having an interest in such adjoining lands for any damage caused by such outfall and drainage works ~~and this, together with any costs awarded against the applicant under this and~~

~~the preceding section, shall be added to the amount upon which the Commissioners shall charge rent charge against the land of such applicant under this Act: Provided that,~~

12. If it shall appear to such ~~the~~ Justices that the value of the improvement to such adjoining lands shall exceed the amount of such damage thereto, such Justices shall apportion the amount of the value of such improvement over such damage to be paid by the persons interested in the adjoining lands.

Excess of value of improvements to be payable to Applicant.

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10 and unless the amount of such excess shall be paid within *thirty* days from the time it shall be demanded by the Commissioners, it shall be charged against such lands, and shall be repayable by a rent-charge in the manner provided by this Act.

13. The cost of cleaning and maintaining in good order and repair any such outfall drains and works shall be borne in such proportion as, failing such private arrangement, the Justices shall determine, and shall be recoverable in a summary way by the party performing or willing to perform ~~who has completed such work~~ from the party refusing, failing, or neglecting to perform his part of such cleaning, maintenance, and keeping such works in good order and repair; and for such purpose the owner may enter upon any adjoining lands after *forty-eight* hours' notice given by him to the owner or occupier of the adjoining lands.

Outfall drains and works to be cleaned and kept in order.

14. The owner for the time being of the adjoining lands may, ~~subject to an order being first obtained from the Justices, or the consent in writing of all parties interested in the maintenance of the drainage work,~~ divert or alter any of the said drainage works, upon condition that such works shall be equally efficient as before such alteration; and any dispute as to the efficiency of the drains so altered shall be decided by any two Justices in cases where the consideration involved shall be under one hundred pounds in value; but, where the interests involved shall exceed that amount, any dispute as to such diversion or alteration shall be decided by the Judge of the District Court and two Justices, who shall have power to award costs, and order how and in what manner such alteration or diversion shall be made, or shall order that the works shall not be altered or diverted.

Owner of adjoining lands may divert drains.

GENERAL PROVISIONS.

15. Where any works have been commenced or shall be carried on under this Act according to any plan, specification, or estimate originally approved by the Commissioners ~~Justices,~~ and it shall appear to the said Commissioners ~~from Justices that~~ by any alteration of circumstances, or otherwise, that such plans, specifications, or estimates may be improved by modification or alteration, such modification or alteration shall not invalidate any ~~transaction made or security act, matter, or thing, made, done, or given~~ under this Act.

Alterations of plans, &c., by Justices not to invalidate transactions or securities.

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41. It shall be lawful for the public convenience for the Colonial Treasurer to open subsidiary Drainage Advances and Repayment Accounts, at the bankers of the Colonial Government in various parts of New Zealand, from which advances may be made, and into which rent-charge payments may be paid under this Act.

*New Clauses.*

16. All costs and other moneys payable under this Act, not exceeding *one* hundred pounds, shall be recoverable in a summary way at any time after the same have remained unpaid for *thirty* days, and when exceeding the aforesaid amount shall be recoverable in any Court of competent jurisdiction.

All moneys, &c., recovered summarily.

Owners may elect to pay interest on principal sum adjudged to be paid.

17. Whenever an order is made under this Act, awarding or adjudging a gross sum to be paid by any person, it shall be at the option of such person, upon giving security to the satisfaction of the Justices in lieu of paying the said sum at once, to pay interest thereon at the rate of *nine* per centum per annum during such time not exceeding *five* years as the Justices shall determine. 5

Recovery of interest.

Provided that the payment of such interest shall not acquit the person paying the same from his liability to pay the gross sum awarded at the time so determined by the Justices: And provided also that the person entitled to receive any such interest shall have the same 10 remedy for the recovery thereof as he would have for any gross sum adjudged to be paid to him.

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SCHEDULE.

SCHEDULE A.

FORM OF APPLICATION UNDER "THE DRAINAGE ACT, 1880."

To the Commissioner appointed under "The Drainage Act, 1880."

The Memorial of the undersigned showeth,—

THAT your memorialist is [or are] within the meaning of this Act owner of the land mentioned in the Schedule hereto annexed.

That your memorialist propose to increase the value of the said lands by [*Here state proposed works*], as stated in the annexed proposals, report, plan, estimate, and specification, which your memorialist pray may be respectively considered as part of this memorial.

That he [or she or they] is [or are] desirous of obtaining a loan for that purpose, to be secured by a rent-charge on the lands mentioned in the said Schedule under the provisions of the above mentioned Act.

That the present annual value of such lands is the sum of £ , and the rates and public taxes thereon amount to £ . That the amount of mortgage or other burdens amount to £ , and the yearly charge on that account amount to £

That the cost and time of completing the proposed works is as stated in the annexed proposals.

That your memorialist further state and specifies that his [her or their] estate and interest in the said lands and premises is [or are] as follows:—[*State mortgages, rent-charges, titles, and any burdens and disabilities whatever*].

That your memorialist applies and asks for the advance of the sum of £ by way of loan under the provisions of the said Act, for defraying the expense of the proposed works, with such alterations and modifications as the Commissioners may approve.

Witness :

(Signature of owner.)

I [or we] being mortgagee of £ secured upon the lands referred to in the above application, and described in the Schedule appended hereto, do hereby assent to the above application, subject to and in accordance with the provisions of the said Act.

Witness to signature of Mortgagee :

(Signatures.)

SCHEDULE.

[*Here describe the lands referred to above.*]