



ANNO QUARTO

VICTORIÆ REGINÆ,

No. 4.

Am. by. 29th No. 201

*24. V. No. 17
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By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT for enabling the Government to secure a Supply of Pure Water for the Town of New Norfolk.

WHEREAS in order to ensure a supply of Pure Water for the use of the Inhabitants of New Norfolk a Watercourse has been constructed at the Public expense by means of which Water is obtained from the Lachlan Rivulet and is carried thence through the land of sundry private individuals to a Tank or Reservoir in the said Township— PREAMBLE.

AND WHEREAS also Pipes or Conduits for conducting the Water from the said Reservoir have been laid down in several Streets of the said Township for the greater Public convenience in obtaining Water—

AND WHEREAS it may be expedient hereafter to construct other Watercourses for the purpose of obtaining a supply of Water from the

said Rivulet and it is necessary that all nuisances and obstructions therein or in or to any part of the said Rivulet from which the major part of the Inhabitants of the Town obtain their only supply of Water should be prevented and that the said several Watercourses should be effectually preserved from injury—

AND WHEREAS it is just that individuals whose lands may have been or may hereafter be trespassed upon by the formation or repair of any such Watercourse or whose private rights or interests may have been or may hereafter be in any other manner affected by any thing done under the authority of this Act should receive a fair and reasonable Compensation for the injury (if any) thereby sustained by them—

The property of Watercourses &c. vested in the Crown.

BE IT THEREFORE ENACTED by His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that the said Watercourse now made and all such Branches thereof as are now or at any future time may be made under the authority of the Lieutenant-Governor for the time being by means of Pipes or other Conduits for conveying Water from the said Lachlan Rivulet into the said Town or through any Street or other part thereof for the supply of the Inhabitants with Water and all such new and other Watercourses and Pipes or Conduits therefrom as shall at any future time be made or constructed for any of the purposes aforesaid and all Reservoirs Basins Wells Tanks Pumps Cocks and other things lawfully used for retaining Water in or conducting or distributing Water from the same Watercourse or Watercourses or either of them— AND also (subject nevertheless to all private rights or interests if any to or in the same) all Springs and Streams of Water forming the sources of supply of any such Watercourse and especially the Water of and in the said Rivulet together with the soil and bed thereof and the right of ingress and egress to and from the same for the purpose of inspecting and cleansing the same and repairing and making good the banks thereof shall be and the same are hereby declared to be respectively vested in Her Majesty Her Heirs and Successors for the use of the Public for ever.

Power to enter on Lands for the purpose of making or repairing Watercourses.

II. AND BE IT ENACTED that after twenty-four hours' previous notice for that purpose given to the occupier or party in actual possession it shall be lawful for the Town Surveyor for the time being and every or any person or persons acting in his aid or under his direction for any of the purposes of this Act to enter at all reasonable times in the day-time into and upon any lands or tenements through under or upon which the said present Watercourse or any such new Watercourses is or may be constructed or shall be proposed for construction or any Conduit Branch or Pipe or Trough Reservoir Basin or Tank of or belonging thereto is or shall be proposed to be made dug or laid whether for conducting Water from or supplying Water to the same and with horses bullocks workmen carts and implements there to dig cut trench sink or bore into the ground and clear and remove the soil subverted and to place and lay any metal wood bricks or other materials and things in upon or beneath the said lands or tenements as it may be needful or proper to do in the progress of the work for the purposes of

any such construction or for inspecting maintaining repairing or amending the said Watercourses or any part thereof or making digging laying or amending any such Conduit Branch Pipe Trough Reservoir Basin or Tank as aforesaid or for supplying any such Watercourse or keeping the same supplied with Pure Water from any Rivulet or other Stream or any Springs or other Sources near thereto respectively—AND for all or either of the purposes aforesaid to do or cause to be done in and upon the said lands and tenements all such acts and things as may be needful or proper to be done such Town Surveyor and his assistants and workmen nevertheless doing no unnecessary damage and being guilty of no vexatious delay on those occasions—AND he and they and also all and every other persons and person concerned in the construction or repair of any such Watercourse shall be and they are severally hereby discharged from and indemnified against all actions whatsoever for or by reason of any such act or thing as aforesaid or any other act or thing by him or any of them done or occasioned for any of the purposes aforesaid whether before the passing of this Act or otherwise.

III. PROVIDED ALWAYS AND BE IT ENACTED that if any part of any such Watercourse now made or constructed or hereafter made or constructed or any branch thereof hath been or shall hereafter be constructed upon or conducted through or shall have been or shall be without the consent of the Owner or Owners supplied with Water from or through any lands belonging to any person or persons who hath suffered or shall suffer any actual loss or damage in or to such property or otherwise by reason of any such act as aforesaid or if the property or private rights or interests of any other nature of any person or persons whatsoever now actually and lawfully vested in such person or persons shall have been or shall be prejudicially affected by any other act or thing done under the authority of this Act then upon complaint in writing by or on behalf of any such Owner or person or his assignee for the time being setting forth that he hath suffered actual loss and damage from or by any such act or thing as aforesaid and specifying not only the particular act complained of but the nature and amount of the loss or damage alleged to be thereby occasioned it shall be lawful for the Lieutenant-Governor to nominate and appoint one or more person or persons to be Assessor or Assessors and for the party so complaining to nominate and appoint a like number of persons as an Assessor or Assessors on his behalf and the said Assessors shall before proceeding to assess the amount of such loss or damage as hereinafter mentioned nominate by writing under their hands one other person as their Umpire to act together with them.

Proviso for indemnity.

IV. AND BE IT ENACTED that the said Assessors and Umpire being first sworn before one of the Judges of the Supreme Court well and truly to enquire into the fact of such actual loss and damage and thereupon to assess the amount thereof if any shall appear to them to have been in fact sustained it shall be lawful for them or the major part of them to proceed to enquire into and hear and determine upon oath (which oath any Justice of the Peace is hereby authorised to administer) the matters of the said complaint and to assess the amount of any such actual loss or damage sustained by the party so complaining and thereupon to certify under their hands their determination upon the premises—AND upon such certificate it shall be lawful for the Lieutenant-Governor

Mode of proceeding.

by Warrant under his hand to direct the amount of the loss or damage so assessed to be paid to the party complaining by the Colonial Treasurer—PROVIDED that no claim for Compensation under this Act shall be received or admissible in respect of any act heretofore done or any injury alleged to be thereby occasioned unless the same claim be preferred within three calendar months after the passing of this Act nor any claim be received or admissible in respect of any act or injury hereafter done or occasioned unless the same be preferred within three calendar months next after such act shall have been committed—AND PROVIDED ALSO that nothing in this Section shall extend to prevent the award of any such Assessors and Umpire from liability to be impeached or set aside for error in any matter of law or for any cause which in any ordinary case would be sufficient for that purpose.

Obstructing Surveyor or workmen.

V. AND BE IT ENACTED that if any person shall obstruct or endeavour or attempt to obstruct in any manner any such Town Surveyor or any servant or other person acting in his aid or under his direction in the doing or performing of any act or thing whatever which such Town Surveyor servant or other person is authorised to do or perform under or by virtue of the provisions of this Act he or she shall upon conviction forfeit and pay for every such offence a penalty not exceeding Fifty Pounds.

Injuring Water-courses or pipes or rendering water unwholesome.

VI. AND BE IT ENACTED that if any person shall after the publication of this Act destroy or injure any such Watercourse as aforesaid now or hereafter constructed or whilst being constructed or any Branch thereof or Pipe Trench Conduit Trough Pump Well Tank or Cistern or other thing used in the conducting or distributing or receiving Water from any such Watercourse or any Branch thereof or shall in any manner without the permission of the Town Surveyor in that behalf wilfully prevent the flow of Water to or divert the Water of any Spring or Stream of Water from any such Watercourse or shall cause or knowingly suffer any filth stones soil or rubbish or any noxious offensive or unwholesome thing or matter to be cast or to flow into any such Watercourse or Pipe Trench Conduit Trough Pump Well Tank or Cistern or any part thereof respectively or (except only at such particular times and places as the Town Surveyor may prescribe) into the said Lachlan Rivulet or any part thereof or shall otherwise injure or obstruct the passage of the Water in a pure and wholesome state through the same Watercourses or other Channels as aforesaid or either of them every person so offending shall upon conviction forfeit and pay for every such offence a penalty not exceeding Fifty Pounds—AND if any person shall unlawfully and maliciously break destroy or injure any part of any Watercourse or any of the Main Branches thereof or any such Public Reservoir Basin or Tank used for retaining Water from any such Watercourse or wilfully and maliciously do any act calculated to render the Water therein unwholesome or offensive every such person so offending shall be deemed guilty of a misdemeanor and being convicted thereof shall at the discretion of the Court be liable to fine and imprisonment as in other cases of misdemeanor or to be imprisoned and kept to hard labour for any term not exceeding six months.

Appropriating Water from

VII. AND BE IT ENACTED that it shall be lawful for the Town Surveyor assisted by two other officers or persons to be in that behalf

Referred to 24th Nov. 1857

nominated by the Lieutenant-Governor from time to time to grant permission to private individuals in consideration of such yearly or other sum of money and on such other terms and conditions in that behalf as shall be deemed reasonable to place or lay and have the use of any Branch Pipe or Pipes leading from any such Watercourse or Reservoir as aforesaid and to obtain a reasonable supply of Water therefrom—AND if any person having obtained any such permission shall neglect or knowingly omit to comply with any or either of the terms or conditions subject to which such permission was granted or shall after the First day of October next without having duly obtained such permission place or lay any such Branch Pipe or use or continue to use any now existing Branch Pipe without obtaining such permission or otherwise without such permission appropriate or endeavour to appropriate to his or her use any Water or divert or abstract any Water from any such Watercourse or any of the aforesaid Branches Conduits Reservoirs Basins Tanks or Pipes belonging to the same or either of them (save and except from some Public or common Pump Pipe Cistern or place expressly made or set apart for general and Public use) he or she shall forfeit and pay a penalty not exceeding Fifty Pounds—AND it shall be lawful for the said Town Surveyor after conviction of any party of having unlawfully placed laid or used any Branch Pipe to cause such Pipe or any Conduit whatsoever unlawfully formed or laid for the purpose of appropriating Water from any Watercourse without such permission as aforesaid to be filled up cut off or seized as may be most expedient—AND if any person whatsoever (whether he or she shall have obtained permission for the laying or using of any such Branch Pipe as aforesaid or not) shall at any time after the publication of this Act unlawfully do any act whereby the water of or from any such Watercourse or any Branch Pipe Reservoir Basin Tank Conduit or Pump connected therewith respectively shall run to waste he or she shall forfeit and pay for every such offence a penalty not exceeding Twenty Pounds.

Watercourses to private use or wasting the Water.

VIII. AND BE IT ENACTED that the amount of all such yearly or other sums of money so payable for such permissions as aforesaid shall be from time to time as the Lieutenant-Governor may direct paid into the Colonial Treasury and the same together with the amount of all shares of fines and penalties under this Act payable to Her Majesty shall be reserved for and appropriated to the payment of the amount of any such Compensations as aforesaid and otherwise for defraying the expenses which this Act may from time to time occasion.

Appropriation.

IX. AND BE IT ENACTED that all offences against this Act not otherwise provided for shall upon Information in that behalf exhibited be in a summary way heard and determined—AND all fines and penalties in respect of the same be imposed by and before any two Justices of the Peace—AND every person feeling aggrieved by any judgment or conviction of such Justices shall be entitled to appeal therefrom in the manner provided respectively by the Act intituled *An Act to regulate Summary Proceedings before Justices of the Peace* and no prosecution under this Act shall be allowed unless the information therein shall be exhibited within three calendar months after the time of the offence committed—PROVIDED ALWAYS that (in order to prevent two penalties or proceedings for one offence) a conviction under this Act shall in respect of the same subject matter or occasion be a bar to all

Proceeding for penalties.

proceedings under the Act intituled *An Act for the Preservation of Public Reservoirs and Watercourses from Injury* and a conviction under the said last-mentioned Act shall (in respect of the same subject matter or occasion) be equally a bar to all proceedings under this Act.

For protection of persons against actions.

X. AND BE IT ENACTED that if any action shall be brought against the Town Surveyor or any other person whatsoever in consequence of any entry made upon any lands or tenements or any other act or thing whatsoever heretofore or hereafter done or occasioned (in respect of which said entry or other act or thing provision is by this Act made for compensation to the party thereby injured) it shall be lawful for the Defendant in such Action to plead only the General Issue and to give the special matter in evidence thereupon any law or usage to the contrary notwithstanding and in case the Plaintiff shall become nonsuited or shall discontinue the action or have judgment therein against him the Defendant shall recover double costs.

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Lieutenant-Governor may nominate another person than the Town Surveyor for the purpose of exercising the powers and provisions of this Act.

XI. AND BE IT ENACTED that it shall be lawful for the Lieutenant-Governor at any time and so from time to time as occasion may seem to him to require to nominate and appoint such other person or persons for the purpose of exercising all or any of the powers which under the provisions of this Act are vested in the Town Surveyor for the time being as the said Lieutenant-Governor shall think proper and either with or instead of such Town Surveyor as His Excellency shall deem expedient and immediately upon and from and after every or any such nomination and appointment the several powers and authorities by this Act or any provision thereof vested in such Town Surveyor shall (for the purposes of such appointment and to the extent if any thereby limited) be severally vested and the same are hereby vested in the person or persons so named and appointed as fully and effectually as if the name or names of such person or persons had been for those purposes actually inserted in this Act.

JOHN FRANKLIN.

Passed the Legislative Council this twenty-fourth day of August, one thousand eight hundred and forty,

RONALD C. GUNN, *Clerk of the Council.*