



ANNO SEXTO

VICTORIÆ REGINÆ,

No. 14.

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 to enable the Lieutenant-Governor of this Island to secure a Supply of pure Water for the Town and Port of Launceston and to make Contracts for that Purpose.

WHEREAS in order to ensure a supply of pure Water for the use of the Inhabitants of Launceston and the Shipping frequenting the Port thereof it is expedient that the Waters of the South Esk River should be secured to the use of the Public for ever for that purpose in manner hereinafter in that behalf provided—AND WHEREAS it is expedient to construct Water-courses for the purpose of obtaining a supply of Water from that River and it is necessary that all nuisances and obstructions therein or to any part of the said Water-courses hereafter to be constructed should be prevented and that the said Water-courses should be effectually preserved from injury—AND WHEREAS it is just that individuals whose lands may hereafter be trespassed upon by the formation or repair of any such Water-course or Water-courses or whose private rights or interests may hereafter be in any 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—AND WHEREAS it is expedient that powers should be given to the Lieutenant-Governor of this Island for the time being from time to time as occasion may require to make Contracts with persons who may be willing to contract with the Government of this Island for supplying the Town and Port of Launceston with pure Water from the said South Esk River—**BE IT THEREFORE ENACTED**

PREAMBLE.

The Waters and bed of the South Esk vested in Her Majesty for the use of the Public.

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 from and after the passing of this Act the Waters of and in the South Esk River together with the soil and bed thereof (subject nevertheless to all private rights or interests to or in the same) 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.

Lieutenant-Governor empowered to make Contracts with individuals for securing a supply of Water.

II. AND BE IT ENACTED that from and after the passing of this Act it shall be lawful for the Lieutenant-Governor for the time being by and with the advice of the Executive Council from time to time as occasion may require to make such Contracts under the Public Seal of this Island with such person or persons as shall by His Excellency in the said Executive Council be deemed proper for supplying the Town and Port of Launceston and Shipping frequenting the same with pure Water and upon the execution of such Contract or Contracts to appoint and declare by notice in the Hobart Town Gazette such person or persons so contracting as aforesaid as and to be the Contractor or Contractors for supplying the Town and Port of Launceston with pure Water—PROVIDED that such Contractor or Contractors shall upon the execution of such Contract or Contracts become bound in a Bond with sufficient Sureties to be executed by such Contractor or Contractors and Sureties to Her Majesty Her Heirs and Successors for the due fulfilment of such Contract or Contracts in such sum of money as His Excellency with the advice of the Executive Council shall deem sufficient such Sureties being first approved of by His Excellency in the said Executive Council.

Town Surveyor Contractors and their Agents may enter upon lands for the purpose of constructing Works &c.

III. AND BE IT ENACTED that after twenty-four hours' 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 or in case of any such Contract then for the Contractor or Contractors and every and any person or persons acting under his or their 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 any Tunnels or Water-courses shall be proposed for construction or any conduit branch or pipe or trough reservoir or 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 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 and 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 Tunnels or Water-courses or any part thereof or making digging laying or amending any such conduit branch pipe trough reservoir or basin or tank as aforesaid or for supplying any such Water-course

or keeping the same supplied with Water from the said South Esk River 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 or Contractor or Contractors his and their assistants and workmen nevertheless doing no unnecessary damage and being guilty of no vexatious delay on those occasions and he and they and all and every other person and persons concerned in the construction or repair of any such Water-course 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 them or any of them done or occasioned for any of the purposes aforesaid.

IV. PROVIDED ALWAYS AND BE IT ENACTED that if any part of any such Water-course as aforesaid or any branch thereof 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 interest of any other nature of any person or persons whatsoever now actually or 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 had 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.

Indemnity to owners of land.

V. AND BE IT ENACTED that the said Assessors and Umpire being first sworn before one of the Judges of the Supreme Court or a Commissioner of the said Court who is hereby authorised to administer such oath 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 inquire 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 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

Inquiry into the loss by such owner and assessment and payment of the amount thereof.

Colonial Treasurer—PROVIDED that no claim for compensation under this Act shall be received or admissible in respect of any act done or any injury alleged to be thereby occasioned unless the same claim be preferred within six calendar months after the doing of such act or committing such injury—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.

Where injury occasioned by the Contractor he is to be responsible.

VI. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that in every case in which any such loss or damage shall be sustained by any person or persons by reason of any of the aforesaid acts being done or committed by any Contractor or Contractors under this Act then such loss or damage shall be inquired of and assessed as hereinbefore provided and the amount of such assessment shall within ten days after notice thereof to be given to such Contractor or Contractors be paid by him or them to the person or persons in whose favour such assessment shall have been made as aforesaid and in case such Contractor or Contractors shall neglect or refuse to pay the amount of such assessment within such time as aforesaid then the same shall be recovered by action of debt at the suit of such person or persons against such Contractor or Contractors.

Penalty for obstructing Town Surveyor Contractor or their Agents.

VII. AND BE IT ENACTED that if any person shall obstruct or endeavour or attempt to obstruct in any manner any such Town Surveyor or (in case of any such Contract) any such Contractor or Contractors or any servant or other person acting in his or their aid or under his or their direction in the doing or performing of any act or thing whatever which such Town Surveyor or Contractor or Contractors 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 or sum not exceeding One Hundred Pounds.

Penalty for destroying or injuring any of the Water-works diverting the Water or rendering it noxious.

VIII. AND BE IT ENACTED that if any person shall after the publication of this Act destroy or injure any such Tunnel or Water-course hereafter to be constructed or whilst being constructed or any branch thereof pipe trench conduit trough pump well tank or cistern or other thing used in the conducting or distributing or receiving Water from any such Tunnel or Water-course or any branch thereof or shall in any manner without the permission of the Town Surveyor or in case of any such Contract then of such Contractor or Contractors in that behalf wilfully prevent the flow of water to or divert the water of the said River from any such Tunnel or Water-course 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 flow into any such Tunnel or Water-course 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 or Contractor or Contractors may prescribe) into the said River or any part thereof or

shall otherwise injure or obstruct the passage of the Water in a pure and wholesome state through the same Water-courses or other channels as aforesaid or either of them every person so offending shall upon conviction forfeit and pay a penalty or sum not exceeding Fifty Pounds—AND if any person shall unlawfully and maliciously break destroy or injure any part of any Tunnel or Water-course or any of the main branches thereof or any public reservoir basin or tank used for retaining or conveying Water from any such Tunnel or Water-course 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 Two Years.

IX. 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 nominated by the Lieutenant-Governor or in case of any such Contract then by the Contractor or Contractors 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 and not exceeding the rate of one shilling and nine-pence in the pound upon the annual value of the premises occupied by them respectively to place or lay and have the use of any branch pipe or pipes leading from any such Water-course or reservoir as aforesaid and to obtain a reasonable supply of Water therefrom and if any person having obtained 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 passing of this Act without having duly obtained such permission place or lay any such branch pipe or use or continue to use any existing branch pipe without obtaining such permission or shall without such permission appropriate or endeavour to appropriate to his or her use any Water or divert or abstract any Water from any such Tunnel or Water-course 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 or sum not exceeding Fifty Pounds—AND it shall be lawful for the said Town Surveyor or in case of any such Contract then for such Contractor or Contractors after conviction of any party of having wilfully placed laid or used any such branch pipe to cause such pipe or any conduit whatsoever unlawfully formed or laid for the purpose of appropriating Water from any Water-course 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 Tunnel or Water-course or any branch pipe reservoir basin tank conduit or pump connected therewith respectively shall run

Terms upon which Water may be obtained.

Penalty for violation of those terms for taking Water without permission or allowing it to run to waste.

to waste he or she shall forfeit and pay for every such offence a penalty or sum not exceeding Fifty Pounds—PROVIDED ALWAYS that where the occupiers of any house shall either by himself or his servants use any portion thereof as a retail shop not requiring Water for the trade carried on therein such occupier shall be liable to pay such rate on that proportion only of the annual value which is applicable to the part used by him as a residence—AND PROVIDED ALSO that in the case of any person requiring a supply of Water for the purposes of any trade or business or for the watering of any garden the Water Rent to be charged shall be agreed upon between the Contractor and such person or in the event of the said parties not being able to agree then the same shall be assessed and settled as hereinafter provided.

Method of settling disputes as to annual value of premises.

X. AND BE IT ENACTED that in case any dispute shall arise between the Contractor or Contractors and any person desirous of being so supplied with Water as to the amount of the annual value of any premises chargeable with such Rate as aforesaid or as to the Water Rent to be paid in respect to any establishment or part of an establishment not used as a dwelling-house then the same shall be determined by two persons one to be appointed by His Excellency the Lieutenant-Governor for the time being and the other by the Contractor or Contractors who shall assess the annual value or Water Rent as the case may be and their assessment shall be final but in case such persons so to be appointed as aforesaid shall not agree in their assessment then an Umpire shall be appointed by such persons as aforesaid and the decision and assessment of such Umpire shall be final and such Contractor or Contractors shall thereupon and upon notice of such assessment to be given to him or them in writing be bound to supply such persons with Water at his her or their premises at the rate according to the value so assessed under a penalty not exceeding Fifty Pounds.

Cisterns and ball-cocks to be provided.

XI. AND (in order to prevent as much as possible the wilful and negligent waste of water) BE IT FURTHER ENACTED that each and every person supplied with Water by virtue of this Act shall if required by the said Contractor provide and keep and maintain in repair a proper cistern or cisterns of lead stone brick wood or other material to receive and hold such quantity of Water as shall be deemed sufficient for his her or their consumption as he she and they is and are hereby required to provide a valve or ball and stop-cock and to fix or cause to be fixed the same to the pipe conducting the Water from the main or service pipes belonging to the said Contractor to such cistern or cisterns and at all times afterwards to keep the same in good repair for the purpose of preventing the Water running to waste when the same shall be full and in case any person or persons supplied with Water by virtue of this Act shall (on being required so to do as aforesaid) neglect to provide such cistern or cisterns and also a ball or valve or stop-cock and to fix or cause to be affixed the same in manner aforesaid for the purpose of preventing the Water from running to waste when such cistern or cisterns shall be filled as aforesaid it shall be lawful for the said Con-

tractor or any person or persons acting by virtue of or under the authority of the said Contractor to cut the pipe and turn off the Water by such ways or means as to him or them shall seem right and proper from the house building or premises of every such person until such cistern or cisterns shall be provided and such ball valve or stop-cock added in manner aforesaid.

XII. AND BE IT ENACTED that the amount of all such yearly and other sums of money so payable for such permissions as shall be granted by the Town Surveyor 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 such 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 compensation as aforesaid and otherwise for defraying the expenses which this Act may from time to time occasion so long and as and when the supplying of Water from the said River under this Act shall be managed by the Government of this Island and that the amount of all such yearly or other sums of money so payable for such permissions as shall be granted by such Contractor or Contractors as aforesaid shall be from time to time paid to such Contractor or Contractors and all fines and penalties incurred under the provisions of this Act shall during the existence only of any such Contract or Contracts as aforesaid be paid the one half to the informer and the other half to the Contractor or Contractors for the time being—PROVIDED that in case any fine or penalty shall have been imposed upon any Contractor or Contractors no portion thereof shall be paid to him or them or either of them but one moiety thereof shall be appropriated to Her Majesty Her Heirs and Successors for the Public uses of this Colony and the support of the Government thereof.

Appropriation of Water Rates and Penalties under this Act.

XIII. 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 shall be recovered as provided by the Act intituled *An Act to regulate Summary Proceedings before 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 and at the time provided by the same Act and no prosecution under this Act shall be allowed unless the information shall be exhibited within three calendar months after the time of the offence committed.

Proceedings for penalties.

XIV. AND BE IT ENACTED that if any action shall be brought against the said Town Surveyor or (in case of any such Contract as aforesaid) against any such Contractor or Contractors as aforesaid 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 compensa-

Indemnity against actions for things done under the authority of this Act.

tion 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.

Lieutenant-Governor may confer upon any other person or persons the power by this Act given to the Town Surveyor.

XV. 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 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 may 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 eighteenth day of November, one thousand eight hundred and forty-two,

FR. HARTWELL HENSLOWE, *Clerk of the Council.*