

T A S M A N I A.



1868.

ANNO TRICESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 15.



AN ACT to facilitate the Irrigation and Drainage of Land. [17 September, 1868.]

WHEREAS it is expedient that facilities should be afforded for the Irrigation and Drainage of Lands: Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.

Preliminary.

1 This Act may be cited for all purposes as "The Irrigation and Drainage Act, 1868." Short Title.

2 This Act shall apply to works necessary to irrigate land as well as to works necessary to drain land. Application of Act.

3 "Watercourse," shall include all rivers, streams, drains, sewers, and passages through which water flows: Definition of terms.

"Person," shall include any body of persons, corporate or unincorporate, unless there is something in the context inconsistent therewith:

"Owner," as used throughout this Act, shall have the same meaning as it has in The Lands Clauses Act:

"District," shall mean a General and Quarter Sessions District:

"Land" shall extend to all arable, pasture, or otherwise profitable and to all waste uncultivated Land, and shall also extend to

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messuages, tenements, mills, weirs, easements, and other hereditaments, corporeal or incorporeal, and any estate or interest therein, and any undivided part thereof, or any of them.

Power of private Owners to procure Outfalls.

Application for
outfall to adjoining
owner.

4 Any person or persons interested in land, who is or are desirous to irrigate or drain the same, and in order thereto deems or deem it necessary that new drains should be opened through lands belonging to another owner or owners, or that existing drains in or immediately adjoining lands belonging to another owner or owners should be cleansed, widened, straightened, deepened, or otherwise improved, may apply to such owner or owners, hereinafter referred to as the adjoining owner or owners, for leave to make such drains or improvements in drains through, on, or adjoining the lands of such owner or owners.

Mode of making
application.

5 Any such application as aforesaid shall be by notice in writing under the hand of the applicant or applicants, and shall be served on the owner or owners through whose lands such new drains or improvements are intended to be taken, and on the occupier or occupiers of such lands if the owner is not the occupier, and also on the owners and occupiers whose lands may be interfered with or affected by such drains or improvements. The notice shall state the nature of such drains or improvements, and the names of the owners and occupiers whose lands will be cut through, interfered with, or affected by such drains or improvements, and shall be accompanied by a map, on which the length, width, and depth of the proposed drains or improvements in drains shall be delineated, and shall further state the compensation, if any, which the applicant or applicants proposes or propose to pay.

Assent of ad-
joining owner.

6 The adjoining owner or owners may, by deed under his or their hand and seal, assent to such application, upon such terms and on payment of such compensation as he or they may require, and any assent so given shall be binding on all parties having any estate or interest in the land, subject to the following provisions:—

1stly. That any arrangement entered into by any adjoining owner under any disability or incapacity, or not having power to assent to such application except under the provisions of this Act, shall not be valid unless the same is approved by Two Surveyors, one of whom is to be nominated by the applicant or applicants, and the other by the adjoining owner; and each of such surveyors, if they approve of the arrangement, shall annex to the document containing the same a declaration to that effect, subscribed by them:

2dly. That any compensation to be paid by the Applicant or Applicants to the adjoining owner in cases where such owner is under any disability or incapacity, or has not power to assent to such application except under the provisions of this Act, shall be applied in manner in which the compensation coming to parties having limited interests, or prevented from treating, and not making title, is applicable, under *The Lands Clauses Act*:

3dly. That any occupier or person other than the owner interested in the lands shall be entitled to compensation for any injury he may sustain by the making of the proposed drains or

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improvements in drains, so that the claim therefor be made within Twelve months after completion of such drains or improvements in drains, the amount of such compensation to be determined, in case of dispute, by Two or more Justices in Petty Sessions assembled, or if such occupiers or other person do not consent to a determination by such Justices, then by arbitration.

7 The applicant or applicants shall forward to the Clerk or Deputy Clerk of the Peace of the District wherein the land is situate the Deed containing the assent of the adjoining owner to the proposed drains or improvements, who shall keep the same in his Office as a record of the proceedings between the parties.

Record of assent
of adjoining
owner.

8 The adjoining owner shall be deemed to have dissented from the application made to him if he fail to express his assent thereto within One month after the service of the notice of application on him; and in the event of such dissent there shall be decided, by Two or more Justices in Petty Sessions assembled, (unless the adjoining owner require the same within such period of One month to be decided by Arbitration,) the Questions following; that is to say,

Dissent of ad-
joining owner.

- (1.) Whether the proposed drains or improvements in drains will cause any injury to the adjoining owner, or to the occupier or other person interested in the lands:
- (2.) Whether any injury that may be caused is or is not of a nature to admit of being fully compensated for by money.

The result of any such decision shall be as follows; that is to say, Result of decision.

- (1.) If the decision is that no injury will be caused to the adjoining owner, to the occupier, or other parties interested in the lands, the applicant or applicants may proceed forthwith to make the proposed drains or improvements in drains:
- (2.) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, but that such injury is of a nature to admit of being fully compensated for by money, the Justices or Arbitrators shall proceed to assess such compensation, and to apportion the same amongst the parties in their judgment entitled thereto; and in assessing the amount of such compensation the Justices or Arbitrators shall take into consideration the benefit, if any, to be derived from such drains or improvements by such adjoining owner, occupier, or other persons, and to set off the same against the amount to be assessed by them for such compensation; and on payment of the sum so assessed the applicant or applicants may proceed to make the proposed drains or improvements in drains:
- (3.) If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, and that such injury is not of a nature to admit of being fully compensated for by money, the applicant or applicants shall not be entitled to make the proposed drains or improvements in drains.

9 Where the compensation assessed by the Justices or Arbitrators under the last preceding Section is payable to any owner or other person who is under any disability or incapacity, or is not entitled to

Application of
compensation in
case of owners
under disability,

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receive the same for his own benefit, such compensation shall be applied in the manner in which the compensation is applicable under *The Lands Clauses Act*.

If drainage scheme approved of, map shall be prepared.

10 The Justices or Arbitrators, as the case may be, in the event of their approving of a scheme of drainage as proposed by the applicant or applicants, or as modified by themselves, shall cause a map thereof to be prepared, and shall certify under their hands the correctness of such map; and it shall be the duty of the applicant or applicants to forward the same to the Clerk or Deputy Clerk of the Peace of the District wherein the land is situate, who shall keep the same in his Office as a record of the proceedings between the parties.

Power of applicant to clear drains.

11 After drains have been opened or improvements in drains made, in pursuance of this Act, it shall be lawful for the applicant or applicants, his or their heirs and assigns, for ever thereafter, from time to time, as it becomes necessary, to enter upon the lands through which such drains have been opened or improvements made, for the purpose of clearing out, scouring, and otherwise maintaining the same in a due state of efficiency; and if such drains or improvements in drains are not kept so cleared out, scoured, and maintained in a due state of efficiency, the owner or occupier for the time being of the lands through or on which such drains or improvements in drains are made may clear out, scour, and otherwise maintain the same in a due state of efficiency, and recover the expenses incurred in such clearing out, scouring, or maintenance, in a summary manner in the mode prescribed by *The Magistrates Summary Procedure Act*, or by Civil Action, from the applicant or applicants, his or their heirs or assigns.

Power of adjoining owner to divert drains.

12 The owner for the time being of the land through or in which any drain may be opened or improvements in drains made, in pursuance of this Act, may fill up, divert, or otherwise deal with such drains or improvements in drains, on condition of first making and laying down in lieu thereof drains equally efficient; and any dispute as to the efficiency of drains so laid down shall be decided by Two or more Justices assembled in Petty Sessions, or, if desired by either party, by arbitration.

Penalty for obstructing or injuring drains.

13 Any person who wilfully obstructs any person making any drains or improvements in drains, in pursuance of this Act, and any person who wilfully dams up, obstructs, or in any way injures any drains or improvements in drains so opened or made, shall for each offence incur a penalty not exceeding Ten Pounds, to be recovered in a summary manner before Two or more Justices at Petty Sessions, in the mode prescribed by *The Magistrates Summary Procedure Act*.

Costs of application.

14 All costs, charges, and expenses reasonably incurred by the adjoining owner in respect of any application made in pursuance of this Act shall be defrayed by the applicant or applicants.

Provision in case of change of natural outfall.

15 Where any person is desirous, in pursuance of this Act, of constructing any drain by means whereof any creek, river, or other watercourse will be diverted from its ordinary channel into any other creek, river, or watercourse, he shall cause a copy of the notice hereby required to be served on the adjoining owner to be published by advertisement once at least in each of Three successive weeks in some newspaper circulating in the district in which the drain proposed to be constructed is situate, and to be served on all owners of land abutting upon the creek, river, or other watercourse into which the diversion is made, and situate

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within Four miles of the point of junction, and shall deposit a copy of the map hereby required to accompany the notice served on the adjoining owner with the Clerk or Deputy-Clerk of the Peace of the District wherein the proposed drain is situate; and it shall be lawful for any person, being the owner of land capable of being injured by the proposed drain, within Eight weeks after the first notice of the proposed drain appears in the newspaper, to serve notice that he apprehends injury from such drain on the person proposing to make the same, and thereupon such owner shall be deemed to have dissented, and shall be entitled to the same rights and privileges under this Act as if he were the adjoining owner.

16 Where any question is by this Act to be decided by Justices or arbitration, at the option of an adjoining owner, occupier, or other person interested, Two Arbitrators shall be nominated, one by the applicant or applicants, and the other by such adjoining owner, occupier, or other person interested, as the case may be; and in default of such adjoining owner, occupier, or other person interested in nominating an Arbitrator, it shall be lawful for any Two or more Justices in Petty Sessions, after notice to such adjoining owner, occupier, or other person, to nominate such Arbitrator; and the Arbitrators shall decide the several Questions mentioned in this Act, and shall have power, in case of disagreement, to call in an Umpire; and such Arbitrators and Umpire, as the case may be, shall make their award on the said several matters. Appointment of Arbitrators.

17 All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers now existing by Common Law, or under any Act heretofore passed, and now remaining unrepealed; and every person may exercise such other powers in the same manner as if this Act had not passed, anything herein contained notwithstanding. Powers of Act cumulative.

