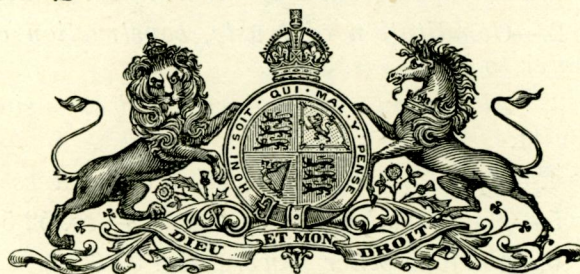


New South Wales.



ANNO TERTIO

GEORGI V REGIS.

Act No. 44, 1912.

An Act to consolidate the Acts relating to Water Rights, Water and Drainage, Drainage Promotion, and Artesian Wells.
[Assented to, 26th November, 1912.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Water Act, 1912," and is divided into Parts and Divisions as follows:—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—WATER RIGHTS AND WORKS.

DIVISION 1.—*Interpretation*—s. 5.

A

DIVISION

Water.

DIVISION 2.—*Rights of the Crown and of riparian proprietors—*
ss. 6-9.

DIVISION 3.—*Licenses—ss. 10-18.*

DIVISION 4.—*Works constructed by the Crown—ss. 19, 20.*

DIVISION 5.—*Miscellaneous—ss. 21-27.*

PART III.—WATER AND DRAINAGE.

DIVISION 1.—*Interpretation and general—ss. 28-30.*

DIVISION 2.—*Constitution of trusts, construction of works and*
transfer to trust—ss. 31-38.

DIVISION 3.—*Alteration of boundaries and extension of works—*
ss. 39-41.

DIVISION 4.—*Appointment and election of trustees—ss. 42-51.*

DIVISION 5.—*Power and duties of trustees—ss. 52-58.*

DIVISION 6.—*Various other powers—ss. 59-65.*

DIVISION 7.—*Certain works not administered by trusts—ss. 66-68.*

DIVISION 8.—*Loans—s. 69.*

DIVISION 9.—*Miscellaneous—ss. 70-75.*

PART IV.—DRAINAGE PROMOTION.

DIVISION 1.—*Interpretation—s. 76.*

DIVISION 2.—*Drainage Unions, and Boards of Directors—ss. 77-*
85.

DIVISION 3.—*Rates—ss. 86-91.*

DIVISION 4.—*Arbitration—s. 92.*

DIVISION 5.—*Miscellaneous—ss. 93-104.*

PART V.—ARTESIAN WELLS.

DIVISION 1.—*Interpretation and general—ss. 105, 106.*

DIVISION 2.—*Construction and charges—ss. 107-111.*

DIVISION 3.—*Licenses—ss. 112-118.*

DIVISION 4.—*Miscellaneous—ss. 119-129.*

Repeal.
 Schedule I.

Savings.

2. The Acts in Schedule One of this Act mentioned are, to the extent therein expressed, hereby repealed.

3. (1) Any board constituted under the provisions of any Act hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.

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(2) All persons appointed, employed, or elected under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed, employed, or elected under the provisions of this Act.

(3) All proclamations, regulations, and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.

(4) All licenses granted under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been granted under the provisions of this Act.

(5) All fees, rates, charges, and expenses payable, and all penalties incurred, under the provisions of any Act hereby repealed, shall be deemed to be payable and to have been incurred respectively under the corresponding provisions of this Act.

(6) Any matter or thing duly done under the authority of any Act hereby repealed shall be deemed to have been duly done under the authority of this Act.

4. In this Act, and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires—

“Crown lands” has the meaning given to that expression in the Crown Lands Act of 1884.

“Justice” means justice of the peace.

“Land district” means land district proclaimed under the Crown Lands Acts of 1884 or any Act amending the same.

“Prescribed” means prescribed by any Part of this Act in which the expression occurs, or by any regulations under that Part.

“Western Division” has the meaning given to that expression in the Crown Lands Act of 1884.

Interpretation.
No. 31, 1901, s. 3.
No. 51, 1902, s. 3.
No. 93, 1902, s. 2.

PART II.

WATER RIGHTS AND WORKS.

DIVISION 1.—Interpretation.

5. In this Part, and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires—

“Drainage” includes the draining of flood or other waters of rivers or lakes by means of any work; and “drainage work” includes a work constructed or used for the above purposes.

Interpretation.
No. 51, 1902, s. 3.

“Lake”

Water.

“ Lake ” includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.

“ Local land board ” means the land board for the district in which a work is situated, or if the work be situated in more than one land board district, such land board as the Minister may name.

“ Licensed work ” means a work in respect of which a license is held under this Part.

“ Occupier ” means person in actual occupation.

“ River ” includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch, or other stream into or from which the river flows.

“ Water supply ” includes a supply for the carrying on of any industrial operation.

“ Work ” includes any dam, lock, reservoir, weir, flume, race, channel (whether an artificial channel or a natural channel artificially improved), any cutting, tunnel, pipe, sewer, and any machinery and appliances.

“ Work to which this Part extends ” means work connected with any river or lake flowing through, or past, or situate within the land of two or more occupiers, or with any water flowing in, to, or from, or being in any river or lake flowing or situate as aforesaid, whether such work be for water conservation, irrigation, water supply, or drainage, and whether such work be constructed before or after the commencement of this Act.

DIVISION 2.—Rights of the Crown and of riparian proprietors.

Rights to certain
waters vested in the
Crown.
No. 51, 1902, s. 4.

6. (1) The right to the use and flow and to the control of the water in all rivers and lakes which flow through, or past, or are situate within the land of two or more occupiers, and of the water contained in or conserved by any works to which this Part extends, shall, subject only to the restrictions hereinafter mentioned, vest in the Crown. And in the exercise of that right, the Crown, by its officers and servants, may enter any land and take such measures as may be thought fit, or as may be prescribed for the conservation and supply of such water as aforesaid and its more equal distribution and beneficial use, and its protection from pollution, and for preventing the unauthorised obstruction of rivers.

For the purposes of this subsection “ occupier ” includes the Crown.

(2)

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(2) The said right shall be subject to the following restrictions:— Restriction of Crown's rights.

- (a) It shall not be exercised in contravention of any right conferred on and lawfully exercisable by any person or board by or under the authority of any Act dealing with Mining, or of any public or private Statute, or of any license granted by the Crown.
- (b) It shall be subject to the rights hereinafter mentioned of the occupiers of land on the banks of rivers or lakes.
- (c) It shall be subject to the rights of the holders of licenses under this Part.

7. The occupier of land on the bank of a river or lake shall have the right to use the water then being in the river or lake for domestic purposes, and for watering cattle or other stock, or for gardens not exceeding five acres in extent used in connection with a dwelling-house, and it shall not be necessary for the occupier to apply for or obtain a license for any work used solely in respect of that right. Rights of riparian proprietors.
No. 51, 1902, s. 4 (2).

8. Where the Crown is, by its officers, servants, or agents, in occupation of a work to which this Part extends, constructed by the Crown at any time, the Crown shall, subject to the provisions of this Part, have the quiet enjoyment and sole and exclusive use of the said work as against all persons whomsoever, and shall be entitled to make such charges for the supply or use of the water conserved thereby as may be prescribed. Rights of Crown in respect of works.
Ibid. s. 6.

9. The right of the occupier of any work to which this Part extends— Rights of occupiers of work to which this Part extends.
Ibid. s. 7.

- (a) to use the work for the purpose of water conservation, irrigation, or water supply, or drainage; or
- (b) to take, use, or dispose of the water contained therein, conserved, or obtained thereby,

shall be subject to the provisions of this Part.

DIVISION 3.—*Licenses.*

10. Any occupier of land whereon any work to which this Part extends is constructed or used, or is proposed to be constructed or used, for the purpose of water conservation, irrigation, water supply, or drainage, may apply to the person, and in the form prescribed, for a license to construct and use the said work, and to take, use, and dispose of the water contained therein, conserved, or obtained thereby. Application for licenses.
Ibid. s. 10.

11. (1) On application being made for a license under the last section, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where Public inquiry.
Ibid. s. 11.
the

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the land is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the land is situate, a public inquiry will be held as to the desirability of granting the application.

Procedure.

No. 51, 1902, s. 12(1).

(2) The inquiry shall be held by the local land board by the direction of the Minister, or by some person authorised by the Minister in that behalf, and the local land board or the person so authorised shall report in writing to the Minister.

Persons interested may appear.

Ibid. s. 12 (2).

(3) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application.

Appeal.

Ibid. s. 12 (3).

(4) Where any inquiry is held under this section by a person authorised by the Minister as aforesaid, the applicant or any person so interested as aforesaid shall have a right of appeal from the report of such person to the local land board.

Issue of license.

Ibid. s. 13.

12. (1) The report of the person holding the inquiry by the authority of the Minister, or of the local land board or Land Court on appeal, shall be published in the Gazette within the prescribed time after presentation thereof to the Minister, and the Minister shall, after the expiration of thirty days from such publication, where the report recommends the issue of a license, issue a license to the applicant in the prescribed form, subject to such terms, limitations, and conditions, if any, as may be recommended in such report.

Provisos.

Schedule II.

(2) Provided that

- (a) no license shall be issued under this section pending any appeal or reference; and
- (b) a license shall be issued only upon payment of a fee calculated in the manner and according to the scale set forth in Schedule Two to this Act; and
- (c) before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report.

Application by two or more occupiers.

Ibid. s. 14.

13. If two or more occupiers desire to construct any work to which this Part extends, they may apply for a license to construct and use the said work in the manner prescribed for a single occupier, and such application will be dealt with as the application of a single occupier.

Period of license.

Ibid. s. 15.

Schedule II.

14. The license, if granted, shall in every case, except in the case of dams and weirs included in Class IV in Schedule Two, be granted for a period not exceeding ten years, and shall (subject to the provisions of this Part with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make)

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make) be renewed by the Minister from time to time on the application of the person holding the license, on the payment of a fee calculated in the manner and according to the scale set forth in Schedule Two.

Provided that no renewal shall be for a longer period than ten years.

15. Except in cases where a single license fee may be paid for combined works, as mentioned in Schedule Two to this Act, a separate application for a license may be required in respect of each work; and the determination as to what work may be included in each license shall rest with the Minister.

Extent of license.
No. 51, 1902, s. 16.
Schedule II.

16. A license shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupier for the time being of the land whereon the work is constructed or is proposed to be constructed.

Benefit of license.
Ibid. s. 17.

17. Subject to the provisions of this Part, or the regulations hereunder, the person holding a license under this Part in respect of any work shall have absolutely, during his lawful occupation of the work, so far only as the said work is constructed or maintained on the land occupied by him, the quiet enjoyment and the sole and exclusive use of the work as against all other persons whomsoever, including the Crown, and shall be entitled to take, use, and dispose of any water contained therein or conserved thereby.

Rights of holder of license.
Ibid. s. 18.

18. If, during the time that a license under this Part is in force in respect of a work, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity or quality of water flowing in, to, or from, or being in any river or lake, the person who has made the alterations shall be liable to a penalty not exceeding one hundred pounds, and, in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled and annulled.

Penalty for alteration of work during currency of license.
Ibid. s. 19.

Provided that the holder of any license may, during the currency thereof, apply for an amended license, allowing alterations in the work as originally licensed, and any such application shall be dealt with as hereinafter provided in respect of applications for a license in the first instance.

Provisos.

Provided also that the operations herein referred to shall not apply to any repairs or alterations rendered necessary for maintenance or any sudden or unforeseen emergency.

DIVISION 4.—*Works constructed by the Crown.*

19. (1) The Governor may notify, by proclamation in the Gazette, proposals for dams, locks, weirs, channels, or drainage works to be constructed by the Crown, together with an estimate of the cost of the same.

Proposals for work.
Ibid. s. 8.

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Reference to land board.

(2) After such notification, the Minister may refer any such proposal to the land board for the land district within which the proposed works would be, or to a land board for a land district adjacent to the site of the proposed work; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, should be included in any water or drainage district to be constituted in respect of the said work.

Notification of district.

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which water or drainage charges may be levied.

Petition.

(4) If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons—

(a) who constitute a two-thirds majority of the total number of those occupying land within the district; and

(b) who occupy an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out.

Construction of work.

(5) Thirty days after the receipt of such report to that effect the Minister may carry out the work out of funds legally available for the purpose, unless an appeal to the Land Court affecting the same is pending, in which case he shall not proceed with the work until the appeal is decided.

Public Works Act.

Provided that any such work shall be subject to the Public Works Act, 1900.

Charges.

No. 51, 1902, s. 9.

20. (1) Upon the work being completed, the Minister may direct the land board to assess in each and every case the water and drainage charges to be paid, which charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the work.

Provided that the total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of such work.

Fresh assessment.

(2) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid.

DIVISION 5.—*Miscellaneous.*

Injuries to works.

Ibid. s. 21.

21. Any person who maliciously cuts, breaks, or destroys, or damages with intent to destroy or render less useful any licensed work, or any work to which this Part extends, constructed by the Crown, shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding five years.

22.

Water.

22. (1) For the purposes of this Part the Minister, or any person authorised by him, may enter on any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any works. Power of entry.
No. 51, 1902, s. 20.

(2) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months. Penalty.

23. Any person who obstructs or hinders any person while performing any duty which he is authorised by this Part, or by any regulation made thereunder, to perform, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months. Obstructing persons
in the performance
of duties.
Ibid. s. 23.

24. Fees and charges payable under and penalties imposed by this Part, or any regulation made thereunder, may be recovered before, and charges in respect of offences under this Part (not being offences made punishable on indictment) may be heard and determined by, a police or stipendiary magistrate, or any two justices in petty sessions. Recovery of fees,
charges, and
penalties.
Ibid. s. 24.

25. Any report, recommendation, or decision, of a land board under this Part shall be subject to an appeal or reference to the Land Appeal Court in the manner prescribed by the Crown Lands Acts, or any regulations made thereunder. The decision of the said court shall be final. Appeal.
Ibid. s. 25.

26. All contributions, fees, and charges payable under this Part shall be paid at the times and in the manner prescribed into the Consolidated Revenue Fund. Consolidated
revenue.
Ibid. s. 9 (2), and
s. 26.

27. (1) The Governor may make regulations prescribing the forms of licenses and of renewals of the same, and for carrying out the provisions of this Part; and may, in such regulations, impose any penalty not exceeding fifty pounds for each breach of the same, or where the breach was a continuing one, not exceeding five pounds for every day during which the breach continues. Regulations.
Ibid. s. 21.

(2) A copy of such regulations shall be laid before the Legislative Council and Legislative Assembly without delay.

PART III.

WATER AND DRAINAGE.

DIVISION 1.—*Interpretation and general.*

28. In this Part—
 “Board” means Board constituted under this Part.
 “Minister” means Minister for Public Works.
 “Occupier” means person in actual possession.

Interpretation.
No. 93, 1902, s. 2.
No. 59, 1906, s. 2.

“Owner”

Water.

"Owner" means owner of any estate of freehold in land, and includes a mortgagee in possession.

"Ratepayer" means person paying rates in respect of land within a trust district.

ee No. 59, 1906, s. 5.

"State work" means any work of water supply, water conservation, or irrigation, or of drainage, or for the prevention of floods or the control of flood-waters, proclaimed as such by the Governor.

"Trust" means trust constituted under this Part.

"Trustee" means member of a trust.

"Trust district" means area over which a trust has jurisdiction under this Part.

"Works" includes any natural or artificial conduit, well, appliance, machinery, or structure pertaining to or used in connection with a trust.

Effect of Part II.

No. 59, 1906, s. 17.

29. Nothing in Part II of this Act shall—

(a) affect the exercise of the powers conferred by this Part in relation to a river or lake as defined in Part II; or

(b) affect the right of a trust to fix and levy rates under the provisions of this Part.

Constitution of board.

Ibid. s. 2.

30. There shall be a Board, consisting of the Under Secretary of the Department of Public Works, the Chief Engineer for Rivers, Water Supply, and Drainage, the Executive Engineer appointed by the Governor to administer this Part, and such officer or officers of the Department of Public Works as the Governor may appoint, and including, where any work is situate in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901.

DIVISION 2.—Constitution of trusts, construction of works, and transfer to trust.

Proposals for works.

No. 93, 1902, s. 6.

No. 59, 1906, s. 5.
and Sched., and s. 8.

31. In respect of any works of water conservation the Minister may, and in respect of any work of water supply, irrigation, or drainage, or for the prevention of floods or the control of flood-waters, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works, proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works.

Contents of proposals.

No. 93, 1902, s. 7.

32. Any such proposal shall contain—

(a) a description of the purpose for which it is proposed to constitute the trust;

(b) a plan and description of the works and of the land, whether covered with water or not, proposed to be taken or acquired for the purposes of such works, and of their cost or estimated cost;

(c)

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- (c) the rate of interest, which shall not exceed four per centum per annum, and shall be paid by the trust on the actual cost or on the estimated cost, plus ten per centum, whichever is the lesser sum;
- (d) the charges to be paid by the trust for water to be supplied by the Crown, and the conditions of such supply;
- (e) the maximum rate which may be assessed by the trust;
- (f) a description of the trust district;
- (g) the number of trustees, being either three or five;
- (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

33. (1) If, within eight weeks after such notification, a petition is presented to the Minister, signed by at least one-third in number of the occupiers of Crown land, including homestead selectors, conditional lessees, and settlement lessees, and owners of other land within the proposed trust district, objecting to the proposal, he shall refer the proposal to the board for inquiry and report.

Petition objecting,
and inquiry.
No. 93, 1902, s. 8.

(2) For the purpose of any such inquiry the Board shall have the power to subpoena witnesses and take evidence on oath.

Powers of Board.

(3) Every person who, when required by the board, attends as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena on the trial of an action in the District Court, and, in case of dispute as to the amount to be allowed, the same shall be referred to the registrar of the nearest District Court, who, on request under the hand of the chairman of the Board, shall ascertain and certify the proper amount of such expenses.

Witnesses' expenses.

34. (1) If within the said period no such petition is received, or if the Board reports in favour of the proposal, with or without modifications, the Governor may constitute the trust with such modifications of the proposal as the Board may recommend, or where no reference is made to the Board with such modifications as the Minister may think fit.

Constitution of
trust.
Ibid. s. 9 (1).

(2) The constitution of the trust shall be notified by the Minister in the Gazette.

Gazette notice.
Ibid. s. 9 (2).

35. Upon such notification the conditions of the proposal, with such modifications (if any) as aforesaid, shall be binding on the trust and on the Crown, and the Minister may, out of the funds raised under this Part, or out of the revenue account or the loan account of the public works fund, carry out the works described in the proposal.

Construction of
works.
Ibid. s. 9 (3).
Act No. 59, 1906, s. 7.

36. (1) The Minister may notify proposals for the constitution of a trust in respect of any work constructed and completed by him before or at the commencement of the Act No. 59, 1906, and a trust may be constituted in respect of the same. Thereupon the trust shall take over the administration and management of the work, and the provisions of this Part shall apply thereto, and the interest and charges payable by the trust shall commence to run.

Works completed.
No. 59, 1906, s. 9 (2).

Provided

Water.

Provided that no trust shall be constituted under this subsection for work in respect of which charges are payable under Part II or Part V of this Act, unless with the consent in writing of the persons—

- (a) who constitute a two-thirds majority of the total number of persons liable for such charges; and
- (b) who are liable for two-thirds in amount of such charges.

Other parts and Acts
not to apply.

No. 59, 1906, s. 9 (3).

(2) On the constitution of a trust under this section for any work the provisions of this or any Act, other than the provisions of this Part, shall cease to apply thereto.

Transfer to trust.

No. 93, 1902, s. 13.

No. 59, 1906, s. 11.

37. The completion of any works in respect of which a trust is constituted under this Part shall be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers contained in this Part except such as are conferred solely upon the Minister, and the interest and charges payable by the trust shall commence to run.

Provided that the cost of such work may be determined by the Minister, and notified in the Gazette, at any time after the work has been completed and taken over as aforesaid; and this proviso shall apply whether the work was completed before or after the commencement of this Act.

Transfer of works
not completed.

Ibid. s. 10.

38. Where any work in respect of which a trust is constituted is, in the opinion of the Minister, so far constructed as to be of use to the trust, that fact may be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers and discharge all the duties conferred and imposed by this Part in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

DIVISION 3.—Alteration of boundaries and extension of works.

Alteration of
boundaries.

No. 93, 1902, s. 14.

39. If two-thirds in number of the occupiers of Crown lands, including homestead selectors, conditional lessees and settlement lessees, and owners of other lands within any area, sign and forward to the Minister a petition that such area be included in a trust district, the Minister shall refer the proposed alteration to the Board, who, after giving the trust an opportunity of expressing their opinion, shall report to the Minister whether, in the opinion of the Board, the petition ought to be refused or granted, with or without modification, whereupon the Minister may, by notification in the Gazette, alter the boundaries of such district accordingly, or may refuse the petition.

Water.

40. Where the Minister thinks it desirable that any works in respect of which a trust is constituted, or is proposed to be constituted, should be constructed through the district of another trust, he may, on or after the constitution of the first-mentioned trust, and on giving notice to the last-mentioned trust, construct such works and amend the boundaries of the respective districts so as to include the said works and such lands adjacent thereto as he may think desirable in the district of the trust for which the works have been or are proposed to be constructed. Such amendment of boundaries shall be notified in the Gazette.

Construction of work through another district.
No. 59, 1906, s. 21.

41. If the trustees, by request in writing, desire the Minister to improve or extend any works under their charge or increase the quantity of water supplied, the Minister may prepare an estimate of the cost of the proposed work and the interest thereon payable by the trust, and a statement of the additional charge to be paid by the trust in respect of the increase of the quantity of water supplied. Such estimate and statement shall be supplied to the trustees.

Extension of works.
No. 93, 1902, s. 29.

Upon the receipt from the trustees of an intimation that the estimate and statement have been approved by a special general meeting of the voters in the trust, of which not less than fourteen days' notice shall be given in the prescribed manner, the Minister may proceed with the construction of the proposed work, or may increase the quantity of water supplied.

On the completion of the work, or upon the increase of the quantity of water, a notification shall be sent to the trustees, and shall be published in the Gazette, directing that, with the Governor's approval, the interest on the cost of such work and the charges for the increase of water supplied shall be paid by the trust.

Such interest and charges shall commence to run from the date of such notification, and such interest shall be calculated on a sum not exceeding the estimated cost, plus ten per centum.

DIVISION 4.—Appointment and election of trustees.

42. (1) After the constitution of the trust, but before the completion of the works (if any) proposed to be constructed, the Minister shall, by notice in the Gazette, appoint trustees and direct the first election of trustees in pursuance of this Part.

Appointment or election of trustees.
No. 93, 1902, s. 15.

(2) Where the trust district consists wholly of land acquired under the Closer Settlement Act, 1901, or any Act amending the same, or unoccupied Crown lands, all the trustees shall be appointed by the Minister, and shall, subject to the provisions of this Part, hold office until half the land in the district is occupied by persons who are liable to pay rates to the trust.

Thereafter,

Water.

Thereafter, and in other cases where the number of the trustees is three, one shall be appointed by the Minister and two shall be elected; but where the number of the trustees is five, two shall be appointed by the Minister and the rest shall be elected.

Provided that where the trust district is in the western division the Western Lands Board shall be sole trustees in lieu of the trustee or trustees hereinbefore mentioned.

Term of office.
No. 93, 1902, s. 16.

43. Elected trustees shall be elected for three years, and shall hold office until their successors are elected.

Rolls for first
election.
Ibid. s. 17.

44. For the purpose of the first election of trustees the Minister shall prepare a roll of voters, placing on the roll the names of the persons who, in his opinion, will be liable to pay rates to the trust, and the persons whose names are on such roll, and no others, shall be qualified to vote at the first election.

No. 59, 1906, s. 12(1).

Provided that when any such person is not resident in the trust district, but the property in respect of which he would, in the opinion of the Minister, be liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person.

Rolls for subsequent
elections.
No. 93, 1902, s. 18.

45. For the purpose of any subsequent election of trustees a roll of voters, containing the names of the persons who are liable to pay rates to the trust, shall be prepared by the trustees, and revised in the prescribed manner by the police magistrate having jurisdiction in the district, before whom any person aggrieved by the omission or addition of the name of any person may appear and be heard, and the persons whose names are on such roll, and no others, shall be entitled to vote at any such election.

No. 59, 1906, s. 12
(2).

Provided that where any such person is not resident in the trust district, but the property in respect of which he is liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person.

Plural voting.
No. 93, 1902, s. 19.
No. 59, 1906, s. 5,
and Sched. and
s. 12 (3).

46. Persons on the roll shall be entitled to vote in manner following, that is to say:—

- (a) In the case of a trust placed in charge of drainage work or irrigation works, or works for the prevention of floods or the control of flood-waters, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding fifty acres, but not exceeding three hundred acres, to two votes; and of an area exceeding three hundred acres, to three votes.
- (b) In the case of a trust in charge of water supplies for domestic and stock purposes, the occupier of an area of land not exceeding

Water.

exceeding two thousand acres shall have one vote; the occupier of more than two thousand acres, but not more than ten thousand acres, two votes; and the occupier of more than ten thousand acres, three votes.

(2) For the purpose of this section a person on the roll as administering a property under a power of attorney shall be deemed the occupier of the area of land included in such property.

47. Any person entitled to vote at the election of trustees may be elected as trustee. But no person who has been convicted of any criminal offence shall be capable of being appointed or elected or to act as a trustee, and where a trustee becomes incapable as aforesaid his office shall become vacant. Qualification of trustees.
No. 93, 1902, s. 20.

48. In the first election of trustees the Minister shall appoint a returning officer, and may, for any succeeding election, appoint a returning officer, or delegate this power to the trustees. Returning officers.
Ibid. s. 21.

49. The Minister shall appoint the date of any election and the polling places, and shall notify the same in the Gazette and a local newspaper. Date of election and polling places.
Ibid. s. 21.

50. The mode of election of trustees shall be as prescribed. Mode of election.
Ibid. s. 22.

51. Any vacancy caused by the death, resignation, or incapacity of a trustee shall be filled by appointment or election, as the case may be. Filling of vacancy.
Ibid. s. 23.

DIVISION 5.—*Powers and duties of trustees.*

52. The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage, and for the prevention of floods and the control of flood-waters, mentioned in the notification constituting the trust, or thereafter constructed within the trust district. Duties of trustees.
Ibid. s. 24.
No. 59, 1906, s. 5 and Sched.

53. Trustees shall have the following duties and powers:—

- (a) They shall maintain in a state of efficiency the works under their charge. Powers and duties of trustees.
No. 93, 1902, s. 25.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works, and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.
- (d) They shall pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by them, and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Treasurer to a special account, to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.
- (e) They may appoint, with the sanction of the Minister, such officers or servants as may be required.

54.

Water.

Power of trustees to
enter and inspect.
No. 93, 1902, s. 26.

54. In the exercise and discharge of their powers and duties the trustees, by themselves or their officers, may enter any land within the trust district and make any inspection or survey they may deem necessary, and effect repairs or alterations to any works, but in so doing shall avoid, as far as practicable, causing any loss, injury, or damage. They shall not be responsible for any loss, injury, or damage caused by them, unless claim in writing be made within three months thereafter.

Rates.
Ibid. s. 27.

55. (1) For the purpose of providing money for exercising their powers and performing their duties under this Part, the trustees may fix and levy rates upon the whole of the lands within the trust district as follows:—

No. 59, 1906, s. 5
and Sched.

- (a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed, and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.
- (b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.
- (c) In the case of drainage, or works for the prevention of floods or the control of flood-waters, a rate per acre of the land benefited by the works shall be fixed; and this rate may vary according to the distance of the land from drains, or works for the prevention of floods or the control of flood waters, and in proportion to the benefit received as aforesaid.
- (d) In the case of irrigation, a rate per acre on the whole of the irrigable land within the trust district shall be levied, whereupon the ratepayer shall be entitled to a proportion of the water to be fixed by the trustees, either by measure or according to the area irrigated, or which, in the opinion of the trustees, should be irrigated.
- (e) In all cases not otherwise in this section provided for, a rate per acre of the land benefited, directly or indirectly, by the works shall be fixed yearly, and shall, as far as practicable, be in proportion to the benefit received as aforesaid.
- (f) In the case of a supply for more than one purpose, separate rates may be fixed, calculated on the basis set out for each such purpose.

Rates payable by
occupier.

(2) All such rates shall be payable by the occupiers of the
lands.

(3)

Water.

(3) Any occupier aggrieved by the amount at which he is rated may appeal to the police magistrate having jurisdiction in the district, who shall hear and determine the matter, and may confirm or vary such amount. Appeal to magistrate.

(4) If in any such appeal the police magistrate reduces the amount at which the appellant is rated, he shall increase the other ratings of the trust in such amounts as he thinks just, where he considers such course necessary, in order to secure that the total amount to be received by the trust for rates shall not be diminished by such reduction. Increase of other ratings.
No. 59, 1906, s. 18.

56. The trustees shall have power to sell water by measure to any ratepayer, in addition to the quantity to which he is entitled by payment of rates. Additional water.
No. 93, 1902, s. 28.

57. When a trust under this Part has any surplus water which is not required for the purpose for which the trust was constituted, the trust may sell such water, by measure or otherwise, to any ratepayer for any other purpose. Surplus water.
No. 59, 1906, s. 13.

58. The trustees shall submit to the Minister once every year, and at such other times as the Minister may direct, an audited statement of the accounts of the trust. The Minister may, if in his opinion such audited statement is defective or unsatisfactory, appoint an auditor to prepare a proper statement of accounts, at the cost of the trust. Accounts.
No. 93, 1902, s. 31.

DIVISION 6.—Various other powers.

59. In the event of any delay in the election of trustees, or in the event of any default by trustees in the discharge of their duties under this Part or the regulations made thereunder— General powers of Minister and Governor.
Ibid. s. 30 (2).

(a) the Minister may assume all or any of the powers by this Part conferred on trustees; and

(b) the Governor may, if in his opinion sufficient cause exists, dissolve a trust, remove from office trustees, and appoint and direct the election of other trustees, or appoint a manager of the affairs of a trust.

60. The Minister, by himself or his officers, may at any time enter any part of a trust district and make an inspection or survey of the works in charge of the trust, and may inspect the records and accounts of the trustees. Power of Minister to enter and inspect.
Ibid. s. 30 (1).

If upon such inspection the Minister is of opinion that any of such works are not kept in repair and efficient working order he may cause such repairs as he may think necessary to be made at the cost of the trust, and for the purpose of effecting such repairs he shall have the powers of the trustees.

61. (1) The Minister or trustees for the purposes of this Part may construct and maintain and repair any conduit through any land, street, or road. Conduits and drains.
Ibid. s. 32.

Water.

Any ratepayer of a trust may, with the approval of the trustees, for the purpose of draining his land, cut and make, and maintain and repair drains through any adjacent or neighbouring land.

Compensation.

(2) Provided that the trustees or ratepayer shall make full compensation for any damage occasioned by cutting and making such drains; and such compensation, estimated at one-fifth part above the value of the property affected, shall be assessed by the board, and when so assessed shall be recoverable in any court of competent jurisdiction.

Channels and
embankments.
No 59, 1906, s. 14.

62. On notice, in the prescribed form and under the hand of the Minister, being served—

(a) personally or by post on the owner or occupier or person in apparent occupation of any land through which it is proposed to construct a channel or embankment under the authority of this Part; or

(b) if the land is unoccupied, on the owner; or

(c) if the owner is out of the State or cannot be found, by posting a copy of the notice on some conspicuous part of the land,

the Minister, by his officers and servants, may commence and complete such channel or embankment through such land so as approximately to follow the direction as set out or described in the notice, with such variations as may be authorised under the provisions of this Part.

Power to use land
for certain purposes.
Ibid. s. 15.

63. For the purpose of the construction or the maintenance and repair of any channel or embankment proposed to be constructed, or constructed under the authority of this Part, or to which this Part applies, the Minister or a trust having the control of or carrying out such construction, maintenance, or repair shall be deemed to have had and shall have power at any time to enter any land within sixteen and a half feet on either side of the centre line of a distributing channel, or site for the same, or within lines distant sixty-six feet from the top of each bank of a water conservation or drainage channel, or site for the same, or any land being an embankment or site for the same, and use such land for the said purposes, notwithstanding that no easement or right so to enter or use such land may have been granted or acquired.

No compensation.
Ibid. s. 16.

64. No compensation shall be payable or shall be deemed to have been payable for the exercise of any powers conferred by the two last preceding sections.

Proviso.

Provided that where, after the twenty-eighth day of December, one thousand nine hundred and six, any such power is or has been exercised with respect to land cultivated or having buildings thereon, or being within population boundaries, compensation shall be payable, the amount of which shall be determined by two arbitrators, appointed respectively by the Minister and by the person owning the land or buildings, and by an umpire appointed by such arbitrators unless otherwise agreed by and between the Minister and the said person. The provisions of the Arbitration Act, 1902, shall apply to any such arbitration.

65.

Water.

65. (1) For the purposes of this Part, the Minister, or any person authorised by him, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells. Power of entry. No. 59, 1906, s. 3.

(2) Any person hindering him in the exercise of such power shall be liable to a penalty not exceeding twenty pounds. Penalties.

(3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds.

DIVISION 7.—Certain works not administered by trusts.

66. The Minister may, subject to the provisions of the Public Works Act, 1900, carry out a "State work" under the said Act out of the funds raised under this Part, and may maintain and administer and, subject as aforesaid, extend the same as he thinks fit. State works. No. 93, 1902, s. 4.

67. (1) Where the estimated cost does not exceed five thousand pounds the Minister may, out of the funds raised under this Part, carry out any works of water conservation that he deems desirable, and maintain and administer the same. Works of water conservation under £5,000. Ibid. s. 5.

Provided that the Minister shall, before carrying out any such work, refer the proposal to the board, and obtain their report thereon.

(2) No charge shall be made for any water supplied to travelling stock from such works when situated at or near any public highway. Travelling stock.

68. The Minister may, out of the funds raised under this Part, or out of the revenue account, or the loan account of the public works fund, carry out any work which he is authorised to carry out under the Public Watering Places Act, 1900, or under Part IV of this Act. Works under other Acts. Ibid. s. 10. No. 59, 1906, s. 7.

DIVISION 8.—Loans.

69. (1) The Governor may raise, in the year one thousand nine hundred and twelve, and in each of the next four succeeding years, by the issue of debentures or the issue of inscribed stock, secured upon the Consolidated Revenue Fund of this State, and bearing interest at a rate not exceeding four per centum per annum, a sum not exceeding two hundred thousand pounds, for the purpose of carrying out works of water supply, water conservation or irrigation, or of drainage, or for the prevention of floods or the control of flood-waters. Powers to raise loans. No. 93, 1902, s. 3. No. 59, 1906, s. 5 and Sched., and s. 6. No. 20, 1911, s. 2.

(2) The loans so authorised may be negotiated wholly or in part in the form of debentures or inscribed stock, in the State or in London, at such times and for such amounts as may be directed by the Governor.

Water.

(3) Any stock issued within the State under this Part shall be styled "New South Wales Funded Stock," and shall, if sold otherwise than by tender, be purchasable at the Treasury upon any lawful day.

(4) The provisions of the Funded Stock Act of 1892, relating to the method of inscription and transfer of stock, and the regulations under such Act, and the forms prescribed in the said regulations, are hereby declared to be applicable to, and shall be followed and used, *mutatis mutandis*, in connection with stock issued within the State under the provisions of this Part.

(5) In respect to any stock issued in London under the provisions of this Act the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act of 1883, for carrying this Act into effect, and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

(6) All moneys borrowed under this Act shall be paid to the Treasurer, and shall be by him carried to and form part of the General Loan Account, and be appropriated and applied, as required, to the works and services hereinbefore specified, or to any other duly authorised loan services, in terms of the Audit Act, 1902.

Powers of
investment in
trustees and other
persons.

(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government Securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

DIVISION 9.—*Miscellaneous.*

Notice to holder of
license.

No. 93, 1902, s. 12.

70. (1) If any work, other than a Statework, which the Minister is authorised by this Part to carry out interferes with any rights under any license granted by the Crown under this Act or any other Act the Minister shall give the holder of such license the following notice of his intention to carry out such work, that is to say—

- (a) where the unexpired term of the license does not exceed five years, six months' notice;
- (b) where the unexpired term of the license exceeds five years, twelve months' notice.

(2) Such work shall not be carried out until after the expiration of the period expressed in such notice.

*Water.***71.** Any person who—

Penalties.

- (a) obstructs the trustees or their officers or servants acting under this Part or the regulations or by-laws made thereunder; or
- (b) interferes with works in charge of the trustees; or
- (c) destroys, injures, or obliterates any mark or level fixed by the trustees or their officers; or
- (d) uses water from the works of the trust otherwise than in the manner and at the times prescribed; or
- (e) obstructs the flow of or pollutes any water under the control of a trust; or

(f) commits any breach of the provisions of this Part, shall be liable to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a penalty not exceeding five pounds per day whilst the offence continues, and shall also be liable to be sued by the trustees or by any person for compensation on account of loss or damage caused by his offence.

72. All rates and all charges imposed by or under this Part, or the regulations or by-laws made thereunder, may be recovered in any court of competent jurisdiction.

Recovery of rates.

73. Every work, other than a State work, which the Minister is authorised by this Part to carry out shall be carried out under the Public Works Act, 1900, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work, and for all purposes of the said Act such work shall be deemed to be an "authorised work," and the Minister shall be deemed a "constructing authority" within the meaning of the said Act.

Public Works Act.

74. (1) The Governor may make regulations for carrying out the provisions of this Part, and in particular for—

Regulations.

Ibid. s. 34.

- (a) the election of trustees and the making and revision of the rolls of voters, and the mode of voting;
- (b) the election by the trustees of a chairman;
- (c) the intervals within which meetings of trustees must be held;
- (d) the procedure at such meetings;
- (e) the appointment, payment, and dismissal of officers and servants;
- (f) the fixing and notifying of rates;
- (g) the hearing of appeals;
- (h) the collection and recovery of rates and charging the same on lands in respect of which they are payable;
- (i) the keeping of the accounts of trustees;
- (j) regulating the payment to the Crown of interest and charges by the trust;
- (k) regulating the proceeds of the board;
- (l) regulating special meetings of voters of a trust in pursuance of this Act;

(m)

Water.

(m) imposing any penalty not exceeding twenty pounds for any breach of the regulations.

(2) Such regulations shall be published in the Gazette.

By-laws.

No. 93, 1902, s. 35.

75 (1) The trustees may, subject to the approval of the Governor, make by-laws—

prescribing the duties of their officers and servants;

for regulating the supply of water from and the use of the works of the trust;

prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust;

imposing any penalty not exceeding ten pounds for any breach of the by-laws.

(2) Such by-laws shall have effect when approved by the Governor and published in the Gazette.

All such regulations and by-laws shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

PART IV.

DRAINAGE PROMOTION.

DIVISION 1.—*Preliminary.*

Interpretation.

No. 31, 1901, s. 3.

76. In this Part, unless the context or subject-matter otherwise indicates or requires—

“ Drain ” means any drain, channel, watercourse, or other artificial outlet for the purpose of draining any land into any waters.

“ Flood ” means any flood, flush, fresh, watershed, fall, tide, or other cause of a rise in the level of any waters above the bottom of any drain.

“ Minister ” means the Minister for Lands.

“ Owner ” means the owner, including the Crown, for the time being of any land, for any freehold estate, or any leasehold estate, whether such owner is or is not in actual occupation, or the agent of such owner.

“ Tenant ” means the person in actual occupation of any land, not being the owner.

“ Union ” means “ drainage union ” constituted under this Part, or under any Act hereby repealed.

“ Waters ” means any river, creek, stream, lagoon, lake, or other running or standing waters, the level of which is liable to variation, and the sea where the tide ebbs and flows.

DIVISION

*Water.*DIVISION 2.—*Drainage Unions and Boards of Directors.*

77. Whenever any tract of land is so circumstanced that from any permanent or occasional cause considerable quantities of water accumulate, and, for the default of sufficient natural or artificial drainage, lie thereon to the injury of such land, any owner or owners thereof may present a petition to the Governor under his hand—

- (a) describing as accurately as may be the land so under water, or liable to be under water, and the locality and boundaries thereof;
- (b) stating therein
 - (i) the facts as they exist;
 - (ii) the nature and cause of the accumulations;
 - (iii) the name and description of every other owner of such tract, including the Crown; and
 - (iv) the number of acres held by such owners respectively; and
- (c) praying that all owners of such tract, except the Crown, may be constituted a union—by some name to be specified—for the purpose of compulsory drainage and contribution under this Part.

78. Upon receipt of any such petition the Governor may publish the same in the Gazette.

79. Before the issuing of the proclamation hereinafter mentioned—

- (1) if any other owners of such tract of land, not including the Crown, being not less than one-fifth in number of holdings, present a counter-petition to the Governor, showing reasonable objections to constituting such union, or if for any other reason the Governor thinks fit, he may employ some competent person—
 - (a) to examine such tract of land, and report respecting the statements contained in both petitions, and the sufficiency of the reasons alleged in the latter;
 - (b) to make a survey and levels if deemed necessary; and
 - (c) to report on the best mode of effecting the drainage of such tract;

and the person so employed shall for such purposes have full power to enter upon any land within the limits of the proposed union.

- (2) In the event of an examination, report, and survey being deemed necessary to be made, and before the same are made, the original petitioner shall pay into the State Treasury, to the account of a separate fund, to be called the "Drainage Union of A or B Fund," such sum as is, in the opinion of the

Chief

Petition.

No. 31, 1901, s. 4.

Publication of
petition.

Ibid. s. 5.

Counter-petition.

Ibid. s. 6.

Security for
expenses.

Water.

Chief Surveyor, sufficient to reimburse all expenses likely to be incurred by the Government in the matter, and out of which separate fund sufficient funds may for that purpose be from time to time drawn and transferred to the Consolidated Revenue Fund by warrant of the Governor:

Provided that if the prayer of the original petition is refused, the money so paid by such petitioner, or the balance thereof, shall be returned to him.

Proclamation of
drainage union.
No. 31, 1901, s. 7.

80. (1) After the lapse of two months from the day of the publication of the original petition the Governor may, if he does not refuse the petition, publish in the Gazette a proclamation declaring the then owners of such tract of land and their successors, owners for the time being, the Crown excepted, to be a "drainage union" for the purpose of draining and keeping drained the said tract of land.

(2) By virtue of such proclamation, all such owners, and other owners for the time being, except the Crown, shall become and be a drainage union for such purpose only, and compellable by mandamus at the instance of any one or more of such owners, or of the Crown if holding land within the tract, or of any person interested in the land or any part thereof, to drain, and from time to time thereafter to keep drained, such land accordingly.

Board of manage-
ment.
Ibid. s. 10.

81. (1) A board of directors of such union, not fewer in number than three nor more than seven, and two auditors, shall be annually elected by a majority of the votes of members present at a general meeting, duly convened by notice published by the Minister in the Gazette and in the nearest local newspaper.

Ibid. s. 12.

Provided that, if the Crown holds lands within such union, the Governor shall be entitled to appoint one of such directors.

(2) The directors shall from time to time, under such by-laws as may be made by virtue of this Act, choose one of themselves to be chairman, and shall, as a board, manage all the affairs of such union.

By-laws.
Ibid. 1901, s. 11.

82. At a like general meeting by-laws may be made, not inconsistent with this Act, and such by-laws, when confirmed by the Governor and published in the Gazette, shall have the force of law.

Plural voting.
Ibid. s. 12.

83. (1) In voting at any such meeting for electing directors or making by-laws, every member of such union shall be entitled to one or more votes according to the assessed increased value to accrue to the several holdings as aforesaid, that is to say:—If such increased value amounts to less than fifty pounds, the member shall be entitled to one vote; if fifty pounds and below one hundred pounds, two votes; if one hundred pounds and below two hundred and fifty pounds, three votes; if two hundred and fifty pounds and below five hundred pounds, four votes; and if five hundred pounds and upwards, five votes.

Schedule III.

(2) Every voter shall, before voting, make and subscribe a declaration in the terms of Schedule Three hereto, before some justice of the peace.

84.

Water.

84. (1) The board of directors may appoint such officers and servants as they deem necessary, and may, in the name of their chairman, make valid contracts, and sue and be sued on behalf of the union. Powers of directors. No. 31, 1901, s. 13.

(2) Every director, and also every other officer of the union shall before entering upon business, make and subscribe before a justice a declaration in the terms of Schedule Four hereto. Schedule IV.

85. Notwithstanding the provisions contained in this Part, every member of the said drainage union whose rates are fully paid shall be entitled to vote at any election of the board of directors of such union. Voting for directors. No. 28, 1902, s. .

DIVISION 3.—Rates.

86. A sworn appraiser shall be appointed by the Governor, to be remunerated according to a scale of fees fixed by the Governor and published in the Gazette, for the purpose of assessing the increased value to accrue to the several holdings, including those of the Crown, by reason of drainage under this Part. Assessment of values. Ibid. s. 8.

87. (1) If any owner objects to such mode of assessment in writing addressed to the Minister, the registrar of the nearest District Court shall, by direction of the Minister, summon a jury of ten persons, not being members of such union, five of whom shall be chosen by lot, and who shall, on a day to be fixed by the District Court judge, under his direction, assess such increased value, and the verdict of the majority of such jury shall be final, and the cost of such mode of assessment shall be borne by such owner. Appeal against assessment. Ibid. s. 9.

(2) The contributions towards the expenses of the Government, and also the general contributions of the members of the union, and of the Crown, if a holder, towards the expenses of such drainage, and also the proportions of votes hereinafter mentioned shall be apportioned according to such increased value.

88. (1) The board of directors of every union shall, within three months after election to office, and at a corresponding period in every subsequent year, cause an estimate to be made of the probable amount which will be required for the current year, commencing on the first day of January and ending on the thirty-first day of December, towards making, clearing, and keeping open drains by sufficient means, including steam-engines where found to be requisite, in upholding embankments, and in doing other necessary works for the purpose of fully carrying out this Part, and shall raise the amount so estimated by an assessment not exceeding ten pounds per centum on the increased value accruing to the several holdings, including those of the Crown, from such works. Assessment. Ibid. s. 14.

(2) The occupier of the lands assessed shall primarily pay the rates hereinafter mentioned.

Provided

Water.

Provided that if there is no sufficient provision in the lease, or in some other written instrument with reference thereto, the tenant may recover from his landlord a fair proportion of such rates, to be settled by arbitration in case of dispute.

Rates.

No. 31, 1901, s. 15.

89. (1) In each and every year there shall be paid by every person, including the Crown, holding land within the union, and towards the revenues of such union, for every portion of land so held a rate not exceeding twenty pounds per centum of the increased annual value thereof, to be settled as herein mentioned; and all such rates for the first year shall be paid into the hands of the chairman of the board of directors within two months after notice in writing signed by him, and for every succeeding year in such time and manner as may be required by any by-law made under this Part.

Levy and distress.

(2) In default of payment of such rates, or of such amended rates, as may be determined on appeal as hereinafter provided, such rates, or amended rates, may be levied by warrant under the hand of such chairman by distress and sale of the goods and chattels of the person by whom the same are due, and in the event of such goods and chattels not being found of sufficient value to satisfy such rates, or amended rates, then by sale of the land, or a sufficient portion thereof.

Provided that the surplus, if any, shall be repaid to the owner of such goods and chattels or land.

Recovery of rates
before justices.

No. 28, 1902, s. 2.

(3) If any person rated under the provisions of this Part fails to pay any rate due from him for the space of thirty days after demand thereof made in writing, signed by the chairman or any director for the time being of any union, or by a collector duly authorised in that behalf by any drainage union, or after publication in some newspaper circulating in the neighbourhood of a notice requiring such payment to be made, any such drainage union may at their discretion withhold or abandon proceedings by distress and sale, as provided in the preceding subsection, and may, after default as aforesaid, or in the absence of any or a sufficient distress, recover the amount of rates due from the person rated for the same in a summary way before two justices, and the same when recovered shall be paid over to the union interested towards its revenue.

Appeal.

No. 31, 1901, s. 16.

90. Any person aggrieved by the amount of any such rate may appeal against the same to the nearest petty sessions, which court shall have power to hear and determine the same and to award such relief in the premises as the justice of the case may require, and the decision thereof shall be final.

Provided that the appellant shall give notice in writing under his hand to the chairman of his intention to appeal seven days at least before the holding of the court for hearing such appeal:

Provided also that no justice, being a member of the union, interested in such appeal, shall adjudicate therein.

91.

Water.

91. All complaints or other legal proceedings for the recovery of any rates as aforesaid, or for any non-compliance with or any breach of this Part, or of any by-laws made thereunder, may be laid and taken by the chairman of, or any other officer appointed by, any union in that behalf, and any such chairman or officer may appear and represent any union at the hearing of such complaints or other legal proceedings.

Appearance by chairman or officer.
No. 28, 1908, s. 3.

DIVISION 4.—*Arbitration.*

92. Whenever it becomes necessary, under the provisions of this Part, to proceed by arbitration, the arbitrators and umpire shall be appointed, and the arbitration shall be conducted in manner following:—

Mode of arbitration.
No. 31, 1901, s. 28.

- (1) Where the Crown is a party, the Minister and the other party may concur in the appointment of a single arbitrator, and, failing such concurrence, then on the request of the Minister or such other party, after appointing an arbitrator in writing under his hand in the form of Schedule Five hereto, such other party or the Minister, as the case may be, shall also in like manner appoint an arbitrator.
- (2) Where the Crown is not a party, the parties to the dispute may concur in the appointment of a single arbitrator, and failing such concurrence, after either party shall in like manner have appointed an arbitrator, the other party shall, at his request also in like manner, appoint an arbitrator.
- (3) All appointments of arbitrators shall be delivered to the respective arbitrators, and shall be attached to the award when made, and shall be deemed to be a submission to arbitration.
- (4) Any submission to arbitration may, on the application of either party, be made a rule of the Supreme Court or of the District Court of the district.
- (5) Every request to appoint an arbitrator shall be in the form of Schedule Six hereto, and if within sixty days after the same has been duly served, together with a copy of the first appointment, the party served fails to appoint an arbitrator, the arbitrator so first appointed shall be deemed to be appointed by and shall act as a single arbitrator on behalf of both parties.
- (6) No appointment of an arbitrator shall be revoked without the consent of both parties to the arbitration, nor shall the death of any party operate as a revocation.
- (7) Every award made in the form or to the effect of Schedule Seven hereto, and signed by the single arbitrator, or by both arbitrators, or by the umpire, as the case may be, shall be final and conclusive and binding upon all parties to or interested in the arbitration for all intents and purposes.

Appointment of arbitrators where Crown a party.

Schedule V.

Appointment of arbitrators in other cases.

Appointment to be deemed submission.

Submission made rule of court.

Failure to appoint arbitrators.
Schedule VI.

No appointment to be revoked.

Award to be final.
Schedule VII.

Water.

Death or failure to
act of arbitrator.

Schedule V.

Power of single
arbitrator.

Death or failure to
act of single
arbitrator.

Schedule VIII.

Appointment of
umpire.

Schedule IX.

When umpire to act.

Production of
documents.

- (8) If before the making of the award any arbitrator dies or refuses or becomes incapable to act, the party by whom he was appointed may appoint in writing under his hand, in the form of Schedule Five hereto, another person in his stead, and if he fails so to do for thirty days after request in writing, in that behalf from the other arbitrators, such other arbitrator may proceed *ex parte* and make his award as single arbitrator for both parties.
- (9) Every arbitrator becoming a single arbitrator in any manner aforesaid, shall have the same powers and authorities as are by this Part vested in any arbitrator appointed to be single arbitrator with the concurrence of both the parties.
- (10) If a single arbitrator dies, or refuses or becomes incapable to act, before the making of his award, or fails to make his award within sixty days after his appointment, or within such extended time (if any) not exceeding thirty days as has been duly fixed by him for that purpose by indorsement on his appointment in the form of Schedule Eight hereto, the matters referred to him shall be again referred to arbitration, under the provisions of this Part, as if no former reference had been made.
- (11) If there is more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint an umpire by endorsement on each of their appointments under their hands in the form of Schedule Nine hereto, and if the person appointed to be umpire dies, or refuses or becomes incapable to act, the arbitrators shall forthwith appoint in like manner another person in his stead, and in case the arbitrators neglect or refuse to appoint an umpire for thirty days after the date on which the last of them was appointed, an umpire may be appointed by the Minister.
- (12) If arbitrators fail to make their award within sixty days after the day on which the last of them was appointed, or within such extended time (if any), not exceeding thirty days, as has been fixed by them for that purpose by indorsement as aforesaid, the matters shall be determined by the umpire, and the provisions of this Part with respect to the time for making an award, and with respect to extending the same in the case of a single arbitrator, shall apply to any umpirage save and except that such time shall commence and be computed from the date of the matters being referred to the umpire.
- (13) Any arbitrator or umpire appointed by virtue of this Part may require the production of such documents in the possession or power of either party as he thinks necessary for determining the matters referred, and may examine any persons, including the parties, as witnesses, on oath.

(14)

Water.

- (14) All costs of and consequent upon the reference shall be in the discretion of the arbitrator, arbitrators, or umpire, as the case may be. Costs.
- Provided that where no special agreement is made beforehand by the parties, the charge of each arbitrator or of the umpire shall not in any case exceed one pound.
- (15) Before any arbitrator or umpire enters upon the reference, he shall make and subscribe before a justice a declaration in the form of Schedule Ten hereto. Declaration by arbitrator or umpire. Schedule X.
- (16) Every such declaration shall be annexed to the award, and any arbitrator or umpire who in such declaration falsely states that he is not so interested, or who wilfully acts contrary to such declaration, shall be guilty of a misdemeanour. False declaration a misdemeanour.
- (17) No appointment or award shall be set aside for irregularity or error in matter of form. No avoidance for error in form.
- (18) Every award shall be in writing and in duplicate, and shall be transmitted by the arbitrator, arbitrators, or umpire to each party or the agent of each party, and where the Crown is a party, to the Minister, and the Minister shall deposit the same in his office. Requisites of award.

DIVISION 5.—Miscellaneous.

93. Every union shall, within one year after its establishment, publish in the Gazette a plan of the drainage contemplated within the limits of such union, showing accurately the position and direction, width, depth, and other material particulars of such drainage, and distinguishing the parts (if any) then completed, and shall cause tracings of such plan to be lodged with the Chief Surveyor, to be recorded by him for public reference at convenient hours, and a like tracing to be lodged for like reference with the registrar of the District Court of the district. Plans of drainage to be published. No. 31, 1901, s. 17.

Such union shall thereafter, in every successive half-year, publish and transmit in like manner like plans and tracings as to all then intended additional drainage.

94. No alteration affecting any navigable water shall be made without the sanction of the Governor. Navigable water. Ibid. s. 17.

95. Every union shall also, once in every half-year at equal intervals of time, publish twice in the Gazette a correct debtor and creditor account, certified under the hand of their chairman and by the auditors, of all receipts and payments under this Part for the last half-year, and if the Crown is a holder of lands within the union, shall transmit the same to the Minister. Accounts. Ibid. s. 18.

96. All members of every union, and, if the Crown is a holder of lands within the union, the Minister or any person duly authorised by him, may at all reasonable times examine any drain constructed by the union. Inspection of drains. Ibid. s. 19.

Provided

Water.

Provided that if any damage or injury to any property is done by or by reason of such examination, the party causing such damage or injury shall be answerable for the same.

Power to borrow
money.
No. 31, 1901, s. 20.

97. Every union may borrow, by mortgage or otherwise, on the credit of any property or revenue belonging thereto, for or towards or incidental to the making or completing of any such drains or any works within the purposes of this Part, any money not exceeding the estimated revenue of such union for five years.

Provided that no money shall be so borrowed without the sanction of the Governor.

Limitation of
actions.
Ibid. s. 21.

98 No action or other proceeding, whether civil or criminal, shall be commenced by any union against any person under this Part after the expiration of twelve months from the day on which the cause of such action or proceeding arose.

Provided that when such person is absent from the State, service of any notice or process in any civil proceeding against such person may be made upon the land in like manner as in cases of ejectment.

Dissolution of union.
Ibid. s. 22.

99. On the receipt of a petition, under the hand of not less than one-third part of the members of any union in number and value of holdings, and after publication of such petition in the Gazette and at least one local newspaper for two months, and no sufficient cause against it shown by other such members more in number and greater in value, the Governor may dissolve such union, if then free from all debt as aforesaid, from and after a day to be named in a proclamation published in like manner, and the union shall be so dissolved accordingly.

Flood-gates to
certain drains.
Ibid. s. 23.

100. Any owner who cuts or makes any drain, the bottom of which at its opening into any waters is so low as to injure or endanger any other property, and omits to construct and fix in and to every such drain a flood-gate sufficient, when closed, to prevent the flow from such waters through such drain of any water over or upon the land of any other owner, shall be liable to a penalty not exceeding one hundred pounds, and to a further penalty not exceeding twenty pounds for every week after the imposition of the first penalty during which he fails to construct such flood-gate.

Notice of cleansing
or repairing drains.
Ibid. s. 24.

101. (1) Whenever any drain, cut for the benefit and at the expense of two or more owners, but not being within a union in terms of this Part, in the opinion of any such owner requires cleansing or repair so as to render it effective, such owner may give written notice to each of the other owners requiring them to take measures for such cleansing and repair.

(2) After the expiration of fourteen days from the service of such notice, the owner serving the said notice, failing the agreement of all the owners, or the owners consenting, if any other owner consents, may enter upon any lands through which such drain passes, and may cause such cleansing and repairs to be effected.

(3)

Water.

(3) The owners declining to effect such cleansing and repairs, or failing to consent to the same, shall be liable to their ratable share of the cost of such cleansing and repairs, to be determined and recovered in a summary way before any court of petty sessions if such court is satisfied that such cleansing and repair were necessary.

102. Nothing herein shall affect any remedy at law by which the Crown or any person may recover compensation in damages for any loss or injury to any land, stock, crops, or other property, by reason of any breach or neglect by the Crown or any other person of any provision of this Part. Legal remedies not affected. No. 31, 1901, s. 25.

103. Whosoever wilfully injures or damages any drain, flood-gate, or other work connected with drainage under this Part, or wilfully trespasses upon, damages, or injures any property under colour or pretence of carrying out this Part shall, in addition to any liability at law to compensate for such trespass, damage, or injury, be liable for every such offence to a penalty not exceeding twenty pounds nor less than one pound. Penalties for wilful injury. Ibid. s. 26.

104. (1) Any union or any owner of land may, for the purpose of draining land under this Part, make and cut drains through any adjacent or neighbouring land into any waters. Power to make drains through other lands. Ibid. s. 27.

(2) Such union or owner constructing such drain shall be liable at law to make full compensation for any damage thereby occasioned to the proprietor of such adjacent or neighbouring land, and be subject to all other the provisions of this Part in respect of drains.

(3) The amount of such compensation shall be settled by arbitration under this Part.

(4) Such compensation shall be estimated at one-fifth part above the value of the property affected at the time such loss or damage accrues.

PART V.

ARTESIAN WELLS.

DIVISION 1.—*Interpretation and general.*

105. In this Part—

“Artesian well” includes an artesian well from which the water does not flow naturally, but has to be raised by pumping or other artificial means; and

“Minister” means Minister for Public Works. Definition. No. 41, 1897, s. 7.

106. Any work constructed under the authority of the Artesian Wells Act, 1897, or any Act amending the same, shall be deemed to have been constructed under this Part. Works under repealed Acts.

DIVISION

Water.

DIVISION 2.—*Construction and charges.*

Notification of
proposal.
No. 41, 1897, 1 (i).

107. (1) The Governor may notify in the Gazette any proposal for the construction by the Crown of any artesian well, and for the conservation and supply of the water flowing from such well, together with an estimate of the cost of the same.

Report of board.

(2) After such notification the Minister may refer any such proposal to the land board for the land district within which the proposed work would be situate, or to a land board for a land district adjacent thereto; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, would be benefited by water from the proposed well, and should be included in any district to be constituted in respect of the said work.

Notification of
district.

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which the charges in the next following section mentioned may be levied.

Petition.

(4) If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons—

(a) who constitute a two-thirds majority of the total number of those owning or occupying, or being mortgagees, of land within the district; and

(b) who own or occupy or are mortgagees of an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out.

Construction of
work.

(5) Thirty days after the receipt of a report to that effect the Minister may carry out the work with funds legally available for the purpose.

Provided that if an appeal to the Land Appeal Court affecting the same is pending, the carrying out of the work shall be stayed until the appeal is decided.

Assessment of
charges.
Ibid. s. 1 (ii).

108. (1) On the completion of a work constructed under the preceding section, the Minister may direct the land board to assess the charges to be paid by each occupier of land within the district notified as aforesaid.

Including charges.

(2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the construction of the well and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided.

Total maximum.

(3) The total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of the work.

(4)

Water.

(4) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid. Fresh assessment.

109. If the occupiers, owners, or mortgagees of any lands in writing request the Minister to construct an artesian well for the purpose of supplying water to their lands, and consent to pay any charges which may be levied in respect of the same, the Minister may, if he approve of the request, construct the well and such channels and other works for the supply of the water as he may think fit, with funds legally available for the purpose. Construction of well on petition of occupiers. No. 41, 1897, s. 2 (i).

110. (1) On the completion of a work constructed under the preceding section, the Minister may direct the land board of the land district within which the work is situate to assess the charges to be paid by each occupier of any of the said lands. Assessment of charges. Ibid. s. 2 (ii).

(2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the construction of the well, and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided. Individual charges.

(3) The total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of the work. Total maximum.

(4) On the petition of persons liable in the aggregate to pay one-half of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of charges to be paid. Fresh assessment.

111. On the receipt of a petition in writing by the occupiers, owners, or mortgagees of any land situate in the neighbourhood of an artesian well constructed under this Part, and in respect of which charges are payable under this Part, and on obtaining the consent in writing of the persons who— Extension of supply. No. 59, 1906, s. 31.

(a) constitute a two-thirds majority of the total number of those liable to pay charges as aforesaid; and

(b) who occupy an area exceeding two-thirds of the total area in respect of which those charges are payable,

the Minister may, by notice in the Gazette, extend the supply of water from the well to the lands of the first mentioned occupiers, owners, and mortgagees.

Charges shall be assessed and paid in respect of such lands under this Part.

DIVISION 3.—*Licenses.*

112. (1) No artesian well shall be commenced or be enlarged, deepened, or be altered to increase the flow of water therefrom, unless— Wells to be licensed. Ibid. s. 22.

(a) in pursuance of a license under this Part; or

c

(b)

Water.

- (b) in pursuance of a written contract, signed before the twenty-ninth day of December, one thousand nine hundred and six, and lodged with the Minister within fourteen days after such date;
- (c) in compliance with conditions imposed in an improvement lease granted before such date, and if notice of such lease is given to the Minister within fourteen days after such date; or
- (d) where the well is to be sunk, enlarged, deepened, or altered by the Crown.

Penalty.

(2) If any person contravenes the provisions of this section, the said person, and the owner of the well in respect of which the contravention has occurred, shall, on conviction, be liable to a penalty not exceeding one hundred pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction.

Application for license.

No. 59, 1906, s. 24.

113. (1) Application for a license for any new artesian well, or for enlarging, deepening, or altering any existing well, shall be made to the Under Secretary for Public Works in the form prescribed, accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to utilise the water.

Notification of application.

(2) On application being so made, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where the well or the site for the well is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the well or the site thereof is situate, a public inquiry will be held as to the desirability of granting the application.

*Inquiry.**Ibid.* s. 25.

114. (1) The inquiry shall be held by the board, or by some person authorised by the board, and approved by the Minister. The board shall report in writing to the Minister upon the inquiry.

Persons interested.

(2) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application.

*Issue of license.**Ibid.* s. 26.

115. If the board reports in favour of the issuing of a license, the same shall be notified by the Minister in the Gazette, and the Minister shall, after the expiration of thirty days from such notification, issue a license to the applicant in the prescribed form, subject to such terms, limitations, and conditions, if any, as may be recommended in such report, and to such conditions as he thinks fit.

Provided that before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report, or as he may think fit.

Water.

116. The license, if granted, shall be granted for a period not exceeding twenty-eight years, and shall (subject to the provisions of this Part with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make) be renewed by the Minister from time to time on the application of the person holding the license. Period of license. No. 59, 1906, s. 27.

Provided that no renewal shall be for a longer period than fourteen years.

117. A license shall be deemed to be held by and shall operate for the benefit of the lawful occupier for the time being of the land whereon the well is sunk or is proposed to be sunk. Benefit of license. Ibid. s. 28.

118. During the time that a license under this Part is in force with respect to a well, no alterations other than repairs or alterations necessary for the maintenance of the well, or on account of any sudden or unforeseen emergency, shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorised by the license. Penalty for alterations of licensed well or contravention of license. Ibid. s. 29.

Any person who contravenes the provisions of this section, or contravenes or fails to carry out any condition of the license, shall be liable to a penalty not exceeding fifty pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction; and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled.

Provided that the holder of any such license may, during the currency thereof, apply for an amended license allowing alterations in the well, and any such application shall be dealt with as herein provided in respect of applications for a license in the first instance.

DIVISION 4.—*Miscellaneous.*

119. All charges and expenses payable under the authority of this Part shall be a charge on the land in respect of which they were payable. Charge on land. No. 41, 1897, s. 3.

120. (1) It shall be the duty of each occupier of any of the lands in sections one hundred and seven and one hundred and nine mentioned, and if any of the said lands should at any time be unoccupied it shall be the duty of the owner thereof, to maintain in good repair and in efficient condition such channels and other works in connection therewith as have been constructed through his land; and any occupier or owner who fails to comply with the provisions of this subsection shall be liable to a penalty not exceeding fifty pounds. Duty of occupier to keep in repair. Ibid. s. 2 (iii).

(2) The Minister, or any person appointed by him in that behalf, may, on being informed of any failure by an occupier or owner to comply with the provisions of the last preceding subsection, require the occupier or owner, by notice in writing served on him, to effect such repairs. On failure of duty to repair. Ibid. s. 2 (iv).

Water.

repairs and do such things as he may consider necessary in order to put the channel in an efficient condition. If the occupier or owner for one week after receipt of the notice fails or neglects to comply therewith it shall be lawful for the Minister to cause such repairs and things as aforesaid to be effected and done, and recover from the occupier or owner, as the case may be, in any court of competent jurisdiction, the expenses thereby incurred.

Penalty for wilful
destruction.
No. 41, 1897, s. 4 (i).

121. Any person who wilfully cuts, breaks, or destroys or damages, with intent to destroy or render less useful, any work constructed under the authority of this Part shall be liable for all damage and loss sustained by such act, and shall be, in addition, liable to be fined any sum not exceeding one hundred pounds, or to be imprisoned for any term not exceeding six months.

Penalty for
obstruction or
diversion of water
Ibid. s. 4 (ii).

122. Any person who wilfully and wrongly obstructs or diverts the flow of water in any channel constructed under the authority of this Part shall be liable to a penalty not exceeding fifty pounds.

Waste of water.
No. 59, 1906, s. 30.

123. (1) If the Minister is of opinion that the water from any artesian well is being wastefully or improperly used, or is being wasted, he may direct the partial closing of such well, or direct such other precautions to be taken as he may deem necessary to prevent such improper use or waste.

Penalty.

(2) Any person refusing or neglecting to carry out any direction given by the Minister under this section shall be liable, for every day during which such refusal or neglect continues after such direction has been given, to a penalty not exceeding twenty pounds, and in addition to the said penalty any license issued under this Part in respect of such well may, by notice in the Gazette, be cancelled.

Power of entry.
Ibid. s. 3.

124. (1) For the purposes of this Part the Minister, or any person authorised by him, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells.

Penalties.

(2) Any person hindering him in the exercise of such powers shall be liable to a penalty not exceeding twenty pounds.

(3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds.

Recovery of charges
and penalties.
No. 41, 1897, s. 6.

125. Charges and expenses payable under and penalties imposed by this Part, or by any regulations made thereunder, may be recovered before a police or stipendiary magistrate or any two justices in petty sessions.

Appeal.
Ibid. s. 1 (ii),

126. Any report, recommendation, or decision of a land board under this Part shall be subject to an appeal or reference to the Land Court in the manner prescribed by the Crown Lands Acts, or any regulations made thereunder. The decision of the said court shall be final.

127.

Water.

127. All works and wells constructed under the authority of this Part shall be subject to the provisions of the Public Works Act, 1900.

Public Works Act.
No. 41, 1897, s. 1 (i),
and s. 2 (i).

128. All charges payable under this Part shall be paid, at the times and in the manner prescribed, into the Consolidated Revenue Fund.

Consolidated
Revenue.
Ibid. s. 1 (ii) and s. 2
(ii).

129. (1) The Governor may make regulations—

Regulations.
Ibid. s. 5.
No. 59, 1906, s. 32.

- (a) for levying and collecting the charges payable under the authority of this Part;
- (b) for regulating the supply and use of water from any well constructed under the authority of this Part;
- (c) prescribing the steps to be taken in order to maintain the bores and channels in good repair and in efficient condition;
- (d) prescribing the forms of licenses and renewals of the same; and
- (e) for carrying out the provisions of this Part;

and may, in such regulations, impose any penalty not exceeding twenty pounds for any breach of the same, or, where the breach is a continuing one, not exceeding five pounds for every day during which the breach continues.

(2) All such regulations, on being published in the Gazette, shall have the force of law, and shall, within fourteen days thereafter, be laid on the table of each House of Parliament, if Parliament be then in session; but if not, then within fourteen days after the next meeting of Parliament.

SCHEDULES.

SCHEDULE I.

Section 2.

Number of Acts.	Name of Act.	Extent of repeal.
No. 41, 1897	Artesian Wells Act, 1897	The whole.
No. 31, 1901	Drainage Promotion Act, 1901	The whole.
No. 28, 1902	Drainage Promotion Act Amendment Act, 1902...	The whole.
No. 51, 1902	Water Rights Act, 1902	The whole.
No. 93, 1902	Water and Drainage Act, 1902	The unrepealed portion.
No. 59, 1906	Water and Drainage and Artesian Wells (Amending) Act, 1906	The whole.
No. 20, 1911	Water and Drainage (Amendment) Act, 1911.....	The whole.

SCHEDULE

Water.

Sections 12 (2), 14,
and 15.

SCHEDULE II.

For the purpose of fixing scales of fees, works shall be divided by the Minister into the following classes:—

Class I consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works six months or longer in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation, for irrigation or other purposes.

Class II consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works less than six months in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation for irrigation or other purposes.

Class III.—Pumping machinery and other water-lifting appliances exclusive of those where the motive power employed does not exceed one-horse power.

Class IV.—Dams and weirs for storing water and not included in Class I or Class II.

Class V.—Flood-gates for drainage purposes on the banks of rivers or lakes, and artificial channels or natural channels artificially improved emptying or draining into a river or lake.

Fees for granting or renewing licenses.

The following license fees payable on the granting or renewing of licenses will in each case cover the period for which the license is granted or renewed.

Class I.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The Minister, or some person authorised by him in that behalf, shall determine the amount of water per minute which can be supplied to the licensee by the work, and the fee payable is hereby fixed at the rate of two pounds for every seven hundred and fifty gallons, or portion of seven hundred and fifty gallons, of water per minute so determined as aforesaid, up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied as aforesaid above that amount, at the rate of four pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class II.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The amount of water per minute which can be supplied by the work shall be determined in the same way as in the case of works included in Class I, and the fee payable is hereby fixed at the rate of two pounds for every one thousand five hundred gallons or portion of one thousand five hundred gallons of water per minute so determined as aforesaid up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied above that amount as aforesaid, at the rate of two pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class III.—The license fee to be paid in respect of a work included in this class shall be as follows:—

- (a) Where the motive power employed or to be employed does not exceed one-horse power no charge for a license shall be made.
- (b)

Water.

- (b) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of at least six months annually, without the aid of a dam or weir, the license fee shall be the same as in Class I.
- (c) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of less than six months annually, without the aid of a dam or weir, the license fee shall be half that payable under the last preceding paragraph.
- (d) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes during at least six months annually, the license fee for the combined works shall be a mean between the fee payable under Class I and that payable under Class II.
- (e) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes for a period of less than six months annually, the license fee for the combined works shall be half that payable under the last preceding paragraph.

Class IV.—The license fee for a work included in this class shall be one pound.

Class V.—The license fee for a work included in this class shall be one pound.

SCHEDULE III.

Section 83.

Declaration of voter.

I, A.B., do hereby solemnly declare that I am the owner of land, as described in this Act, to the value of _____ pounds, and a member of the union for drainage, and that I have not yet voted at this election.

SCHEDULE IV.

Section 84.

Declaration of officer.

I, A.B., having been elected director (or *chairman or other officer*) of the board of directors of the _____ union for drainage, do hereby solemnly declare that I will duly and faithfully fulfil the duties of that office to the best of my judgment and ability, and that I have not fraudulently or collusively obtained the said office.

SCHEDULE V.

Sections 92 (1) and 92 (8).

Appointment of arbitrators.

I, A.B. (or *Minister for Lands on behalf of the Crown if a party*), do hereby appoint E.F. to be one of two arbitrators under the Water Act, 1912, Part IV, to determine in the mode prescribed by that Act the matter hereinafter stated which is in dispute between the Crown (or *myself*) and C.D. (or *the Crown*). And I hereby promise and agree that I will submit to and be bound by the award in writing to be made by the said arbitrator and the other arbitrator appointed by the said C.D. (or *by the Minister for Lands on behalf of the Crown*) or by the umpire (if any) appointed by them.

[*State precisely the question to be determined.*]

Witness—

[*Signature.*]*

* In case of a corporation this appointment must be under the common seal.

SCHEDULE

Water.

Section 92 (5).

SCHEDULE VI.

*Request.*To C.D. (*or the Minister for Lands in case of Crown*).

[Date.]

I, A.B., having, by the instrument of which I annex a copy hereto, duly appointed, under the Water Act, 1912, Part IV, E.F. to be one of two arbitrators to determine the matter of dispute set forth in the said instrument, do hereby request you to appoint another arbitrator in due time, as under the said Act in default thereof the said E.F. will act as single arbitrator, and will alone determine and make his award in writing respecting the said matter.

Witness—

[Signature.]

Section 92 (7).

SCHEDULE VII.

Award.

We, E.F. and G.H., abitrators (*or I, E.F., a single arbitrator, or I, K.L., the umpire*), duly appointed under the Water Act, 1912, Part IV, to determine and make our (*my*) award in writing concerning the matter next hereunder stated in dispute between A.B. and C.D.

[*Here copy statement of the matter in dispute in precisely same words as at foot of appointment of arbitrators.*]

do by this our (*my*) award in writing under our hands (*my hand*) determine and award as follows:—

[*Here give the determination in plain and simple language, taking care to provide for every point in dispute.*]

Witness—

[Signatures or Signature.]

Section 92 (10).

SCHEDULE VIII.

Indorsement.

[Date.]

We, E.F. and G.H., arbitrators (*or I, E.F., single arbitrator, or I, K.L., umpire*), duly appointed by the within instrument under the Water Act, 1912, Part IV, to determine by arbitration and make award upon the matter therein stated in dispute between A.B. and C.D. (*or Minister for Lands on behalf of the Crown*), do hereby extend the time for making our (*or my*) award until the day of , 19 .

Witness—

[Signatures or Signature.]

Section 92 (11).

SCHEDULE IX.

Appointment of umpire.

[Date.]

We, E.F. and G.H., arbitrators appointed by the within instrument to determine the matter in dispute therein stated, do hereby, before we proceed upon such arbitration, appoint K.L. to be umpire under the Act within mentioned, and to determine and make his award in writing concerning such matter in the event of our differing concerning the same.

Witness—

[Signatures.]

Section 92 (15).

SCHEDULE X.

Declaration.

I, A.B., do solemnly and sincerely declare that I am not directly or indirectly interested in the matter in dispute between A.B. and C.D., referred to me as arbitrator (*or as one of the arbitrators or as umpire*), and that I will faithfully, honestly, and to the best of my skill and ability hear and determine such matter under the Water Act, 1912, Part IV.

By Authority : WILLIAM APPELGATE GULLICK, Government Printer, Sydney, 1912.

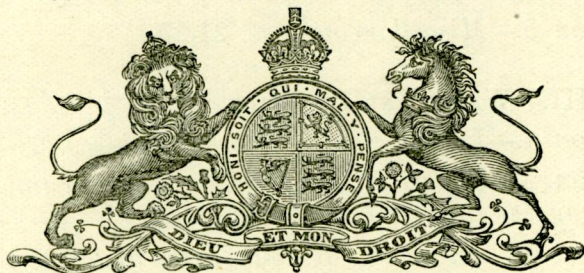
[1s. 6d.]

I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Assembly Chamber,
Sydney, 13 November, 1912. }*

*RICHD. A. ARNOLD,
Clerk of the Legislative Assembly.*

New South Wales.



ANNO TERTIO

GEORGII V REGIS.

Act No. 44, 1912.

An Act to consolidate the Acts relating to Water Rights, Water and Drainage, Drainage Promotion, and Artesian Wells.
[Assented to, 26th November, 1912.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Water Act, 1912," and is divided into Parts and Divisions as follows:—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—WATER RIGHTS AND WORKS.

DIVISION 1.—*Interpretation*—s. 5.

DIVISION

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

*R. D. MEAGHER,
Chairman of Committees of the Legislative Assembly.*

Water.

DIVISION 2.—*Rights of the Crown and of riparian proprietors—*ss. 6-9.

DIVISION 3.—*Licenses—*ss. 10-18.

DIVISION 4.—*Works constructed by the Crown—*ss. 19, 20.

DIVISION 5.—*Miscellaneous—*ss. 21-27.

PART III.—WATER AND DRAINAGE.

DIVISION 1.—*Interpretation and general—*ss. 28-30.

DIVISION 2.—*Constitution of trusts, construction of works and transfer to trust—*ss. 31-38.

DIVISION 3.—*Alteration of boundaries and extension of works—*ss. 39-41.

DIVISION 4.—*Appointment and election of trustees—*ss. 42-51.

DIVISION 5.—*Power and duties of trustees—*ss. 52-58.

DIVISION 6.—*Various other powers—*ss. 59-65.

DIVISION 7.—*Certain works not administered by trusts—*ss. 66-68.

DIVISION 8.—*Loans—*s. 69.

DIVISION 9.—*Miscellaneous—*ss. 70-75.

PART IV.—DRAINAGE PROMOTION.

DIVISION 1.—*Interpretation—*s. 76.

DIVISION 2.—*Drainage Unions, and Boards of Directors—*ss. 77-85.

DIVISION 3.—*Rates—*ss. 86-91.

DIVISION 4.—*Arbitration—*s. 92.

DIVISION 5.—*Miscellaneous—*ss. 93-104.

PART V.—ARTESIAN WELLS.

DIVISION 1.—*Interpretation and general—*ss. 105, 106.

DIVISION 2.—*Construction and charges—*ss. 107-111.

DIVISION 3.—*Licenses—*ss. 112-118.

DIVISION 4.—*Miscellaneous—*ss. 119-129.

Repeal.
Schedule I.

Savings.

2. The Acts in Schedule One of this Act mentioned are, to the extent therein expressed, hereby repealed.

3. (1) Any board constituted under the provisions of any Act hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.

Water.

(2) All persons appointed, employed, or elected under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed, employed, or elected under the provisions of this Act.

(3) All proclamations, regulations, and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.

(4) All licenses granted under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been granted under the provisions of this Act.

(5) All fees, rates, charges, and expenses payable, and all penalties incurred, under the provisions of any Act hereby repealed, shall be deemed to be payable and to have been incurred respectively under the corresponding provisions of this Act.

(6) Any matter or thing duly done under the authority of any Act hereby repealed shall be deemed to have been duly done under the authority of this Act.

4. In this Act, and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires—

“Crown lands” has the meaning given to that expression in the Crown Lands Act of 1884.

“Justice” means justice of the peace.

“Land district” means land district proclaimed under the Crown Lands Acts of 1884 or any Act amending the same.

“Prescribed” means prescribed by any Part of this Act in which the expression occurs, or by any regulations under that Part.

“Western Division” has the meaning given to that expression in the Crown Lands Act of 1884.

Interpretation.
No. 31, 1901, s. 3.
No. 51, 1902, s. 3.
No. 93, 1902, s. 2.

PART II.

WATER RIGHTS AND WORKS.

DIVISION 1.—*Interpretation.*

5. In this Part, and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires—

“Drainage” includes the draining of flood or other waters of rivers or lakes by means of any work; and “drainage work” includes a work constructed or used for the above purposes.

Interpretation.
No. 51, 1902, s. 3.

“Lake”

Water.

- “ Lake ” includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.
- “ Local land board ” means the land board for the district in which a work is situated, or if the work be situated in more than one land board district, such land board as the Minister may name.
- “ Licensed work ” means a work in respect of which a license is held under this Part.
- “ Occupier ” means person in actual occupation.
- “ River ” includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch, or other stream into or from which the river flows.
- “ Water supply ” includes a supply for the carrying on of any industrial operation.
- “ Work ” includes any dam, lock, reservoir, weir, flume, race, channel (whether an artificial channel or a natural channel artificially improved), any cutting, tunnel, pipe, sewer, and any machinery and appliances.
- “ Work to which this Part extends ” means work connected with any river or lake flowing through, or past, or situate within the land of two or more occupiers, or with any water flowing in, to, or from, or being in any river or lake flowing or situate as aforesaid, whether such work be for water conservation, irrigation, water supply, or drainage, and whether such work be constructed before or after the commencement of this Act.

DIVISION 2.—*Rights of the Crown and of riparian proprietors.*

Rights to certain
waters vested in the
Crown.
No. 51, 1902, s. 4.

6. (1) The right to the use and flow and to the control of the water in all rivers and lakes which flow through, or past, or are situate within the land of two or more occupiers, and of the water contained in or conserved by any works to which this Part extends, shall, subject only to the restrictions hereinafter mentioned, vest in the Crown. And in the exercise of that right, the Crown, by its officers and servants, may enter any land and take such measures as may be thought fit, or as may be prescribed for the conservation and supply of such water as aforesaid and its more equal distribution and beneficial use, and its protection from pollution, and for preventing the unauthorised obstruction of rivers.

For the purposes of this subsection “ occupier ” includes the Crown.

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(2) The said right shall be subject to the following restrictions:— Restriction of Crown's rights.

- (a) It shall not be exercised in contravention of any right conferred on and lawfully exercisable by any person or board by or under the authority of any Act dealing with Mining, or of any public or private Statute, or of any license granted by the Crown.
- (b) It shall be subject to the rights hereinafter mentioned of the occupiers of land on the banks of rivers or lakes.
- (c) It shall be subject to the rights of the holders of licenses under this Part.

7. The occupier of land on the bank of a river or lake shall have the right to use the water then being in the river or lake for domestic purposes, and for watering cattle or other stock, or for gardens not exceeding five acres in extent used in connection with a dwelling-house, and it shall not be necessary for the occupier to apply for or obtain a license for any work used solely in respect of that right. Rights of riparian proprietors.
No. 51, 1902, s. 4 (2).

8. Where the Crown is, by its officers, servants, or agents, in occupation of a work to which this Part extends, constructed by the Crown at any time, the Crown shall, subject to the provisions of this Part, have the quiet enjoyment and sole and exclusive use of the said work as against all persons whomsoever, and shall be entitled to make such charges for the supply or use of the water conserved thereby as may be prescribed. Rights of Crown in respect of works.
Ibid. s. 6.

9. The right of the occupier of any work to which this Part extends— Rights of occupiers of work to which this Part extends.

- (a) to use the work for the purpose of water conservation, irrigation, or water supply, or drainage; or
- (b) to take, use, or dispose of the water contained therein, conserved, or obtained thereby,

shall be subject to the provisions of this Part. *Ibid.* s. 7.

DIVISION 3.—*Licenses.*

10. Any occupier of land whereon any work to which this Part extends is constructed or used, or is proposed to be constructed or used, for the purpose of water conservation, irrigation, water supply, or drainage, may apply to the person, and in the form prescribed, for a license to construct and use the said work, and to take, use, and dispose of the water contained therein, conserved, or obtained thereby. Application for licenses.
Ibid. s. 10.

11. (1) On application being made for a license under the last section, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where Public inquiry.
Ibid. s. 11.

the

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the land is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the land is situate, a public inquiry will be held as to the desirability of granting the application.

Procedure.

No. 51, 1902, s. 12(1). (2) The inquiry shall be held by the local land board by the direction of the Minister, or by some person authorised by the Minister in that behalf, and the local land board or the person so authorised shall report in writing to the Minister.

Persons interested may appear.

Ibid. s. 12 (2).

(3) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application.

Appeal.

Ibid. s. 12 (3).

(4) Where any inquiry is held under this section by a person authorised by the Minister as aforesaid, the applicant or any person so interested as aforesaid shall have a right of appeal from the report of such person to the local land board.

Issue of license.

Ibid. s. 13.

12. (1) The report of the person holding the inquiry by the authority of the Minister, or of the local land board or Land Court on appeal, shall be published in the Gazette within the prescribed time after presentation thereof to the Minister, and the Minister shall, after the expiration of thirty days from such publication, where the report recommends the issue of a license, issue a license to the applicant in the prescribed form, subject to such terms, limitations, and conditions, if any, as may be recommended in such report.

Provisos.

Schedule II.

(2) Provided that

- (a) no license shall be issued under this section pending any appeal or reference; and
- (b) a license shall be issued only upon payment of a fee calculated in the manner and according to the scale set forth in Schedule Two to this Act; and
- (c) before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report.

Application by two or more occupiers.

Ibid. s. 14.

13. If two or more occupiers desire to construct any work to which this Part extends, they may apply for a license to construct and use the said work in the manner prescribed for a single occupier, and such application will be dealt with as the application of a single occupier.

Period of license.

Ibid. s. 15.

Schedule II.

14. The license, if granted, shall in every case, except in the case of dams and weirs included in Class IV in Schedule Two, be granted for a period not exceeding ten years, and shall (subject to the provisions of this Part with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make)

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make) be renewed by the Minister from time to time on the application of the person holding the license, on the payment of a fee calculated in the manner and according to the scale set forth in Schedule Two.

Provided that no renewal shall be for a longer period than ten years.

15. Except in cases where a single license fee may be paid for combined works, as mentioned in Schedule Two to this Act, a separate application for a license may be required in respect of each work; and the determination as to what work may be included in each license shall rest with the Minister.

Extent of license.
No. 51, 1902, s. 16.
Schedule II.

16. A license shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupier for the time being of the land whereon the work is constructed or is proposed to be constructed.

Benefit of license.
Ibid. s. 17.

17. Subject to the provisions of this Part, or the regulations hereunder, the person holding a license under this Part in respect of any work shall have absolutely, during his lawful occupation of the work, so far only as the said work is constructed or maintained on the land occupied by him, the quiet enjoyment and the sole and exclusive use of the work as against all other persons whomsoever, including the Crown, and shall be entitled to take, use, and dispose of any water contained therein or conserved thereby.

Rights of holder of license.
Ibid. s. 18.

18. If, during the time that a license under this Part is in force in respect of a work, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity or quality of water flowing in, to, or from, or being in any river or lake, the person who has made the alterations shall be liable to a penalty not exceeding one hundred pounds, and, in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled and annulled.

Penalty for alteration of work during currency of license.
Ibid. s. 19.

Provided that the holder of any license may, during the currency thereof, apply for an amended license, allowing alterations in the work as originally licensed, and any such application shall be dealt with as hereinafter provided in respect of applications for a license in the first instance.

Provisos.

Provided also that the operations herein referred to shall not apply to any repairs or alterations rendered necessary for maintenance or any sudden or unforeseen emergency.

DIVISION 4.—*Works constructed by the Crown.*

19. (1) The Governor may notify, by proclamation in the Gazette, proposals for dams, locks, weirs, channels, or drainage works to be constructed by the Crown, together with an estimate of the cost of the same.

Proposals for work.
Ibid. s. 8.

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Reference to land board.

(2) After such notification, the Minister may refer any such proposal to the land board for the land district within which the proposed works would be, or to a land board for a land district adjacent to the site of the proposed work; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, should be included in any water or drainage district to be constituted in respect of the said work.

Notification of district.

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which water or drainage charges may be levied.

Petition.

(4) If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons—

(a) who constitute a two-thirds majority of the total number of those occupying land within the district; and

(b) who occupy an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out.

Construction of work.

(5) Thirty days after the receipt of such report to that effect the Minister may carry out the work out of funds legally available for the purpose, unless an appeal to the Land Court affecting the same is pending, in which case he shall not proceed with the work until the appeal is decided.

Public Works Act.

Provided that any such work shall be subject to the Public Works Act, 1900.

Charges.

No. 51, 1902, s. 9.

20. (1) Upon the work being completed, the Minister may direct the land board to assess in each and every case the water and drainage charges to be paid, which charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the work.

Provided that the total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of such work.

Fresh assessment.

(2) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid.

DIVISION 5.—*Miscellaneous.*Injuries to works.
Ibid., s. 21.

21. Any person who maliciously cuts, breaks, or destroys, or damages with intent to destroy or render less useful any licensed work, or any work to which this Part extends, constructed by the Crown, shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding five years.

22.

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22. (1) For the purposes of this Part the Minister, or any person authorised by him, may enter on any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any works.

Power of entry.
No. 51, 1902, s. 20.

(2) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months.

Penalty.

23. Any person who obstructs or hinders any person while performing any duty which he is authorised by this Part, or by any regulation made thereunder, to perform, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months.

Obstructing persons
in the performance
of duties.

Ibid. s. 23.

24. Fees and charges payable under and penalties imposed by this Part, or any regulation made thereunder, may be recovered before, and charges in respect of offences under this Part (not being offences made punishable on indictment) may be heard and determined by, a police or stipendiary magistrate, or any two justices in petty sessions.

Recovery of fees,
charges, and
penalties.

Ibid. s. 24.

25. Any report, recommendation, or decision, of a land board under this Part shall be subject to an appeal or reference to the Land Appeal Court in the manner prescribed by the Crown Lands Acts, or any regulations made thereunder. The decision of the said court shall be final.

Appeal.

Ibid. s. 25.

26. All contributions, fees, and charges payable under this Part shall be paid at the times and in the manner prescribed into the Consolidated Revenue Fund.

Consolidated
revenue.

Ibid. s. 9 (2), and
s. 26.

27. (1) The Governor may make regulations prescribing the forms of licenses and of renewals of the same, and for carrying out the provisions of this Part; and may, in such regulations, impose any penalty not exceeding fifty pounds for each breach of the same, or where the breach was a continuing one, not exceeding five pounds for every day during which the breach continues.

Regulations.

Ibid. s. 21.

(2) A copy of such regulations shall be laid before the Legislative Council and Legislative Assembly without delay.

PART III.

WATER AND DRAINAGE.

DIVISION 1.—*Interpretation and general.*

28. In this Part—

“ Board ” means Board constituted under this Part.

Interpretation.

No. 93, 1902, s. 2.

“ Minister ” means Minister for Public Works.

No. 59, 1906, s. 2.

“ Occupier ” means person in actual possession.

“ Owner ”

Water.

“ Owner ” means owner of any estate of freehold in land, and includes a mortgagee in possession.

“ Ratepayer ” means person paying rates in respect of land within a trust district.

ee No. 59, 1906, s. 5.

“ State work ” means any work of water supply, water conservation, or irrigation, or of drainage, or for the prevention of floods or the control of flood-waters, proclaimed as such by the Governor.

“ Trust ” means trust constituted under this Part.

“ Trustee ” means member of a trust.

“ Trust district ” means area over which a trust has jurisdiction under this Part.

“ Works ” includes any natural or artificial conduit, well, appliance, machinery, or structure pertaining to or used in connection with a trust.

Effect of Part II.

No. 59, 1906, s. 17.

29. Nothing in Part II of this Act shall—

(a) affect the exercise of the powers conferred by this Part in relation to a river or lake as defined in Part II; or

(b) affect the right of a trust to fix and levy rates under the provisions of this Part.

Constitution of board.

Ibid., s. 2.

30. There shall be a Board, consisting of the Under Secretary of the Department of Public Works, the Chief Engineer for Rivers, Water Supply, and Drainage, the Executive Engineer appointed by the Governor to administer this Part, and such officer or officers of the Department of Public Works as the Governor may appoint, and including, where any work is situate in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901.

DIVISION 2.—*Constitution of trusts, construction of works, and transfer to trust.*

Proposals for works.

No. 93, 1902, s. 6.

No. 59, 1906, s. 5.
and Sched., and s. 8.

31. In respect of any works of water conservation the Minister may, and in respect of any work of water supply, irrigation, or drainage, or for the prevention of floods or the control of flood-waters, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works, proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works.

Contents of proposals.

No. 93, 1902, s. 7.

32. Any such proposal shall contain—

(a) a description of the purpose for which it is proposed to constitute the trust;

(b) a plan and description of the works and of the land, whether covered with water or not, proposed to be taken or acquired for the purposes of such works, and of their cost or estimated cost;

(c)

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- (c) the rate of interest, which shall not exceed four per centum per annum, and shall be paid by the trust on the actual cost or on the estimated cost, plus ten per centum, whichever is the lesser sum;
- (d) the charges to be paid by the trust for water to be supplied by the Crown, and the conditions of such supply;
- (e) the maximum rate which may be assessed by the trust;
- (f) a description of the trust district;
- (g) the number of trustees, being either three or five;
- (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

33. (1) If, within eight weeks after such notification, a petition is presented to the Minister, signed by at least one-third in number of the occupiers of Crown land, including homestead selectors, conditional lessees, and settlement lessees, and owners of other land within the proposed trust district, objecting to the proposal, he shall refer the proposal to the board for inquiry and report.

Petition objecting,
and inquiry.
No. 93, 1902, s. 8.

(2) For the purpose of any such inquiry the Board shall have the power to subpoena witnesses and take evidence on oath.

Powers of Board.

(3) Every person who, when required by the board, attends as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena on the trial of an action in the District Court, and, in case of dispute as to the amount to be allowed, the same shall be referred to the registrar of the nearest District Court, who, on request under the hand of the chairman of the Board, shall ascertain and certify the proper amount of such expenses.

Witnesses' expenses.

34. (1) If within the said period no such petition is received, or if the Board reports in favour of the proposal, with or without modifications, the Governor may constitute the trust with such modifications of the proposal as the Board may recommend, or where no reference is made to the Board with such modifications as the Minister may think fit.

Constitution of
trust.
Ibid. s. 9 (1).

(2) The constitution of the trust shall be notified by the Minister in the Gazette.

Gazette notice.
Ibid. s. 9 (2).

35. Upon such notification the conditions of the proposal, with such modifications (if any) as aforesaid, shall be binding on the trust and on the Crown, and the Minister may, out of the funds raised under this Part, or out of the revenue account or the loan account of the public works fund, carry out the works described in the proposal.

Construction of
works.
Ibid. s. 9 (3).
Act No. 59, 1906, s. 7.

36. (1) The Minister may notify proposals for the constitution of a trust in respect of any work constructed and completed by him before or at the commencement of the Act No. 59, 1906, and a trust may be constituted in respect of the same. Thereupon the trust shall take over the administration and management of the work, and the provisions of this Part shall apply thereto, and the interest and charges payable by the trust shall commence to run.

Works completed.
No. 59, 1906, s. 9 (2).

Provided

Water.

Provided that no trust shall be constituted under this subsection for work in respect of which charges are payable under Part II or Part V of this Act, unless with the consent in writing of the persons—

- (a) who constitute a two-thirds majority of the total number of persons liable for such charges; and
- (b) who are liable for two-thirds in amount of such charges.

Other parts and Acts
not to apply.

No. 59, 1906, s. 9 (3).

(2) On the constitution of a trust under this section for any work the provisions of this or any Act, other than the provisions of this Part, shall cease to apply thereto.

Transfer to trust.

No. 93, 1902, s. 13.

No. 59, 1906, s. 11.

37. The completion of any works in respect of which a trust is constituted under this Part shall be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers contained in this Part except such as are conferred solely upon the Minister, and the interest and charges payable by the trust shall commence to run.

Provided that the cost of such work may be determined by the Minister, and notified in the Gazette, at any time after the work has been completed and taken over as aforesaid; and this proviso shall apply whether the work was completed before or after the commencement of this Act.

Transfer of works
not completed.

Ibid. s. 10.

38. Where any work in respect of which a trust is constituted is, in the opinion of the Minister, so far constructed as to be of use to the trust, that fact may be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers and discharge all the duties conferred and imposed by this Part in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

DIVISION 3.—Alteration of boundaries and extension of works.

Alteration of
boundaries.

No. 93, 1902, s. 14.

39. If two-thirds in number of the occupiers of Crown lands, including homestead selectors, conditional lessees and settlement lessees, and owners of other lands within any area, sign and forward to the Minister a petition that such area be included in a trust district, the Minister shall refer the proposed alteration to the Board, who, after giving the trust an opportunity of expressing their opinion, shall report to the Minister whether, in the opinion of the Board, the petition ought to be refused or granted, with or without modification, whereupon the Minister may, by notification in the Gazette, alter the boundaries of such district accordingly, or may refuse the petition.

Water.

40. Where the Minister thinks it desirable that any works in respect of which a trust is constituted, or is proposed to be constituted, should be constructed through the district of another trust, he may, on or after the constitution of the first-mentioned trust, and on giving notice to the last-mentioned trust, construct such works and amend the boundaries of the respective districts so as to include the said works and such lands adjacent thereto as he may think desirable in the district of the trust for which the works have been or are proposed to be constructed. Such amendment of boundaries shall be notified in the Gazette.

Construction of
work through
another district.
No. 59, 1906, s. 21.

41. If the trustees, by request in writing, desire the Minister to improve or extend any works under their charge or increase the quantity of water supplied, the Minister may prepare an estimate of the cost of the proposed work and the interest thereon payable by the trust, and a statement of the additional charge to be paid by the trust in respect of the increase of the quantity of water supplied. Such estimate and statement shall be supplied to the trustees.

Extension of works.
No. 93, 1902, s. 29.

Upon the receipt from the trustees of an intimation that the estimate and statement have been approved by a special general meeting of the voters in the trust, of which not less than fourteen days' notice shall be given in the prescribed manner, the Minister may proceed with the construction of the proposed work, or may increase the quantity of water supplied.

On the completion of the work, or upon the increase of the quantity of water, a notification shall be sent to the trustees, and shall be published in the Gazette, directing that, with the Governor's approval, the interest on the cost of such work and the charges for the increase of water supplied shall be paid by the trust.

Such interest and charges shall commence to run from the date of such notification, and such interest shall be calculated on a sum not exceeding the estimated cost, plus ten per centum.

DIVISION 4.—Appointment and election of trustees.

42. (1) After the constitution of the trust, but before the completion of the works (if any) proposed to be constructed, the Minister shall, by notice in the Gazette, appoint trustees and direct the first election of trustees in pursuance of this Part.

Appointment or
election of trustees.
No. 93, 1902, s. 15.

(2) Where the trust district consists wholly of land acquired under the Closer Settlement Act, 1901, or any Act amending the same, or unoccupied Crown lands, all the trustees shall be appointed by the Minister, and shall, subject to the provisions of this Part, hold office until half the land in the district is occupied by persons who are liable to pay rates to the trust.

Thereafter,

Water.

Thereafter, and in other cases where the number of the trustees is three, one shall be appointed by the Minister and two shall be elected; but where the number of the trustees is five, two shall be appointed by the Minister and the rest shall be elected.

Provided that where the trust district is in the western division the Western Lands Board shall be sole trustees in lieu of the trustee or trustees hereinbefore mentioned.

Term of office.
No. 93, 1902, s. 16.

43. Elected trustees shall be elected for three years, and shall hold office until their successors are elected.

Rolls for first
election.
Ibid. s. 17.

44. For the purpose of the first election of trustees the Minister shall prepare a roll of voters, placing on the roll the names of the persons who, in his opinion, will be liable to pay rates to the trust, and the persons whose names are on such roll, and no others, shall be qualified to vote at the first election.

No. 59, 1906, s. 12(1).

Provided that when any such person is not resident in the trust district, but the property in respect of which he would, in the opinion of the Minister, be liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person.

Rolls for subsequent
elections.
No. 93, 1902, s. 18.

45. For the purpose of any subsequent election of trustees a roll of voters, containing the names of the persons who are liable to pay rates to the trust, shall be prepared by the trustees, and revised in the prescribed manner by the police magistrate having jurisdiction in the district, before whom any person aggrieved by the omission or addition of the name of any person may appear and be heard, and the persons whose names are on such roll, and no others, shall be entitled to vote at any such election.

No. 59, 1906, s. 12
(2).

Provided that where any such person is not resident in the trust district, but the property in respect of which he is liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person.

Plural voting.
No. 93, 1902, s. 19.
No. 59, 1906, s. 5,
and Sched. and
s. 12 (3).

46. Persons on the roll shall be entitled to vote in manner following, that is to say:—

- (a) In the case of a trust placed in charge of drainage work or irrigation works, or works for the prevention of floods or the control of flood-waters, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding fifty acres, but not exceeding three hundred acres, to two votes; and of an area exceeding three hundred acres, to three votes.
- (b) In the case of a trust in charge of water supplies for domestic and stock purposes, the occupier of an area of land not exceeding

Water.

exceeding two thousand acres shall have one vote; the occupier of more than two thousand acres, but not more than ten thousand acres, two votes; and the occupier of more than ten thousand acres, three votes.

(2) For the purpose of this section a person on the roll as administering a property under a power of attorney shall be deemed the occupier of the area of land included in such property.

47. Any person entitled to vote at the election of trustees may be elected as trustee. But no person who has been convicted of any criminal offence shall be capable of being appointed or elected or to act as a trustee, and where a trustee becomes incapable as aforesaid his office shall become vacant. Qualification of trustees. No. 93, 1902, s. 20.

48. In the first election of trustees the Minister shall appoint a returning officer, and may, for any succeeding election, appoint a returning officer, or delegate this power to the trustees. Returning officers. Ibid. s. 21.

49. The Minister shall appoint the date of any election and the polling places, and shall notify the same in the Gazette and a local newspaper. Date of election and polling places. Ibid. s. 21.

50. The mode of election of trustees shall be as prescribed. Mode of election. Ibid. s. 22.

51. Any vacancy caused by the death, resignation, or incapacity of a trustee shall be filled by appointment or election, as the case may be. Filling of vacancy. Ibid. s. 23.

DIVISION 5.—Powers and duties of trustees.

52. The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage, and for the prevention of floods and the control of flood-waters, mentioned in the notification constituting the trust, or thereafter constructed within the trust district. Duties of trustees. Ibid. s. 24. No. 59, 1906, s. 5 and Sched.

53. Trustees shall have the following duties and powers:—

- (a) They shall maintain in a state of efficiency the works under their charge. Powers and duties of trustees. No. 93, 1902, s. 25.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works, and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.
- (d) They shall pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by them, and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Treasurer to a special account, to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.
- (e) They may appoint, with the sanction of the Minister, such officers or servants as may be required. **54.**

Water.

Power of trustees to
enter and inspect.

No. 93, 1902, s. 26.

54. In the exercise and discharge of their powers and duties the trustees, by themselves or their officers, may enter any land within the trust district and make any inspection or survey they may deem necessary, and effect repairs or alterations to any works, but in so doing shall avoid, as far as practicable, causing any loss, injury, or damage. They shall not be responsible for any loss, injury, or damage caused by them, unless claim in writing be made within three months thereafter.

Rates.

Ibid. s. 27.

55. (1) For the purpose of providing money for exercising their powers and performing their duties under this Part, the trustees may fix and levy rates upon the whole of the lands within the trust district as follows:—

No. 59, 1906, s. 5
and Sched.

- (a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed, and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.
- (b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.
- (c) In the case of drainage, or works for the prevention of floods or the control of flood-waters, a rate per acre of the land benefited by the works shall be fixed; and this rate may vary according to the distance of the land from drains, or works for the prevention of floods or the control of flood waters, and in proportion to the benefit received as aforesaid.
- (d) In the case of irrigation, a rate per acre on the whole of the irrigable land within the trust district shall be levied, whereupon the ratepayer shall be entitled to a proportion of the water to be fixed by the trustees, either by measure or according to the area irrigated, or which, in the opinion of the trustees, should be irrigated.
- (e) In all cases not otherwise in this section provided for, a rate per acre of the land benefited, directly or indirectly, by the works shall be fixed yearly, and shall, as far as practicable, be in proportion to the benefit received as aforesaid.
- (f) In the case of a supply for more than one purpose, separate rates may be fixed, calculated on the basis set out for each such purpose.

Rates payable by
occupier.

lands.

(2) All such rates shall be payable by the occupiers of the

(3)

Water.

(3) Any occupier aggrieved by the amount at which he is rated may appeal to the police magistrate having jurisdiction in the district, who shall hear and determine the matter, and may confirm or vary such amount. Appeal to magistrate.

(4) If in any such appeal the police magistrate reduces the amount at which the appellant is rated, he shall increase the other ratings of the trust in such amounts as he thinks just, where he considers such course necessary, in order to secure that the total amount to be received by the trust for rates shall not be diminished by such reduction. Increase of other ratings. No. 59, 1906, s. 18.

56. The trustees shall have power to sell water by measure to any ratepayer, in addition to the quantity to which he is entitled by payment of rates. Additional water. No. 93, 1902, s. 28.

57. When a trust under this Part has any surplus water which is not required for the purpose for which the trust was constituted, the trust may sell such water, by measure or otherwise, to any ratepayer for any other purpose. Surplus water. No. 59, 1906, s. 13.

58. The trustees shall submit to the Minister once every year, and at such other times as the Minister may direct, an audited statement of the accounts of the trust. The Minister may, if in his opinion such audited statement is defective or unsatisfactory, appoint an auditor to prepare a proper statement of accounts, at the cost of the trust. Accounts. No. 93, 1902, s. 31.

DIVISION 6.—Various other powers.

59. In the event of any delay in the election of trustees, or in the event of any default by trustees in the discharge of their duties under this Part or the regulations made thereunder— General powers of Minister and Governor. Ibid. s. 30 (2).

- (a) the Minister may assume all or any of the powers by this Part conferred on trustees; and
- (b) the Governor may, if in his opinion sufficient cause exists, dissolve a trust, remove from office trustees, and appoint and direct the election of other trustees, or appoint a manager of the affairs of a trust.

60. The Minister, by himself or his officers, may at any time enter any part of a trust district and make an inspection or survey of the works in charge of the trust, and may inspect the records and accounts of the trustees. Power of Minister to enter and inspect. Ibid. s. 30 (1).

If upon such inspection the Minister is of opinion that any of such works are not kept in repair and efficient working order he may cause such repairs as he may think necessary to be made at the cost of the trust, and for the purpose of effecting such repairs he shall have the powers of the trustees.

61. (1) The Minister or trustees for the purposes of this Part may construct and maintain and repair any conduit through any land, street, or road. Conduits and drains. Ibid. s. 32.

Water.

Any ratepayer of a trust may, with the approval of the trustees, for the purpose of draining his land, cut and make, and maintain and repair drains through any adjacent or neighbouring land.

Compensation.

(2) Provided that the trustees or ratepayer shall make full compensation for any damage occasioned by cutting and making such drains; and such compensation, estimated at one-fifth part above the value of the property affected, shall be assessed by the board, and when so assessed shall be recoverable in any court of competent jurisdiction.

Channels and
embankments.
No 59, 1906, s. 14.

62. On notice, in the prescribed form and under the hand of the Minister, being served—

- (a) personally or by post on the owner or occupier or person in apparent occupation of any land through which it is proposed to construct a channel or embankment under the authority of this Part; or
- (b) if the land is unoccupied, on the owner; or
- (c) if the owner is out of the State or cannot be found, by posting a copy of the notice on some conspicuous part of the land,

the Minister, by his officers and servants, may commence and complete such channel or embankment through such land so as approximately to follow the direction as set out or described in the notice, with such variations as may be authorised under the provisions of this Part.

Power to use land
for certain purposes.
Ibid. s. 15.

63. For the purpose of the construction or the maintenance and repair of any channel or embankment proposed to be constructed, or constructed under the authority of this Part, or to which this Part applies, the Minister or a trust having the control of or carrying out such construction, maintenance, or repair shall be deemed to have had and shall have power at any time to enter any land within sixteen and a half feet on either side of the centre line of a distributing channel, or site for the same, or within lines distant sixty-six feet from the top of each bank of a water conservation or drainage channel, or site for the same, or any land being an embankment or site for the same, and use such land for the said purposes, notwithstanding that no easement or right so to enter or use such land may have been granted or acquired.

No compensation.
Ibid. s. 16.

64. No compensation shall be payable or shall be deemed to have been payable for the exercise of any powers conferred by the two last preceding sections.

Proviso.

Provided that where, after the twenty-eighth day of December, one thousand nine hundred and six, any such power is or has been exercised with respect to land cultivated or having buildings thereon, or being within population boundaries, compensation shall be payable, the amount of which shall be determined by two arbitrators, appointed respectively by the Minister and by the person owning the land or buildings, and by an umpire appointed by such arbitrators unless otherwise agreed by and between the Minister and the said person. The provisions of the Arbitration Act, 1902, shall apply to any such arbitration.

65.

Water.

65. (1) For the purposes of this Part, the Minister, or any person authorised by him, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells. Power of entry. No. 59, 1906, s. 3.

(2) Any person hindering him in the exercise of such power shall be liable to a penalty not exceeding twenty pounds. Penalties.

(3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds.

DIVISION 7.—Certain works not administered by trusts.

66. The Minister may, subject to the provisions of the Public Works Act, 1900, carry out a "State work" under the said Act out of the funds raised under this Part, and may maintain and administer and, subject as aforesaid, extend the same as he thinks fit. State works. No. 93, 1902, s. 4.

67. (1) Where the estimated cost does not exceed five thousand pounds the Minister may, out of the funds raised under this Part, carry out any works of water conservation that he deems desirable, and maintain and administer the same. Works of water conservation under £5,000. Ibid. s. 5.

Provided that the Minister shall, before carrying out any such work, refer the proposal to the board, and obtain their report thereon.

(2) No charge shall be made for any water supplied to travelling stock from such works when situated at or near any public highway. Travelling stock.

68. The Minister may, out of the funds raised under this Part, or out of the revenue account, or the loan account of the public works fund, carry out any work which he is authorised to carry out under the Public Watering Places Act, 1900, or under Part IV of this Act. Works under other Acts. Ibid. s. 10. No. 59, 1906, s. 7.

DIVISION 8.—Loans.

69. (1) The Governor may raise, in the year one thousand nine hundred and twelve, and in each of the next four succeeding years, by the issue of debentures or the issue of inscribed stock, secured upon the Consolidated Revenue Fund of this State, and bearing interest at a rate not exceeding four per centum per annum, a sum not exceeding two hundred thousand pounds, for the purpose of carrying out works of water supply, water conservation or irrigation, or of drainage, or for the prevention of floods or the control of flood-waters. Powers to raise loans. No. 93, 1902, s. 3. No. 59, 1906, s. 5 and Sched., and s. 6. No. 20, 1911, s. 2.

(2) The loans so authorised may be negotiated wholly or in part in the form of debentures or inscribed stock, in the State or in London, at such times and for such amounts as may be directed by the Governor.

Water.

(3) Any stock issued within the State under this Part shall be styled "New South Wales Funded Stock," and shall, if sold otherwise than by tender, be purchasable at the Treasury upon any lawful day.

(4) The provisions of the Funded Stock Act of 1892, relating to the method of inscription and transfer of stock, and the regulations under such Act, and the forms prescribed in the said regulations, are hereby declared to be applicable to, and shall be followed and used, *mutatis mutandis*, in connection with stock issued within the State under the provisions of this Part.

(5) In respect to any stock issued in London under the provisions of this Act the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act of 1883, for carrying this Act into effect, and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

(6) All moneys borrowed under this Act shall be paid to the Treasurer, and shall be by him carried to and form part of the General Loan Account, and be appropriated and applied, as required, to the works and services hereinbefore specified, or to any other duly authorised loan services, in terms of the Audit Act, 1902.

Powers of
investment in
trustees and other
persons.

(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government Securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

DIVISION 9.—*Miscellaneous.*

Notice to holder of
license.

No. 93, 1902, s. 12.

70. (1) If any work, other than a State work, which the Minister is authorised by this Part to carry out interferes with any rights under any license granted by the Crown under this Act or any other Act the Minister shall give the holder of such license the following notice of his intention to carry out such work, that is to say—

- (a) where the unexpired term of the license does not exceed five years, six months' notice;
- (b) where the unexpired term of the license exceeds five years, twelve months' notice.

(2) Such work shall not be carried out until after the expiration of the period expressed in such notice.

*Water.***71.** Any person who—

Penalties.

- (a) obstructs the trustees or their officers or servants acting under this Part or the regulations or by-laws made thereunder; or
- (b) interferes with works in charge of the trustees; or
- (c) destroys, injures, or obliterates any mark or level fixed by the trustees or their officers; or
- (d) uses water from the works of the trust otherwise than in the manner and at the times prescribed; or
- (e) obstructs the flow of or pollutes any water under the control of a trust; or
- (f) commits any breach of the provisions of this Part,

shall be liable to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a penalty not exceeding five pounds per day whilst the offence continues, and shall also be liable to be sued by the trustees or by any person for compensation on account of loss or damage caused by his offence.

72. All rates and all charges imposed by or under this Part, or the regulations or by-laws made thereunder, may be recovered in any court of competent jurisdiction.

Recovery of rates.

Ibid. s. 36.

73. Every work, other than a State work, which the Minister is authorised by this Part to carry out shall be carried out under the Public Works Act, 1900, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work, and for all purposes of the said Act such work shall be deemed to be an "authorised work," and the Minister shall be deemed a "constructing authority" within the meaning of the said Act.

Public Works Act.

Ibid. s. 12.

74. (1) The Governor may make regulations for carrying out the provisions of this Part, and in particular for—

Regulations.

Ibid. s. 34.

- (a) the election of trustees and the making and revision of the rolls of voters, and the mode of voting;
- (b) the election by the trustees of a chairman;
- (c) the intervals within which meetings of trustees must be held;
- (d) the procedure at such meetings;
- (e) the appointment, payment, and dismissal of officers and servants;
- (f) the fixing and notifying of rates;
- (g) the hearing of appeals;
- (h) the collection and recovery of rates and charging the same on lands in respect of which they are payable;
- (i) the keeping of the accounts of trustees;
- (j) regulating the payment to the Crown of interest and charges by the trust;
- (k) regulating the proceeds of the board;
- (l) regulating special meetings of voters of a trust in pursuance of this Act;

(m)

Water.

(m) imposing any penalty not exceeding twenty pounds for any breach of the regulations.

(2) Such regulations shall be published in the Gazette.

By-laws.

No. 93, 1902, s. 35.

75. (1) The trustees may, subject to the approval of the Governor, make by-laws—

prescribing the duties of their officers and servants;
for regulating the supply of water from and the use of the works of the trust;

prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust;

imposing any penalty not exceeding ten pounds for any breach of the by-laws.

(2) Such by-laws shall have effect when approved by the Governor and published in the Gazette.

All such regulations and by-laws shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

PART IV.
DRAINAGE PROMOTION.
DIVISION 1.—Preliminary.

Interpretation.

No. 31, 1901, s. 3.

76. In this Part, unless the context or subject-matter otherwise indicates or requires—

“ Drain ” means any drain, channel, watercourse, or other artificial outlet for the purpose of draining any land into any waters.

“ Flood ” means any flood, flush, fresh, watershed, fall, tide, or other cause of a rise in the level of any waters above the bottom of any drain.

“ Minister ” means the Minister for Lands.

“ Owner ” means the owner, including the Crown, for the time being of any land, for any freehold estate, or any leasehold estate, whether such owner is or is not in actual occupation, or the agent of such owner.

“ Tenant ” means the person in actual occupation of any land, not being the owner.

“ Union ” means “ drainage union ” constituted under this Part, or under any Act hereby repealed.

“ Waters ” means any river, creek, stream, lagoon, lake, or other running or standing waters, the level of which is liable to variation, and the sea where the tide ebbs and flows.

DIVISION

Water.

DIVISION 2.—*Drainage Unions and Boards of Directors.*

77. Whenever any tract of land is so circumstanced that from Petition.
any permanent or occasional cause considerable quantities of water No. 31, 1901, s. 4.
accumulate, and, for the default of sufficient natural or artificial
drainage, lie thereon to the injury of such land, any owner or owners
thereof may present a petition to the Governor under his hand—

- (a) describing as accurately as may be the land so under water,
or liable to be under water, and the locality and boundaries
thereof;
- (b) stating therein
 - (i) the facts as they exist;
 - (ii) the nature and cause of the accumulations;
 - (iii) the name and description of every other owner of such
tract, including the Crown; and
 - (iv) the number of acres held by such owners respectively; and
- (c) praying that all owners of such tract, except the Crown, may
be constituted a union—by some name to be specified—for
the purpose of compulsory drainage and contribution under
this Part.

78. Upon receipt of any such petition the Governor may pub- Publication of
lish the same in the Gazette. petition.

79. Before the issuing of the proclamation hereinafter men- Ibid. s. 5.
tioned— Counter-petition.
Ibid. s. 6.

- (1) if any other owners of such tract of land, not including the
Crown, being not less than one-fifth in number of holdings,
present a counter-petition to the Governor, showing reasonable
objections to constituting such union, or if for any other
reason the Governor thinks fit, he may employ some competent
person—
- (a) to examine such tract of land, and report respecting the
statements contained in both petitions, and the sufficiency
of the reasons alleged in the latter;
- (b) to make a survey and levels if deemed necessary; and
- (c) to report on the best mode of effecting the drainage of such
tract;

and the person so employed shall for such purposes have full
power to enter upon any land within the limits of the proposed
union.

- (2) In the event of an examination, report, and survey being Security for
deemed necessary to be made, and before the same are made, expenses.
the original petitioner shall pay into the State Treasury, to
the account of a separate fund, to be called the "Drainage
Union of A or B Fund," such sum as is, in the opinion of the
Chief

Water.

Chief Surveyor, sufficient to reimburse all expenses likely to be incurred by the Government in the matter, and out of which separate fund sufficient funds may for that purpose be from time to time drawn and transferred to the Consolidated Revenue Fund by warrant of the Governor:

Provided that if the prayer of the original petition is refused, the money so paid by such petitioner, or the balance thereof, shall be returned to him.

Proclamation of
drainage union.
No. 31, 1901, s. 7.

80. (1) After the lapse of two months from the day of the publication of the original petition the Governor may, if he does not refuse the petition, publish in the Gazette a proclamation declaring the then owners of such tract of land and their successors, owners for the time being, the Crown excepted, to be a "drainage union" for the purpose of draining and keeping drained the said tract of land.

(2) By virtue of such proclamation, all such owners, and other owners for the time being, except the Crown, shall become and be a drainage union for such purpose only, and compellable by mandamus at the instance of any one or more of such owners, or of the Crown if holding land within the tract, or of any person interested in the land or any part thereof, to drain, and from time to time thereafter to keep drained, such land accordingly.

Board of manage-
ment.
Ibid. s. 10.

81. (1) A board of directors of such union, not fewer in number than three nor more than seven, and two auditors, shall be annually elected by a majority of the votes of members present at a general meeting, duly convened by notice published by the Minister in the Gazette and in the nearest local newspaper.

Ibid. s. 12.

Provided that, if the Crown holds lands within such union, the Governor shall be entitled to appoint one of such directors.

(2) The directors shall from time to time, under such by-laws as may be made by virtue of this Act, choose one of themselves to be chairman, and shall, as a board, manage all the affairs of such union.

By-laws.
Ibid. 1901, s. 11.

82. At a like general meeting by-laws may be made, not inconsistent with this Act, and such by-laws, when confirmed by the Governor and published in the Gazette, shall have the force of law.

Plural voting.
Ibid. s. 12.

83. (1) In voting at any such meeting for electing directors or making by-laws, every member of such union shall be entitled to one or more votes according to the assessed increased value to accrue to the several holdings as aforesaid, that is to say:—If such increased value amounts to less than fifty pounds, the member shall be entitled to one vote; if fifty pounds and below one hundred pounds, two votes; if one hundred pounds and below two hundred and fifty pounds, three votes; if two hundred and fifty pounds and below five hundred pounds, four votes; and if five hundred pounds and upwards, five votes.

Schedule III.

(2) Every voter shall, before voting, make and subscribe a declaration in the terms of Schedule Three hereto, before some justice of the peace.

84.

Water.

84. (1) The board of directors may appoint such officers and servants as they deem necessary, and may, in the name of their chairman, make valid contracts, and sue and be sued on behalf of the union. Powers of directors. No. 31, 1901, s. 13.

(2) Every director, and also every other officer of the union shall before entering upon business, make and subscribe before a justice a declaration in the terms of Schedule Four hereto. Schedule IV.

85. Notwithstanding the provisions contained in this Part, every member of the said drainage union whose rates are fully paid shall be entitled to vote at any election of the board of directors of such union. Voting for directors. No. 28, 1902, s. 2.

DIVISION 3.—*Rates.*

86. A sworn appraiser shall be appointed by the Governor, to be remunerated according to a scale of fees fixed by the Governor and published in the Gazette, for the purpose of assessing the increased value to accrue to the several holdings, including those of the Crown, by reason of drainage under this Part. Assessment of values. *Ibid.* s. 8.

87. (1) If any owner objects to such mode of assessment in writing addressed to the Minister, the registrar of the nearest District Court shall, by direction of the Minister, summon a jury of ten persons, not being members of such union, five of whom shall be chosen by lot, and who shall, on a day to be fixed by the District Court judge, under his direction, assess such increased value, and the verdict of the majority of such jury shall be final, and the cost of such mode of assessment shall be borne by such owner. Appeal against assessment. *Ibid.* s. 9.

(2) The contributions towards the expenses of the Government, and also the general contributions of the members of the union, and of the Crown, if a holder, towards the expenses of such drainage, and also the proportions of votes hereinafter mentioned shall be apportioned according to such increased value.

88. (1) The board of directors of every union shall, within three months after election to office, and at a corresponding period in every subsequent year, cause an estimate to be made of the probable amount which will be required for the current year, commencing on the first day of January and ending on the thirty-first day of December, towards making, clearing, and keeping open drains by sufficient means, including steam-engines where found to be requisite, in upholding embankments, and in doing other necessary works for the purpose of fully carrying out this Part, and shall raise the amount so estimated by an assessment not exceeding ten pounds per centum on the increased value accruing to the several holdings, including those of the Crown, from such works. Assessment. *Ibid.* s. 14.

(2) The occupier of the lands assessed shall primarily pay the rates hereinafter mentioned.

Provided

Water.

Provided that if there is no sufficient provision in the lease, or in some other written instrument with reference thereto, the tenant may recover from his landlord a fair proportion of such rates, to be settled by arbitration in case of dispute.

Rates.

No. 31, 1901, s. 15.

89. (1) In each and every year there shall be paid by every person, including the Crown, holding land within the union, and towards the revenues of such union, for every portion of land so held a rate not exceeding twenty pounds per centum of the increased annual value thereof, to be settled as herein mentioned, and all such rates for the first year shall be paid into the hands of the chairman of the board of directors within two months after notice in writing signed by him, and for every succeeding year in such time and manner as may be required by any by-law made under this Part.

Levy and distress.

(2) In default of payment of such rates, or of such amended rates, as may be determined on appeal as hereinafter provided, such rates, or amended rates, may be levied by warrant under the hand of such chairman by distress and sale of the goods and chattels of the person by whom the same are due, and in the event of such goods and chattels not being found of sufficient value to satisfy such rates, or amended rates, then by sale of the land, or a sufficient portion thereof.

Provided that the surplus, if any, shall be repaid to the owner of such goods and chattels or land.

Recovery of rates
before justices.

No. 28, 1902, s. 2.

(3) If any person rated under the provisions of this Part fails to pay any rate due from him for the space of thirty days after demand thereof made in writing, signed by the chairman or any director for the time being of any union, or by a collector duly authorised in that behalf by any drainage union, or after publication in some newspaper circulating in the neighbourhood of a notice requiring such payment to be made, any such drainage union may at their discretion withhold or abandon proceedings by distress and sale, as provided in the preceding subsection, and may, after default as aforesaid, or in the absence of any or a sufficient distress, recover the amount of rates due from the person rated for the same in a summary way before two justices, and the same when recovered shall be paid over to the union interested towards its revenue.

Appeal.

No. 31, 1901, s. 16.

90. Any person aggrieved by the amount of any such rate may appeal against the same to the nearest petty sessions, which court shall have power to hear and determine the same and to award such relief in the premises as the justice of the case may require, and the decision thereof shall be final.

Provided that the appellant shall give notice in writing under his hand to the chairman of his intention to appeal seven days at least before the holding of the court for hearing such appeal:

Provided also that no justice, being a member of the union, interested in such appeal, shall adjudicate therein.

91.

Water.

91. All complaints or other legal proceedings for the recovery of any rates as aforesaid, or for any non-compliance with or any breach of this Part, or of any by-laws made thereunder, may be laid and taken by the chairman of, or any other officer appointed by, any union in that behalf, and any such chairman or officer may appear and represent any union at the hearing of such complaints or other legal proceedings.

Appearance by
chairman or officer.
No. 28, 1908, s. 3.

DIVISION 4.—*Arbitration.*

92. Whenever it becomes necessary, under the provisions of this Part, to proceed by arbitration, the arbitrators and umpire shall be appointed, and the arbitration shall be conducted in manner following:—

- (1) Where the Crown is a party, the Minister and the other party may concur in the appointment of a single arbitrator, and, failing such concurrence, then on the request of the Minister or such other party, after appointing an arbitrator in writing under his hand in the form of Schedule Five hereto, such other party or the Minister, as the case may be, shall also in like manner appoint an arbitrator.
- (2) Where the Crown is not a party, the parties to the dispute may concur in the appointment of a single arbitrator, and failing such concurrence, after either party shall in like manner have appointed an arbitrator, the other party shall, at his request also in like manner, appoint an arbitrator.
- (3) All appointments of arbitrators shall be delivered to the respective arbitrators, and shall be attached to the award when made, and shall be deemed to be a submission to arbitration.
- (4) Any submission to arbitration may, on the application of either party, be made a rule of the Supreme Court or of the District Court of the district.
- (5) Every request to appoint an arbitrator shall be in the form of Schedule Six hereto, and if within sixty days after the same has been duly served, together with a copy of the first appointment, the party served fails to appoint an arbitrator, the arbitrator so first appointed shall be deemed to be appointed by and shall act as a single arbitrator on behalf of both parties.
- (6) No appointment of an arbitrator shall be revoked without the consent of both parties to the arbitration, nor shall the death of any party operate as a revocation.
- (7) Every award made in the form or to the effect of Schedule Seven hereto, and signed by the single arbitrator, or by both arbitrators, or by the umpire, as the case may be, shall be final and conclusive and binding upon all parties to or interested in the arbitration for all intents and purposes.

Appointment of
arbitrators where
Crown a party.

Schedule V.

Appointment of
arbitrators in other
cases.

Appointment to be
deemed submission.

Submission made
rule of court.

Failure to appoint
arbitrators.
Schedule VI.

No appointment to
be revoked.

Award to be final.
Schedule VII.

Water.

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| Death or failure to act of arbitrator. | (8) If before the making of the award any arbitrator dies or refuses or becomes incapable to act, the party by whom he was appointed may appoint in writing under his hand, in the form of Schedule Five hereto, another person in his stead, and if he fails so to do for thirty days after request in writing, in that behalf from the other arbitrators, such other arbitrator may proceed <i>ex parte</i> and make his award as single arbitrator for both parties. |
| Schedule V. | |
| Power of single arbitrator. | (9) Every arbitrator becoming a single arbitrator in any manner aforesaid, shall have the same powers and authorities as are by this Part vested in any arbitrator appointed to be single arbitrator with the concurrence of both the parties. |
| Death or failure to act of single arbitrator. | (10) If a single arbitrator dies, or refuses or becomes incapable to act, before the making of his award, or fails to make his award within sixty days after his appointment, or within such extended time (if any) not exceeding thirty days as has been duly fixed by him for that purpose by indorsement on his appointment in the form of Schedule Eight hereto, the matters referred to him shall be again referred to arbitration, under the provisions of this Part, as if no former reference had been made. |
| Schedule VIII. | |
| Appointment of umpire. | (11) If there is more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint an umpire by endorsement on each of their appointments under their hands in the form of Schedule Nine hereto, and if the person appointed to be umpire dies, or refuses or becomes incapable to act, the arbitrators shall forthwith appoint in like manner another person in his stead, and in case the arbitrators neglect or refuse to appoint an umpire for thirty days after the date on which the last of them was appointed, an umpire may be appointed by the Minister. |
| Schedule IX. | |
| When umpire to act. | (12) If arbitrators fail to make their award within sixty days after the day on which the last of them was appointed, or within such extended time (if any), not exceeding thirty days, as has been fixed by them for that purpose by indorsement as aforesaid, the matters shall be determined by the umpire, and the provisions of this Part with respect to the time for making an award, and with respect to extending the same in the case of a single arbitrator, shall apply to any umpirage save and except that such time shall commence and be computed from the date of the matters being referred to the umpire. |
| Production of documents. | (13) Any arbitrator or umpire appointed by virtue of this Part may require the production of such documents in the possession or power of either party as he thinks necessary for determining the matters referred, and may examine any persons, including the parties, as witnesses, on oath. |

(14)

Water.

- (14) All costs of and consequent upon the reference shall be in the discretion of the arbitrator, arbitrators, or umpire, as the case may be. Costs.
- Provided that where no special agreement is made beforehand by the parties, the charge of each arbitrator or of the umpire shall not in any case exceed one pound.
- (15) Before any arbitrator or umpire enters upon the reference, he shall make and subscribe before a justice a declaration in the form of Schedule Ten hereto. Declaration by arbitrator or umpire. Schedule X.
- (16) Every such declaration shall be annexed to the award, and any arbitrator or umpire who in such declaration falsely states that he is not so interested, or who wilfully acts contrary to such declaration, shall be guilty of a misdemeanour. False declaration a misdemeanour.
- (17) No appointment or award shall be set aside for irregularity or error in matter of form. No avoidance for error in form.
- (18) Every award shall be in writing and in duplicate, and shall be transmitted by the arbitrator, arbitrators, or umpire to each party or the agent of each party, and where the Crown is a party, to the Minister, and the Minister shall deposit the same in his office. Requisites of award.

DIVISION 5.—Miscellaneous.

93. Every union shall, within one year after its establishment, publish in the Gazette a plan of the drainage contemplated within the limits of such union, showing accurately the position and direction, width, depth, and other material particulars of such drainage, and distinguishing the parts (if any) then completed, and shall cause tracings of such plan to be lodged with the Chief Surveyor, to be recorded by him for public reference at convenient hours, and a like tracing to be lodged for like reference with the registrar of the District Court of the district. Plans of drainage to be published. No. 31, 1901, s. 17.

Such union shall thereafter, in every successive half-year, publish and transmit in like manner like plans and tracings as to all then intended additional drainage.

94. No alteration affecting any navigable water shall be made without the sanction of the Governor. Navigable water. Ibid. s. 17.

95. Every union shall also, once in every half-year at equal intervals of time, publish twice in the Gazette a correct debtor and creditor account, certified under the hand of their chairman and by the auditors, of all receipts and payments under this Part for the last half-year, and if the Crown is a holder of lands within the union, shall transmit the same to the Minister. Accounts. Ibid. s. 18.

96. All members of every union, and, if the Crown is a holder of lands within the union, the Minister or any person duly authorised by him, may at all reasonable times examine any drain constructed by the union. Inspection of drains. Ibid. s. 19.

Provided

Water.

Provided that if any damage or injury to any property is done by or by reason of such examination, the party causing such damage or injury shall be answerable for the same.

Power to borrow
money.
No. 31, 1901, s. 20.

97. Every union may borrow, by mortgage or otherwise, on the credit of any property or revenue belonging thereto, for or towards or incidental to the making or completing of any such drains or any works within the purposes of this Part, any money not exceeding the estimated revenue of such union for five years.

Provided that no money shall be so borrowed without the sanction of the Governor.

Limitation of
actions.
Ibid. s. 21.

98. No action or other proceeding, whether civil or criminal, shall be commenced by any union against any person under this Part after the expiration of twelve months from the day on which the cause of such action or proceeding arose.

Provided that when such person is absent from the State, service of any notice or process in any civil proceeding against such person may be made upon the land in like manner as in cases of ejectment.

Dissolution of union.
Ibid. s. 22.

99. On the receipt of a petition, under the hand of not less than one-third part of the members of any union in number and value of holdings, and after publication of such petition in the Gazette and at least one local newspaper for two months, and no sufficient cause against it shown by other such members more in number and greater in value, the Governor may dissolve such union, if then free from all debt as aforesaid, from and after a day to be named in a proclamation published in like manner, and the union shall be so dissolved accordingly.

Flood-gates to
certain drains.
Ibid. s. 23.

100. Any owner who cuts or makes any drain, the bottom of which at its opening into any waters is so low as to injure or endanger any other property, and omits to construct and fix in and to every such drain a flood-gate sufficient, when closed, to prevent the flow from such waters through such drain of any water over or upon the land of any other owner, shall be liable to a penalty not exceeding one hundred pounds, and to a further penalty not exceeding twenty pounds for every week after the imposition of the first penalty during which he fails to construct such flood-gate.

Notice of cleansing
or repairing drains.
Ibid. s. 24.

101. (1) Whenever any drain, cut for the benefit and at the expense of two or more owners, but not being within a union in terms of this Part, in the opinion of any such owner requires cleansing or repair so as to render it effective, such owner may give written notice to each of the other owners requiring them to take measures for such cleansing and repair.

(2) After the expiration of fourteen days from the service of such notice, the owner serving the said notice, failing the agreement of all the owners, or the owners consenting, if any other owner consents, may enter upon any lands through which such drain passes, and may cause such cleansing and repairs to be effected.

(3)

Water.

(3) The owners declining to effect such cleansing and repairs, or failing to consent to the same, shall be liable to their ratable share of the cost of such cleansing and repairs, to be determined and recovered in a summary way before any court of petty sessions if such court is satisfied that such cleansing and repair were necessary.

102. Nothing herein shall affect any remedy at law by which the Crown or any person may recover compensation in damages for any loss or injury to any land, stock, crops, or other property, by reason of any breach or neglect by the Crown or any other person of any provision of this Part. Legal remedies not affected.
No. 31, 1901, s. 25.

103. Whosoever wilfully injures or damages any drain, flood-gate, or other work connected with drainage under this Part, or wilfully trespasses upon, damages, or injures any property under colour or pretence of carrying out this Part shall, in addition to any liability at law to compensate for such trespass, damage, or injury, be liable for every such offence to a penalty not exceeding twenty pounds nor less than one pound. Penalties for wilful injury.
Ibid. s. 26.

104. (1) Any union or any owner of land may, for the purpose of draining land under this Part, make and cut drains through any adjacent or neighbouring land into any waters. Power to make drains through other lands.

(2) Such union or owner constructing such drain shall be liable at law to make full compensation for any damage thereby occasioned to the proprietor of such adjacent or neighbouring land, and be subject to all other the provisions of this Part in respect of drains. *Ibid.* s. 27.

(3) The amount of such compensation shall be settled by arbitration under this Part.

(4) Such compensation shall be estimated at one-fifth part above the value of the property affected at the time such loss or damage accrues.

PART V.**ARTESIAN WELLS.****DIVISION 1.—*Interpretation and general.***

105. In this Part—

“Artesian well” includes an artesian well from which the water does not flow naturally, but has to be raised by pumping or other artificial means; and Definition.
No. 41, 1897, s. 7.

“Minister” means Minister for Public Works.

106. Any work constructed under the authority of the Artesian Wells Act, 1897, or any Act amending the same, shall be deemed to have been constructed under this Part. Works under repealed Acts.

DIVISION

Water.

DIVISION 2.—*Construction and charges.*Notification of
proposal.

No. 41, 1897, 1 (i).

107. (1) The Governor may notify in the Gazette any proposal for the construction by the Crown of any artesian well, and for the conservation and supply of the water flowing from such well, together with an estimate of the cost of the same.

Report of board.

(2) After such notification the Minister may refer any such proposal to the land board for the land district within which the proposed work would be situate, or to a land board for a land district adjacent thereto; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, would be benefited by water from the proposed well, and should be included in any district to be constituted in respect of the said work.

Notification of
district.

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which the charges in the next following section mentioned may be levied.

Petition.

(4) If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons—

(a) who constitute a two-thirds majority of the total number of those owning or occupying, or being mortgagees, of land within the district; and

(b) who own or occupy or are mortgagees of an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out.

Construction of
work.

(5) Thirty days after the receipt of a report to that effect the Minister may carry out the work with funds legally available for the purpose.

Provided that if an appeal to the Land Appeal Court affecting the same is pending, the carrying out of the work shall be stayed until the appeal is decided.

Assessment of
charges.*Ibid.* s. 1 (ii).

108. (1) On the completion of a work constructed under the preceding section, the Minister may direct the land board to assess the charges to be paid by each occupier of land within the district notified as aforesaid.

Including charges.

(2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the construction of the well and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided.

Total maximum.

(3) The total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of the work.

(4)

Water.

(4) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid. Fresh assessment.

109. If the occupiers, owners, or mortgagees of any lands in writing request the Minister to construct an artesian well for the purpose of supplying water to their lands, and consent to pay any charges which may be levied in respect of the same, the Minister may, if he approve of the request, construct the well and such channels and other works for the supply of the water as he may think fit, with funds legally available for the purpose. Construction of well on petition of occupiers. No. 41, 1897, s. 2 (i).

110. (1) On the completion of a work constructed under the preceding section, the Minister may direct the land board of the land district within which the work is situate to assess the charges to be paid by each occupier of any of the said lands. Assessment of charges. Ibid. s. 2 (ii).

(2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the construction of the well, and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided. Individual charges.

(3) The total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of the work. Total maximum.

(4) On the petition of persons liable in the aggregate to pay one-half of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of charges to be paid. Fresh assessment.

111. On the receipt of a petition in writing by the occupiers, owners, or mortgagees of any land situate in the neighbourhood of an artesian well constructed under this Part, and in respect of which charges are payable under this Part, and on obtaining the consent in writing of the persons who— Extension of supply. No. 59, 1906, s. 31.

- (a) constitute a two-thirds majority of the total number of those liable to pay charges as aforesaid; and
 - (b) who occupy an area exceeding two-thirds of the total area in respect of which those charges are payable,
- the Minister may, by notice in the Gazette, extend the supply of water from the well to the lands of the first mentioned occupiers, owners, and mortgagees.

Charges shall be assessed and paid in respect of such lands under this Part.

DIVISION 3.—Licenses.

112. (1) No artesian well shall be commenced or be enlarged, deepened, or be altered to increase the flow of water therefrom, unless— Wells to be licensed. Ibid. s. 22.

- (a) in pursuance of a license under this Part; or

Water.

- (b) in pursuance of a written contract, signed before the twenty-ninth day of December, one thousand nine hundred and six, and lodged with the Minister within fourteen days after such date;
- (c) in compliance with conditions imposed in an improvement lease granted before such date, and if notice of such lease is given to the Minister within fourteen days after such date; or
- (d) where the well is to be sunk, enlarged, deepened, or altered by the Crown.

Penalty.

(2) If any person contravenes the provisions of this section, the said person, and the owner of the well in respect of which the contravention has occurred, shall, on conviction, be liable to a penalty not exceeding one hundred pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction.

Application for
license.
No. 59, 1906, s. 24.

113. (1) Application for a license for any new artesian well, or for enlarging, deepening, or altering any existing well, shall be made to the Under Secretary for Public Works in the form prescribed, accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to utilise the water.

Notification of
application.

(2) On application being so made, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where the well or the site for the well is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the well or the site thereof is situate, a public inquiry will be held as to the desirability of granting the application.

Inquiry.
Ibid. s. 25.

114. (1) The inquiry shall be held by the board, or by some person authorised by the board, and approved by the Minister. The board shall report in writing to the Minister upon the inquiry.

Persons interested.

(2) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application.

Issue of license.
Ibid. s. 26.

115. If the board reports in favour of the issuing of a license, the same shall be notified by the Minister in the Gazette, and the Minister shall, after the expiration of thirty days from such notification, issue a license to the applicant in the prescribed form, subject to such terms, limitations, and conditions, if any, as may be recommended in such report, and to such conditions as he thinks fit.

Provided that before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report, or as he may think fit.

Water.

116. The license, if granted, shall be granted for a period not exceeding twenty-eight years, and shall (subject to the provisions of this Part with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make) be renewed by the Minister from time to time on the application of the person holding the license.

Period of license.
No. 59, 1906, s. 27.

Provided that no renewal shall be for a longer period than fourteen years.

117. A license shall be deemed to be held by and shall operate for the benefit of the lawful occupier for the time being of the land whereon the well is sunk or is proposed to be sunk.

Benefit of license.
Ibid. s. 28.

118. During the time that a license under this Part is in force with respect to a well, no alterations other than repairs or alterations necessary for the maintenance of the well, or on account of any sudden or unforeseen emergency, shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorised by the license.

Penalty for alterations of licensed well or contravention of license.
Ibid. s. 29.

Any person who contravenes the provisions of this section, or contravenes or fails to carry out any condition of the license, shall be liable to a penalty not exceeding fifty pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction; and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled.

Provided that the holder of any such license may, during the currency thereof, apply for an amended license allowing alterations in the well, and any such application shall be dealt with as herein provided in respect of applications for a license in the first instance.

DIVISION 4.—*Miscellaneous.*

119. All charges and expenses payable under the authority of this Part shall be a charge on the land in respect of which they were payable.

Charge on land.
No. 41, 1897, s. 3.

120. (1) It shall be the duty of each occupier of any of the lands in sections one hundred and seven and one hundred and nine mentioned, and if any of the said lands should at any time be unoccupied it shall be the duty of the owner thereof, to maintain in good repair and in efficient condition such channels and other works in connection therewith as have been constructed through his land; and any occupier or owner who fails to comply with the provisions of this subsection shall be liable to a penalty not exceeding fifty pounds.

Duty of occupier to keep in repair.
Ibid. s. 2 (iii).

(2) The Minister, or any person appointed by him in that behalf, may, on being informed of any failure by an occupier or owner to comply with the provisions of the last preceding subsection, require the occupier or owner, by notice in writing served on him, to effect such repairs

On failure of duty to repair.
Ibid. s. 2 (iv).

Water.

repairs and do such things as he may consider necessary in order to put the channel in an efficient condition. If the occupier or owner for one week after receipt of the notice fails or neglects to comply therewith it shall be lawful for the Minister to cause such repairs and things as aforesaid to be effected and done, and recover from the occupier or owner, as the case may be, in any court of competent jurisdiction, the expenses thereby incurred.

Penalty for wilful
destruction.
No. 41, 1897, s. 4 (i).

121. Any person who wilfully cuts, breaks, or destroys or damages, with intent to destroy or render less useful, any work constructed under the authority of this Part shall be liable for all damage and loss sustained by such act, and shall be, in addition, liable to be fined any sum not exceeding one hundred pounds, or to be imprisoned for any term not exceeding six months.

Penalty for
obstruction or
diversion of water
Ibid. s. 4 (ii).

122. Any person who wilfully and wrongly obstructs or diverts the flow of water in any channel constructed under the authority of this Part shall be liable to a penalty not exceeding fifty pounds.

Waste of water.
No. 59, 1906, s. 30.

123. (1) If the Minister is of opinion that the water from any artesian well is being wastefully or improperly used, or is being wasted, he may direct the partial closing of such well, or direct such other precautions to be taken as he may deem necessary to prevent such improper use or waste.

Penalty.

(2) Any person refusing or neglecting to carry out any direction given by the Minister under this section shall be liable, for every day during which such refusal or neglect continues after such direction has been given, to a penalty not exceeding twenty pounds, and in addition to the said penalty any license issued under this Part in respect of such well may, by notice in the Gazette, be cancelled.

Power of entry.
Ibid. s. 3.

124. (1) For the purposes of this Part the Minister, or any person authorised by him, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells.

Penalties.

(2) Any person hindering him in the exercise of such powers shall be liable to a penalty not exceeding twenty pounds.

(3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds.

Recovery of charges
and penalties.
No. 41, 1897, s. 6.

125. Charges and expenses payable under and penalties imposed by this Part, or by any regulations made thereunder, may be recovered before a police or stipendiary magistrate or any two justices in petty sessions.

Appeal.
Ibid. s. 1 (ii),

126. Any report, recommendation, or decision of a land board under this Part shall be subject to an appeal or reference to the Land Court in the manner prescribed by the Crown Lands Acts, or any regulations made thereunder. The decision of the said court shall be final.

127.

Water.

127. All works and wells constructed under the authority of this Part shall be subject to the provisions of the Public Works Act, 1900. Public Works Act.
No. 41, 1897, s. 1 (i),
and s. 2 (i).

128. All charges payable under this Part shall be paid, at the times and in the manner prescribed, into the Consolidated Revenue Fund. Consolidated
Revenue.
Ibid. s. 1 (ii) and s. 2
(ii).

129. (1) The Governor may make regulations—

- (a) for levying and collecting the charges payable under the authority of this Part; Regulations.
Ibid. s. 5.
No. 59, 1906, s. 32.
- (b) for regulating the supply and use of water from any well constructed under the authority of this Part;
- (c) prescribing the steps to be taken in order to maintain the bores and channels in good repair and in efficient condition;
- (d) prescribing the forms of licenses and renewals of the same; and
- (e) for carrying out the provisions of this Part;

and may, in such regulations, impose any penalty not exceeding twenty pounds for any breach of the same, or, where the breach is a continuing one, not exceeding five pounds for every day during which the breach continues.

(2) All such regulations, on being published in the Gazette, shall have the force of law, and shall, within fourteen days thereafter, be laid on the table of each House of Parliament, if Parliament be then in session; but if not, then within fourteen days after the next meeting of Parliament.

SCHEDULES.

SCHEDULE I.

Section 2.

Number of Acts.	Name of Act.	Extent of repeal.
No. 41, 1897	Artesian Wells Act, 1897	The whole.
No. 31, 1901	Drainage Promotion Act, 1901	The whole.
No. 28, 1902	Drainage Promotion Act Amendment Act, 1902...	The whole.
No. 51, 1902	Water Rights Act, 1902	The whole.
No. 93, 1902	Water and Drainage Act, 1902	The unrepealed portion.
No. 59, 1906	Water and Drainage and Artesian Wells (Amending) Act, 1906	The whole.
No. 20, 1911	Water and Drainage (Amendment) Act, 1911.....	The whole.

SCHEDULE

Water.

Sections 12 (2), 14,
and 15.

SCHEDULE II.

For the purpose of fixing scales of fees, works shall be divided by the Minister into the following classes:—

Class I consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works six months or longer in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation, for irrigation or other purposes.

Class II consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works less than six months in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation for irrigation or other purposes.

Class III.—Pumping machinery and other water-lifting appliances exclusive of those where the motive power employed does not exceed one-horse power.

Class IV.—Dams and weirs for storing water and not included in Class I or Class II.

Class V.—Flood-gates for drainage purposes on the banks of rivers or lakes, and artificial channels or natural channels artificially improved emptying or draining into a river or lake.

Fees for granting or renewing licenses.

The following license fees payable on the granting or renewing of licenses will in each case cover the period for which the license is granted or renewed.

Class I.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The Minister, or some person authorised by him in that behalf, shall determine the amount of water per minute which can be supplied to the licensee by the work, and the fee payable is hereby fixed at the rate of two pounds for every seven hundred and fifty gallons, or portion of seven hundred and fifty gallons, of water per minute so determined as aforesaid, up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied as aforesaid above that amount, at the rate of four pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class II.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The amount of water per minute which can be supplied by the work shall be determined in the same way as in the case of works included in Class I, and the fee payable is hereby fixed at the rate of two pounds for every one thousand five hundred gallons or portion of one thousand five hundred gallons of water per minute so determined as aforesaid up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied above that amount as aforesaid, at the rate of two pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class III.—The license fee to be paid in respect of a work included in this class shall be as follows:—

- (a) Where the motive power employed or to be employed does not exceed one-horse power no charge for a license shall be made.
- (b)

Water.

- (b) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of at least six months annually, without the aid of a dam or weir, the license fee shall be the same as in Class I.
- (c) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of less than six months annually, without the aid of a dam or weir, the license fee shall be half that payable under the last preceding paragraph.
- (d) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes during at least six months annually, the license fee for the combined works shall be a mean between the fee payable under Class I and that payable under Class II.
- (e) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes for a period of less than six months annually, the license fee for the combined works shall be half that payable under the last preceding paragraph.

Class IV.—The license fee for a work included in this class shall be one pound.

Class V.—The license fee for a work included in this class shall be one pound.

SCHEDULE III.

Section 83.

Declaration of voter.

I, A.B., do hereby solemnly declare that I am the owner of land, as described in this Act, to the value of _____ pounds, and a member of the union for drainage, and that I have not yet voted at this election.

SCHEDULE IV.

Section 84.

Declaration of officer.

I, A.B., having been elected director (or chairman or other officer) of the board of directors of the _____ union for drainage, do hereby solemnly declare that I will duly and faithfully fulfil the duties of that office to the best of my judgment and ability, and that I have not fraudulently or collusively obtained the said office.

SCHEDULE V.

Sections 92 (1) and 92 (8).

Appointment of arbitrators.

I, A.B. (or Minister for Lands on behalf of the Crown if a party), do hereby appoint E.F. to be one of two arbitrators under the Water Act, 1912, Part IV, to determine in the mode prescribed by that Act the matter hereinafter stated which is in dispute between the Crown (or myself) and C.D. (or the Crown). And I hereby promise and agree that I will submit to and be bound by the award in writing to be made by the said arbitrator and the other arbitrator appointed by the said C.D. (or by the Minister for Lands on behalf of the Crown) or by the umpire (if any) appointed by them.

[State precisely the question to be determined.]

Witness—

[Signature.]*

* In case of a corporation this appointment must be under the common seal.

SCHEDULE

Water.

Section 92 (5).

SCHEDULE VI.

*Request.*To C.D. (*or the Minister for Lands in case of Crown*).

[Date.]

I, A.B., having, by the instrument of which I annex a copy hereto, duly appointed, under the Water Act, 1912, Part IV, E.F. to be one of two arbitrators to determine the matter of dispute set forth in the said instrument, do hereby request you to appoint another arbitrator in due time, as under the said Act in default thereof the said E.F. will act as single arbitrator, and will alone determine and make his award in writing respecting the said matter.

Witness—

[Signature.]

Section 92 (7).

SCHEDULE VII.

Award.

We, E.F. and G.H., arbitrators (*or I, E.F., a single arbitrator, or I, K.L., the umpire*), duly appointed under the Water Act, 1912, Part IV, to determine and make our (*my*) award in writing concerning the matter next hereunder stated in dispute between A.B. and C.D.

[*Here copy statement of the matter in dispute in precisely same words as at foot of appointment of arbitrators.*]

do by this our (*my*) award in writing under our hands (*my hand*) determine and award as follows:—

[*Here give the determination in plain and simple language, taking care to provide for every point in dispute.*]

Witness—

[Signatures or Signature.]

Section 92 (10).

SCHEDULE VIII.

Indorsement.

[Date.]

We, E.F. and G.H., arbitrators (*or I, E.F., single arbitrator, or I, K.L., umpire*), duly appointed by the within instrument under the Water Act, 1912, Part IV, to determine by arbitration and make award upon the matter therein stated in dispute between A.B. and C.D. (*or Minister for Lands on behalf of the Crown*), do hereby extend the time for making our (*or my*) award until the day of , 19 .

Witness—

[Signatures or Signature.]

Section 92 (11).

SCHEDULE IX.

Appointment of umpire.

[Date.]

We, E.F. and G.H., arbitrators appointed by the within instrument to determine the matter in dispute therein stated, do hereby, before we proceed upon such arbitration, appoint K.L. to be umpire under the Act within mentioned, and to determine and make his award in writing concerning such matter in the event of our differing concerning the same.

Witness—

[Signatures.]

Section 92 (15).

SCHEDULE X.

Declaration.

I, A.B., do solemnly and sincerely declare that I am not directly or indirectly interested in the matter in dispute between A.B. and C.D., referred to me as arbitrator (*or as one of the arbitrators or as umpire*), and that I will faithfully, honestly, and to the best of my skill and ability hear and determine such matter under the Water Act, 1912, Part IV.

In the name and on behalf of His Majesty I assent to this Act.

CHELMSFORD,
Governor.

State Government House,
Sydney, 26th November, 1912.

STATUTES CONSOLIDATION COMMISSION.

COMMISSIONER'S MEMORANDUM AND CERTIFICATE.

WATER BILL.

THIS Bill consolidates seven Acts relating to Drainage Promotion, Artesian Wells, Water Rights, and matters connected with these subjects as follows :—

Artesian Wells Act, 1897.

Drainage Promotion Act, 1901.

Drainage Promotion Act Amendment Act, 1902.

Water Right Act, 1902.

Water and Drainage Act, 1902.

Water and Drainage and Artesian Wells (Amending) Act, 1906

Water and Drainage (Amendment) Act, 1911.

Clause 31. This clause is, it is submitted, an exact reproduction of the existing law as set out in the original section and amendment.

Clauses 61 and 104. These clauses contain what was described in the certificate to the former consolidation as “an amazing piece of injustice,” but as the Legislature has not altered these provisions by any of the amending Acts the clauses are again submitted in the original form.

Clauses 85 and 89 (3). Some ambiguity arises upon the peculiar form of amendment included in the later Act, but it is thought the intention of the Legislature was to enact the law as stated in this clause.

Clause 105. The “Minister for Public Works” has been substituted for the Secretary for Mines as the Acts have for some years past been under the administration of the Works Department.

Clause 120. It was not quite clear whether the expression “the said lands” in the original section included lands under section 1, as well as lands under section 2 of the original Act. A reason in support of the more limited meaning is found in the fact that the amount to be annually paid by each occupier under section 2 is to be reduced by the estimated cost of the maintenance by him of the channels and works on his land, but no such deduction is expressly provided for under section 1. The practice of the Department has been to apply the provisions both as to payments and deductions to both classes of works, and this practice has been affirmed in the Bill.

Clause 130. The section herein consolidated, although conferring power to make regulations in respect of subject-matters practically identical, varied as to penalty, the earlier section providing for a maximum of £50, the latter £20, with cumulative penalties of £5 a day for a continuing breach. It has been considered that the later section should be taken impliedly to repeal the earlier.

I certify that, save as aforesaid, this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

WILFRED BLACKET,

Commissioner for the Consolidation of the Statute Law.

Water Bill.

[TABLE showing how sections of Acts consolidated have been dealt with.]

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
No. 41, 1897.		
1	107, 108, 126, 127, 128	
2	109, 110, 120, 127, 128	
3	119	
4	121, 122	
5	129	
6	125	
7	105	Interpretation.
8	.....	Short title.
No. 31, 1901.		
1	.....	Short title.
2	.....	Repeal and saving.
3	4, 76	Interpretation.
4-7	77-80	
8	86	
9	87	
10	81	
11	82	
12	81, 83	
13	84	
14	88	
15	89	
16	90	
17	93, 94	
18-27	95-104	
28	92	
Sched. I-VIII	Sched. III-X	
No. 28, 1902.		
1	.....	Short title.
2	85, 89 (3)	
3	91	
No. 51, 1902.		
1	.....	Short title.
2	.....	Repeal and saving.
3	4, 5	Interpretation.
4-7	6-9	
8	19	
9	20, 26	
10	10	
11	11 (1)	
12	11 (2), (3), (4)	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
No. 51, 1902— <i>continued</i> .		
13-19	12-18	
20	22	
21	27	
22	21	
23	23	
24	24	
Sched.	Sched. II	
No. 93, 1902:		
1	.....	Short title.
2	4, 28	Interpretation.
3	69	
4	66	
5	67	
6	31	
7	32	
8	33	
9	34, 35	
10	68	
11	.....	Repealed by No. 59, 1906, s. 9
12	70, 73	
13	37	
14	39	
15-20	42-47	
21	48, 49	
22-28	50-56	
29	41	
30	59, 60	
31	58	
32	6	
33	71	
34	74	
35	75	
36	72	
No. 59, 1906.		
1	.....	Short title.
2	30	Subsection (3), repeal and definition, omitted
3	65, 124	
4	.....	Definition omitted.
5	.....	Incorporated in sections 28, 31 46, 52, 55 and 69.
6	69	No. 93, 1902, s. 3 is amended by No. 59, 1906, s. 6, and the latter is amended by No. 20 1911, s. 2.
7	35, 68	
8	31	
9	36	Operation of subsection (1) exhausted. Subsec- tion (3) repeals No. 93, 1902, s. 11
10	38	
11	37	
12	44, 45, 46	
13	57	

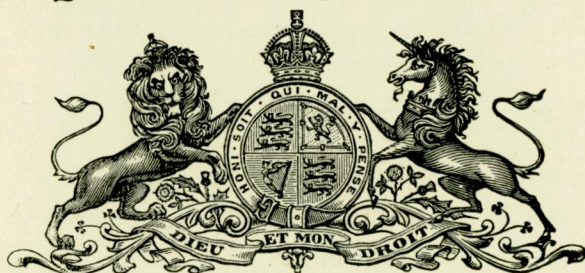
Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
No. 59, 1906— <i>continued</i> .		
14	62	
15	63	
16	64	
17	29	
18	55 (4)	
19, 20	.....	Operation exhausted.
21	40	
22	112	
23	.....	Operation exhausted.
24-29	113-118	
30	123	
31	111	
32	129	
Schedule.	31, 46, 52, 55, 69	
No. 20, 1911.		
1	.....	Short title.
2	69	Amends No. 59, 1906, s. 6

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 12 November, 1912. }*

*RICHD. A. ARNOLD,
Clerk of the Legislative Assembly.*

New South Wales.



ANNO TERTIO

GEORGI V REGIS.

Act No. , 1912.

An Act to consolidate the Acts relating to Water Rights, Water and Drainage, Drainage Promotion, and Artesian Wells.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Water Act, 1912," and is divided into Parts and Divisions as follows:—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—WATER RIGHTS AND WORKS.

DIVISION 1.—*Interpretation*—s. 5.

Water.

DIVISION 2.—*Rights of the Crown and of riparian proprietors—*
ss. 6-9.

DIVISION 3.—*Licenses—*ss. 10-18.

DIVISION 4.—*Works constructed by the Crown—*ss. 19, 20.

DIVISION 5.—*Miscellaneous—*ss. 21-27.

PART III.—WATER AND DRAINAGE.

DIVISION 1.—*Interpretation and general—*ss. 28-30.

DIVISION 2.—*Constitution of trusts, construction of works and*
*transfer to trust—*ss. 31-38.

DIVISION 3.—*Alteration of boundaries and extension of works—*
ss. 39-41.

DIVISION 4.—*Appointment and election of trustees—*ss. 42-51.

DIVISION 5.—*Power and duties of trustees—*ss. 52-58.

DIVISION 6.—*Various other powers—*ss. 59-65.

DIVISION 7.—*Certain works not administered by trusts—*ss. 66-68.

DIVISION 8.—*Loans—*s. 69.

DIVISION 9.—*Miscellaneous—*ss. 70-75.

PART IV.—DRAINAGE PROMOTION.

DIVISION 1.—*Interpretation—*s. 76.

DIVISION 2.—*Drainage Unions, and Boards of Directors—*ss. 77-
85.

DIVISION 3.—*Rates—*ss. 86-91.

DIVISION 4.—*Arbitration—*s. 92.

DIVISION 5.—*Miscellaneous—*ss. 93-104.

PART V.—ARTESIAN WELLS.

DIVISION 1.—*Interpretation and general—*ss. 105, 106.

DIVISION 2.—*Construction and charges—*ss. 107-111.

DIVISION 3.—*Licenses—*ss. 112-118.

DIVISION 4.—*Miscellaneous—*ss. 119-129.

2. The Acts in Schedule One of this Act mentioned are, to the Repeal,
extent therein expressed, hereby repealed. Schedule I.

3. (1) Any board constituted under the provisions of any Act Savings,
hereby repealed, and being in existence at the time of the passing of this
Act, shall be deemed to have been constituted under the provisions of
this Act.

Water.

(2) All persons appointed, employed, or elected under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed, employed, or elected under the provisions of this Act.

(3) All proclamations, regulations, and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.

(4) All licenses granted under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been granted under the provisions of this Act.

(5) All fees, rates, charges, and expenses payable, and all penalties incurred, under the provisions of any Act hereby repealed, shall be deemed to be payable and to have been incurred respectively under the corresponding provisions of this Act.

(6) Any matter or thing duly done under the authority of any Act hereby repealed shall be deemed to have been duly done under the authority of this Act.

4. In this Act, and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires—

“Crown lands” has the meaning given to that expression in the Crown Lands Act of 1884.

“Justice” means justice of the peace.

“Land district” means land district proclaimed under the Crown Lands Acts of 1884 or any Act amending the same.

“Prescribed” means prescribed by any Part of this Act in which the expression occurs, or by any regulations under that Part.

“Western Division” has the meaning given to that expression in the Crown Lands Act of 1884.

PART II.

WATER RIGHTS AND WORKS.

DIVISION 1.—*Interpretation.*

5. In this Part, and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires—

“Drainage” includes the draining of flood or other waters of rivers or lakes by means of any work; and “drainage work” includes a work constructed or used for the above purposes.

“Lake”

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- “ Lake ” includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.
- “ Local land board ” means the land board for the district in which a work is situated, or if the work be situated in more than one land board district, such land board as the Minister may name.
- “ Licensed work ” means a work in respect of which a license is held under this Part.
- “ Occupier ” means person in actual occupation.
- “ River ” includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch, or other stream into or from which the river flows.
- “ Water supply ” includes a supply for the carrying on of any industrial operation.
- “ Work ” includes any dam, lock, reservoir, weir, flume, race, channel (whether an artificial channel or a natural channel artificially improved), any cutting, tunnel, pipe, sewer, and any machinery and appliances.
- “ Work to which this Part extends ” means work connected with any river or lake flowing through, or past, or situate within the land of two or more occupiers, or with any water flowing in, to, or from, or being in any river or lake flowing or situate as aforesaid, whether such work be for water conservation, irrigation, water supply, or drainage, and whether such work be constructed before or after the commencement of this Act.

DIVISION 2.—Rights of the Crown and of riparian proprietors.

6. (1) The right to the use and flow and to the control of the water in all rivers and lakes which flow through, or past, or are situate within the land of two or more occupiers, and of the water contained in or conserved by any works to which this Part extends, shall, subject only to the restrictions hereinafter mentioned, vest in the Crown. And in the exercise of that right, the Crown, by its officers and servants, may enter any land and take such measures as may be thought fit, or as may be prescribed for the conservation and supply of such water as aforesaid and its more equal distribution and beneficial use, and its protection from pollution, and for preventing the unauthorised obstruction of rivers.

Rights to certain waters vested in the Crown.

No. 51, 1902, s. 4.

For the purposes of this subsection “ occupier ” includes the Crown.

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(2) The said right shall be subject to the following restrictions:— Restriction of Crown's rights.

- (a) It shall not be exercised in contravention of any right conferred on and lawfully exercisable by any person or board by or under the authority of any Act dealing with Mining, or of any public or private Statute, or of any license granted by the Crown.
- (b) It shall be subject to the rights hereinafter mentioned of the occupiers of land on the banks of rivers or lakes.
- (c) It shall be subject to the rights of the holders of licenses under this Part.

7. The occupier of land on the bank of a river or lake shall have the right to use the water then being in the river or lake for domestic purposes, and for watering cattle or other stock, or for gardens not exceeding five acres in extent used in connection with a dwelling-house, and it shall not be necessary for the occupier to apply for or obtain a license for any work used solely in respect of that right. Rights of riparian proprietors.
No. 51, 1902, s. 4 (2).

8. Where the Crown is, by its officers, servants, or agents, in occupation of a work to which this Part extends, constructed by the Crown at any time, the Crown shall, subject to the provisions of this Part, have the quiet enjoyment and sole and exclusive use of the said work as against all persons whomsoever, and shall be entitled to make such charges for the supply or use of the water conserved thereby as may be prescribed. Rights of Crown in respect of works.
Ibid. s. 6.

9. The right of the occupier of any work to which this Part extends— Rights of occupiers of work to which this Part extends.

- (a) to use the work for the purpose of water conservation, irrigation, or water supply, or drainage; or
- (b) to take, use, or dispose of the water contained therein, conserved, or obtained thereby,

shall be subject to the provisions of this Part.

DIVISION 3.—Licenses.

10. Any occupier of land whereon any work to which this Part extends is constructed or used, or is proposed to be constructed or used, for the purpose of water conservation, irrigation, water supply, or drainage, may apply to the person, and in the form prescribed, for a license to construct and use the said work, and to take, use, and dispose of the water contained therein, conserved, or obtained thereby. Application for licenses.
Ibid. s. 10.

11. (1) On application being made for a license under the last section, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where Public inquiry
Ibid. s. 11.
the

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the land is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the land is situate, a public inquiry will be held as to the desirability of granting the application.

(2) The inquiry shall be held by the local land board by the direction of the Minister, or by some person authorised by the Minister in that behalf, and the local land board or the person so authorised shall report in writing to the Minister.

(3) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application.

(4) Where any inquiry is held under this section by a person authorised by the Minister as aforesaid, the applicant or any person so interested as aforesaid shall have a right of appeal from the report of such person to the local land board.

12. (1) The report of the person holding the inquiry by the authority of the Minister, or of the local land board or Land Court on appeal, shall be published in the Gazette within the prescribed time after presentation thereof to the Minister, and the Minister shall, after the expiration of thirty days from such publication, where the report recommends the issue of a license, issue a license to the applicant in the prescribed form, subject to such terms, limitations, and conditions, if any, as may be recommended in such report.

(2) Provided that

- (a) no license shall be issued under this section pending any appeal or reference; and
- (b) a license shall be issued only upon payment of a fee calculated in the manner and according to the scale set forth in Schedule Two to this Act; and
- (c) before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report.

13. If two or more occupiers desire to construct any work to which this Part extends, they may apply for a license to construct and use the said work in the manner prescribed for a single occupier, and such application will be dealt with as the application of a single occupier.

14. The license, if granted, shall in every case, except in the case of dams and weirs included in Class IV in Schedule Two, be granted for a period not exceeding ten years, and shall (subject to the provisions of this Part with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make)

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make) be renewed by the Minister from time to time on the application of the person holding the license, on the payment of a fee calculated in the manner and according to the scale set forth in Schedule Two.

Provided that no renewal shall be for a longer period than ten years.

15. Except in cases where a single license fee may be paid for combined works, as mentioned in Schedule Two to this Act, a separate application for a license may be required in respect of each work; and the determination as to what work may be included in each license shall rest with the Minister.

Extent of license.
No. 51, 1902, s. 16.
Schedule II.

16. A license shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupier for the time being of the land whereon the work is constructed or is proposed to be constructed.

Benefit of license.
Ibid. s. 17.

17. Subject to the provisions of this Part, or the regulations hereunder, the person holding a license under this Part in respect of any work shall have absolutely, during his lawful occupation of the work, so far only as the said work is constructed or maintained on the land occupied by him, the quiet enjoyment and the sole and exclusive use of the work as against all other persons whomsoever, including the Crown, and shall be entitled to take, use, and dispose of any water contained therein or conserved thereby.

Rights of holder of license.
Ibid. s. 18.

18. If, during the time that a license under this Part is in force in respect of a work, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity or quality of water flowing in, to, or from, or being in any river or lake, the person who has made the alterations shall be liable to a penalty not exceeding one hundred pounds, and, in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled and annulled.

Penalty for alteration of work during currency of license.
Ibid. s. 19.

Provided that the holder of any license may, during the currency thereof, apply for an amended license, allowing alterations in the work as originally licensed, and any such application shall be dealt with as hereinafter provided in respect of applications for a license in the first instance.

Provisos.

Provided also that the operations herein referred to shall not apply to any repairs or alterations rendered necessary for maintenance or any sudden or unforeseen emergency.

DIVISION 4.—Works constructed by the Crown.

19. (1) The Governor may notify, by proclamation in the Gazette, proposals for dams, locks, weirs, channels, or drainage works to be constructed by the Crown, together with an estimate of the cost of the same.

Proposals for work.
Ibid. s. 8

(2)

Water.

(2) After such notification, the Minister may refer any such proposal to the land board for the land district within which the proposed works would be, or to a land board for a land district adjacent to the site of the proposed work; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, should be included in any water or drainage district to be constituted in respect of the said work. ^{Reference to land board.}

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which water or drainage charges may be levied. ^{Notification of district.}

(4) If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons— ^{Petition.}

- (a) who constitute a two-thirds majority of the total number of those occupying land within the district; and
- (b) who occupy an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out.

(5) Thirty days after the receipt of such report to that effect the Minister may carry out the work out of funds legally available for the purpose, unless an appeal to the Land Court affecting the same is pending, in which case he shall not proceed with the work until the appeal is decided. ^{Construction of work.}

Provided that any such work shall be subject to the Public Works Act, 1900. ^{Public Works Act.}

20. (1) Upon the work being completed, the Minister may direct the land board to assess in each and every case the water and drainage charges to be paid, which charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the work. ^{Charges. No. 51, 1902, s. 9.}

Provided that the total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of such work.

(2) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid. ^{Fresh assessment.}

DIVISION 5.—Miscellaneous.

21. Any person who maliciously cuts, breaks, or destroys, or damages with intent to destroy or render less useful any licensed work, or any work to which this Part extends, constructed by the Crown, shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding five years. ^{Injuries to works. Ibid. s. 21.}

22.

Water.

22. (1) For the purposes of this Part the Minister, or any person authorised by him, may enter on any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any works.

Power of entry.
No. 51, 1902, s. 20.

(2) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months.

Penalty.

23. Any person who obstructs or hinders any person while performing any duty which he is authorised by this Part, or by any regulation made thereunder, to perform, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months.

Obstructing persons
in the performance
of duties.
Ibid. s. 23.

24. Fees and charges payable under and penalties imposed by this Part, or any regulation made thereunder, may be recovered before, and charges in respect of offences under this Part (not being offences made punishable on indictment) may be heard and determined by, a police or stipendiary magistrate, or any two justices in petty sessions.

Recovery of fees,
charges, and
penalties.
Ibid. s. 24.

25. Any report, recommendation, or decision, of a land board under this Part shall be subject to an appeal or reference to the Land Appeal Court in the manner prescribed by the Crown Lands Acts, or any regulations made thereunder. The decision of the said court shall be final.

Appeal.
Ibid. s. 25.

26. All contributions, fees, and charges payable under this Part shall be paid at the times and in the manner prescribed into the Consolidated Revenue Fund.

Consolidated
revenue.
Ibid. s. 9 (2), and
s. 26.

27. (1) The Governor may make regulations prescribing the forms of licenses and of renewals of the same, and for carrying out the provisions of this Part; and may, in such regulations, impose any penalty not exceeding fifty pounds for each breach of the same, or where the breach was a continuing one, not exceeding five pounds for every day during which the breach continues.

Regulations.
Ibid. s. 21.

(2) A copy of such regulations shall be laid before the Legislative Council and Legislative Assembly without delay.

PART III.

WATER AND DRAINAGE.

DIVISION 1.—*Interpretation and general.*

28. In this Part—

“ Board ” means Board constituted under this Part.

“ Minister ” means Minister for Public Works.

“ Occupier ” means person in actual possession.

Interpretation.
No. 93, 1902, s. 2
No. 59, 1906, s. 2.

“ Owner ”

Water.

“ Owner ” means owner of any estate of freehold in land, and includes a mortgagee in possession.

“ Ratepayer ” means person paying rates in respect of land within a trust district.

“ State work ” means any work of water supply, water conservation, or irrigation, or of drainage, or for the prevention of floods or the control of flood-waters, proclaimed as such by the Governor. S. c. No. 59, 1903, s. 5.

“ Trust ” means trust constituted under this Part.

“ Trustee ” means member of a trust.

“ Trust district ” means area over which a trust has jurisdiction under this Part.

“ Works ” includes any natural or artificial conduit, well, appliance, machinery, or structure pertaining to or used in connection with a trust.

29. Nothing in Part II of this Act shall—

Effect of Part II.

(a) affect the exercise of the powers conferred by this Part in relation to a river or lake as defined in Part II; or No. 59, 1906, s. 17.

(b) affect the right of a trust to fix and levy rates under the provisions of this Part.

30. There shall be a Board, consisting of the Under Secretary of the Department of Public Works, the Chief Engineer for Rivers, Water Supply, and Drainage, the Executive Engineer appointed by the Governor to administer this Part, and such officer or officers of the Department of Public Works as the Governor may appoint, and including, where any work is situate in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901. Constitution of board. Ibid. s. 2.

DIVISION 2.—Constitution of trusts, construction of works, and transfer to trust.

31. In respect of any works of water conservation the Minister may, and in respect of any work of water supply, irrigation, or drainage, or for the prevention of floods or the control of flood-waters, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works, proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works. Proposals for works. No. 93, 1902, s. 6. No. 59, 1906, s. 5. and Sched., and s. 8.

32. Any such proposal shall contain—

Contents of proposals.

(a) a description of the purpose for which it is proposed to constitute the trust; No. 93, 1902, s. 7.

(b) a plan and description of the works and of the land, whether covered with water or not, proposed to be taken or acquired for the purposes of such works, and of their cost or estimated cost;

(c)

Water.

- (c) the rate of interest, which shall not exceed four per centum per annum, and shall be paid by the trust on the actual cost or on the estimated cost, plus ten per centum, whichever is the lesser sum;
- (d) the charges to be paid by the trust for water to be supplied by the Crown, and the conditions of such supply;
- (e) the maximum rate which may be assessed by the trust;
- (f) a description of the trust district;
- (g) the number of trustees, being either three or five;
- (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

33. (1) If, within eight weeks after such notification, a petition is presented to the Minister, signed by at least one-third in number of the occupiers of Crown land, including homestead selectors, conditional lessees, and settlement lessees, and owners of other land within the proposed trust district, objecting to the proposal, he shall refer the proposal to the board for inquiry and report.

Petition objecting, and inquiry. No. 93, 1902, s. 8.

(2) For the purpose of any such inquiry the Board shall have the power to subpoena witnesses and take evidence on oath.

Powers of Board.

(3) Every person who, when required by the board, attends as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena on the trial of an action in the District Court, and, in case of dispute as to the amount to be allowed, the same shall be referred to the registrar of the nearest District Court, who, on request under the hand of the chairman of the Board, shall ascertain and certify the proper amount of such expenses.

Witnesses' expenses.

34. (1) If within the said period no such petition is received, or if the Board reports in favour of the proposal, with or without modifications, the Governor may constitute the trust with such modifications of the proposal as the Board may recommend, or where no reference is made to the Board with such modifications as the Minister may think fit.

Constitution of trust. Ibid. s. 9 (1).

(2) The constitution of the trust shall be notified by the Minister in the Gazette.

Gazette notice. Ibid. s. 9 (2).

35. Upon such notification the conditions of the proposal, with such modifications (if any) as aforesaid, shall be binding on the trust and on the Crown, and the Minister may, out of the funds raised under this Part, or out of the revenue account or the loan account of the public works fund, carry out the works described in the proposal.

Construction of works. Ibid. s. 9 (3). Act No. 59, 1906, s. 7.

36. (1) The Minister may notify proposals for the constitution of a trust in respect of any work constructed and completed by him before or at the commencement of the Act No. 59, 1906, and a trust may be constituted in respect of the same. Thereupon the trust shall take over the administration and management of the work, and the provisions of this Part shall apply thereto, and the interest and charges payable by the trust shall commence to run.

Works completed. No. 59, 1906, s. 9 (2).

Provided

Water.

Provided that no trust shall be constituted under this subsection for work in respect of which charges are payable under Part II or Part V of this Act, unless with the consent in writing of the persons—

- (a) who constitute a two-thirds majority of the total number of persons liable for such charges; and
- (b) who are liable for two-thirds in amount of such charges.

(2) On the constitution of a trust under this section for any work the provisions of this or any Act, other than the provisions of this Part, shall cease to apply thereto.

Other parts and Acts
not to apply.
No. 59, 1906, s. 9 (3).

37. The completion of any works in respect of which a trust is constituted under this Part shall be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers contained in this Part except such as are conferred solely upon the Minister, and the interest and charges payable by the trust shall commence to run.

Transfer to trust.
No. 93, 1902, s. 13.
No. 59, 1906, s. 11.

Provided that the cost of such work may be determined by the Minister, and notified in the Gazette, at any time after the work has been completed and taken over as aforesaid; and this proviso shall apply whether the work was completed before or after the commencement of this Act.

38. Where any work in respect of which a trust is constituted is, in the opinion of the Minister, so far constructed as to be of use to the trust, that fact may be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers and discharge all the duties conferred and imposed by this Part in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

Transfer of works
not completed.
Ibid. s. 12.

DIVISION 3.—*Alteration of boundaries and extension of works.*

39. If two-thirds in number of the occupiers of Crown lands, including homestead selectors, conditional lessees and settlement lessees, and owners of other lands within any area, sign and forward to the Minister a petition that such area be included in a trust district, the Minister shall refer the proposed alteration to the Board, who, after giving the trust an opportunity of expressing their opinion, shall report to the Minister whether, in the opinion of the Board, the petition ought to be refused or granted, with or without modification, whereupon the Minister may, by notification in the Gazette, alter the boundaries of such district accordingly, or may refuse the petition.

Alteration of
boundaries.
No. 93, 1902, s. 14.

Water.

40. Where the Minister thinks it desirable that any works in Construction of respect of which a trust is constituted, or is proposed to be constituted, work through another district. should be constructed through the district of another trust, he may, No. 59, 1906, s. 21. on or after the constitution of the first-mentioned trust, and on giving notice to the last-mentioned trust, construct such works and amend the boundaries of the respective districts so as to include the said works and such lands adjacent thereto as he may think desirable in the district of the trust for which the works have been or are proposed to be constructed. Such amendment of boundaries shall be notified in the Gazette.

41. If the trustees, by request in writing, desire the Minister to Extension of works improve or extend any works under their charge or increase the quantity No. 93, 1902, s. 29 of water supplied, the Minister may prepare an estimate of the cost of the proposed work and the interest thereon payable by the trust, and a statement of the additional charge to be paid by the trust in respect of the increase of the quantity of water supplied. Such estimate and statement shall be supplied to the trustees.

Upon the receipt from the trustees of an intimation that the estimate and statement have been approved by a special general meeting of the voters in the trust, of which not less than fourteen days' notice shall be given in the prescribed manner, the Minister may proceed with the construction of the proposed work, or may increase the quantity of water supplied.

On the completion of the work, or upon the increase of the quantity of water, a notification shall be sent to the trustees, and shall be published in the Gazette, directing that, with the Governor's approval, the interest on the cost of such work and the charges for the increase of water supplied shall be paid by the trust.

Such interest and charges shall commence to run from the date of such notification, and such interest shall be calculated on a sum not exceeding the estimated cost, plus ten per centum.

DIVISION 4.—Appointment and election of trustees.

42. (1) After the constitution of the trust, but before the com-Appointment or election of trustees. pletion of the works (if any) proposed to be constructed, the Minister shall, by notice in the Gazette, appoint trustees and direct the first No. 93, 1902, s. 15. election of trustees in pursuance of this Part.

(2) Where the trust district consists wholly of land acquired under the Closer Settlement Act, 1901, or any Act amending the same, or unoccupied Crown lands, all the trustees shall be appointed by the Minister, and shall, subject to the provisions of this Part, hold office until half the land in the district is occupied by persons who are liable to pay rates to the trust.

Thereafter,

Water.

Thereafter, and in other cases where the number of the trustees is three, one shall be appointed by the Minister and two shall be elected; but where the number of the trustees is five, two shall be appointed by the Minister and the rest shall be elected.

Provided that where the trust district is in the western division the Western Lands Board shall be sole trustees in lieu of the trustee or trustees hereinbefore mentioned.

43. Elected trustees shall be elected for three years, and shall hold office until their successors are elected. Term of office.
No. 93, 1902, s. 16.

44. For the purpose of the first election of trustees the Minister shall prepare a roll of voters, placing on the roll the names of the persons who, in his opinion, will be liable to pay rates to the trust, and the persons whose names are on such roll, and no others, shall be qualified to vote at the first election. Rolls for first election.
Ibid. s. 17.

Provided that when any such person is not resident in the trust district, but the property in respect of which he would, in the opinion of the Minister, be liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person. No. 59, 1906, s. 12 (1).

45. For the purpose of any subsequent election of trustees a roll of voters, containing the names of the persons who are liable to pay rates to the trust, shall be prepared by the trustees, and revised in the prescribed manner by the police magistrate having jurisdiction in the district, before whom any person aggrieved by the omission or addition of the name of any person may appear and be heard, and the persons whose names are on such roll, and no others, shall be entitled to vote at any such election. Rolls for subsequent elections.
No. 93, 1902, s. 18.

Provided that where any such person is not resident in the trust district, but the property in respect of which he is liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person. No. 59, 1906, s. 12 (2).

46. Persons on the roll shall be entitled to vote in manner following, that is to say:— Plural voting.
No. 93, 1902, s. 19.

- (a) In the case of a trust placed in charge of drainage work or irrigation works, or works for the prevention of floods or the control of flood-waters, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding fifty acres, but not exceeding three hundred acres, to two votes; and of an area exceeding three hundred acres, to three votes. No. 59, 1906, s. 5, and Sched. and s. 12 (3).
- (b) In the case of a trust in charge of water supplies for domestic and stock purposes, the occupier of an area of land not exceeding

Water.

exceeding two thousand acres shall have one vote; the occupier of more than two thousand acres, but not more than ten thousand acres, two votes; and the occupier of more than ten thousand acres, three votes.

(2) For the purpose of this section a person on the roll as administering a property under a power of attorney shall be deemed the occupier of the area of land included in such property.

47. Any person entitled to vote at the election of trustees may be elected as trustee. But no person who has been convicted of any criminal offence shall be capable of being appointed or elected or to act as a trustee, and where a trustee becomes incapable as aforesaid his office shall become vacant. Qualification of trustees.
No. 93, 1902, s. 20.

48. In the first election of trustees the Minister shall appoint a returning officer, and may, for any succeeding election, appoint a returning officer, or delegate this power to the trustees. Returning officers.
Ibid. s. 21.

49. The Minister shall appoint the date of any election and the polling places, and shall notify the same in the Gazette and a local newspaper. Date of election and
polling places.
Ibid. s. 21.

50. The mode of election of trustees shall be as prescribed. Mode of election.
Ibid. s. 22.

51. Any vacancy caused by the death, resignation, or incapacity of a trustee shall be filled by appointment or election, as the case may be. Filling of vacancy.
Ibid. s. 23.

DIVISION 5.—*Powers and duties of trustees.*

52. The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage, and for the prevention of floods and the control of flood-waters, mentioned in the notification constituting the trust, or thereafter constructed within the trust district. Duties of trustees.
Ibid. s. 24.
No. 59, 1906, s. 5
and Sched.

53. Trustees shall have the following duties and powers:—

- (a) They shall maintain in a state of efficiency the works under their charge. Powers and duties
of trustees.
No. 93, 1902, s. 25.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works, and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.
- (d) They shall pay to the Treasury, at such times as may be fixed by the Minister, the interest and charges payable by them, and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Treasurer to a special account, to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.
- (e) They may appoint, with the sanction of the Minister, such officers or servants as may be required. **54.**

Water.

54. In the exercise and discharge of their powers and duties the trustees, by themselves or their officers, may enter any land within the trust district and make any inspection or survey they may deem necessary, and effect repairs or alterations to any works, but in so doing shall avoid, as far as practicable, causing any loss, injury, or damage. They shall not be responsible for any loss, injury, or damage caused by them, unless claim in writing be made within three months thereafter.

Power of trustees to enter and inspect.
No. 93, 1902, s. 26.

55. (1) For the purpose of providing money for exercising their powers and performing their duties under this Part, the trustees may fix and levy rates upon the whole of the lands within the trust district as follows:—

Rates.
Ibid. s. 27.

- (a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed, and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.
- (b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.
- (c) In the case of drainage, or works for the prevention of floods or the control of flood-waters, a rate per acre of the land benefited by the works shall be fixed; and this rate may vary according to the distance of the land from drains, or works for the prevention of floods or the control of flood waters, and in proportion to the benefit received as aforesaid.
- (d) In the case of irrigation, a rate per acre on the whole of the irrigable land within the trust district shall be levied, whereupon the ratepayer shall be entitled to a proportion of the water to be fixed by the trustees, either by measure or according to the area irrigated, or which, in the opinion of the trustees, should be irrigated.
- (e) In all cases not otherwise in this section provided for, a rate per acre of the land benefited, directly or indirectly, by the works shall be fixed yearly, and shall, as far as practicable, be in proportion to the benefit received as aforesaid.
- (f) In the case of a supply for more than one purpose, separate rates may be fixed, calculated on the basis set out for each such purpose.

(2) All such rates shall be payable by the occupiers of the lands.

Rates payable by occupier.

Water.

(3) Any occupier aggrieved by the amount at which he is rated may appeal to the police magistrate having jurisdiction in the district, who shall hear and determine the matter, and may confirm or vary such amount. Appeal to magistrate.

(4) If in any such appeal the police magistrate reduces the amount at which the appellant is rated, he shall increase the other ratings of the trust in such amounts as he thinks just, where he considers such course necessary, in order to secure that the total amount to be received by the trust for rates shall not be diminished by such reduction. Increase of other ratings. No. 59, 1906, s. 18.

56. The trustees shall have power to sell water by measure to any ratepayer, in addition to the quantity to which he is entitled by payment of rates. Additional water. No. 93, 1902, s. 28.

57. When a trust under this Part has any surplus water which is not required for the purpose for which the trust was constituted, the trust may sell such water, by measure or otherwise, to any ratepayer for any other purpose. Surplus water. No. 59, 1906, s. 13.

58. The trustees shall submit to the Minister once every year, and at such other times as the Minister may direct, an audited statement of the accounts of the trust. The Minister may, if in his opinion such audited statement is defective or unsatisfactory, appoint an auditor to prepare a proper statement of accounts, at the cost of the trust. Accounts. No. 93, 1902, s. 31.

DIVISION 6.—Various other powers.

59. In the event of any delay in the election of trustees, or in the event of any default by trustees in the discharge of their duties under this Part or the regulations made thereunder— General powers of Minister and Governor. Ibid. s. 30 (2).

- (a) the Minister may assume all or any of the powers by this Part conferred on trustees; and
- (b) the Governor may, if in his opinion sufficient cause exists, dissolve a trust, remove from office trustees, and appoint and direct the election of other trustees, or appoint a manager of the affairs of a trust.

60. The Minister, by himself or his officers, may at any time enter any part of a trust district and make an inspection or survey of the works in charge of the trust, and may inspect the records and accounts of the trustees. Power of Minister to enter and inspect. Ibid. s. 30 (1).

If upon such inspection the Minister is of opinion that any of such works are not kept in repair and efficient working order he may cause such repairs as he may think necessary to be made at the cost of the trust, and for the purpose of effecting such repairs he shall have the powers of the trustees.

61. (1) The Minister or trustees for the purposes of this Part may construct and maintain and repair any conduit through any land, street, or road. Conduits and drains. Ibid. s. 32.

Water.

Any ratepayer of a trust may, with the approval of the trustees, for the purpose of draining his land, cut and make, and maintain and repair drains through any adjacent or neighbouring land.

(2) Provided that the trustees or ratepayer shall make full compensation for any damage occasioned by cutting and making such drains; and such compensation, estimated at one-fifth part above the value of the property affected, shall be assessed by the board, and when so assessed shall be recoverable in any court of competent jurisdiction.

62. On notice, in the prescribed form and under the hand of the Minister, being served—

- (a) personally or by post on the owner or occupier or person in apparent occupation of any land through which it is proposed to construct a channel or embankment under the authority of this Part; or
- (b) if the land is unoccupied, on the owner; or
- (c) if the owner is out of the State or cannot be found, by posting a copy of the notice on some conspicuous part of the land,

the Minister, by his officers and servants, may commence and complete such channel or embankment through such land so as approximately to follow the direction as set out or described in the notice, with such variations as may be authorised under the provisions of this Part.

63. For the purpose of the construction or the maintenance and repair of any channel or embankment proposed to be constructed, or constructed under the authority of this Part, or to which this Part applies, the Minister or a trust having the control of or carrying out such construction, maintenance, or repair shall be deemed to have had and shall have power at any time to enter any land within sixteen and a half feet on either side of the centre line of a distributing channel, or site for the same, or within lines distant sixty-six feet from the top of each bank of a water conservation or drainage channel, or site for the same, or any land being an embankment or site for the same, and use such land for the said purposes, notwithstanding that no easement or right so to enter or use such land may have been granted or acquired.

64. No compensation shall be payable or shall be deemed to have been payable for the exercise of any powers conferred by the two last preceding sections.

Provided that where, after the twenty-eighth day of December, one thousand nine hundred and six, any such power is or has been exercised with respect to land cultivated or having buildings thereon, or being within population boundaries, compensation shall be payable, the amount of which shall be determined by two arbitrators, appointed respectively by the Minister and by the person owning the land or buildings, and by an umpire appointed by such arbitrators unless otherwise agreed by and between the Minister and the said person. The provisions of the Arbitration Act, 1902, shall apply to any such arbitration.

65.

Water.

65. (1) For the purposes of this Part, the Minister, or any ^{Power of entry.} person authorised by him, may enter any land and take levels and make No. 59, 1906, s. 3. surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells.

(2) Any person hindering him in the exercise of such power ^{Penalties.} shall be liable to a penalty not exceeding twenty pounds.

(3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds.

DIVISION 7.—Certain works not administered by trusts.

66. The Minister may, subject to the provisions of the Public ^{State works.} Works Act, 1900, carry out a "State work" under the said Act out No. 93, 1902, s. 4. of the funds raised under this Part, and may maintain and administer and, subject as aforesaid, extend the same as he thinks fit.

67. (1) Where the estimated cost does not exceed five thousand ^{Works of water} pounds the Minister may, out of the funds raised under this Part, carry ^{conservation under} out any works of water conservation that he deems desirable, and ^{£5,000.} ^{*Ibid.* s. 5.} maintain and administer the same.

Provided that the Minister shall, before carrying out any such work, refer the proposal to the board, and obtain their report thereon.

(2) No charge shall be made for any water supplied to ^{Travelling stock.} travelling stock from such works when situated at or near any public highway.

68. The Minister may, out of the funds raised under this Part, ^{Works under other} or out of the revenue account, or the loan account of the public works ^{Acts.} fund, carry out any work which he is authorised to carry out under the ^{*Ibid.* s. 10.} Public Watering Places Act, 1900, or under Part IV of this Act. ^{No. 59, 1906, s. 7.}

DIVISION 8.—Loans.

69. (1) The Governor may raise, in the year one thousand nine ^{Powers to raise} hundred and twelve, and in each of the next four succeeding years, by the ^{loans.} issue of debentures or the issue of inscribed stock, secured upon the Con- ^{No. 93, 1902, s. 3.} solidated Revenue Fund of this State, and bearing interest at a rate not ^{No. 59, 1906, s. 5} exceeding four per centum per annum, a sum not exceeding two hundred ^{and Sched., and s. 6.} thousand pounds, for the purpose of carrying out works of water supply, ^{No. 20, 1911, s. 2.} water conservation or irrigation, or of drainage, or for the prevention of floods or the control of flood-waters.

(2) The loans so authorised may be negotiated wholly or in part in the form of debentures or inscribed stock, in the State or in London, at such times and for such amounts as may be directed by the Governor.

Water.

(3) Any stock issued within the State under this Part shall be styled "New South Wales Funded Stock," and shall, if sold otherwise than by tender, be purchasable at the Treasury upon any lawful day.

(4) The provisions of the Funded Stock Act of 1892, relating to the method of inscription and transfer of stock, and the regulations under such Act, and the forms prescribed in the said regulations, are hereby declared to be applicable to, and shall be followed and used, *mutatis mutandis*, in connection with stock issued within the State under the provisions of this Part.

(5) In respect to any stock issued in London under the provisions of this Act the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act of 1883, for carrying this Act into effect, and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

(6) All moneys borrowed under this Act shall be paid to the Treasurer, and shall be by him carried to and form part of the General Loan Account, and be appropriated and applied, as required, to the works and services hereinbefore specified, or to any other duly authorised loan services, in terms of the Audit Act, 1902.

(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government Securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

Powers of investment in trustees and other persons.

DIVISION 9.—*Miscellaneous.*

70. (1) If any work, other than a State work, which the Minister is authorised by this Part to carry out interferes with any rights under any license granted by the Crown under this Act or any other Act the Minister shall give the holder of such license the following notice of his intention to carry out such work, that is to say—

Notice to holder of license.

No. 93, 1902, s. 12.

- (a) where the unexpired term of the license does not exceed five years, six months' notice;
- (b) where the unexpired term of the license exceeds five years, twelve months' notice.

(2) Such work shall not be carried out until after the expiration of the period expressed in such notice.

*Water.***71.** Any person who—

Penalties.

- (a) obstructs the trustees or their officers or servants acting under this Part or the regulations or by-laws made thereunder; or
- (b) interferes with works in charge of the trustees; or
- (c) destroys, injures, or obliterates any mark or level fixed by the trustees or their officers; or
- (d) uses water from the works of the trust otherwise than in the manner and at the times prescribed; or
- (e) obstructs the flow of or pollutes any water under the control of a trust; or

(f) commits any breach of the provisions of this Part, shall be liable to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a penalty not exceeding five pounds per day whilst the offence continues, and shall also be liable to be sued by the trustees or by any person for compensation on account of loss or damage caused by his offence.

72. All rates and all charges imposed by or under this Part, or the regulations or by-laws made thereunder, may be recovered in any court of competent jurisdiction.

73. Every work, other than a State work, which the Minister is authorised by this Part to carry out shall be carried out under the Public Works Act, 1900, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work, and for all purposes of the said Act such work shall be deemed to be an "authorised work," and the Minister shall be deemed a "constructing authority" within the meaning of the said Act.

74. (1) The Governor may make regulations for carrying out the provisions of this Part, and in particular for—

Regulations.
Ibid. s. 34.

- (a) the election of trustees and the making and revision of the rolls of voters, and the mode of voting;
- (b) the election by the trustees of a chairman;
- (c) the intervals within which meetings of trustees must be held;
- (d) the procedure at such meetings;
- (e) the appointment, payment, and dismissal of officers and servants;
- (f) the fixing and notifying of rates;
- (g) the hearing of appeals;
- (h) the collection and recovery of rates and charging the same on lands in respect of which they are payable;
- (i) the keeping of the accounts of trustees;
- (j) regulating the payment to the Crown of interest and charges by the trust;
- (k) regulating the proceeds of the board;
- (l) regulating special meetings of voters of a trust in pursuance of this Act;

(m)

Water.

(m) imposing any penalty not exceeding twenty pounds for any breach of the regulations.

(2) Such regulations shall be published in the Gazette.

75. (1) The trustees may, subject to the approval of the Governor, make by-laws—

By-laws.

No. 93, 1902. s. 35.

prescribing the duties of their officers and servants;

for regulating the supply of water from and the use of the works of the trust;

prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust;

imposing any penalty not exceeding ten pounds for any breach of the by-laws.

(2) Such by-laws shall have effect when approved by the Governor and published in the Gazette.

All such regulations and by-laws shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

PART IV.

DRAINAGE PROMOTION.

DIVISION 1.—*Preliminary.*

76. In this Part, unless the context or subject-matter otherwise indicates or requires—

Interpretation.

No. 31, 1901, s. 3.

“ Drain ” means any drain, channel, watercourse, or other artificial outlet for the purpose of draining any land into any waters.

“ Flood ” means any flood, flush, fresh, watershed, fall, tide, or other cause of a rise in the level of any waters above the bottom of any drain.

“ Minister ” means the Minister for Lands.

“ Owner ” means the owner, including the Crown, for the time being of any land, for any freehold estate, or any leasehold estate, whether such owner is or is not in actual occupation, or the agent of such owner.

“ Tenant ” means the person in actual occupation of any land, not being the owner.

“ Union ” means “ drainage union ” constituted under this Part, or under any Act hereby repealed.

“ Waters ” means any river, creek, stream, lagoon, lake, or other running or standing waters, the level of which is liable to variation, and the sea where the tide ebbs and flows.

DIVISION

*Water.*DIVISION 2.—*Drainage Unions and Boards of Directors.*

77. Whenever any tract of land is so circumstanced that from any permanent or occasional cause considerable quantities of water accumulate, and, for the default of sufficient natural or artificial drainage, lie thereon to the injury of such land, any owner or owners thereof may present a petition to the Governor under his hand—

- (a) describing as accurately as may be the land so under water, or liable to be under water, and the locality and boundaries thereof;
- (b) stating therein
 - (i) the facts as they exist;
 - (ii) the nature and cause of the accumulations;
 - (iii) the name and description of every other owner of such tract, including the Crown; and
 - (iv) the number of acres held by such owners respectively; and
- (c) praying that all owners of such tract, except the Crown, may be constituted a union—by some name to be specified—for the purpose of compulsory drainage and contribution under this Part.

78. Upon receipt of any such petition the Governor may publish the same in the Gazette.

Petition.
No. 31, 1901, s. 4.

Ibid. s. 5.

79. Before the issuing of the proclamation hereinafter mentioned—

Counter-petition.

Ibid. s. 6.

- (1) if any other owners of such tract of land, not including the Crown, being not less than one-fifth in number of holdings, present a counter-petition to the Governor, showing reasonable objections to constituting such union, or if for any other reason the Governor thinks fit, he may employ some competent person—
 - (a) to examine such tract of land, and report respecting the statements contained in both petitions, and the sufficiency of the reasons alleged in the latter;
 - (b) to make a survey and levels if deemed necessary; and
 - (c) to report on the best mode of effecting the drainage of such tract;

and the person so employed shall for such purposes have full power to enter upon any land within the limits of the proposed union.

- (2) In the event of an examination, report, and survey being deemed necessary to be made, and before the same are made, the original petitioner shall pay into the State Treasury, to the account of a separate fund, to be called the "Drainage Union of A or B Fund," such sum as is, in the opinion of the

Security for
expenses.

Chief

Water.

Chief Surveyor, sufficient to reimburse all expenses likely to be incurred by the Government in the matter, and out of which separate fund sufficient funds may for that purpose be from time to time drawn and transferred to the Consolidated Revenue Fund by warrant of the Governor:

Provided that if the prayer of the original petition is refused, the money so paid by such petitioner, or the balance thereof, shall be returned to him.

80. (1) After the lapse of two months from the day of the publication of the original petition the Governor may, if he does not refuse the petition, publish in the Gazette a proclamation declaring the then owners of such tract of land and their successors, owners for the time being, the Crown excepted, to be a "drainage union" for the purpose of draining and keeping drained the said tract of land.

Proclamation of
drainage union.
No. 31, 1901, s. 7.

(2) By virtue of such proclamation, all such owners, and other owners for the time being, except the Crown, shall become and be a drainage union for such purpose only, and compellable by mandamus at the instance of any one or more of such owners, or of the Crown if holding land within the tract, or of any person interested in the land or any part thereof, to drain, and from time to time thereafter to keep drained, such land accordingly.

81. (1) A board of directors of such union, not fewer in number than three nor more than seven, and two auditors, shall be annually elected by a majority of the votes of members present at a general meeting, duly convened by notice published by the Minister in the Gazette and in the nearest local newspaper.

Board of manage-
ment.
Ibid. s. 10.

Provided that, if the Crown holds lands within such union, the Governor shall be entitled to appoint one of such directors.

Ibid. s. 12.

(2) The directors shall from time to time, under such by-laws as may be made by virtue of this Act, choose one of themselves to be chairman, and shall, as a board, manage all the affairs of such union.

82. At a like general meeting by-laws may be made, not inconsistent with this Act, and such by-laws, when confirmed by the Governor and published in the Gazette, shall have the force of law.

By-laws.
Ibid. 1901, s. 11.

83. (1) In voting at any such meeting for electing directors or making by-laws, every member of such union shall be entitled to one or more votes according to the assessed increased value to accrue to the several holdings as aforesaid, that is to say:—If such increased value amounts to less than fifty pounds, the member shall be entitled to one vote; if fifty pounds and below one hundred pounds, two votes; if one hundred pounds and below two hundred and fifty pounds, three votes; if two hundred and fifty pounds and below five hundred pounds, four votes; and if five hundred pounds and upwards, five votes.

Plural voting.
Ibid. s. 12.

(2) Every voter shall, before voting, make and subscribe a declaration in the terms of Schedule Three hereto, before some justice of the peace.

Schedule III.

84.

Water.

84. (1) The board of directors may appoint such officers and servants as they deem necessary, and may, in the name of their chairman, make valid contracts, and sue and be sued on behalf of the union. Powers of directors. No. 31, 1901, s. 13.

(2) Every director, and also every other officer of the union shall before entering upon business, make and subscribe before a justice a declaration in the terms of Schedule Four hereto. Schedule IV.

85. Notwithstanding the provisions contained in this Part, every member of the said drainage union whose rates are fully paid shall be entitled to vote at any election of the board of directors of such union. Voting for directors. No. 28, 1902, s. 2.

DIVISION 3.—Rates.

86. A sworn appraiser shall be appointed by the Governor, to be remunerated according to a scale of fees fixed by the Governor and published in the Gazette, for the purpose of assessing the increased value to accrue to the several holdings, including those of the Crown, by reason of drainage under this Part. Assessment of values. Ibid. s. 8.

87. (1) If any owner objects to such mode of assessment in writing addressed to the Minister, the registrar of the nearest District Court shall, by direction of the Minister, summon a jury of ten persons, not being members of such union, five of whom shall be chosen by lot, and who shall, on a day to be fixed by the District Court judge, under his direction, assess such increased value, and the verdict of the majority of such jury shall be final, and the cost of such mode of assessment shall be borne by such owner. Appeal against assessment. Ibid. s. 9.

(2) The contributions towards the expenses of the Government, and also the general contributions of the members of the union, and of the Crown, if a holder, towards the expenses of such drainage, and also the proportions of votes hereinafter mentioned shall be apportioned according to such increased value.

88. (1) The board of directors of every union shall, within three months after election to office, and at a corresponding period in every subsequent year, cause an estimate to be made of the probable amount which will be required for the current year, commencing on the first day of January and ending on the thirty-first day of December, towards making, clearing, and keeping open drains by sufficient means, including steam-engines where found to be requisite, in upholding embankments, and in doing other necessary works for the purpose of fully carrying out this Part, and shall raise the amount so estimated by an assessment not exceeding ten pounds per centum on the increased value accruing to the several holdings, including those of the Crown, from such works. Assessment. Ibid. s. 14.

(2) The occupier of the lands assessed shall primarily pay the rates hereinafter mentioned.

Provided

Water.

Provided that if there is no sufficient provision in the lease, or in some other written instrument with reference thereto, the tenant may recover from his landlord a fair proportion of such rates, to be settled by arbitration in case of dispute.

89. (1) In each and every year there shall be paid by every Rates.
person, including the Crown, holding land within the union, and No. 31, 1901, s. 15.
towards the revenues of such union, for every portion of land so held a
rate not exceeding twenty pounds per centum of the increased annual
value thereof, to be settled as herein mentioned, and all such rates for
the first year shall be paid into the hands of the chairman of the board
of directors within two months after notice in writing signed by him,
and for every succeeding year in such time and manner as may be
required by any by-law made under this Part.

(2) In default of payment of such rates, or of such Levy and distress.
amended rates, as may be determined on appeal as hereinafter provided,
such rates, or amended rates, may be levied by warrant under the hand
of such chairman by distress and sale of the goods and chattels of the
person by whom the same are due, and in the event of such goods and
chattels not being found of sufficient value to satisfy such rates, or
amended rates, then by sale of the land, or a sufficient portion thereof.

Provided that the surplus, if any, shall be repaid to the owner of
such goods and chattels or land.

(3) If any person rated under the provisions of this Part Recovery of rates
fails to pay any rate due from him for the space of thirty days after before justices.
demand thereof made in writing, signed by the chairman or any No. 28, 1902, s. 2.
director for the time being of any union, or by a collector duly
authorised in that behalf by any drainage union, or after publication in
some newspaper circulating in the neighbourhood of a notice requiring
such payment to be made, any such drainage union may at their dis-
cretion withhold or abandon proceedings by distress and sale, as pro-
vided in the preceding subsection, and may, after default as aforesaid,
or in the absence of any or a sufficient distress, recover the amount of
rates due from the person rated for the same in a summary way before
two justices, and the same when recovered shall be paid over to the union
interested towards its revenue.

90. Any person aggrieved by the amount of any such rate Appeal.
may appeal against the same to the nearest petty sessions, which No. 31, 1901, s. 16
court shall have power to hear and determine the same and to award
such relief in the premises as the justice of the case may require, and
the decision thereof shall be final.

Provided that the appellant shall give notice in writing under
his hand to the chairman of his intention to appeal seven days at least
before the holding of the court for hearing such appeal:

Provided also that no justice, being a member of the union,
interested in such appeal, shall adjudicate therein.

Water.

91. All complaints or other legal proceedings for the recovery of any rates as aforesaid, or for any non-compliance with or any breach of this Part, or of any by-laws made thereunder, may be laid and taken by the chairman of, or any other officer appointed by, any union in that behalf, and any such chairman or officer may appear and represent any union at the hearing of such complaints or other legal proceedings.

Appearance by
chairman or officer
No. 28, 1908, s. 3.

DIVISION 4.—*Arbitration.*

92. Whenever it becomes necessary, under the provisions of this Part, to proceed by arbitration, the arbitrators and umpire shall be appointed, and the arbitration shall be conducted in manner following:—

Mode of arbitration
No. 31, 1901, s. 28.

- (1) Where the Crown is a party, the Minister and the other party may concur in the appointment of a single arbitrator, and, failing such concurrence, then on the request of the Minister or such other party, after appointing an arbitrator in writing under his hand in the form of Schedule Five hereto, such other party or the Minister, as the case may be, shall also in like manner appoint an arbitrator.
- (2) Where the Crown is not a party, the parties to the dispute may concur in the appointment of a single arbitrator, and failing such concurrence, after either party shall in like manner have appointed an arbitrator, the other party shall, at his request also in like manner, appoint an arbitrator.
- (3) All appointments of arbitrators shall be delivered to the respective arbitrators. and shall be attached to the award when made, and shall be deemed to be a submission to arbitration.
- (4) Any submission to arbitration may, on the application of either party, be made a rule of the Supreme Court or of the District Court of the district.
- (5) Every request to appoint an arbitrator shall be in the form of Schedule Six hereto, and if within sixty days after the same has been duly served, together with a copy of the first appointment, the party served fails to appoint an arbitrator, the arbitrator so first appointed shall be deemed to be appointed by and shall act as a single arbitrator on behalf of both parties.
- (6) No appointment of an arbitrator shall be revoked without the consent of both parties to the arbitration, nor shall the death of any party operate as a revocation.
- (7) Every award made in the form or to the effect of Schedule Seven hereto, and signed by the single arbitrator, or by both arbitrators, or by the umpire, as the case may be, shall be final and conclusive and binding upon all parties to or interested in the arbitration for all intents and purposes.

Appointment of
arbitrators where
Crown a party.

Schedule V.

Appointment of
arbitrators in other
cases.

Appointment to be
deemed submission.

Submission made
rule of court.

Failure to appoint
arbitrators.
Schedule VI.

No appointment to
be revoked.

Award to be final
Schedule VII.

Water.

- (8) If before the making of the award any arbitrator dies or refuses or becomes incapable to act, the party by whom he was appointed may appoint in writing under his hand, in the form of Schedule Five hereto, another person in his stead, and if he fails so to do for thirty days after request in writing, in that behalf from the other arbitrators, such other arbitrator may proceed *ex parte* and make his award as single arbitrator for both parties. Death or failure to act of arbitrator.
Schedule V.
- (9) Every arbitrator becoming a single arbitrator in any manner aforesaid, shall have the same powers and authorities as are by this Part vested in any arbitrator appointed to be single arbitrator with the concurrence of both the parties. Power of single arbitrator.
- (10) If a single arbitrator dies, or refuses or becomes incapable to act, before the making of his award, or fails to make his award within sixty days after his appointment, or within such extended time (if any) not exceeding thirty days as has been duly fixed by him for that purpose by indorsement on his appointment in the form of Schedule Eight hereto, the matters referred to him shall be again referred to arbitration, under the provisions of this Part, as if no former reference had been made. Death or failure to act of single arbitrator.
Schedule VIII.
- (11) If there is more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint an umpire by endorsement on each of their appointments under their hands in the form of Schedule Nine hereto, and if the person appointed to be umpire dies, or refuses or becomes incapable to act, the arbitrators shall forthwith appoint in like manner another person in his stead, and in case the arbitrators neglect or refuse to appoint an umpire for thirty days after the date on which the last of them was appointed, an umpire may be appointed by the Minister. Appointment of umpire.
Schedule IX.
- (12) If arbitrators fail to make their award within sixty days after the day on which the last of them was appointed, or within such extended time (if any), not exceeding thirty days, as has been fixed by them for that purpose by indorsement as aforesaid, the matters shall be determined by the umpire, and the provisions of this Part with respect to the time for making an award, and with respect to extending the same in the case of a single arbitrator, shall apply to any umpirage save and except that such time shall commence and be computed from the date of the matters being referred to the umpire. When umpire to act.
- (13) Any arbitrator or umpire appointed by virtue of this Part may require the production of such documents in the possession or power of either party as he thinks necessary for determining the matters referred, and may examine any persons, including the parties, as witnesses, on oath. Production of documents.

(14)

Water.

- (14) All costs of and consequent upon the reference shall be in the discretion of the arbitrator, arbitrators, or umpire, as the case may be. Costs.
- Provided that where no special agreement is made beforehand by the parties, the charge of each arbitrator or of the umpire shall not in any case exceed one pound.
- (15) Before any arbitrator or umpire enters upon the reference, he shall make and subscribe before a justice a declaration in the form of Schedule Ten hereto. Declaration by arbitrator or umpire. Schedule X.
- (16) Every such declaration shall be annexed to the award, and any arbitrator or umpire who in such declaration falsely states that he is not so interested, or who wilfully acts contrary to such declaration, shall be guilty of a misdemeanour. False declaration a misdemeanour.
- (17) No appointment or award shall be set aside for irregularity or error in matter of form. No avoidance for error in form.
- (18) Every award shall be in writing and in duplicate, and shall be transmitted by the arbitrator, arbitrators, or umpire to each party or the agent of each party, and where the Crown is a party, to the Minister, and the Minister shall deposit the same in his office. Requisites of award.

DIVISION 5.—*Miscellaneous.*

93. Every union shall, within one year after its establishment, publish in the Gazette a plan of the drainage contemplated within the limits of such union, showing accurately the position and direction, width, depth, and other material particulars of such drainage, and distinguishing the parts (if any) then completed, and shall cause tracings of such plan to be lodged with the Chief Surveyor, to be recorded by him for public reference at convenient hours, and a like tracing to be lodged for like reference with the registrar of the District Court of the district. Plans of drainage to be published. No. 31, 1901, s. 17.

Such union shall thereafter, in every successive half-year, publish and transmit in like manner like plans and tracings as to all then intended additional drainage.

94. No alteration affecting any navigable water shall be made without the sanction of the Governor. Navigable water. Ibid. s. 17.

95. Every union shall also, once in every half-year at equal intervals of time, publish twice in the Gazette a correct debtor and creditor account, certified under the hand of their chairman and by the auditors, of all receipts and payments under this Part for the last half-year, and if the Crown is a holder of lands within the union, shall transmit the same to the Minister. Accounts. Ibid. s. 18.

96. All members of every union, and, if the Crown is a holder of lands within the union, the Minister or any person duly authorised by him, may at all reasonable times examine any drain constructed by the union. Inspection of drains. Ibid. s. 19.

Provided

Water.

Provided that if any damage or injury to any property is done by or by reason of such examination, the party causing such damage or injury shall be answerable for the same.

97. Every union may borrow, by mortgage or otherwise, on the credit of any property or revenue belonging thereto, for or towards or incidental to the making or completing of any such drains or any works within the purposes of this Part, any money not exceeding the estimated revenue of such union for five years. Power to borrow money.
No. 31, 1901, s. 20.

Provided that no money shall be so borrowed without the sanction of the Governor.

98. No action or other proceeding, whether civil or criminal, shall be commenced by any union against any person under this Part after the expiration of twelve months from the day on which the cause of such action or proceeding arose. Limitation of actions.
Ibid. s. 21.

Provided that when such person is absent from the State, service of any notice or process in any civil proceeding against such person may be made upon the land in like manner as in cases of ejectment.

99. On the receipt of a petition, under the hand of not less than one-third part of the members of any union in number and value of holdings, and after publication of such petition in the Gazette and at least one local newspaper for two months, and no sufficient cause against it shown by other such members more in number and greater in value, the Governor may dissolve such union, if then free from all debt as aforesaid, from and after a day to be named in a proclamation published in like manner, and the union shall be so dissolved accordingly. Dissolution of union.
Ibid. s. 22.

100. Any owner who cuts or makes any drain, the bottom of which at its opening into any waters is so low as to injure or endanger any other property, and omits to construct and fix in and to every such drain a flood-gate sufficient, when closed, to prevent the flow from such waters through such drain of any water over or upon the land of any other owner, shall be liable to a penalty not exceeding one hundred pounds, and to a further penalty not exceeding twenty pounds for every week after the imposition of the first penalty during which he fails to construct such flood-gate. Flood-gates to certain drains.
Ibid. s. 23.

101. (1) Whenever any drain, cut for the benefit and at the expense of two or more owners, but not being within a union in terms of this Part, in the opinion of any such owner requires cleansing or repair so as to render it effective, such owner may give written notice to each of the other owners requiring them to take measures for such cleansing and repair. Notice of cleansing or repairing drains.
Ibid. s. 24.

(2) After the expiration of fourteen days from the service of such notice, the owner serving the said notice, failing the agreement of all the owners, or the owners consenting, if any other owner consents, may enter upon any lands through which such drain passes, and may cause such cleansing and repairs to be effected,

(3)

Water.

(3) The owners declining to effect such cleansing and repairs, or failing to consent to the same, shall be liable to their ratable share of the cost of such cleansing and repairs, to be determined and recovered in a summary way before any court of petty sessions if such court is satisfied that such cleansing and repair were necessary.

102. Nothing herein shall affect any remedy at law by which the Crown or any person may recover compensation in damages for any loss or injury to any land, stock, crops, or other property, by reason of any breach or neglect by the Crown or any other person of any provision of this Part. Legal remedies not affected.
No. 31, 1901, s. 25.

103. Whosoever wilfully injures or damages any drain, flood-gate, or other work connected with drainage under this Part, or wilfully trespasses upon, damages, or injures any property under colour or pretence of carrying out this Part shall, in addition to any liability at law to compensate for such trespass, damage, or injury, be liable for every such offence to a penalty not exceeding twenty pounds nor less than one pound. Penalties for wilful injury.
Ibid. s. 26.

104. (1) Any union or any owner of land may, for the purpose of draining land under this Part, make and cut drains through any adjacent or neighbouring land into any waters. Power to make drains through other lands.
Ibid. s. 27.

(2) Such union or owner constructing such drain shall be liable at law to make full compensation for any damage thereby occasioned to the proprietor of such adjacent or neighbouring land, and be subject to all other the provisions of this Part in respect of drains.

(3) The amount of such compensation shall be settled by arbitration under this Part.

(4) Such compensation shall be estimated at one-fifth part above the value of the property affected at the time such loss or damage accrues.

PART V.

ARTESIAN WELLS.

DIVISION 1.—*Interpretation and general.*

105. In this Part—

“Artesian well” includes an artesian well from which the water does not flow naturally, but has to be raised by pumping or other artificial means; and Definition.
No. 41, 1897, s. 7.

“Minister” means Minister for Public Works.

106. Any work constructed under the authority of the Artesian Wells Act, 1897, or any Act amending the same, shall be deemed to have been constructed under this Part. Works under repealed Acts.

DIVISION

*Water.*DIVISION 2.—*Construction and charges.*

107. (1) The Governor may notify in the Gazette any proposal for the construction by the Crown of any artesian well, and for the conservation and supply of the water flowing from such well, together with an estimate of the cost of the same. Notification of proposal.
No. 41, 1897, 1 (i).

(2) After such notification the Minister may refer any such proposal to the land board for the land district within which the proposed work would be situate, or to a land board for a land district adjacent thereto; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, would be benefited by water from the proposed well, and should be included in any district to be constituted in respect of the said work. Report of board.

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which the charges in the next following section mentioned may be levied. Notification of district.

(4) If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons— Petition.

(a) who constitute a two-thirds majority of the total number of those owning or occupying, or being mortgagees, of land within the district; and

(b) who own or occupy or are mortgagees of an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out.

(5) Thirty days after the receipt of a report to that effect the Minister may carry out the work with funds legally available for the purpose. Construction of work.

Provided that if an appeal to the Land Appeal Court affecting the same is pending, the carrying out of the work shall be stayed until the appeal is decided.

108. (1) On the completion of a work constructed under the preceding section, the Minister may direct the land board to assess the charges to be paid by each occupier of land within the district notified as aforesaid. Assessment of charges.
Ibid. s. 1 (ii).

(2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the construction of the well and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided. Including charges.

(3) The total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of the work. Total maximum.

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(4) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid. Fresh assessment.

109. If the occupiers, owners, or mortgagees of any lands in writing request the Minister to construct an artesian well for the purpose of supplying water to their lands, and consent to pay any charges which may be levied in respect of the same, the Minister may, if he approve of the request, construct the well and such channels and other works for the supply of the water as he may think fit, with funds legally available for the purpose. Construction of well on petition of occupiers. No. 41, 1897, s. 2 (i).

110. (1) On the completion of a work constructed under the preceding section, the Minister may direct the land board of the land district within which the work is situate to assess the charges to be paid by each occupier of any of the said lands. Assessment of charges. Ibid. s. 2 (ii).

(2) Such charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the construction of the well, and from the supply to the said land of water from the well, deduction being made for the probable cost of the maintenance of the channels and works as hereinafter provided. Individual charges.

(3) The total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of the work. Total maximum.

(4) On the petition of persons liable in the aggregate to pay one-half of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of charges to be paid. Fresh assessment.

111. On the receipt of a petition in writing by the occupiers, owners, or mortgagees of any land situate in the neighbourhood of an artesian well constructed under this Part, and in respect of which charges are payable under this Part, and on obtaining the consent in writing of the persons who— Extension of supply. No. 59, 1906, s. 31.

(a) constitute a two-thirds majority of the total number of those liable to pay charges as aforesaid; and

(b) who occupy an area exceeding two-thirds of the total area in respect of which those charges are payable,

the Minister may, by notice in the Gazette, extend the supply of water from the well to the lands of the first mentioned occupiers, owners, and mortgagees.

Charges shall be assessed and paid in respect of such lands under this Part.

DIVISION 3.—*Licenses.*

112. (1) No artesian well shall be commenced or be enlarged, deepened, or be altered to increase the flow of water therefrom, unless— Wells to be licensed. Ibid. s. 22.

(a) in pursuance of a license under this Part; or

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(b)

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- (b) in pursuance of a written contract, signed before the twenty-ninth day of December, one thousand nine hundred and six, and lodged with the Minister within fourteen days after such date;
- (c) in compliance with conditions imposed in an improvement lease granted before such date, and if notice of such lease is given to the Minister within fourteen days after such date; or
- (d) where the well is to be sunk, enlarged, deepened, or altered by the Crown.

(2) If any person contravenes the provisions of this section, the said person, and the owner of the well in respect of which the contravention has occurred, shall, on conviction, be liable to a penalty not exceeding one hundred pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction. Penalty.

113. (1) Application for a license for any new artesian well, or for enlarging, deepening, or altering any existing well, shall be made to the Under Secretary for Public Works in the form prescribed, accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to utilise the water. Application for license.
No. 59, 1906, s. 24.

(2) On application being so made, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where the well or the site for the well is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the well or the site thereof is situate, a public inquiry will be held as to the desirability of granting the application. Notification of application.

114. (1) The inquiry shall be held by the board, or by some person authorised by the board, and approved by the Minister. The board shall report in writing to the Minister upon the inquiry. Inquiry.
Ibid. s. 25.

(2) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application. Persons interested.

115. If the board reports in favour of the issuing of a license, the same shall be notified by the Minister in the Gazette, and the Minister shall, after the expiration of thirty days from such notification, issue a license to the applicant in the prescribed form, subject to such terms, limitations, and conditions, if any, as may be recommended in such report, and to such conditions as he thinks fit. Issue of license.
Ibid. s. 26.

Provided that before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report, or as he may think fit.

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116. The license, if granted, shall be granted for a period not exceeding twenty-eight years, and shall (subject to the provisions of this No. 59, 1906, s. 27. Period of license. Part with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make) be renewed by the Minister from time to time on the application of the person holding the license.

Provided that no renewal shall be for a longer period than fourteen years.

117. A license shall be deemed to be held by and shall operate for the benefit of the lawful occupier for the time being of the land whereon the well is sunk or is proposed to be sunk. Benefit of license. *Ibid.* s. 28.

118. During the time that a license under this Part is in force with respect to a well, no alterations other than repairs or alterations necessary for the maintenance of the well, or on account of any sudden or unforeseen emergency, shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorised by the license. Penalty for alterations of licensed well or contravention of license. *Ibid.* s. 29.

Any person who contravenes the provisions of this section, or contravenes or fails to carry out any condition of the license, shall be liable to a penalty not exceeding fifty pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction; and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled.

Provided that the holder of any such license may, during the currency thereof, apply for an amended license allowing alterations in the well, and any such application shall be dealt with as herein provided in respect of applications for a license in the first instance.

DIVISION 4.—*Miscellaneous.*

119. All charges and expenses payable under the authority of this Part shall be a charge on the land in respect of which they were payable. Charge on land. No. 41, 1897, s. 3.

120. (1) It shall be the duty of each occupier of any of the lands in sections one hundred and seven and one hundred and nine mentioned, and if any of the said lands should at any time be unoccupied it shall be the duty of the owner thereof, to maintain in good repair and in efficient condition such channels and other works in connection therewith as have been constructed through his land; and any occupier or owner who fails to comply with the provisions of this subsection shall be liable to a penalty not exceeding fifty pounds. Duty of occupier to keep in repair. *Ibid.* s. 2 (iii).

(2) The Minister, or any person appointed by him in that behalf, may, on being informed of any failure by an occupier or owner to comply with the provisions of the last preceding subsection, require the occupier or owner, by notice in writing served on him, to effect such repairs. On failure of duty to repair. *Ibid.* s. 2 (iv).

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repairs and do such things as he may consider necessary in order to put the channel in an efficient condition. If the occupier or owner for one week after receipt of the notice fails or neglects to comply therewith it shall be lawful for the Minister to cause such repairs and things as aforesaid to be effected and done, and recover from the occupier or owner, as the case may be, in any court of competent jurisdiction, the expenses thereby incurred.

121. Any person who wilfully cuts, breaks, or destroys or damages, with intent to destroy or render less useful, any work constructed under the authority of this Part shall be liable for all damage and loss sustained by such act, and shall be, in addition, liable to be fined any sum not exceeding one hundred pounds, or to be imprisoned for any term not exceeding six months.

Penalty for wilful destruction.
No. 41, 1897, s. 4 (i).

122. Any person who wilfully and wrongly obstructs or diverts the flow of water in any channel constructed under the authority of this Part shall be liable to a penalty not exceeding fifty pounds.

Penalty for obstruction or diversion of water.
Ibid. s. 4 (ii).

123. (1) If the Minister is of opinion that the water from any artesian well is being wastefully or improperly used, or is being wasted, he may direct the partial closing of such well, or direct such other precautions to be taken as he may deem necessary to prevent such improper use or waste.

Waste of water.
No. 59, 1906, s. 30.

(2) Any person refusing or neglecting to carry out any direction given by the Minister under this section shall be liable, for every day during which such refusal or neglect continues after such direction has been given, to a penalty not exceeding twenty pounds, and in addition to the said penalty any license issued under this Part in respect of such well may, by notice in the Gazette, be cancelled.

Penalty.

124. (1) For the purposes of this Part the Minister, or any person authorised by him, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells.

Power of entry.
Ibid. s. 3.

(2) Any person hindering him in the exercise of such powers shall be liable to a penalty not exceeding twenty pounds.

Penalties.

(3) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds.

125. Charges and expenses payable under and penalties imposed by this Part, or by any regulations made thereunder, may be recovered before a police or stipendiary magistrate or any two justices in petty sessions.

Recovery of charges and penalties.
No. 41, 1897, s. 6.

126. Any report, recommendation, or decision of a land board under this Part shall be subject to an appeal or reference to the Land Court in the manner prescribed by the Crown Lands Acts, or any regulations made thereunder. The decision of the said court shall be final.

Appeal.
Ibid. s. 1 (ii).

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127. All works and wells constructed under the authority of this Part shall be subject to the provisions of the Public Works Act, 1900.

Public Works Act.
No. 41, 1897, s. 1 (i),
and s. 2 (i).

128. All charges payable under this Part shall be paid, at the times and in the manner prescribed, into the Consolidated Revenue Fund.

Consolidated
Revenue.
Ibid. s. 1 (ii) and s. 2
(ii).

129. (1) The Governor may make regulations—

Regulations.
Ibid. s. 5.
No. 59, 1906, s. 32.

(a) for levying and collecting the charges payable under the authority of this Part;

(b) for regulating the supply and use of water from any well constructed under the authority of this Part;

(c) prescribing the steps to be taken in order to maintain the bores and channels in good repair and in efficient condition;

(d) prescribing the forms of licenses and renewals of the same; and

(e) for carrying out the provisions of this Part;

and may, in such regulations, impose any penalty not exceeding twenty pounds for any breach of the same, or, where the breach is a continuing one, not exceeding five pounds for every day during which the breach continues.

(2) All such regulations, on being published in the Gazette, shall have the force of law, and shall, within fourteen days thereafter, be laid on the table of each House of Parliament, if Parliament be then in session; but if not, then within fourteen days after the next meeting of Parliament.

SCHEDULES.

SCHEDULE I.

Section 2.

Number of Acts.	Name of Act.	Extent of repeal.
No. 41, 1897	Artesian Wells Act, 1897	The whole.
No. 31, 1901	Drainage Promotion Act, 1901	The whole.
No. 28, 1902	Drainage Promotion Act Amendment Act, 1902...	The whole.
No. 51, 1902	Water Rights Act, 1902	The whole.
No. 93, 1902	Water and Drainage Act, 1902	The unrepealed portion.
No. 59, 1906	Water and Drainage and Artesian Wells (Amendment) Act, 1906	The whole.
No. 20, 1911	Water and Drainage (Amendment) Act, 1911.....	The whole.

SCHEDULE

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SCHEDULE II.

Sections 12 (2), 14,
and 15.

For the purpose of fixing scales of fees, works shall be divided by the Minister into the following classes:—

Class I consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works six months or longer in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation, for irrigation or other purposes.

Class II consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works less than six months in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation for irrigation or other purposes.

Class III.—Pumping machinery and other water-lifting appliances exclusive of those where the motive power employed does not exceed one-horse power.

Class IV.—Dams and weirs for storing water and not included in Class I or Class II.

Class V.—Flood-gates for drainage purposes on the banks of rivers or lakes, and artificial channels or natural channels artificially improved emptying or draining into a river or lake.

Fees for granting or renewing licenses.

The following license fees payable on the granting or renewing of licenses will in each case cover the period for which the license is granted or renewed.

Class I.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The Minister, or some person authorised by him in that behalf, shall determine the amount of water per minute which can be supplied to the licensee by the work, and the fee payable is hereby fixed at the rate of two pounds for every seven hundred and fifty gallons, or portion of seven hundred and fifty gallons, of water per minute so determined as aforesaid, up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied as aforesaid above that amount, at the rate of four pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class II.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The amount of water per minute which can be supplied by the work shall be determined in the same way as in the case of works included in Class I, and the fee payable is hereby fixed at the rate of two pounds for every one thousand five hundred gallons or portion of one thousand five hundred gallons of water per minute so determined as aforesaid up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied above that amount as aforesaid, at the rate of two pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class III.—The license fee to be paid in respect of a work included in this class shall be as follows:—

- (a) Where the motive power employed or to be employed does not exceed one-horse power no charge for a license shall be made.
- (b)

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- (b) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of at least six months annually, without the aid of a dam or weir, the license fee shall be the same as in Class I.
- (c) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of less than six months annually, without the aid of a dam or weir, the license fee shall be half that payable under the last preceding paragraph.
- (d) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes during at least six months annually, the license fee for the combined works shall be a mean between the fee payable under Class I and that payable under Class II.
- (e) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes for a period of less than six months annually, the license fee for the combined works shall be half that payable under the last preceding paragraph.

Class IV.—The license fee for a work included in this class shall be one pound.

Class V.—The license fee for a work included in this class shall be one pound.

SCHEDULE III.

Section 83.

Declaration of voter.

I, A.B., do hereby solemnly declare that I am the owner of land, as described in this Act, to the value of pounds, and a member of the union for drainage, and that I have not yet voted at this election.

SCHEDULE IV.

Section 84.

Declaration of officer.

I, A.B., having been elected director (*or chairman or other officer*) of the board of directors of the union for drainage, do hereby solemnly declare that I will duly and faithfully fulfil the duties of that office to the best of my judgment and ability, and that I have not fraudulently or collusively obtained the said office.

SCHEDULE V.

Sections 92 (1) and 92 (8).

Appointment of arbitrators.

I, A.B. (*or Minister for Lands on behalf of the Crown if a party*), do hereby appoint E.F. to be one of two arbitrators under the Water Act, 1912, Part IV, to determine in the mode prescribed by that Act the matter hereinafter stated which is in dispute between the Crown (*or myself*) and C.D. (*or the Crown*). And I hereby promise and agree that I will submit to and be bound by the award in writing to be made by the said arbitrator and the other arbitrator appointed by the said C.D. (*or by the Minister for Lands on behalf of the Crown*) or by the umpire (if any) appointed by them.

[*State precisely the question to be determined.*]

Witness—

[*Signature.*]*

* In case of a corporation this appointment must be under the common seal.

SCHEDULE

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SCHEDULE VI.

Section 92 (5).

Request.

To C.D. (*or the Minister for Lands in case of Crown*).

[*Date.*]

I, A.B., having, by the instrument of which I annex a copy hereto, duly appointed, under the Water Act, 1912, Part IV, E.F. to be one of two arbitrators to determine the matter of dispute set forth in the said instrument, do hereby request you to appoint another arbitrator in due time, as under the said Act in default thereof the said E.F. will act as single arbitrator, and will alone determine and make his award in writing respecting the said matter.

Witness—

[*Signature.*]

SCHEDULE VII.

Section 92 (7).

Award.

We, E.F. and G.H., abitrators (*or I, E.F., a single arbitrator, or I, K.L., the umpire*), duly appointed under the Water Act, 1912, Part IV, to determine and make our (*my*) award in writing concerning the matter next hereunder stated in dispute between A.B. and C.D.

[*Here copy statement of the matter in dispute in precisely same words as at foot of appointment of arbitrators.*]

do by this our (*my*) award in writing under our hands (*my hand*) determine and award as follows:—

[*Here give the determination in plain and simple language, taking care to provide for every point in dispute.*]

Witness—

[*Signatures or Signature.*]

SCHEDULE VIII.

Section 92 (10).

Indorsement.

[*Date.*]

We, E.F. and G.H., arbitrators (*or I, E.F., single arbitrator, or I, K.L., umpire*), duly appointed by the within instrument under the Water Act, 1912, Part IV, to determine by arbitration and make award upon the matter therein stated in dispute between A.B. and C.D. (*or Minister for Lands on behalf of the Crown*), do hereby extend the time for making our (*or my*) award until the day of , 19 .

Witness—

[*Signatures or Signature.*]

SCHEDULE IX.

Section 92 (11).

Appointment of umpire.

[*Date.*]

We, E.F. and G.H., arbitrators appointed by the within instrument to determine the matter in dispute therein stated, do hereby, before we proceed upon such arbitration, appoint K.L. to be umpire under the Act within mentioned, and to determine and make his award in writing concerning such matter in the event of our differing concerning the same.

Witness—

[*Signatures.*]

SCHEDULE X.

Section 92 (15).

Declaration.

I, A.B., do solemnly and sincerely declare that I am not directly or indirectly interested in the matter in dispute between A.B. and C.D., referred to me as arbitrator (*or as one of the arbitrators or as umpire*), and that I will faithfully, honestly, and to the best of my skill and ability hear and determine such matter under the Water Act, 1912, Part IV.