

**DRAINAGE.**  

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

[23rd September, 1881.]

**BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

**Short Title.**

**1.** The Short Title of this Act is “The Drainage Act, 1881.”

**Drainage through  
land of other  
owners.**

**2.** Any person (hereinafter called “the applicant”) having an interest in lands which require to be drained, but have no communication readily available with any stream, watercourse, or drain, except through lands belonging to other owner or owners, may drain his land through the lands of such owner or owners, subject to the following conditions.

**Plans, &c., must be  
made.**

**3.** He shall cause a description to be prepared of any proposed new work or drain, or of any alteration in any existing work or drain, which he desires to make upon land belonging to other owner or owners, together with a plan showing the course, dimensions, and levels of such drainage works, and shall append a statement of the time at which he proposes to commence the works and to complete the same.

**Full notice to be  
given.**

**4.** He shall give notice in writing to the owner, and, where the owner is not the occupier, also to the occupier, of lands to be affected by the proposed

works, that he desires such drainage works to be made, and shall append to such notice a copy of the description and plan above mentioned.

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

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

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

Justice may issue summons.

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

Service of summons on absentees.

8. The said Resident Magistrate and Justices, hereinafter called "the Court," having before them the parties so summoned, or, in their absence, upon proof of the service of summons, shall make full inquiry into the case, and hear all such evidence as any of the parties or the Court may require, and may order the drainage works to be made, either according to the description and plan aforesaid or with such alterations as the Court shall think fit; and the applicant is hereby empowered to proceed with the works so ordered.

Court to take evidence.

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

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

Conditions under which Court may make order.

the Court shall require the applicant to enter into a bond to the person whose land may be affected, with sufficient securities, that he will carry on to completion the proposed works within a reasonable time.

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

Court shall award costs.

11. The Court shall assess the compensation to be paid by the applicant to all persons having an interest in any lands affected by the drainage works so ordered to be made as aforesaid, for any damage caused by such outfall and drainage works, and shall apportion such compensation amongst the several persons interested according to their several estates and interests.

Court shall assess compensation.

12. The cost of cleaning and maintaining in good order and repair any such outfall drains and works shall be borne in such proportion as the Court at the hearing of the application shall have determined, and shall be recoverable in a summary way, by any party interested in having the said drains and works so cleaned and maintained as aforesaid who has completed the work necessary for such cleaning and maintenance, from the party refusing, failing, or neglecting to

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

perform his part of such cleaning, maintenance, and keeping such works in good order and repair; and, for the purpose of doing the works necessary for such cleaning and maintenance, any person interested in having such drains and works so cleaned and maintained may, after, forty-eight hours' notice given by him to the owner or occupier of the lands affected or intersected by such works, enter upon such lands, and do the works necessary for such cleaning and maintenance.

Owner of lands affected by works may divert drains.

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

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

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

Moneys due may be summarily recovered.

**15.** All sums awarded or payable under this Act shall, if not paid within thirty days from the date of such award or the time when they shall be due or payable, be recoverable in a summary manner, under the provisions of "The Justices of the Peace Act, 1866."

Interpretation of "owner."

**16.** "Owner" for the purposes of this Act includes all persons having a freehold interest at law or in equity, or a leasehold interest, either for a life or lives, or for a term unexpired of not less than three years, and whether as mortgagee or not, or in their own right, or as representative of others.

Payment of costs or compensation may be ordered before commencement of works.

**17.** When the applicant is ordered to pay any sum by way of costs or compensation, the Court may, by the order, direct that such costs or compensation shall be paid to the persons entitled thereto, before the applicant shall be authorized to commence the works authorized by the order.

If at the time of applying for the order, it shall appear to the satisfaction of the Court that any of the lands to be affected by the works referred to in the application will be benefited by such works as much as or more than they will be damaged, then the Court may, by the order, direct that the owners of such lands shall not be entitled to any compensation.

Drains through gardens, &c., must be by consent.

**18.** Nothing in this Act shall authorize the making of an order whereby the applicant shall be authorized to take a drain through or under any house or other building, or any garden or ornamental shrubbery, without the consent of the owners and occupiers thereof.

Application for case to be heard in Supreme Court.

**19.** It shall be lawful for the applicant, or the person to whom such notice as aforesaid shall be given, at any time within fifteen days after the service of the notice, to apply to the nearest Resident Magistrate to order that the case shall be heard by a Judge of the Supreme Court.

Such application may be made *ex parte*, and if it shall be made to appear to the Resident Magistrate that the probable cost of the proposed work exceeds three hundred pounds, he shall make an order that the case shall be heard by such a Judge.

Upon such order being made, no further proceedings shall be taken before the Court hereinbefore constituted, but application may be made to the Registrar of the Supreme Court of the Judicial District within which the land of the owner affected by the proposed works is situate.

The Registrar shall thereupon issue a summons, *mutatis mutandis*, to the like effect as mentioned in section six of this Act.

Any Judge of the Supreme Court may hear the case in a summary way, and all proceedings after the issue of the summonses shall be in conformity with this Act, as though "Judge of the Supreme Court" had been substituted for the Court constituted by this Act.

**20.** For the purposes of this Act, a Judge of the Supreme Court and the Court constituted by this Act shall severally have the same powers of summoning and compelling the attendance of witnesses, and the production of documents, of administering oaths and swearing affidavits, and of punishing persons duly summoned for non-attendance or for refusing to give evidence, or to produce documents, and of enforcing obedience to orders, and the same means of enforcing the observance of order and of its rules during its sittings, and of punishing contempt, as are possessed by the Supreme Court and a Judge thereof, and by a District Court and a Judge thereof, respectively. Powers of Court.

**21.** Sections one hundred and eighty-one to one hundred and ninety-eight of "The Public Works Act, 1876," both inclusive, are hereby repealed, so far as they are repugnant to or inconsistent with this Act, but not further or otherwise. Repeal.

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