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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1916.

A BILL

To make better provision for drainage, and for the prevention of floods and the control of flood waters within certain areas ; to authorise the resumption of land for settlement in connection with schemes of drainage ; to amend the Water Act, 1912 ; and for purposes consequent thereon and incidental thereto.

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 :—

43843

651—A (3)

PART

Drainage and Flood Prevention.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Drainage and Flood Prevention Act, 1916," and is divided into Parts and Divisions as follows :—

Short title.
Division into Parts.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—DRAINAGE and PREVENTION of FLOODS, and CONTROL of FLOOD WATERS—ss. .

DIVISION 1.—*Interpretation and general*—ss. .

DIVISION 2.—*Loans*—ss. .

DIVISION 3.—*Constitution of trusts, construction of works and transfer to trust*—ss. .

DIVISION 4.—*Alteration of boundaries, and extension of works*—ss. .

DIVISION 5.—*Appointment and election of trustees*—ss. .

DIVISION 6.—*Powers and duties of trustees*—ss. .

DIVISION 7.—*Various other powers*—ss. .

DIVISION 8.—*Certain works not administered by trusts*—ss. .

DIVISION 9.—*Acquisition of land for settlement in connection with drainage schemes*—ss. .

DIVISION 10.—*Miscellaneous*—ss. .

PART III.—DRAINAGE PROMOTION—ss. .

DIVISION 1. — PRELIMINARY — *Interpretation*—ss. .

DIVISION 2.—*Drainage unions and boards of directors*—ss. .

DIVISION 3.—*Rates*—ss. .

DIVISION 4.—*Arbitration*—ss. .

DIVISION 5.—*Miscellaneous*—ss. .

2. Division 4 of Part II and so much of Part III of the Water Act, 1912, as relates to flood prevention and the control of flood waters outside the boundaries of the Murray Basin (as defined in any Act now or hereafter in force), and so much of the said Part as relates to works of drainage, and the whole of Part IV of the said Act are hereby repealed.

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 (1) Any board constituted under the provisions of the enactments hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.

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 rates, charges, and expenses payable, and all penalties incurred, under the provisions of any enactment hereby repealed, shall be deemed to be payable and to have been incurred respectively under the corresponding provisions of this Act.

(5) Any matter or thing duly done under the authority of any enactment 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 Consolidation Act, 1913, or any Act amending the same.

“ Director-General ” means the person holding the office of Director-General of Public Works for the time being, or the person acting as such for the time being.

“ Part ” means Part of this Act. “ Prescribed ”

Interpretation.

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

PART II.

DIVISION 1.—*Interpretation and general.*

5. In this part—

- “Board” means board constituted under this Part. Interpretation.
- “Capital Cost” means the actual cost of the works to which the expression refers, or the estimated cost thereof, plus ten per centum of such estimated cost, whichever shall be the lesser sum, together with interest on such last mentioned sum during the period of deferment (if any) calculated at a rate to be fixed as hereinafter provided not exceeding five pounds per centum per annum.
- “Closer Settlement Acts” means the Closer Settlement Act, 1904, and Acts amending the same.
- “Joint owner” includes tenant in common.
- “Minister” means Secretary for Public Works.
- “Occupier” means person in actual occupation, and includes the trustees of any Common under the Commons Regulation Act, 1898, and trustees under the Public Parks Act, 1912, and the Public Trusts Act, 1897, and the Council of any Shire or Municipality, having the care and management of parks, recreation grounds, public reserves (as defined in the Local Government Act, 1906), and Commons.
- “Owner” means owner of any estate of freehold in land, and includes a mortgagee in possession and the Crown, also occupiers of Crown land, including homestead selectors, conditional lessees, and settlement lessees.
- “Period of deferment” means the period between the notification of the completion of the works and the date from which interest and sinking fund payments begin to run. “Ratepayer”

- “Ratepayer” means person paying rates in respect of land within a trust district.
- “State work” means any work 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 a person elected or appointed as a trustee under this Part.
- “Trust district” means area for which a trust has been constituted under this Part.
- “Works” includes any natural or artificial conduit, embankment, appliance, machinery, or structure pertaining to or used in connection with a trust.

6. Nothing in Part II of the Water Act, 1912, shall— Effect of Part II of Water Act, 1912.
- (a) affect the exercise of the powers conferred by this Part in relation to a river or lake as defined in Part II of the said Act; or
 - (b) affect the right of a trust to fix and levy rates under the provisions of this Part.

7. There shall be a board, consisting of the Director-General of the Department of Public Works, the Chief Engineer for Harbours 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. Constitution of board.

DIVISION 2.—Loans.

8. (1) The Governor may raise, in the year one thousand nine hundred and sixteen, 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 five per centum per annum, a sum not exceeding two hundred thousand pounds, for the purpose of carrying out the provisions of this Part of this Act. Powers to raise loans.

(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.

(3)

Drainage and Flood Prevention.

(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 1902 or any Act amending the same, 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

DIVISION 3.—*Constitution of trusts, construction of works, and transfer to trust.*

9. In respect of any work of drainage, or for the prevention of floods or the control of flood-waters, the Minister may notify in the Gazette proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works, and shall also publish in some newspaper circulating in the district affected by the works a notice drawing attention to such proposal and containing such short particulars thereof as he may think fit.

Proposals for works.

10. Any such proposal shall contain—

Contents of proposals.

- (a) a short general description of the purpose for which it is proposed to constitute the trust;
- (b) a plan and short description of the proposed works and of the land proposed to be taken or acquired for the purposes of such works, and also of any existing works proposed to be included in the trust;
- (c) an estimate of the total cost of the scheme, including the cost of land proposed to be taken, the value of any existing works proposed to be included in the trust, the interest to accrue on such total cost during the period of deferment, and a statement of the rate of interest to be charged during such period;
- (d) the rate of interest to be paid by the trust on the capital cost of the proposed works;
- (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 which the period of deferment (if any) shall contain;
- (i) the number of years, commencing from the date of notification of the completion of the works, or from the expiration of the period of deferment (if any) within which the capital cost shall be extinguished by a sinking fund;
- (k) any other provisions not inconsistent with this Act which it may be deemed advisable to insert therein.

11.

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11. (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 owners within the proposed trust district, including the Minister for Lands in respect of any unoccupied Crown lands, objecting to the proposal, he shall refer the proposal to the Board for inquiry and report.

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

(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.

12. If within the said period no such petition is received, or if the Board reports in favour of the proposal, with or without amendments, the Governor may by proclamation published in the Gazette constitute the trust with such amendments of the proposal as the Board may recommend, or where no reference is made to the Board, with such amendments as the Minister may think fit.

13. Upon such constitution the conditions of the proposal, with such amendments (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 with such minor variations as may be found desirable.

14. (1) A trust may be constituted in respect of an area consisting wholly of unoccupied lands the property of the Crown.

(2) In constituting such a trust it shall not be necessary to notify a proposal, but the proclamation constituting such trust shall contain all the particulars required by section ten of this Act to be contained in a proposal for a trust.

15.

15. (1) The Minister may notify proposals for the constitution of trusts in respect of works constructed by any person or persons or public or local government authority either before or after the passing of this Act or partly in respect of such works and partly in respect of proposed new works, and such new works may include any repairs, alterations, or additions to such first-mentioned works, and a trust may be constituted accordingly, subject to the provisions of this Part of this Act:

Works by various persons, &c., may be included in trust. cf. No. 44 of 1912, s. 36.

Provided that no trust shall be constituted under this subsection for works in respect of which assessments have been made and charges are payable under Part II of the Water Act, 1912, or under Part III 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) Where works constructed by the Crown are subsequently included in any trust under this section the fair value of such works may, if the Minister thinks fit, form part of the capital cost to be repaid by the trust.

(3) Where any such works as aforesaid which are to be included in a trust were constructed by any person or persons other than the Crown or by any public or local government body, the Minister shall pay to such person or persons or body the fair value of such works, and such sum shall form part of the capital cost of the works to be repaid by the trust.

Sec. 15.

(4) On the inclusion of any such works as aforesaid in a trust the provisions of any Acts other than the provisions of this Part shall cease to apply thereto.

Certain Acts not to apply.

16. (1) The completion of any works in respect of which a trust is constituted under this Part shall be notified by the Director-General in the Gazette, and thereupon the trust shall take over the same, and the administration

Transfer to trust.

administration and management thereof, upon the terms and conditions prescribed, and shall exercise all the powers and be subject to the duties and obligations by this Part conferred or imposed on the trust.

(2) The capital cost of such works shall be determined by the Minister, and notified in the Gazette, after the works have been completed and taken over as aforesaid.

(3) The Minister shall also after such taking over as aforesaid notify the trustees of the amount of the payments to be paid by the trust, and of the due dates thereof:

Provided that in the case of a trust constituted solely in respect of works completed before the constitution of the trust it shall not be necessary to notify the capital cost, but the valuation placed upon such works as hereinbefore provided shall be the capital cost, and upon the proclamation of such constitution the trustees shall take over the works and the administration and management thereof upon the terms set out in the proposal with such amendments as may have been made therein as hereinbefore provided.

17. 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 on a trust in respect of works completed and taken over by a trust.

Works not completed taken over by trust.
Ibid. s. 38.

18. Where a drainage channel crosses a public road as defined in the Local Government Act, 1906, the design of any proposed bridge or culvert over the same shall be submitted for approval to the council of the shire or municipality within which such public road at the point of intersection by such drainage channel is situated, and upon notification of completion of the works such bridge or culvert shall become part of the road and the council shall be responsible for the maintenance thereof.

Drainage channel crossing road.

DIVISION

DIVISION 4.—Alteration of boundaries and extension of works.

18. (1) If two-thirds in number of the owners within any area, sign and forward to the Minister a petition that such area be included in an existing trust district, the Minister shall refer the petition to the Board, who, after giving the ratepayers 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 amendments, whereupon the Minister may, by notification in the Gazette, alter the boundaries of such district accordingly, or may refuse the petition. Alteration of boundaries.

(2) The Minister may at any time if he thinks fit direct the Board to inquire into the propriety of including in a trust district any unoccupied lands of the Crown which it may be desired to drain, or any lands which may be required for or in connection with any proposed extension or alteration of or addition to the works controlled by a trust or for the purpose of rendering such works more effective, or of giving access to such works, and thereupon the Board shall inquire accordingly, and after having given the ratepayers an opportunity of expressing an opinion shall report to the Minister.

If the Board reports to the Minister in favour of such proposal, with or without amendments, the Minister may, by notification in the Gazette, extend the boundaries of any trust, so as to include therein such lands as the Board may recommend.

19. (1) Where the Minister thinks it desirable that any works in respect of which a trust is constituted, should be constructed through the district of another trust, he may, on giving notice to the last-mentioned trust, construct such works and amend the boundaries of one or both of the said trust 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.

(2)

(2) Where the Minister thinks it desirable that any works in respect of which a trust is proposed to be constituted should be constructed through the district of another trust, he may, on giving notice to the last-mentioned trust, include within the area of the proposed trust such lands as he may think desirable for the purpose of carrying out such works and may by notification in the Gazette amend the boundaries of such other trust accordingly.

(3) If it be deemed desirable that works constructed for a trust should be utilised for the purpose of a proposed trust, the Minister shall notify the fact in the proposal for the last-mentioned trust together with a statement of any alterations or additions to such works necessary to enable them to be so utilised, and together also with a statement of the proportion of the future maintenance of such works to be borne by the proposed trust, and shall serve a copy of such proposal on the first-mentioned trust.

If the first-mentioned trust does not within eight weeks of receipt of such notice show good cause to the satisfaction of the board why the said works should not be so utilised or altered or added to as aforesaid, the Minister may, upon the constitution of the proposed trust, carry out such alterations and additions as aforesaid and the cost thereof shall be borne by the new trust, which shall also pay the proportion of the future maintenance of the works so utilised set out in the proposal with such amendments (if any) as may be set out in the proclamation constituting the trust.

20. (1) If the trustees, by request in writing, desire the Minister to improve or extend any works under their charge, the Minister may prepare a statement setting forth—

*Extension of works.
Statement by Minister.*

- (a) the estimated cost of the proposed work ;
- (b) the rate of interest to be paid by the trust, not exceeding five pounds percentum per annum of the capital cost of the proposed work ;
- (c) the amount (if any) to which the maximum rate which the trustees are empowered to raise under the constitution of the trust will require to be increased.

(2)

(2) Upon the receipt from the trustees of an intimation that the statement has been approved by a majority of voters present personally or by proxy and voting at a special meeting of the voters of the trust, of which not less than fourteen days' notice shall have been given in the prescribed manner, the Minister may proceed with the construction of the proposed works.

General meeting of voters.

(3) A like statement may be prepared by the Minister and submitted to the trustees in any case where the Minister desires to extend the works so as to serve unoccupied land of the Crown within the trust district, and upon receipt from the trustees of a like intimation as is provided for in the last preceding subsection the Minister may proceed with the construction of the proposed works.

(4) On the completion of the work the Director-General shall notify the fact in the Gazette and shall, as soon as conveniently may be, notify the capital cost of the said works, and also the amounts of the payments to be made by the trust and the due dates thereof.

Notification of completion and cost of works.

(5) Interest on such cost and sinking fund charges thereon shall commence to run from the date of notification of the completion of the work.

Charges commence to run.

(6) No informality in the convening of the special meeting referred to in subsection two of this section or in the taking of the vote thereat or any failure to comply with the provisions of that subsection shall affect the validity of anything done by the Minister or Director-General under this section, and notwithstanding any such informality or failure as aforesaid, the conditions of the said statement and of the notification of the cost of such works shall be binding on the trust and on all persons concerned, and the trustees shall, after the notification of completion of works as aforesaid, be empowered to raise the increased maximum rate (if any) therein provided for.

Informality not to invalidate Minister's action.

DIVISION 5.—Appointment and election of trustees.

21. Where the number of trustees is three, one shall be appointed by the Minister and two shall be elected; and where the number of trustees is five, two shall be appointed by the Minister and three shall be elected.

Number of trustees.

22.

22. (1) After the constitution of the trust, the Minister shall, by notice in the Gazette, appoint a trustee or trustees, and direct the first election of trustees in pursuance of this Part.

Appointment and election of trustees.
cf. No. 44,
1912, s. 42.

(2) Where the trust district consists wholly of unoccupied lands the property of the Crown, all the trustees shall be appointed by the Minister until half the land in the district is occupied by persons who are liable to pay rates to the trust. Thereafter the provisions of this Division as to elections shall apply so far as the same are applicable.

Where trust district comprises solely lands of the Crown.

23. (1) Elected trustees shall be elected for three years, and shall, subject as hereinafter provided, hold office until their successors are elected.

Term of office.
Ibid. s. 43.

(2) A trustee elected to fill a vacancy in the number of trustees shall hold office only for the balance of the term of the trustee in whose place he is elected, and this provision shall apply to all trustees so elected whether before or after the passing of this Act.

24. (1) For the purpose of the first election of trustees the Director-General shall prepare a roll of voters, placing on the roll the names of the persons, including the Crown, who, in his opinion, will be primarily liable to pay rates to the trust, together with the number of votes each is entitled to, and the persons whose names are on such roll, and no others, except as hereinafter provided, shall be qualified to vote at the first election.

Rolls for first election.
Ibid. s. 44.

(2) 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 Director-General, 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.

Property administered under power of attorney.

(3) In the case of unoccupied lands the property of the Crown, the Minister for Lands, or, in the case of such lands not being Crown lands, the person in whom such lands are vested may, by writing under his hand, appoint some person to vote in respect of such lands at the first or any subsequent election of trustees and at general meetings of voters.

Minister for Lands may appoint proxy.

25. (1) For the purpose of any subsequent election of trustees a roll of voters, containing the names of the persons, including the Crown, who are primarily liable to pay rates to the trust, shall be prepared by the trustees, and revised in the prescribed manner by the police or stipendiary 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, except as herein otherwise provided, shall be entitled to vote at any such election.

Rolls for subsequent elections.
cf. *Ibid.* s. 45.

(2) Where any such person as aforesaid 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.

(3) In the case of joint owners, lessees, or licensees or tenants in common, the trustees shall place on the roll the name of one only of such persons, and before such person's name is placed on the roll he shall produce to the trustees the consent in the prescribed form of the other or others.

Joint owners, &c.

26. Persons on the roll shall be entitled to vote in manner following, that is to say:—In respect of an area of ratable land not exceeding fifty acres such person 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.

Plural voting.

27. (1) Any person whose name is on the roll of voters 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 of acting as a trustee, and where a trustee becomes incapable as aforesaid his office shall become vacant.

Qualification of trustees.

(2) Where an elected trustee has been removed from office under the provisions of section of this Act he shall not be eligible for re-election unless the Minister shall otherwise direct by notification in the Gazette.

(3)

(3) Where an elected trustee is absent without the permission of the Director-General from three consecutive ordinary meetings of the trustees the office of such trustee shall become vacant.

28. In the first election of trustees the Director-General shall appoint a returning officer, and for any succeeding election a returning officer shall be appointed by the trustees, but a trustee shall not be capable of being appointed as returning officer. Returning officers. of. Ibid. s. 48.

29. (1) The returning officer 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. cf. No. 44, 1912, s. 49.

(2) The mode of election of trustees shall be as prescribed. Mode of election. Ibid. s. 50.

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

(4) Where at an election the required number of trustees has not been elected the Director-General may direct that another election be held to fill the vacancy or vacancies, but no such election shall be held without such direction.

30. No election of trustees heretofore or hereafter held shall be deemed to have been or to be invalid by reason only of—

- (a) any formal defect or error in or relating to the election if the election was held substantially as prescribed ;
- (b) any defect or want of title of the returning officer if he has acted as such ;
- (c) any publication being out of time ;
- (d) the fact that the election was held at a time or place other than that appointed or prescribed, or that a time or place for the election was not duly appointed or prescribed,

if the Governor proclaims that any such defect, error, or omission does not invalidate such election and such proclamation shall be conclusive as to the matter stated therein.

DIVISION 6.—Powers and duties of trustees.

31. The trustees shall be charged with the duty of maintaining and administering the works of the trust.

Duties of trustees.

Ibid. s. 52.

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

Powers and duties of trustees.

Ibid. s. 53.

- (a) They shall maintain in a state of efficiency the works under their charge.
- (b) They shall annually fix and levy rates to provide for the maintenance and management of such works, and also, after the expiration of the period of deferment, for the payment of such interest and sinking fund charges.
- (c) They shall keep proper accounts of all moneys received and paid.
- (d) They shall pay to the Treasury, at the prescribed times, the interest and sinking fund charges payable by them.
- (e) They may appoint, with the sanction of the Director-General, such officers or servants as may be required.
- (f) They may, with the sanction of the Minister, extend any works under their charge provided the necessary funds are in hand to pay for same, after providing for all known commitments from whatever cause arising for the then current year: Provided, nevertheless, that no such extension shall be carried out by the trustees unless the proposed works shall be approved by a majority of the voters present, either personally or by proxy, and voting at a special meeting of the voters of the trust of which not less than fourteen days' notice shall have been given in the prescribed manner.

33. 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 and make minor additions or alterations to any works, but in so doing shall avoid, as far as practicable, causing any loss, injury, or damage. They shall

Power of trustees to enter and inspect.

No. 44, 1912, s. 54.

not be responsible for any loss, injury, or damage caused by them, unless claim in writing be made within three months thereafter.

34. (1) For the purpose of providing money for ^{Rates.} exercising their powers and performing their duties ^{cf. *Ibid.* s. 55.} under this Part, the trustees shall annually fix and levy a rate per acre upon the lands within the trust district which are benefited by the works, including unoccupied land the property of the Crown.

(2) Such rate shall vary in proportion to the benefit received from the works or as near thereto as may reasonably be estimated.

(3) Any person aggrieved by the rating of ^{Appeal to} his land or by the amount at which such land is rated, ^{arbitrator.} may appeal to the police or stipendiary magistrate having jurisdiction in the district, who shall hear and determine the matter, and may confirm or strike out such rating or vary the same.

(4) If in any such appeal the magistrate reduces ^{Increase of} the amount at which such land is rated, or finds that such ^{other ratings.} land is not ratable, he shall, subject to the limitation of rating set out in the constitution of the trust, increase the other ratings of the trust proportionately where he considers such course necessary, in order to secure that the total amount to be received by the trust as rates shall not be diminished by such reduction.

(5) The decision of the magistrate on any such appeal shall be final and conclusive.

(6) No person who has not appealed as before provided shall have any defence to an action to recover rates on the ground that the rating of the land in respect of which the rates are sought to be recovered is excessive.

(7) No person shall have any defence to such an action as aforesaid on the ground that the land in respect of which the rates are sought to be recovered has received no benefit from the works unless on an appeal as before provided the magistrate shall have found that the lands have received no benefit from the works of the trust.

35.

35. (1) The person primarily liable to pay the rates shall be the person appearing in the assessment book as the occupier of any ratable land or the owner of any unoccupied ratable land; or the rate may be recovered after the expiration of thirty days after demand made at any time in the prescribed manner from any person in occupation of the land at the time the rate is demanded, whether such person was the occupier when the rate was imposed or not, and if at any time the land is unoccupied, or if the occupier becomes bankrupt or insolvent, or if there shall be found on the premises no sufficient distress to satisfy any writ or warrant of execution issued out of any court of competent jurisdiction, upon a judgment for the recovery of the rates, the owner shall be liable.

Recovery of rates.
of *Ibid.* s. 55.

(2) Rates shall be due and payable after the expiration of the time stated in a notice of such rate as prescribed under this Part, not being less than thirty days after such notice.

When rates due.

(3) Rates payable by the Crown shall be deemed to have been paid when the Treasurer shall have credited the amount thereof to the trust in his books and shall have sent a notification thereof to the trustees.

36. Joint owners, lessees, licensees, or occupiers, or tenants in common of ratable land shall be jointly and severally liable for the whole amount of the rates due to the trust in respect of the land, but as between themselves each shall, unless otherwise agreed, be liable only for the part of such rates proportionate to the value of his interest in the land. If any of them pay to the trust more than his proportionate part, as aforesaid, he may recover the excess by way of contribution from the other or others.

Joint owners, &c.

37. Where after the passing of this Act a tenant or licensee of lands has paid rates to a trust in respect of such lands, and no sufficient agreement exists between himself and the person from whom he holds such lease or license with reference to the payment of such rates, such tenant or licensee may recover from such person a fair proportion of such rates, or, if the court before which such action is tried shall think just, the whole of such rates.

Tenant may recover proportion of rates.

38.

38. (1) Where any land, other than land the property of the Crown, within the area of a trust is unoccupied, and any rates heretofore made or declared, or hereafter to be made or declared in respect thereof, are due and unpaid and in arrear for a period of one year from the making of the assessment of such rates, the trustees may cause to be inserted in the Gazette, in three consecutive issues thereof, a notice in the form in Schedule IX to this Act annexed or in a form to the like effect.

Power to let
land to
recover rates.

(2) If, after the expiration of thirty days from the publication of the last of such notices as aforesaid, the rates due at the time of the first publication thereof, or any part of such rates, are still unpaid, the trustees may let the property or any part thereof for one year, or for any less term, and may receive the rents, and may apply the same in the first place in or towards reimbursing the trust all costs of and attending such notice and letting and the recovery of rates, and in the next place in or towards the payment of rates in arrear, including as well the rates in arrear at the time of the last publication of the said notice as any rates that may become due and in arrear thereafter, and may continue to let the said lands from time to time whenever any rates shall be in arrear for thirty days after the date when the same became due and payable without any further notice as required in subsection one of this section, and any surplus moneys in hand from time to time shall be devoted by the trustees to the payment of all municipal or other local government rates in respect of the said lands, and the balance (if any) shall be held upon trust for the person entitled to the receipt of the rents and profits of such land.

(3) Any lease made by trustees under this section shall be valid and effectual against all sales, conveyances, transfers, leases, mortgages, encumbrances, and dealings whatsoever, and against all persons claiming thereunder, whether made before or after such lease by trustees.

39.

39. (1) All rates due before the passing of this Act may be recovered by a trust against the same persons, or by proceedings for letting the land subject to such rates, in every respect as though the rates had become due under this Act. Rates imposed before this Act.

(2) All rates imposed before the passing of this Act in respect of unoccupied land and being still unpaid, shall be deemed to have been due on the making of the assessment thereof, notwithstanding that the prescribed notice of assessment or of demand was not given, or that the name of the owner was incorrectly stated in the rate-book, or that no name was inserted therein.

40. In assessing unoccupied lands the name of the owner shall be inserted in the rate-book as the person liable to pay such rates or if the owner is not known it shall be sufficient to insert in such book the word "owner". Method of assessing unoccupied lands.

41. (1) Where the ownership of unoccupied ratable land has changed after notice given to pay rates the rates may be recovered from the new owner without any further notice. Recovery of rates in certain cases.

(2) Where the ownership of unoccupied ratable land has changed after the fixing of a rate and before notice given to pay the rate, the notice to pay such rate may be given to the new owner as if he were the person named as owner of such land in the assessment book.

(3) Where it is desired to recover rates from the owner in default of payment thereof by the occupier, as provided in section thirty-five, such rates may be recovered upon the expiration of fourteen days after a notice to pay the same has been given to such owner.

42. Where for any reason a rate has not been levied in any year, the trustees or the Minister, as the case may be, may levy a rate for such year retrospectively, and may recover the same from the occupiers of the land during such year, or from the owners of the land in manner hereinbefore provided :

Provided that where there has been a rate levied in a previous year the rate levied under this section shall not exceed the rate last levied on the respective lands within the trust district.

43.

43. All rates due under this Act shall be a charge upon the land in respect of which such rates are imposed, except lands the property of the Crown, in priority to all sales, conveyances, mortgages, charges, loans, and encumbrances whatsoever.

Rates a charge on land.

44. The trustees shall submit to the Director-General once every year, and at such other times as the Director-General may direct, an audited statement of the accounts of the trust. The Director-General 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. cf. No. 44, 1912, s. 58.

DIVISION 7.—Various and other powers.

45. (1) In the event of any delay in the first election of trustees, the trustee or trustees appointed by the Minister may, with the consent of the Minister, exercise or discharge all or any of the powers, duties, and obligations by this Part conferred or imposed on the trustees, and specified in such consent. Such consent shall be published in the Gazette.

Powers of appointed trustees. cf. *Ibid.* s. 59.

(2) In the event of any default by trustees in the discharge of their duties under this Part, or the regulations made thereunder, or of the ratepayers failing to elect trustees, or the required number of trustees, the Minister may by notification in the Gazette—

- (i) remove a trustee or trustees from office, and appoint and direct the election of another trustee or other trustees ;
- (ii) remove a trustee or trustees (if any) and assume all powers, duties, and obligations by this Part conferred or imposed on the trustees, and may appoint a manager of the affairs of the trust.

46. Notwithstanding that the Minister may have removed the trustees from office, and assumed their powers, duties, and obligations as hereinbefore provided, he may at any time, and from time to time, declare by notification in the Gazette that an election of trustees shall take place, and may appoint a trustee or trustees as hereinbefore provided on the constitution of a trust, and

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and thereupon such election shall proceed in the same manner as if the same were a first election under this Act, and upon such election and appointment of trustees all such powers, duties, and obligations shall be again vested in the trustees.

This section shall apply as well to acts done before the passing of this Act as to acts done hereafter.

47. The Governor may, where in his opinion Governor may dissolve a trust. sufficient reason exists, dissolve a trust and write off any liability of a trust to the Crown.

48. The Minister or trustees for the purposes of Conduits and drains. this Part may construct and maintain and repair any work through or across any land, street, or road.

49. On notice, in the prescribed form and under the Construction of channels and embankments. hand of the Director-General, 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 minor variations as may be deemed advisable.

50. For the purpose of the construction or the maintenance and repair of any work or embankment Power to use land for certain purposes. proposed to be constructed, or constructed under the authority of this Part, or to which this Part applies, the cf. No. 44, 1912, s. 63. 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 lines distant sixty-six feet from the top of each side of a drainage channel, or site for the same, and from the bottom of each slope of 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.

51.

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51. No compensation shall be payable or shall be deemed to have been payable for the exercise of any of the powers conferred by this Part except where land is resumed : No compensation.
Ibid. s. 64.

Provided that where any such power is 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 or the trust as the case may be and by the person owning the land or buildings, and by an umpire appointed by such arbitrators unless otherwise agree by and between the Minister or trust and the said person. The provisions of the Arbitration Act, 1902, shall apply to any such arbitration. Proviso.

52. 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 works. Power of entry.
No. 44, 1912,
s. 65.

53. If upon such inspection as last aforesaid 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. Penalties.

DIVISION 8.—Certain works not administered by trusts.

54. The Minister may, subject to the provisions of the Public Works Act, 1912, 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.

55. 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. Works under other Acts.

DIVISION

DIVISION 9.—*Acquisition and disposal of land.*

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56. (1) Where it is considered necessary for the purpose of any scheme for the drainage of Crown lands that any other lands adjacent thereto or separated therefrom only by any road, river, or watercourse should be acquired in order to render such Crown lands more suitable for settlement, the Governor may resume, appropriate, or otherwise acquire any such lands under the provisions of the Public Works Act, 1912. ^{Acquisition of land.}

(2) The Governor may in the same manner resume, appropriate, or otherwise acquire any lands which in his opinion will come within the beneficial influence of any works carried out or proposed to be carried out under this Part of this Act.

(3) Such lands, when so resumed, appropriated, or acquired as aforesaid, shall be deemed to be Crown lands for all purposes within the meaning of the Crown Lands Consolidation Act, 1913, but shall not be available for the purposes of any application thereunder until a notification declaring them to be so available has been published by the Minister for Lands in the Gazette.

(4) Any resumption, appropriation, or acquisition of lands in pursuance of this section shall be deemed to be for the purpose of an authorised work, but the cost thereof, together with all accruing interest, shall be refunded to the Treasury by the Minister for Lands.

(5) Provided that before any land is resumed under this section, an advisory board, constituted under the Closer Settlement (Amendment) Act, 1907, or under any Act amending the same, shall make a valuation, and shall report to the Minister for Lands in respect of such lands (but without any limitation as to the value of the same), under subsections (a), (b), and (c) of section three of the said Act, and that the provisions of sections nine and ten of the said Act as to the determination of the value of such lands and improvements by a court shall apply to any such resumptions, and the provisions of subsection one of section twenty-three of the Closer Settlement (Amendment) Act, 1909, relating to costs
in

in the proceedings therein referred to shall, mutatis mutandis, apply to costs in any proceedings under this subsection for determining the value of any lands and improvements, and the provisions of this subsection shall be in lieu of the valuation under section one hundred and three of the Public Works Act, 1912, and in lieu of the provisions of sections one hundred and four, one hundred and five, and one hundred and six of the said Act.

(6) Such advisory board as aforesaid shall report to the Minister whether any of the lands proposed to be acquired or appropriated as aforesaid are suitable for closer settlement in conjunction with any lands comprised in any drainage scheme as aforesaid.

(7) In disposing, under the provisions of the Crown Lands Consolidation Act of 1913 and Acts amending the same, of any lands affected by any drainage works carried out under this Act, it may be made a condition that the amount of annual rates payable to the trust in respect of the lands disposed of, or any proportion or part thereof, shall be paid by the occupier.

DIVISION 10.—*Miscellaneous.*

57. Any person who—

- (a) obstructs the Minister or the trustees or their officers or servants acting under this Part or the regulations or by-laws made thereunder; or
- (b) interferes with or wilfully or negligently injures or destroys works in charge of the trustees; or
- (c) destroys, injures, removes, or obliterates any mark, peg, stake, or level fixed by the Minister or the trustees or their officers; or
- (d) 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 affected for compensation on account of loss or damage caused by his offence.

58.

58. 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.

59. Trustees may sue and be sued in the name of the trust as set out in the proclamation constituting the same.

Trustees may sue in name of trust.

60. Every work which the Minister is authorised by this Part to carry out shall be carried out under the Public Works Act, 1912, and all the powers and provisions of the said Act relating to authorised works so long as the same are not inconsistent with the provisions of this Part shall be applicable to such work, and for all purposes of the said Act save as aforesaid 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.

61. (1) The Governor may by notification in the Gazette—

Special powers of Minister and ratification.

- (a) extend the period fixed for the repayment of the cost of the works of the Curl Curl Lagoon Drainage Trust to a term of fifty years from the date of the passing of this Act, and reduce the rates for the current year to such amount as he may think fit: Provided that the Minister shall by notification in the Gazette fix the cost of the works by adding to the amount of the cost already fixed all unpaid interest up to that date;
- (b) the Big Swamp Drainage Trust is hereby dissolved, and the cost of the works of that trust together with all unpaid interest thereon is written off.

(2) The sinking fund charges in respect to the Newrybar Swamp Drainage Trust, and Cudgera Drainage Trust, shall not be deemed to have commenced to run until the expiration of a period of three years from the date of the notification of the completion of the works in each case respectively, and the period allotted within which the cost of the works in each case respectively shall be repaid shall be calculated as from the expiration of such period of three years:

Provided

Provided that the Minister shall by notification in the Gazette fix the cost of the works of the said trusts respectively by adding in each case to the amount of the cost already fixed all unpaid interest thereon at the rate set out in the respective constitutions during such period of three years as aforesaid, and the amounts so notified and no other shall be payable by the said trusts respectively.

(3) The sinking fund charges in respect to the Mooball and Crabbe's Creek Drainage Trust shall not be deemed to have commenced to run until the date on which the completion of certain extra work is published in the Gazette:

Provided that the Minister shall fix the cost of the works by adding to the amount of the cost already fixed the cost of such extra works, together with all unpaid interest accruing up to that date on the original cost of works and the amount so notified, and no other shall be payable by the trust.

(4) The notification by the Minister published in the Gazette of the eighth day of July, one thousand nine hundred and fourteen, purporting to cancel the previous notification of the completion of works of the Lavender Swamp Drainage Trust and the notification published in the Gazette of the fifth day of August, one thousand nine hundred and fourteen, fixing the cost of the works of the said trust at the sum of one thousand two hundred and ninety-two pounds fifteen shillings and fourpence in lieu of the sum of one thousand one hundred and ninety-six pounds nine shillings and eightpence as set out in notification in the Gazette of the ninth day of July, one thousand nine hundred and thirteen, are hereby ratified and confirmed.

(5) The maximum rate per acre which the trustees of the Brundee Swamp Drainage Trust are empowered to levy is hereby declared to be one shilling and sixpence per acre.

(6) The proclamation published in the Gazette of the seventeenth day of March, one thousand nine hundred and fifteen, dissolving the James Creek Drainage Trust in so far only as the said proclamation purported to dissolve the said trust is hereby declared to be and to have been null and void and of no effect.

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

Regulations.
No. 44, 1912,
s. 74.

- (a) the election of trustees and the making and revision of the rolls of voters, and the mode of voting, including voting by post ;
- (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 and of giving notice to pay same, including the method of giving notice of assessment or to pay rates where lands are unoccupied and the owner is not known, or his postal address is not known, or where he is out of the State ;
- (g) the hearing of appeals ;
- (h) the collection and recovery of rates ;
- (i) the keeping of the accounts of trustees ;
- (j) regulating the payment to the Crown of interest and sinking fund charges by the trust ;
- (k) regulating the proceedings of the board ;
- (l) regulating special meetings of voters of a trust in pursuance of this Act ;
- (m) imposing any penalty not exceeding twenty pounds for any breach of the regulations ;
- (n) providing for voting by proxy at elections of trustees and general meetings.

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

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

By-laws.
Ibid. s. 75.

prescribing the duties of their officers and servants ;
prescribing the duties of ratepayers as to the maintenance, clearing, cleansing, and repair of the works of the trust ;

prescribing the procedure to be adopted by ratepayers before connecting their private drains to the works of the trust ;

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

(2)

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

64. All regulations and by-laws, made under the provisions of this Act, 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. No. 44 of 1912, s. 75.

65. All sinking fund payments 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. Ibid. s. 53(b).

PART III.

DRAINAGE PROMOTION.

DIVISION 1.—*Preliminary.*

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

"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 Public Works.

"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

DIVISION 2.—*Drainage unions and boards of directors.*

67. Whenever any tract of land is so circumstanced Petition: 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.

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

69. Before the issuing of the proclamation herein- Counter-petition. after 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)

- (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 or petitioners 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 Surveyor-General, 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:

Security for expenses.

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.

70. (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.

(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.

71. (1) A board of directors of such union, not Board of management. 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 :

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.

72. At a like general meeting by-laws may be made, By-laws. 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.

73. (1) In voting at any such meeting for electing Plural voting. 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.

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

74. (1) The board of directors may appoint such Powers of directors. 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.

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

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75. 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.

DIVISION 3.—Rates.

76. 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.

77. (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.

(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.

78. (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 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 Assessment.

per centum on the increased value accruing to the several holdings, including those of the Crown, from such works.

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

Provided that if there is no sufficient provision in the lease, or in some 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.

79. (1) In each and every year there shall be paid ^{Rates.} 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.

(2) In default of payment of such rates, or of ^{Levy and} such amended rates, as may be determined on appeal as ^{distress.} 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 ^{Recovery of} this Part fails to pay any rate due from him for the ^{rates before} space of thirty days after demand thereof made in ^{justices.} 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

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.

80. 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.

81. 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.

DIVISION 4.—Arbitration.

82. 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.

- (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 Three hereto, such other party or the Minister, as the case may be, shall also in like manner appoint an arbitrator. (2)

Appointment of arbitrators where Crown a party.

Schedule III.

- (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. Appointment of arbitrators in other cases.
- (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. Appointment to be deemed submission.
- (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. Submission made rule of court.
- (5) Every request to appoint an arbitrator shall be in the form of Schedule Four 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. Failure to appoint arbitrators. Schedule IV.
- (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. No appointment to be revoked.
- (7) Every award made in the form or to the effect of Schedule Five 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. Award to be final. Schedule V.
- (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 Three hereto, another person in his stead, and if he fails so to do for thirty days after Death or failure to act of arbitrator. Schedule III.

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. 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 Six 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 VI.
- (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 Seven 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 VII.
- (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 When umpire to act.

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mined 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. Production of documents.
- (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 IX. Declaration by arbitrator or umpire. Schedule IX.
Schedule Nine hereto.
- (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 or 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

DIVISION 5.—Miscellaneous.

83. 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 Surveyor-General, 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.

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.

84. No alteration affecting any navigable water shall be made without the sanction of the Governor.

Navigable water.

85. 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.

86. 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.

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.

87. 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.

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

88.

88. 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.

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.

89. 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.

90. 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.

91. (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.

(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) 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.

92. 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.

93. 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

94. (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.

(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.

95. The accounts of drainage unions shall be subject to inspection, examination, and audit under the Trustees Audit Act, 1912.

SCHEDULES.

SCHEDULES.

SCHEDULE I.

Section .

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 II.

Section .

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 III.

Sections and .

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 Drainage and Flood Prevention Act, 1914, Part II, 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 IV.

Section .

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 Drainage and Flood Prevention Act, 1914, Part II, E.F. to be one of two arbitrators to determine the matter of dispute

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 V.

Award.

We, E.F. and G.H., arbitrators (or I, E.F., a single arbitrator, or I Section .
K.L., the umpire), duly appointed under the Drainage and Flood Prevention Act 1914, Part III, 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 VI.

Indorsement.

[Date.]

We, E.F. and G. H., arbitrators (or I, E.F., single arbitrator) Section .
or I, K.L., umpire), duly appointed by the within instrument under the Drainage and Flood Prevention Act, 1914, Part III, 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 VII.

Appointment of umpire.

[Date.]

We, E.F. and G.H., arbitrators appointed by the within instrument Section .
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

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Drainage and Flood Prevention.

SCHEDULE VIII.

Declaration.

I, A.B., do solemnly and sincerely declare that I am not directly or Section 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 Drainage and Flood Prevention Act, 1914, Part III.

SCHEDULE IX.

Trust.

Notice is hereby given that there is now due in respect of the land Section (or lands) mentioned in the Schedule hereto the sum (or respective sums) set opposite the description of such land (or lands) in the Schedule for a rate (or rates) made by the Trust for the year (or years) ending as in the said Schedule mentioned; and the owner (or owners) of such land (or lands) are required to take notice that unless the amount (or amounts) so due, together with costs of or attending this notice be paid within thirty days from the first publication of this notice the trustees will let the same for one year, or for any less term they may think fit, in manner provided by the "Drainage and Flood Prevention Act, 1914," and may thereafter whenever any rates shall be in arrears again let the same in manner aforesaid, without giving any further notice.

Dated this day of 19 .

Secretary of the Trust.

THE SCHEDULE.

| Description of land by county, parish, and number of portion. | Name of owner or reputed owner or State if known. | Number of years for which rates in arrear. | Date of ending of last year for which rates in arrear. | Amount of rates. |
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