

ANNO QUARTO

GULIELMI IV. REGIS.

No. I.

An Act for protecting from Encroachment and Damage and for facilitating the formation of the Tunnel for supplying with Water the Town and Port of Sydney in the Colony of New South Wales. [4th July, 1833.]

SYDNEY WATER
SUPPLY.
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WHEREAS a certain tunnel has been in part constructed and Preamble.
is now in the course of formation at the public expense for the purpose of supplying the town and port of Sydney in the Colony of New South Wales with water from certain lands and lagoons situated in the parish of Alexandria in the neighbourhood of the said town and it is expedient that all nuisances and obstructions to the said tunnel should be prevented or removed and that any individuals whose private lands shall have been or shall be encroached upon in the formation of the said tunnel should receive a reasonable compensation Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That the said tunnel and all such branches thereof as are now or at any future time may be made by means of pipes or other conduits for conveying water from the said lands and lagoons into the said town and through the streets or other parts thereof and all reservoirs basins tanks pumps cocks and other matters or things used for retaining conducting or distributing water from the said tunnel shall be and the same are hereby *declared* to be vested in His Majesty His Heirs and Successors for ever.

Property in tunnel
declared to be vested
in the King.

2. And be it further enacted That it shall and may be lawful for any surveyor artificer servant or other person or persons acting by or under the authority of the Governor of the said Colony for the purpose aforesaid to enter at all reasonable times in the day-time into and upon any lands or tenements by through under or upon which the said tunnel or any conduit branch or pipe or any reservoir basin or tank of or belonging thereto may be most conveniently constructed or laid and to dig cut sink trench or bore into any ground and also to remove take and carry away any soil and also to place and lay any metal wood stones bricks earth or other things in upon or beneath the said lands or tenements according as the same may be needful or convenient in the progress and for the purposes of constructing or laying the said tunnel or any conduit branch or pipe or any reservoir basin or tank of or belonging thereto and also at the like reasonable times to enter into and upon any lands or tenements by through under or upon which the said tunnel or any conduit branch or pipe or any reservoir basin or tank of or belonging thereto hath been or may hereafter be constructed or laid for the purpose of inspecting cleaning scouring maintaining altering or repairing the same or any part thereof or supplying or keeping the same supplied with water from such lagoons

Governor may
authorize entry upon
lands through which
tunnel runs for its
repair or extension.

Sydney Water Supply.

springs and streams as may be convenient thereto and for that purpose to make and perform or cause to be made and performed in and upon the said lands or tenements all such acts matters and things as shall and may be needful to be made or performed or may be most conveniently made or performed in and upon the same And no surveyor artificer servant or other person shall be liable to any action for or by reason of any matter or thing by them or any of them made done or performed in the progress of the said work or by reason of hereafter making doing or performing any such acts as are hereby authorized to be done by them or any of them.

Persons to receive compensation for encroachment upon their lands in the formation of the tunnel.

3. And be it further enacted That if the said tunnel or any branch thereof hath been or shall hereafter be led or conducted through or under any lands which have been granted to any private person and that such person hath suffered or shall suffer loss or damage upon or near the surface of such lands by reason of any act matter or thing by this Act authorized to be done or performed it shall be lawful for the Governor of the said Colony upon the complaint of any person that he hath suffered such loss or damage to nominate and appoint one person to be an assessor and for the party complaining to nominate and appoint one other person to be an assessor which two persons shall before they proceed to assess the said loss or damage as hereinafter mentioned nominate and appoint by writing under their hands one other person to be an assessor together with them in case they should happen to disagree And it shall be lawful for the said assessors or the greater part of them to enquire into and hear and determine upon oath (which oath any Justice of the Peace is hereby authorized to administer) the matters of the said complaint and to assess the amount of any loss or damage which hath been or shall be sustained upon or near the surface of any such land by the person so complaining and thereupon the said assessors or the greater part of them as the case may be shall certify under their hands their determination upon the premises which shall be final and conclusive as to the same And it shall be lawful for the said Governor by warrant under his hand to direct that the amount of any loss or damage so assessed and certified shall be paid to the party complaining by the Colonial Treasurer Provided however that no such complaint or claim for compensation shall be made received or proceeded upon in respect of any act matter or thing heretofore done or performed unless the said complaint or claim shall be made within three calendar months after the passing of this Act and that no such complaint or claim shall be made received or proceeded upon in respect of any act matter or thing hereafter to be done or performed unless the said complaint or claim shall be made within three calendar months after the said act matter or thing shall have been done or performed.

Proviso.

Injuring pipes pumps &c. &c.

4. And be it further enacted That if any person shall injure or destroy any pipe pump cock or other thing used in the conducting or distributing of water from the said tunnel or any of the branches thereof or shall cause any filth soil or rubbish to be cast or to flow into the same or any part thereof or shall otherwise injure or obstruct the passage of the water which may be conducted through the same every such person shall on proof that the same was wilfully or negligently done forfeit and pay a sum not exceeding twenty pounds nor less than five pounds and if any person shall unlawfully and maliciously break injure or destroy any part of the said tunnel or any of the branches thereof or any public reservoir basin or tank used for retaining water from the said tunnel every such offender shall be guilty of felony and being convicted thereof shall at the discretion of the Court be transported for the term of seven years or be imprisoned for

Malicious injury to tunnel felony.

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for any term not exceeding four years and if a male shall be once twice or thrice publicly or privately whipped (if the Court shall so think fit) in addition to such imprisonment.

5. And be it further enacted That it shall not be lawful for any person without the sanction of the Governor or an officer authorized by him in that behalf to appropriate to his or her use any water from the said tunnel or any branch conduit reservoir basin tank pipe or pump communicating therewith and if any person shall appropriate to his or her use any water from the same without the authority aforesaid he or she shall forfeit and pay for every such offence any sum not exceeding twenty pounds nor less than five pounds and it shall be lawful for the said Governor to order and direct that any tunnel pipe conduit or pump which may be formed or laid for the purpose of appropriating water without the authority aforesaid shall be filled up cut off or seized as may be most convenient and if any person shall open or leave open any cock or otherwise cause the water from the said tunnel or any of the branches pipes reservoirs basins tanks conduits or pumps communicating therewith to run to waste he or she shall forfeit and pay for every such offence a sum not exceeding one pound nor less than five shillings.

Persons appropriating water without permission.

6. And whereas it is expedient for the better protection of the said tunnel that all persons should be prevented from sinking wells or digging the earth within a certain distance of the same Be it therefore enacted That from and after the passing of this Act it shall not be lawful for any person whomsoever to sink any shaft or well either to obtain or divert water therefrom or to dig sink or remove the earth to a greater depth than six feet on any land whatsoever within fifty feet of the said tunnel and every person so offending shall on conviction forfeit and pay for every such offence any sum not less than ten pounds nor more than twenty pounds and it shall be lawful for the said Governor to authorize any surveyor artificer servant or other person to fill up any shaft or well which may have been or shall hereafter be so dug or sunk and to replace any soil which may have been or shall hereafter be removed contrary to the intention and provisions of this Act.

No wells to be sunk within certain distance of tunnel.

7. And be it further enacted That any person who shall obstruct any surveyor artificer servant or other person or persons in the doing or performing any act matter or thing which such surveyor artificer servant or other person shall be authorized to do or perform under or by virtue of any of the provisions of this Act shall upon conviction thereof forfeit and pay for every such offence the sum of five pounds.

Penalty.

As to obstructing surveyors &c.

Penalty.

8. And be it further enacted That all fines and penalties imposed by this Act shall be recoverable before two or more Justices of the Peace within the said town of Sydney on proof of the offence on the oath or oaths of one or more credible witness or witnesses or on confession of the offender and in case of non-payment the said fines and penalties shall be levied by distress and sale of the offender's goods and chattels by warrant under the hands of the said Justices and the overplus (if any) of the money raised after deducting the penalty and the expenses of the distress and sale shall be rendered to the owner and if any person shall feel aggrieved by the summary judgment or conviction of any Justices under this Act wherein the sum or penalty shall exceed the sum of five pounds such person shall be entitled to appeal from such judgment or conviction to the Court of General Quarter Sessions to be holden next after the expiration of ten days from the date of such judgment or conviction Provided always that every such person shall immediately enter into a bond or recognizance to His Majesty His Heirs and Successors in a sum of double the amount

Recovery of penalties.

Appeal to Quarter Sessions.

Proviso.

Census.

amount of the penalty or judgment incurred to abide the judgment of the said Court and to pay such costs as to the said Court shall seem reasonable and such judgment shall be final and conclusive to all intents and purposes.

No *certiorari*.

As to informality in
warrant &c.

9. And be it further enacted That no conviction order warrant or other matter made or purporting to be made by virtue of this Act shall be quashed for want of form or removed by *certiorari* or otherwise in the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein provided it be therein alleged that the party has been convicted and that there be a good and valid conviction to sustain the same and where any distress shall be made for levying any money by virtue of this Act the distress itself shall not be deemed unlawful nor the party making the same be deemed a trespasser on account of any defect or want of form in the summons conviction warrant of distress or other proceedings relating thereto nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him but the person aggrieved by such irregularity may recover full satisfaction for the special damage (if any) in an action upon the case.

General issue &c.

10. And be it further enacted That in any action of trespass or upon the case which shall or may be brought against the said surveyor his servants assistants or any other person relating to any entry upon any lands or grounds or to any other act matter or thing made done or performed by him or any of them by virtue of this Act it shall and may be lawful for the defendant or defendants in such action to plead the general issue and give the special matter in evidence any law or usage to the contrary notwithstanding and in case the plaintiff or plaintiffs in such action shall become nonsuit discontinue his her or their action or have judgment against him her or them the defendant or defendants shall recover double costs of suit.

Appropriation of
penalties.

11. And be it further enacted That one moiety of every penalty imposed and recovered under this Act shall be paid if demanded to the person who shall first inform and prosecute for the same and the residue to His Majesty His Heirs and Successors for the public uses of the said Colony and the support of the Government thereof.
