

No. XXV.

HAY IRRIGATION.

An Act to vest certain lands in the Council of the Municipal District of Hay, to enable the said Council to establish works thereon and elsewhere for Conserving and Utilizing Water for Irrigation, and to lease such lands, and for other purposes incidental thereto. [31st March, 1892.]

Preamble.

WHEREAS it is expedient and would be for the advantage of the inhabitants of Hay, in the Colony of New South Wales, and the public generally, to establish a system whereby a portion of the Murrumbidgee waters flowing past Hay may be conserved and utilized for irrigation, watering of stock, and other purposes: And whereas, for the purposes and in pursuance of the "Commons Regulation Act of 1873," and the "Commons Regulation Act Amendment Act of 1886," the lands described in the Schedule to this Act, with other lands, are vested in the Council of the Municipal District of Hay as a temporary common: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.*Preliminary.***Short title.**

1. This Act may for all purposes be cited as the "Hay Irrigation Act."

Portions of Acts at variance with this.

2. Nothing contained in the "Municipalities Act of 1867," or the "Country Towns Water and Sewerage Act of 1880," shall be construed to control, limit, or restrict the operation of this Act, or to interfere with its provisions in respect of the construction or maintenance of works, or the storage, distribution, or supply of water, or in respect of the borrowing of money, the valuation of property, or the fixing or levying of rates.

Repeal of parts of "Mining Act of 1874."

3. Notwithstanding anything contained in any Act, now in force, relating to mining, no holder of a miner's right or mineral license shall be entitled to divert or use water to the prejudice of any rights acquired or enjoyed under this Act; but no rights acquired or enjoyed under any Act relating to mining shall be interfered with, or prejudiced, or taken from the owner thereof without compensation.

Interpretation of terms and arrangement of sections.

4. In the construction of this Act, unless the context requires a different meaning, the expression—

"Domestic use," when employed with reference to water, means use for household purposes, but does not include use for the irrigation of gardens or land, or for the watering of stock or the washing of sheep.

"The Governor" means the Governor, with the advice of the Executive Council.

"Irrigation area" means the lands and hereditaments described in the Schedule to this Act, and all lands which from time to time may be secured by the Trust.

"The

Hay Irrigation.

“The Minister” means the Minister charged with the administration of this Act.

“Owner” includes lessee or occupier.

“Prescribed” means prescribed by this Act or by the regulations thereunder, or by the by-laws of the Trust.

“Regulations” means the regulations made under this Act.

“Stock” means cattle, horses, sheep, and all other domestic animals.

“The Trust” means the “Municipal District of Hay Irrigation Trust.”

And the sections of this Act are arranged in the order following, viz.:—

PART I.—Preliminary Provisions.

PART II.—Constitution of the Trust.

PART III.—Administration.

PART IV.—Loans.

PART V.—Penalties.

PART II.*Constitution of Trust.*

5. The body authorised to carry out this Act shall be the Council of Municipal District of Hay for the time being, who, by the name of “The Hay Irrigation Trust,” shall be a body corporate, Trust to be body corporate. and shall for the purposes of this Act have perpetual succession and a common seal, and, subject to the sanction of the Minister and to the provisions hereinafter contained, have power to hold, purchase, sell, exchange, mortgage, and lease lands, tenements, stores, goods, chattels, and other property, and shall be capable in law of suing and being sued; but nothing herein contained shall be construed as giving authority to the Trust to sell, exchange, or mortgage any of the land described in the Schedule hereto annexed.

6. No member of the Trust shall be the holder of any paid office or situation under the Trust, or receive any salary, emoluments, or expenses of any kind from the Trust, but any member of the Trust may become a lessee of any portion or portions of the Trust lands under the provisions of this Act.

7. No member of the Trust shall tender for, obtain, or hold any contract, or any part or share in any contract, for works or surveys to be constructed or made by the Trust.

8. Every person who, being disqualified from acting as a member of the Trust by reason of his being the holder of a paid office under the Trust, or receiving a salary, emoluments, or expenses of any kind from the Trust, or who, being the holder of any contract, or any part or share in any contract, for works or surveys to be constructed or made by the Trust, shall attend a meeting of the members of the Trust and vote thereat as a member, shall, for every meeting at which he is so present and acting, be liable on conviction before any two Justices to a penalty not less than ten pounds or more than fifty pounds.

9. From and after the passing of this Act the irrigation area shall cease to be or form part of the temporary common of Hay.

10. For the purposes of this Act there shall be vested in the Trust absolutely—

(i) The irrigation area, except such land as the Minister may decide to set apart from time to time for public purposes.

(ii) All dams, weirs, flood-gates, culverts, aqueducts, sluices, flumes, pipes, engines, pumping-machinery, reservoirs and other works constructed or erected in pursuance of this Act.

(III)

Hay Irrigation.

(III) The water which is at any time in any pipe, reservoir, creek, dam, or other work constructed by the Trust in pursuance of this Act. The land so vested shall be held and administered by the Trust, subject to the provisions of this Act and the approval of the Governor, but no part of the land described in the Schedule hereto annexed shall be sold.

Nothing in this Act shall be construed to limit or in any way interfere with the rights of the Crown to the general control of natural supplies of water; and the provisions of this Act shall be subject to the provisions of any general legislation to deal with water conservation throughout the Colony; and whenever it shall be deemed necessary in the public interest the Governor may by proclamation dissolve the Trust, and take control of the whole of the lands, works, goods, chattels, and funds at the time belonging to or vested in such Trust, subject to all liabilities and obligations attaching to the same, and with all the powers hereby created.

PART III.*Administration.*

Power of the Trust.

11. Subject to the provisions hereinafter contained it shall be lawful for the Trust at any time to exercise any of the following powers, that is to say—

- (i) To erect and construct upon any part of the irrigation area such dams, weirs, flood-gates, culverts, aqueducts, sluices, flumes, pipes, engines, pumping machinery, reservoirs, canals, watercourses, embankments, or other works as may be necessary or expedient for carrying out the objects of this Act.
- (ii) To construct a dam, or flood-gate, or both, across the mouth of the Bungay Creek, at the junction of the said creek with the river Murrumbidgee, or elsewhere on the said creek or any of its affluents.
- (iii) To widen or deepen, or to close or divert any existing creek, lagoon, swamp, or watercourse within the irrigation area.
- (iv) To lay pipes or cut trenches or ducts outside the irrigation area for the purpose of delivering water to owners of adjoining lands.
- (v) To take water from the river Murrumbidgee by means of pumping or other machinery erected within the Municipal area under such regulations as to quantity as the Minister may sanction: Provided, however, that the Minister may at any time cause inspection to be made of any works initiated, constructed, or managed by the Trust, and if the construction of such works be dangerous, the Minister may require the Trust to make such alterations or improvements as may be deemed necessary.

River Murrumbidgee not to be interfered with.

Nothing in this section shall be construed to authorize the Trust to construct any dam, weir, embankment, or other work whatever in or upon the river Murrumbidgee, so as to obstruct, impede, or in any way interfere with the natural flow or the navigation of such river.

Compensation for damage done by the Trust.

12. Whenever any person employed by the Trust in pursuance of this Act shall, while in the execution of his duties, cause injury to land, fences, or other property, or shall cause loss or damage to any owner of land or other property, the person suffering such injury, loss, or damage shall be entitled to be compensated by the Trust.

Hay Irrigation.

13. No claim for compensation on account of injury, loss, or damage caused to persons or property, by any person employed by the Trust, shall be valid unless made within ninety days after such injury, loss, or damage is sustained.

14. When any person claims compensation from the Trust, on account of injury, loss, or damage sustained, and such claim is disputed by the Trust, the settlement of the dispute shall be submitted to arbitration; and the arbitration shall proceed as provided for in the "Arbitration Act," thirty-one Victoria number fifteen.

15. The Trust may from time to time let, in one or more portions not exceeding five acres each until required for public purposes, any lands, tenements, or hereditaments purchased, or taken in exchange by the Trust in pursuance of this Act, or being a portion or portions of the irrigation area: Provided always no one person shall select, lease, or hold more than forty acres; and the lessees of such portion of land shall be entitled to compensation for all improvements when required to surrender their leases. All moneys arising from any such letting shall be applied towards the construction, maintenance, or improvement of the works, roadways, or property of the Trust, or in paying or discharging any interest, debt, or obligation which the Trust may be liable to pay or discharge.

16. In case of any lot not being improved by the lessee to the value of ten pounds per acre within two years after the date of his lease, the Trust may serve notice upon the lessee who has failed to so improve his lot, calling upon him to make improvements to the said amount within three months thence next ensuing, and should the lessee fail to make improvements on his lot to the said amount before the expiration of three months from the service upon him of said notice, it shall be lawful for the said Trust to retake and re-enter such lot, and to eject the said lessee therefrom without compensation for any improvements made by him, and let same to another tenant.

17. Subject to the provisions of this Act, it shall be lawful for the Trust to enter into an agreement in writing with the owner of any land within the irrigation area or not being distant more than three miles in a straight line from the boundary thereof for the supply and delivery of water upon such land for a term of years not exceeding ten years, or from year to year, at a price by measure or otherwise to be stated in such agreement, and in every such agreement the owner of such land shall agree to pay such price for the term limited in the agreement, and to pay the Trust for not less water in any year than the minimum quantity in such agreement specified, and such agreement by such owner, whether under seal or not, shall be deemed to be a covenant running with the land, and shall bind the land and the successive owners thereof during the said term. But nothing in such agreement shall be construed to create any obligation on the part of the Trust to supply any stated quantity of water in the event of there being at the disposal of the Trust an insufficiency of water, as hereinafter provided; but in such case the owner or occupier shall only pay for the water actually supplied to him at the price provided for in such agreement.

18. If at any time the supply of water at the disposal of the Trust be insufficient to afford to all persons entitled by contract the supplies which they may respectively be entitled to receive from the Trust, it shall be competent for the Trust to deliver to such persons such amount as the Trust may deem proper, in quantities proportionate to the quantities which such persons would have been respectively entitled to receive had there been enough water available, and such persons shall be chargeable according, and in no case shall the Trust be liable to any action or other proceeding for not supplying water to any

Trust may contract to supply water for a term of years.

When water insufficient, Trust may supply proportionally, and not liable for any inability to supply.

Hay Irrigation.

Water to be used only in manner prescribed.

Right-of-way for water.

Water-way through land not to confer right to water on owner.

Bridges to be built at road crossings.

Rents fixed at time of letting.

Power to fix rates.

Recovery of rates.

Power to make by-laws.

any person where it has been determined by the Minister that the Trust has been without wilful default or negligence upon its part unable to supply such water.

19. Water supplied by the Trust shall be delivered as prescribed, and no person shall have the right to convey or use such water in a manner or for a purpose other than those prescribed.

20. The Trust may acquire by purchase or lease a right-of-way for water through any land, whether it belong to a private individual, a corporation, or the Crown. If a right-of-way for a distributory channel, pipe, or conduit of any kind be required by any person to enable him to obtain a supply of water from the Trust, the Governor may, on the recommendation of the Minister, resume a right-of-way for such water supply and vest the same in the Trust; and in estimating the amount due as compensation to any owner the Minister shall deduct from the value of the right-of-way so resumed and the damage (if any) done by severance or otherwise, the amount by which the remaining land of the said owner shall have been increased in value by the projected works. In no case shall the owner have a right to claim in respect of the right-of-way so resumed the increased value due to the projected works. Any compensation payable under this clause shall be a charge against the Trust Funds.

21. Under no circumstances shall the passage of water through the land of any owner confer on such owner any right, title, or vested interest in such water, but if in open drains the same shall be fenced by the Trust, or no compensation shall be allowed for trespass of stock.

22. Wherever it is necessary to construct a canal or channel of any kind, or to carry a supply of water across any road, a suitable bridge or culvert or other means of crossing without hindrance to the traffic on the said road must be constructed by the Trust.

23. Rents for allotments let by the Trust shall be fixed at time of letting, and shall be unalterable and incommutable, and the land shall be used only for irrigation culture and sale of produce of the lots. There shall be no power or liberty on the part of the lessee to sublet unless by the sanction of the Trust in writing.

24. Subject to the sanction of the Minister the Trust shall have power to fix rates for water supplied or for land irrigated by the works to be carried out pursuant to this Act. The rates for water shall be of three kinds, viz.:—First, for domestic use and for watering stock and washing sheep; second, for irrigation; third, for power. And when the measurement of water for irrigation is impracticable, the Trust may fix rates per acre for different crops grown, according to their nature; and may fix rates for all kinds of stock to which water is supplied at per head, according to the kind thereof. And all rates, rents, and moneys due to the Trust for water supplied and otherwise may be recovered in a summary way before any two Justices by any person appointed by the Trust to collect and recover the same.

25. The Trust may make by-laws—

- (a) To regulate its proceedings at meetings, the number of members to form a quorum, the convening, postponing, or adjourning of ordinary or special meetings.
- (b) To deal with all matters in respect of which by-laws are expressly or impliedly referred to in this Act.
- (c) To regulate the administration and maintenance of the works constructed in pursuance of this Act.
- (d) To prescribe the conditions on which water shall be supplied, and the mode of levying rates for same.
- (e) To prescribe the penalties to which any person shall be liable for breach of, or refusal, or neglect to obey, or observe such by-laws.

But

Hay Irrigation.

But no such by-laws shall be put in force until confirmed by the Governor, and published in the *Government Gazette*. The production of the *Government Gazette* with any such by-laws so published as aforesaid shall in any suit or proceeding whatsoever be sufficient evidence that such by-laws have been made, confirmed, and published as is herein required.

26. The Governor may make regulations for carrying this Act Governor may make regulations. into full effect, so as to provide for all proceedings and all other matters and things arising under and consistent with this Act and not expressly provided for; and all such regulations shall upon being published in the *Government Gazette* be valid in law, and a copy of every such regulation shall be laid before both Houses of Parliament within one month from the publication thereof, if Parliament shall be then sitting, or within one month after the commencement of the Session next ensuing.

PART IV.*Loans.*

27. The security for the repayment of all moneys raised on Security for loan. loan by the Trust and for the payment of interest due thereon shall be—

- (i) The works vested in the Trust;
- (ii) The proceeds of the sale of water by the Trust;
- (iii) The rents leviable by the Trust on the lands held by the Trust; and
- (iv) Such lands as the Trust may have purchased.

28. It shall not be lawful for the Trust to borrow money on Sanction of Governor for loans essential, &c. loan from any source or for any purpose without the sanction of the Governor.

29. Whenever the Trust desires to raise money on loan for the Application for loans. construction of any works authorized by this Act, the Trust shall make application to the Minister in writing stating full particulars as to the nature and extent of the land to be benefited by such works, of the existing liabilities (if any) of the Trust, and of the estimated cost of the proposed works; and on receipt of such application the Minister shall submit the same, together with such recommendations as he may deem proper to the Governor, and thereupon the Governor may Governor may grant loans. sanction the raising of a loan by the Trust.

30. The aggregate amount of any loan raised by the Trust, Limit to loans. together with the existing liabilities thereof shall not at any time exceed seven years estimated revenue accruing to the Trust on the completion of the works proposed to be constructed with the aid of such loan.

31. When a sinking fund has been formed for the liquidation of Sinking fund to be reckoned an asset. any loan, the accumulated amount of such sinking fund shall, for the purpose of estimating the existing liabilities of the Trust, be deducted from the amount of such loan.

32. The revenue derived from the sale of water and the rents Rates, how applicable. levied in pursuance of the provisions of sections thirty and thirty-one shall be applied as follows:—

- (a) In payment of interest due in respect of loans.
- (b) In contributing to the sinking fund.
- (c) For the maintenance and management of the works of the Trust; or
- (d) For the extension and development of such works.
- (e) For the purchase of adjacent lands to be added to the irrigation area.

Hay Irrigation.

Separate account for each loan.

Return of expenditure to be presented to Parliament.

Improperly borrowing or appropriating.

Change of name or boundaries not to affect agreements.

Compensation for alteration of boundaries.

Obstructing Government or Trust Officers.

Interfering with marks.

Depositing material on land belonging to Government or to Trust.

Polluting water.

33. The Trust shall keep a separate account for every loan, and such accounts shall, at all times be accessible to any officer deputed by the Minister to inspect them, and copies or abstracts of such accounts shall be submitted in such manner and at such times as may be prescribed.

34. The Trust shall during the month of January in each year furnish under statutory declaration a return showing the mode of expending all moneys borrowed on loan, also the cost of management for the preceding year, with a full account of all receipts and general expenditure for such preceding year, such return to be presented to Parliament if then in Session, if not, then within fourteen days after the meeting of Parliament.

35. If, in contravention of this Act, the Trust shall raise a loan without the sanction of the Governor, or appropriate any moneys belonging to the Trust for the purpose of liquidating any claim for money so illegally borrowed, or shall, without the sanction aforesaid, apply any portion of a loan to a purpose other than that for which the said loan was raised, or shall otherwise misappropriate a loan or any portion thereof, the members of the Trust who shall have consented to, or participated in, such improper borrowing, appropriation, or application as aforesaid shall be jointly and severally liable to pay the full amount of the moneys so improperly borrowed, appropriated or applied; and such amount may be sued for by any person, and be recovered from such members of the Trust, or any of them, in any Court of competent jurisdiction.

36. If, with the sanction of the Governor, the boundaries of the irrigation area or the name of the Trust be altered, no bond, mortgage, or agreement entered into by the Trust previously to such alteration shall be rendered invalid, or shall, except as hereinafter provided, be in any way affected by such alteration.

37. If, by reason of the alteration of the boundaries of the irrigation area, any works or other property be taken from the Trust, compensation therefor shall be paid to the Trust, and also to any lessee or lessees whose lease or leases may be injuriously effected by such alteration; any dispute in respect of the amount of compensation in such case shall be determined by arbitration according to the provisions of the Act thirty-first Victoria number fifteen. And if the works or property so taken from the Trust form the security, or part of the security, for any loan, the amount of the compensation received therefor shall be applied in liquidation or reduction of such loan.

PART V.

Offences and Penalties.

38. Whoever, without proper authority, or reasonable cause, and voluntarily does any of the following acts, that is to say—

- (a) Obstructs, in any way, any person, whether such person is acting under the authority of the Trust or of the Minister:
- (b) Removes, injures, or in any way interferes with any pegs, bench-marks, or other marks, or objects placed in the execution of his duty by any person employed in pursuance of this Act, in making surveys, levels, or other investigations in connection with any work or project authorized by this Act.
- (c) Deposits material or refuse of any kind within the bounds of any land resumed or otherwise acquired for any work authorized by this Act.
- (d) Pollutes, or renders less useful the water standing or flowing in any river or work for water conservation and utilisation vested in the Trust.
- (e)

Hay Irrigation.

(c) Interferes with the supply or flow of water in any river, creek, stream, or lake, managed or maintained by the Trust, or causes injury to fences, works, land, or any other property held or managed or maintained by the Trust, shall for every such offence be liable, on conviction before any two Justices, to a penalty not exceeding twenty pounds, or to imprisonment for a term not exceeding three months.

39. Any person who wilfully damages or obstructs any work for water conservation and utilization vested in the Trust, and any person who, without proper authority, interferes with the supply or flow of water in, into, or from any work constructed or maintained under the provisions of this Act, shall for every such offence be liable, on conviction before any two Justices, to imprisonment for a period not exceeding six months, or to a fine not exceeding one hundred pounds, or to a fine and imprisonment combined within the limits aforesaid.

40. Any person who, being responsible under the provisions of this Act for the proper use and management of a supply of water, neglects to take proper precautions for the prevention of waste of the water, or interferes with the authorized distribution thereof, or uses such water in an unauthorized manner, shall for every such offence be liable, on conviction before any two Justices, to a penalty not exceeding ten pounds, or to imprisonment for a term not exceeding one month.

41. The penalties directed under last section for the wilful or negligent waste of water shall apply to the water-rights acquired under the "Mining Act of 1874," or under any other Act or regulation in force relating to mining.

42. Whenever any person is fined or a penalty is imposed upon any person under this Act, the Justices may direct that one-half of such fine may be paid to the Trust or the person or body, if any, injured by such person.

43. Any person offending against this Act may be sued for compensation on account of the loss or damage incurred or sustained through his offence; and this liability for the loss and damage caused will not in any way mitigate or affect the concurrent liability to punishment for the said offence under the terms of this Act.

44. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

SCHEDULE.

County of Waradgery, at Hay, on the Murrumbidgee River, containing seventeen thousand one hundred and forty-seven acres. The unalienated Crown Lands within that portion of the reserve on account of population of the town of Hay, within the following boundaries: Commencing on the Murrumbidgee River, at a post marked broad-arrow P.B. 65, at the intersection of the west boundary of the reserve aforesaid with that river; and bounded thence on part of the west by part of that west boundary bearing north one hundred and five chains; on part of the north by the south boundary of one thousand four hundred and forty acres, appropriated for permanent commonage at Hay, bearing east forty chains; again on the west by the east boundary of the one thousand four hundred and forty acres aforesaid bearing north one hundred and twenty chains to the north boundary of the reserve on account of population of the town of Hay aforesaid; thence on the remainder of the north by that north boundary bearing east three hundred and ninety-six chains and fifty links to the north-east corner of that reserve, at a post marked broad-arrow P.B. 65; on the east by the eastern boundary of that reserve on account of population of the town of Hay bearing south four hundred and thirty-nine chains, crossing the Murrumbidgee River, to the south-eastern corner of that reserve, at a point fifty links east from a box-tree marked broad-arrow P.B. 65; on the south by the south boundary of the reserve aforesaid, on account of population of the town of Hay bearing west four hundred and thirty-six chains and fifty links, to the south-west corner of that reserve, at a post marked broad-arrow P.B. 65; and on the remainder of the west by the west boundary of the reserve on account of population of the town of Hay bearing north two hundred and ten chains and fifty links to the Murrumbidgee River; thence crossing that river, to the point of commencement.

County

Judicial Offices.

County of Waradgery, at Hay, Murrumbidgee River, containing two thousand seven hundred acres: Commencing at the north-west corner of the reserve on account of population of the town of Hay, at a post marked broad-arrow P.B. 65; and bounded thence on the south by the north boundary of that reserve bearing east five miles and sixteen chains; on the east by a line bearing north forty-three chains; on the north by a line bearing west three miles and fourteen chains; thence by a line bearing north thirty-seven chains; and thence by a line bearing west two and a-half miles; on the west by a line bearing south one mile; and on the remainder of the south by a line bearing east forty chains, to the point of commencement.
