

Drainage Promotion.

Act No. 31, 1901.

An Act to consolidate the enactments for promoting the better drainage of lands. [31st October, 1901.]

DRAINAGE
PROMOTION.
—

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

PART I.

Preliminary.

1. This Act may be cited as the "Drainage Promotion Act, 1901," and is divided into Parts, as follows:—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Establishment of drainage unions*—ss. 4-7.

PART III.—*Assessment and rates*—ss. 8-16.

PART IV.—*Miscellaneous*—ss. 17-27.

PART V.—*Arbitration*—s. 28.

2. (1) The Act twenty-ninth Victoria, number one, is hereby repealed.

(2) All owners of land who were declared to be, and who became and were a drainage union under the authority of the Act hereby repealed, and who are a drainage union at the time of the passing of this Act, shall be deemed to have been declared to be and to have become and to be a drainage union under the authority of this Act.

(3) All persons appointed, employed, or elected under the Act hereby repealed shall be deemed to have been appointed, employed, or elected hereunder.

(4) All by-laws made under the authority of the Act hereby repealed and being in force at the time of the passing of this Act, shall be deemed to have been made under the authority of this Act.

(5) All fees fixed under the Act hereby repealed shall be deemed to have been fixed under the authority of this Act.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.
29 Vic. No. 1, s. 1.

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

U

"Flood"

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- “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.
- “Justice” means justice of the peace.
- “Minister” means the Minister for Lands.
- “Owner” means the owner, including the Crown, for the time being of any land, for any freehold estate, or any leasehold estate, whether such owner is or is not in actual occupation, or the agent of such owner.
- “Tenant” means the person in actual occupation of any land, not being the owner.
- “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.

PART II.

Establishment of drainage unions.

Petition may be presented for compulsory drainage. 29 Vic. No. 1, s. 2.

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

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

Publication of Petition. *Ibid.* s. 3.

5. Upon receipt of any such petition the Governor may publish the same in the Gazette. 6.

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6. Before the issuing of the proclamation hereinafter mentioned—
- (1) if any other owners of such tract of land, not including the Crown, being not less than one-fifth in number of holdings, present a counter-petition to the Governor, showing reasonable objections to constituting such union, or if for any other reason the Governor thinks fit, he may employ some competent person—
- (a) to examine such tract of land, and report respecting the statements contained in both petitions, and the sufficiency of the reasons alleged in the latter;
- (b) to make a survey and levels if deemed necessary; and
- (c) to report on the best mode of effecting the drainage of such tract;
- and the person so employed shall for such purposes have full power to enter upon any land within the limits of the proposed union.
- (2) in the event of an examination, report, and survey being deemed necessary to be made, and before the same are made, the original petitioner shall pay into the State Treasury, to the account of a separate fund to be called the "Drainage Union of A or B Fund," such sum as is in the opinion of the Chief Surveyor sufficient to reimburse all expenses likely to be incurred by the Government in the matter, and out of which separate fund, sufficient sums may for that purpose be from time to time drawn and transferred to the Consolidated Revenue Fund by warrant of the Governor:
- Provided that if the prayer of the original petition is refused, the money so paid by such petitioner, or the balance thereof, shall be returned to him.

Tract may be examined by Government.
29 Vic. No. 1, s. 4.

Petitioners to give security for expenses.
Ibid. s. 5.

7. (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.
Ibid. s. 3.

(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.

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PART III.

Assessment and rates.

Assessment of values.
29 Vic. No. 1, s. 6.

8. 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 Act.

Appeal against
assessment.
Ibid. s. 6.

9. (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.

(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.

Board of manage-
ment.
Ibid. s. 7.

10. A board of directors of such union, not fewer in number than three nor more than seven, and two auditors shall be annually elected by a majority of the votes of members present at a general meeting duly convened by notice published by the Minister in the Gazette and in the nearest local newspaper, and such directors shall, from time to time, under such by-laws as may be made by virtue of this Act, choose one of themselves to be chairman, and shall, as a board, manage all the affairs of such union.

By-laws.
Ibid. s. 8.

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

Proportion of votes
to increased values
of.
Ibid. s. 9.

12. In voting at any such meeting for electing directors or making by-laws every member of such union shall be entitled to one or more votes according to the assessed increased value to accrue to the several holdings as aforesaid, that is to say:—If such increased value amounts to less than fifty pounds the member shall be entitled to one vote; if fifty pounds and below one hundred pounds, two votes; if one hundred pounds and below two hundred and fifty pounds, three votes; if two hundred and fifty pounds and below five hundred pounds, four votes; and if five hundred pounds and upwards, five votes. And every voter shall, before voting, make and subscribe a declaration in the terms of the First Schedule hereto, before some justice:

First Schedule.

Provided

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

13. (1) The board of directors may appoint such officers and servants as they deem necessary, and may, in the name of their chairman, make valid contracts, and sue and be sued on behalf of the union. Board may appoint officers and make contracts. 29 Vic. No. 1, s. 10.

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

14. (1) The board of directors of every union under this Act shall, within three months after election to office, and at a corresponding period in every subsequent year, cause an estimate to be made of the probable amount which will be required for the current year, commencing on the first day of January and ending on the thirty-first day of December, towards making, clearing, and keeping open drains by sufficient means, including steam-engines where found to be requisite, in upholding embankments, and in doing other necessary works for the purpose of fully carrying out this Act, and shall raise the amount so estimated by an assessment not exceeding ten pounds per centum on the increased value accruing to the several holdings, including those of the Crown, from such works. Assessment. Ibid. s. 11.

(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 other written instrument with reference thereto, the tenant may recover from his landlord a fair proportion of such rates, to be settled by arbitration in case of dispute.

15. (1) In each and every year there shall be paid by every person, including the Crown, holding land within the union, and towards the revenues of such union, for every portion of land so held a rate not exceeding twenty pounds per centum of the increased annual value thereof, to be settled as herein mentioned, and all such rates for the first year shall be paid into the hands of the chairman of the board of directors within two months after notice in writing signed by him, and for every succeeding year in such time and manner as may be required by any by-law made under this Act. Holders of land rated. Ibid. s. 12.

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

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Appeal from rates.
29 Vic. No. 1, s. 13.

16. If any person is aggrieved by the amount of any such rate he 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 such 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.

PART IV.

Miscellaneous.

Plans of drainage to
be published.
Ibid. s. 14.

17. Every drainage union under this Act shall within one year after its establishment publish in the Gazette a plan of the drainage contemplated within the limits of such union, showing accurately the position and direction, width, depth, and other material particulars of such drainage, and distinguishing the parts (if any) then completed, and shall cause tracings of such plan to be lodged with the Chief Surveyor, to be recorded by him for public reference at convenient hours, and a like tracing to be lodged for like reference with the registrar of the District Court of the district.

And 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:

Provided that no alteration affecting any navigable water shall be made without the sanction of the Governor.

Accounts.
Ibid. s. 15.

18. Every such 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 Act for the last half-year, and if the Crown is a holder of lands within the union, shall transmit the same to the Minister.

Members may
inspect drains.
Ibid. s. 16.

19. All members of every such 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:

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.

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20. Every such 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 Act, any money not exceeding the estimated revenue of such union for five years :

Power to borrow money.
29 Vic. No. 1, s. 17.

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

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

Twelve months limitation of actions, &c.
Ibid. s. 18.

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 ejection.

22. On the receipt of a petition, under the hand of not less than one-third part of the members of any such 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.

Governor may dissolve union.
Ibid. s. 19.

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

Flood-gates to certain drains.
Ibid. s. 20.

24. (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 Act, in the opinion of any such owner requires cleansing or repair so as to render it effective, such owner may give written notice to each of the other owners requiring them to take measures for such cleansing and repair.

Notice of cleansing or repairing drains.
Ibid. s. 21.

(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.

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(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.

Legal remedies not affected.

29 Vic. No. 1, s. 22.

25. 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 Act.

Penalties for wilful injury.

Ibid. s. 23.

26. Whosoever wilfully injures or damages any drain, floodgate, or other work connected with drainage under this Act, or wilfully trespasses upon, damages or injures any property under colour or pretence of carrying out this Act 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.

Power to make drains through other lands.

Ibid. s. 25.

27. (1) Any union under this Act or any owner of land may, for the purpose of draining land under this Act, make and cut drains through any adjacent or neighbouring land into any waters.

(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 Act in respect of drains.

(3) The amount of such compensation shall be settled by arbitration in manner hereinafter enacted.

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

PART V.

Arbitration.

Mode of arbitration.

Ibid. s. 26.

28. Whenever it becomes necessary to proceed by arbitration the arbitrators and umpire shall be appointed and the arbitration shall be conducted in manner following:—

Appointment of arbitrators where Crown a party.

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

Third Schedule.

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- (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 may be made rule of Court.
- (5) Every request to appoint an arbitrator shall be in the form of the Fourth Schedule 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. When arbitrator of one party to act as single arbitrator. Fourth Schedule.
- (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 the Fifth Schedule 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. Fifth Schedule.
- (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 the Third Schedule hereto another person in his stead, and if he fails so to do for thirty days after request in writing in that behalf from the other arbitrator such other arbitrator may proceed ex parte and make his award as single arbitrator for both parties. Provision for death or failure to act of arbitrator. Third Schedule.
- (9) Every arbitrator becoming a single arbitrator in any manner aforesaid shall have the same powers and authorities as are by this Act 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 endorsement on his appointment in the form of the Sixth Schedule hereto, the Provision for death or failure to act of single arbitrator. Sixth Schedule.

matters

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- matters referred to him shall be again referred to arbitration under the provisions of this Act as if no former reference had been made.
- Appointment of umpire. (11) If there is more than one arbitrator the arbitrators shall, before they enter upon the reference, appoint an umpire by endorsement on each of their appointments under their hands in the form of the Seventh Schedule 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.
- Seventh Schedule.
- When umpire to act. (12) If arbitrators fail to make their award within sixty days after the day on which the last of them was appointed, or within such extended time (if any), not exceeding thirty days, as has been fixed by them for that purpose by endorsement as aforesaid, the matters shall be determined by the umpire, and the provisions of this Act with respect to the time for making an award, and with respect to extending the same in the case of a single arbitrator, shall apply to any umpirage save and except that such time shall commence and be computed from the date of the matters being referred to the umpire.
- Production of documents. (13) Any arbitrator or umpire appointed by virtue of this Act 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.
- Determination of costs. (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 :
- 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.
- Declaration by arbitrator or umpire. (15) Before any arbitrator or umpire enters upon the reference he shall make and subscribe before a justice a declaration in the form of the Eighth Schedule hereto.
- Eighth Schedule.
- False declaration a misdemeanour. (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.
- No avoidance for error in form. (17) No appointment or award shall be set aside for irregularity or error in matter of form. (18)

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(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.

SCHEDULES.

FIRST SCHEDULE.

Section 12.
29 Vic. No. 1, Sch. 1.

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.

SECOND SCHEDULE.

Section 13.
Ibid. Sch. 2.

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.

THIRD SCHEDULE.

Section 28 (1) (3).
Ibid. Sch. 3.

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 Promotion Act, 1901, 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.

FOURTH SCHEDULE.

Section 28 (5).
Ibid. Sch. 4.

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 Promotion Act, 1901, E.F. to be one of two arbitrators to determine the matter of dispute set forth in the said instrument, do hereby request you to appoint another arbitrator in due time, as under the said Act in default thereof the said E.F. will act as single arbitrator, and will alone determine and make his award in writing respecting the said matter.

Witness— _____ (*Signature.*)

FIFTH

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Section 28 (7).
29 Vic. No. 1, Sch. 5.

FIFTH SCHEDULE.

Award.

WE, E.F. and G.H., arbitrators (or I, E.F., a single arbitrator, or I, K.L., the umpire), duly appointed under the Drainage Promotion Act, 1901, to determine and make our (my) award in writing concerning the matter next hereunder stated in dispute between A.B. and C.D.

[Here copy statement of the matter in dispute in precisely same words as at foot of appointment of arbitrators]
do by this our (my) award in writing under our hands (my hand) determine and award as follows:—

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

Witness—

(Signatures or Signature.)

Section 28 (10).
Ibid. Sch. 6.

SIXTH SCHEDULE.

Endorsement.

(Date.)

WE, E.F. and G.H., arbitrators (or I, E.F., single arbitrator, or I, K.L., umpire), duly appointed by the within instrument under the Drainage Promotion Act, 1901, to determine by arbitration and make award upon the matter therein stated in dispute between A.B. and C.D. (or Minister for Lands on behalf of the Crown), do hereby extend the time for making our (or my) award until the day of , 19 .

Witness—

(Signatures or Signature.)

Section 28 (11).
Ibid. Sch. 7.

SEVENTH SCHEDULE.

Appointment of umpire.

(Date.)

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

Witness—

(Signatures.)

Section 28 (15).
Ibid. s. 26 (15).

EIGHTH SCHEDULE.

Declaration.

I, A.B., do solemnly and sincerely declare that I am not directly or indirectly interested in the matter in dispute between A.B. and C.D., referred to me as arbitrator (or as one of the arbitrators or as umpire), and that I will faithfully, honestly, and to the best of my skill and ability hear and determine such matter under the Drainage Promotion Act, 1901.
