



ANNO VICESIMO SECUNDO

GEORGII V REGIS.

A.D. 1931.

No. 2062.

An Act to repeal the South-Eastern Drainage Acts, 1926 to 1931, and to Enact other Provisions for the Control and Management of the Drainage System of the South-East, and for purposes incidental thereto.

[Assented to, December 9th, 1931.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "South-Eastern Drainage Act, 1931," and shall come into operation on a day to be fixed by proclamation.

Short title and commencement.

2. (1) The Compulsory Acquisition of Lands Act, 1925, except sections 79, 80, 81, and 82 is incorporated with this Act.

Incorporation of Compulsory Acquisition of Lands Act.

(2) The Board shall be regarded as the promoter of an undertaking and this Act as the Special Act within the meaning of the said incorporated Act.

3. This Act is divided into Parts, as follows :—

Division of Act.

PART I.—Preliminary.

PART II—Administration.

PART III.—Construction and maintenance of drains.

DIVISION 1.—Construction of drains on petition of landholders

DIVISION

PART I.*South-Eastern Drainage Act.—1931.*

DIVISION II.—Maintenance of drains and the drainage rate :

DIVISION III.—Recovery of rates and instalments and general provisions applicable thereto :

DIVISION IV.—General provisions relating to the construction and maintenance of drains.

PART IV.—Provisions relating to repayment of part of the cost of the Scheme Drains.

PART V.—Miscellaneous provisions.

Repeal.

4. The South-Eastern Drainage Acts, 1926 to 1931, are repealed.

Saving of powers of District Councils outside the South-East.
1781, 1926, s. 4A.

5. Notwithstanding the repeals effected by this Act or by the South-Eastern Drainage Act, 1926, any District Council the whole or any part of the District of which is not for the time being included in the South-East as defined by this Act and any proclamation hereunder shall, so long as such District or part of a District is not so included, continue with respect to such District or part of a District, to have and be subject to all the rights, powers, functions, obligations, duties, and immunities vested in or imposed upon a District Council under the Acts repealed by the South-Eastern Drainage Act, 1926, and (without limiting the generality of the foregoing provision) may during the period aforesaid continue to declare and levy drainage rates within such District or part of a District as provided by any of the Acts repealed by the South-Eastern Drainage Act, 1926 ; and so far as is necessary to give effect to this section all the provisions of any such Act relating to any of the said rights, powers, functions, obligations, duties, or immunities shall remain in force and be deemed to have remained in force continuously from the time of the enactment of those provisions.

Definitions.
Ibid. s. 5.

6. (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

“ Board ” means the South-Eastern Drainage Board continued in office by this Act :

“ Commission ” means the Irrigation Commission constituted by the Irrigation Act, 1922, and re-named by the South-Eastern Drainage Act, 1926, the Irrigation and Drainage Commission :

“ Current rate of interest ” means the rate of interest in force for the time being pursuant to section 105 of this Act :

“ Drains ” means all drains (including scheme drains and petition drains) at any time, whether before or after the commencement of this Act, constructed by the Crown or any person on behalf of the Crown in the South-East irrespective of whether the whole or any part of the cost thereof has been paid by some person other than the Crown, and any river, stream, creek, canal, channel, conductor, watercourse,

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watercourse, drain, ditch, or outfall of water declared by proclamation to be a drain for the purposes of this Act :

“ Drainage works ” means all walls, banks, tunnels, bridges, culverts, crossings, fords, dams, weirs, falls, races, by-washes, sluices, hatches, locks, fences, irrigation works, or works of construction on or belonging to or connected with the drains or any of them :

“ Landholder ” means the owner of any freehold estate in land, the holder of land under agreement with the Crown for the sale of such land upon credit, the lessee of land held under perpetual lease from the Crown, and as to Crown lands unleased or leased on other than perpetual lease, the Commissioner of Crown Lands :

“ Petition drains ” means all drains constructed by the Crown on the request of landholders pursuant to the South-Eastern Drainage Amendment Act, 1900, or on the petition of landholders pursuant to the South-Eastern Drainage Act Amendment Act, 1908, or this Act :

“ Scheme drains ” means the drains constructed pursuant to the South-Eastern Drainage Scheme Acts, 1908 and 1910 :

“ South-East ” means the whole of the hundreds of Duffield, Landseer, Peacock, Marcollat, Lacepede, Murrabinna, Minecrow, Woolumbool, Glen Roy, Lochaber, Mount Benson, Bowaka, Townsend, Ross, Conmurra, Joyce, Spence, Naracoorte, Robertson, Waterhouse, Bray, Smith, Fox, Coles, Killanoola, Comaum, Lake George, Symon, Kennion, Short, Monbulla, Penola, Riddoch, Grey, Nangwarry, Young, and Mingbool, and portions of the county of Cardwell and of the hundreds of Rivoli Bay and Mount Muirhead, bounded as set forth in the First Schedule.

(2) The Governor may by proclamation from time to time include any additional lands in the South-East as defined for the time being or may exclude any lands therefrom.

(3) No proclamation shall be made under this section unless a resolution of both Houses of Parliament has first been passed approving of the making of such proclamation and of the terms thereof.

7. The Governor may by proclamation declare any natural or artificial river, stream, creek, canal, channel, conductor, watercourse, drain, ditch, or outfall of water to be a drain for the purposes of this Act.

Proclamation of
drain.

The Governor may also by proclamation declare any drain or part thereof to be closed, and from and after the time when the proclamation comes into force the drain or part thereof shall be closed and shall be no longer a drain or part thereof within the meaning of this Act.

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PART II.

ADMINISTRATION.

Constitution of
South-Eastern
Drainage Board.

8. (1) The South-Eastern Drainage Board is hereby continued and the members in office at the commencement of this Act shall hold office subject to this Act for the term for which they were appointed.

(2) The Board shall be a body corporate by the name of the "South-Eastern Drainage Board," and by that name shall have perpetual succession and a common seal and shall be capable of acquiring, holding, and disposing of lands and of suing and being sued, and submitting to arbitration in all actions, suits, causes, and disputes.

Judicial notice of
seal.

9. Judicial notice shall be taken of the incorporation and of the common seal of the Board, and the production of any deed, instrument, or writing, if sealed with the said seal, shall be sufficient evidence of the making and execution thereof.

Members of the
Board.

10. (1) The Board shall consist of three members, who shall be appointed from time to time by the Governor.

(2) Each member shall be appointed for a term of three years, and any member shall from time to time at the expiration of his term of office be eligible for re-appointment for a further term of three years.

(3) Whenever a vacancy occurs in the office of any member, the Governor may appoint some person to fill the vacancy. A member appointed to fill a casual vacancy shall hold office for the balance of the term of the member in whose place he was appointed.

(4) Within one month after the commencement of this Act the Governor shall call upon one member of the Board other than the Chairman to retire, and that member shall retire accordingly as from a date to be notified to him by the Governor.

The Governor shall appoint in his place as member of the Board a landholder of land in the South-East, and thereafter at all times one member of the Board shall be a landholder of land in the South-East.

Dismissal from
office.

11. The Governor may at any time dismiss any member from his office—

- (a) for misbehaviour or incompetence ; or
- (b) if he is adjudicated bankrupt or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than Twenty Shillings in the Pound ; or
- (c) if he wilfully absents himself from three consecutive meetings of the Board except on leave granted by the Minister ;

or

(d) if

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(d) if he becomes in any way, except as member, concerned or interested in any contract made by or on behalf of the Board or in any way participates or claims to be entitled to participate in the profits thereof, or in any benefit or emolument arising therefrom.

12. (1) The Governor may appoint one of the members to be the Chairman of the Board, and another to be the Deputy Chairman of the Board, and whenever a vacancy occurs in the office of Chairman or Deputy Chairman may appoint one of the members to fill the vacancy.

Chairman and
Deputy Chairman.

(2) At all meetings of the Board the Chairman, or in his absence, the Deputy Chairman shall preside. When only two members are present the Chairman or Deputy Chairman so presiding shall have a second or casting vote.

13. Any two members shall constitute a quorum.

Quorum.

14. No act or proceeding of the Board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken, or commenced there is a vacancy in the office of any member.

Validity of acts of
Board.

15. The Board shall be responsible to the Minister for the discharge of its duties and functions under this Part.

Responsibility of
Board.

16. (1) The officers of the Board shall be appointed under and be subject to the provisions of the Public Service Act, 1916.

Staff of the Board.

(2) The Board may, subject to any direction of the Minister or law as to rates of wages, appoint at daily or weekly wages such persons as it deems proper for the purpose of carrying out its powers, duties, and functions under this Act and may dismiss such persons, but this section shall not affect the rights of any person wrongfully dismissed.

17. All drains and drainage works within the South-East shall be vested in and under the care, control, and management of the Board.

Control of drains
by Board.

18. In any deed, lease, licence, agreement, permit, transfer, mortgage, or other document or instrument of any kind whatsoever in force or subsisting at the commencement of this Act which concerns or affects any of the property, rights, interests, titles, privileges, obligations, and liabilities transferred by the Act No. 2000 of 1931, to the Board, all references to the South-Eastern Drainage Assessment Board or to the Commissioner of Public Works or other Minister of the Crown or to the Commission shall, so far as they affect any property, right, interest, title, privilege, obligation, or liability so transferred, be read and construed as references to the Board.

Consequential
amendments of
documents and
instruments.
1781, 1926, s. 9.

19. In

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Powers of Board as
to inquiries.
Ibid., s. 11.

19. In addition to and without prejudice to the other powers vested in it, the Board shall, for the purpose of obtaining information to assist it in carrying out its powers, functions, and duties under this Act, and in formulating schemes for extending agriculture and closer settlement in the South-East, have the following powers, that is to say :—

- (1) Any member or members of the Board or any person appointed by the Board for the purpose, may enter upon and inspect any land, building, or place, and inspect any goods and other things, the entry upon or inspection of which appears to them or him to be requisite for the purposes aforesaid :
- (2) The Board may require, by summons under the hand of the Chairman, the attendance of all such persons as it thinks fit to call before it, and may require answers or returns to such inquiries as it thinks fit to make :
- (3) The Board may by notice in writing, signed as aforesaid, require and compel the production of any books, papers, or documents :
- (4) The Board may inspect any books, papers, and documents produced before it, and retain them for such reasonable periods as it thinks fit, and may make copies of such matters therein as are relevant, or take extracts of such matters :
- (5) The Board may examine witnesses on oath, affirmation, or declaration, which may be administered by any member of the Board.

Powers of Board in
respect of witnesses.
1781, 1926, s. 12.

20. (1) If any person—

- (a) who has been personally served with a summons to attend before the Board, and whose expenses, as provided in subsection (2) hereof, have been paid or tendered to him, neglects to attend in obedience to such summons ;
or
- (b) wilfully insults the Board, or any member thereof ; or
- (c) misbehaves himself before the Board ; or
- (d) interrupts the proceedings of the Board ; or
- (e) being called or examined as a witness before the Board, refuses to be sworn, or to affirm or declare, or refuses or neglects to produce any books, papers, or documents mentioned in a notice under the last preceding section personally served upon him, or prevaricates in his evidence or refuses to answer any lawful question,

such

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such person shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Fifty Pounds.

(2) Every person required by the Board, under the powers conferred by this Act, to attend before it, shall be allowed such expenses as would be allowed to a witness attending on subpoena before the Supreme Court, and in case of dispute as to the amount to be allowed, the same shall be referred to the Master of the Supreme Court, who, on request under the hand of the Chairman, shall ascertain and certify the proper amount of such expenses.

21. Any person who, upon oath, affirmation, or declaration taken or made under this Act, wilfully and corruptly gives any false evidence before the Board shall be guilty of perjury, and may be imprisoned, with or without hard labour, for any term not exceeding four years.

Punishment for
false evidence.
1781, 1926, s. 14.

22. (1) Any member of the Board and any person employed or authorised by the Board may—

Power of Board to
enter on land for
surveys.

Ibid., s. 11A.

- (a) on giving not less than three days notice to the occupier of any land in the South East enter upon such land for the purpose of doing all or any of the things hereinafter in this section mentioned, and remain thereon so long as is reasonably necessary for the said purpose :
- (b) survey and take levels of any such land and do anything incidental thereto :
- (c) examine the soil and subsoil of any such land, and do anything incidental thereto :
- (d) do anything necessary to ascertain whether any such land is suitable for drainage or to determine suitable positions for drains.

(2) The Board shall pay compensation to all persons interested in the land for any damage done under this section and the compensation shall be determined in the manner provided in the Compulsory Acquisition of Land Act, 1925.

23. (1) The Board may enter into contracts with any person for the execution of any works directed by this Act or any other Act to be executed by the Board, or which the Board thinks proper to do or to direct to be done under or by virtue of the powers conferred upon the Board by this Act, or for the supply of any goods or things whatsoever necessary for enabling the Board to carry the purposes of this Act into execution, in such manner and for such sum of money, and under such stipulations, conditions, and restrictions as the Board thinks proper : Provided that no contract made by the

Contracts for works.
Ibid., s. 16.

Board,

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Board, the consideration for which exceeds Two Thousand Pounds, shall have any force or effect unless sanctioned by the Minister.

(2) Every such contract may, if the Board thinks fit, specify the person to whose satisfaction the same is to be completed, and the mode of determining any dispute which may arise concerning or in consequence of such contract.

Mode of entering
into contracts.
Ibid., s. 17.

24. (1) The powers hereby granted to the Board to make contracts may be exercised as follows:—

- I. Any contract which, if made between private persons, would be by law required to be in writing and under seal, the Board may make in writing in its corporate name under its common seal, and in like manner may vary or discharge the same :
- II. Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties thereto, the Board may make in writing in its corporate name signed by any two members, and in like manner may vary or discharge the same :
- III. Any contract which, if made between private persons, would be by law valid although made by parol only and not reduced into writing, the Board or any two of them, acting by direction and on behalf of the Board, may make by parol only without writing, and in like manner may vary or discharge the same.

(2) All contracts so made and duly executed by the parties thereto respectively shall be effectual in law and binding on the Board and all other parties thereto, their successors, assigns, heirs, executors, or administrators (as the case may be).

(3) In case of default in the execution of any such contract either by the Board or by any other party thereto, such actions or suits may be instituted, either by or against the Board in its corporate name or by or against the other parties failing in the execution thereof, and such damages and costs recovered, as might be instituted and recovered had the like contract been made between private persons.

Books and account-
ing.
1781, 1926, s. 19.

25. (1) The Board shall keep such proper books of account showing all amounts paid to or received by the Board and the purposes for which the amounts were received or paid, and all moneys payable to the Board under or pursuant to this Act shall be collected and received for and on account of the General Revenue.

(2) The accounts of the Board shall, once at least in every year, and also whenever so directed by the Governor, be audited by the Auditor-General.

(3) The

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(3) The provisions of any Acts for the time being in force for the collection and payment of the public moneys and the audit of the public accounts shall apply to and in respect of the moneys and books of account of the Board.

26. As soon as may be after the thirtieth day of June in each year the Board shall prepare—

Annual report and
financial statement.
Ibid., s. 20.

- I. a report of its proceedings during the financial year then next preceding, including the contracts entered into, the works carried on or completed, and the transactions generally of the Board during the year ; and
- II. a financial statement showing the moneys received and disbursed by the Board during the year, setting forth the matters in respect of which they have been received and the purposes for which they have been disbursed, and showing in regard to each of such matters and purposes the balance of receipts and disbursements brought forward from the previous year and the balances at the end of the financial year dealt with in the statement.

The report and statement shall be laid before both Houses of Parliament in the month of October in each year, if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session thereafter.

27. (1) If any dispute arises or is about to arise between the Board and any officer or department of the Government of the State with respect to—

Disputes.
1781, 1926, s. 25.

- (a) any property, real or personal, vested in the Board :
- (b) any right, interest, title, privilege, obligation, or liability transferred by this Act, or any question whether any such matter or thing is so transferred or not ;
- (c) any power, duty, or function conferred or imposed upon the Board by this Act, or the exercise or discharge of or failure to exercise or discharge the same ; or
- (d) any other matter or thing arising under this Act,

the Governor shall determine such dispute in such manner as he thinks fit.

(2) For the purpose of making any such determination the Governor may appoint any officer to make such investigation and report as the Governor may direct, and the Governor, in making such determination, may act upon such report.

(3) The determination of the Governor shall be final and binding upon all the parties to the dispute and upon all other officers and Departments of the Government of the State.

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PART III.

PART III.

CONSTRUCTION AND MAINTENANCE OF DRAINS.

DIVISION I.

DIVISION I.—CONSTRUCTION OF DRAINS ON PETITION OF LANDHOLDERS.

- Petitions for drain.**
ibid., s. 26. **28.** A petition may be presented to the Board by landholders, requesting that a drain or drains (hereafter in this Division called “the drain”) indicated in the petition be constructed.
- Form of petition.**
ibid., s. 27. **29.** Such petition shall be in the form in the Second Schedule hereto, and each signature thereto shall be witnessed by some person who shall make a declaration before a Justice of the Peace in the form at the end of the said Schedule; and any person wilfully making any false statement in such declaration shall be guilty of a misdemeanour, and shall be liable, on conviction, to imprisonment with hard labour for any term not exceeding two years.
- Preliminary inquiry.**
1781, 1926, s. 28. **30.** The Board shall forthwith upon receiving a petition—
 (a) ascertain what lands will, in its opinion, be benefited by the drain;
 (b) prepare an estimate of the cost of constructing the drain.
- Board's approval.**
ibid., s. 29. **31.** (1) If the Board after due inquiry considers that it is expedient to construct the drain, it may by notice in the *Gazette* declare—
 (a) that it approves of the construction of the drain;
 (b) what lands in its opinion will be benefited by the drain; and
 (c) the estimated cost of constructing the drain.
 (2) The Board's declaration shall be conclusive as to what lands will be benefited by the drain.
- Board to decide whether petitioners are majority of landholders and hold three-fourths in value of benefited lands.**
ibid. s. 30. **32.** (1) Unless within one month of the publication of the Board's declaration in the *Gazette*, a substantial number of the petitioners, by notice in writing received by the Board, withdraw the petition, the Board shall decide whether or not the petitioners are a majority of the landholders of the lands which will be benefited by the drain, and whether or not the value of the lands of which they are the landholders is at least three-fourths of the value of all the lands which will be benefited by the drain. A “substantial number” means a number considered by the Board to be substantial.
 (2) In this section “value” means—
 I. as to lands assessed for the purposes of land tax, the unimproved value of such lands as so assessed;
 II. as to lands not so assessed, the unimproved value of such lands as assessed by the Board.
- (3)** Upon

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(3) Upon deciding as in subsection (1) of this section mentioned, the Board shall publish its decision by notice in the *Gazette*, and such notice shall be conclusive as to the accuracy of such decision.

33. If the Board decides that the petitioners are a majority of the landholders of the lands which will be benefited by the drain, and that the value of the lands of which they are the landholders is at least three-fourths of the value of the lands which will be benefited by the drain, the Board shall, after the publication of its decision in the *Gazette*, proceed with the construction of the drain out of money provided by Parliament for the purpose of constructing drains :

Construction of
drain.
Ibid., s. 31.

Provided that before the construction of any such drain is proceeded with the Board shall supply to one of the petitioners, to be nominated for the purpose by a majority of the petitioners a plan and specification of the proposed works to be undertaken, together with an estimate of the cost thereof :

Provided also that so soon as tenders shall have been received for the proposed works copies of all tenders and the amounts thereof shall be similarly supplied to the person nominated by the petitioners.

If within twenty-one days from the receipt of the tenders by the petitioners' nominee a majority of the petitioners shall signify to the Board that they do not desire the works to be proceeded with, the Board shall not accept any tender for the proposed works. The costs of the preparation of plans and calling for tenders shall be borne by the petitioners, who shall be jointly and severally liable for the amount thereof.

34. The cost of constructing the drain shall be deemed to be an advance by the Board to all the landholders of the lands which will be benefited by the drain, and such advance shall be repaid to the Board by such landholders, with interest thereon at the current rate per centum per annum, in the proportions to be ascertained as hereinafter mentioned.

Cost to be paid by
landholders.
1781, 1926, s. 32.

35. When the construction of the drain is completed the Board shall, by notice in the *Gazette*, notify the date of completion of the drain and the cost of construction thereof, and such notice shall be conclusive as to such matters, notwithstanding that the cost as so notified differs from any previous estimate of the cost.

Final report.

36. (1) The Board shall, within three years after the date of completion of the drain, make a preliminary apportionment of the cost of the construction thereof amongst all the landholders of the lands benefited by the drain, as declared by the Board's declaration.

Preliminary
apportionment of
the cost.
Ibid., s. 34.

(2) The Board shall, by notice published in the *Gazette*, set forth the preliminary apportionment. Such notice may be in the form in the Third Schedule hereto. The *Gazette* containing such notice shall be conclusive as to such apportionment.

(3) Any

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(3) Any apportionment made under this section after the expiration of three years from the date of completion of the drain shall be as valid for all purposes as if it had been made before the expiration of such term: Provided that the Board may, if in its opinion the delay in making the apportionment has resulted in hardship to any landholder thereby affected, postpone for such period as the Board thinks fit the date from which such landholder is to commence payment of the amount of the proportion of the cost of construction apportioned to him.

Objection to the
apportionment
1781, 1926, s. 35.

37. Any landholder may, within two months after the publication of the notice of preliminary apportionment, object to the proportion of the cost apportioned to him by such apportionment. The objection shall be made by notice served on the Board, and may be in the form in the Fourth Schedule hereto.

Determination of
objection.
Ibid., s. 36.

38. (1) Every objection shall be considered by the Board at a time fixed by notice given to the objector, not being less than seven days after the giving of such notice, and at a place fixed by such notice: Provided that the consideration of any objection may be adjourned from time to time and from place to place as the Board deems convenient.

(2) The objector may attend any meeting of the Board held to consider his objection, and may adduce before the Board any relevant evidence.

(3) The Board may make any inquiries it deems necessary, and inform itself in such manner as it deems fit for the purpose of determining the objection, and shall not be bound to observe any rules of evidence or procedure.

(4) The Board shall consider every objection and determine the same in such manner as it deems fair and equitable, and may confirm or increase or decrease the amount of the cost apportioned to the objector, and may, if the amount is confirmed or increased, order the objector to pay the costs occasioned by the objection.

(5) The determination of the Board shall be final, and not subject to any appeal or to be questioned in any way.

Adjustment of
apportionment.
Ibid., s. 37.

39. If upon the consideration of any objection to the preliminary apportionment the amount apportioned to any landholder is altered the Board shall adjust the amounts apportioned to other landholders as may be found necessary.

Final apportion-
ment.
Ibid., s. 38.

40. The Board shall forthwith, after the time for objecting has expired, if no objection is pending, or if any objection is pending, then forthwith after the determination of all objections, make its final apportionment of the cost of the construction of the drain, and fix the yearly instalments to be paid by each landholder to the Board, and the date upon which the first instalment is to be paid.

41. (1) The

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41. (1) The Board shall publish in the *Gazette* a notice setting forth the final apportionment, the yearly instalments, and the date upon which the first instalments are to be paid.

Notice of apportionment.
Ibid., s. 39.

(2) Such notice may be in the form in the Fifth Schedule hereto, and shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

42. (1) The amount of the proportion of the cost of construction apportioned to any landholder shall be a debt due from such landholder to the Board, and shall be a first charge upon the land of such landholder which is benefited by the drain, and shall be paid by such landholder to the Board, with interest on the balance thereof owing for the time being at the current rate in force at the time when the notice of the final apportionment is published in the *Gazette*, in forty-two equal yearly instalments. The amount of the annual instalment for every One Hundred Pounds payable by a landholder in respect of the proportion of the cost of construction apportioned to him shall be fixed by notice published by the Board in the *Gazette* at the time of publication of the notice of the final apportionment.

Repayment of cost of construction.
Ibid., s. 40.

(2) The first of such instalments shall become due on the first day after the expiration of five years from the date of the completion of the drain, and one of such instalments shall fall due on the same day in each year thereafter until the whole debt has been paid: Provided that any landholder may at any time pay the balance of the amount charged on his land, with any interest then due, whereupon his liability and the charge upon his land shall cease.

(3) Interest shall be paid on the amount of any instalment which remains unpaid for more than six months after the same falls due. The interest shall be chargeable from the day upon which the instalment falls due and shall be at the current rate in force at the time when the instalment falls due.

(4) In computing the amounts of the yearly instalments the interest for the first five years shall be added to the amount of the proportion of the cost of construction, but no interest shall be charged upon the interest for such five years.

(5) The charge upon the land may be enforced by the Board as if it were a mortgagee under The Real Property Act, 1886.

43. (1) Where any land charged as in the next preceding section mentioned is subject to a lease to any person other than the landholder of such land, the lessee under that lease shall pay to the landholder during the currency of that lease such proportion of each annual instalment payable by the landholder as may be agreed between them.

Lessees to pay proportion of cost to landholder
1781, 1926, s. 41.

(2) In default of agreement, the amount of the proportion to be paid by the lessee shall be settled by the Board on the application of either the landholder or the lessee.

(3) Such application shall be made by notice given to the other party and the Board.

(4) The

(4) The application shall be heard by the Board at a time fixed by notice given to both parties, not being less than seven days after notice is so given, and at a place fixed by such notice: Provided that the hearing may be adjourned from time to time and from place to place as the Board deems convenient.

(5) The Board may inform itself in such manner as it deems fit for determining the proportion to be paid by the lessee, and shall not be bound to observe any rules of evidence or procedure.

(6) The Board shall determine the matter as it deems fair and equitable, and may order either party to pay the costs of the application, not exceeding Five Pounds.

(7) The determination of the Board shall be final, and not subject to any appeal or to be questioned in any way.

Provision for
apportionment of
cost of drain where
land charged is
subdivided.
1781, 1926, s. 42.

44. (1) Where after notice of the final apportionment any land included in such notice belonging to one and the same landholder is subdivided (whether as the result of a sale or otherwise), and becomes vested in two or more different landholders, the Board shall further apportion between such landholders the amount by such notice apportioned to such landholder in respect of such land, and fix the yearly instalments to be paid by each of such landholders to the Board and the date upon which the first instalment is to be paid: Provided that in making such apportionment the Board shall take into account the total amount of the instalments (if any) already paid by such landholder.

(2) The Board shall publish in the *Gazette* a notice setting forth such apportionment, the yearly instalments, and the date upon which the first instalments are to be paid, and such notice shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

(3) The provisions of this Division relating to payment by landholders of the amount of cost apportioned to them, to the payment of part of that cost by lessees to landholders, and to the recovery of such cost, shall apply, *mutatis mutandis*, to and in respect of any amount apportioned under the authority of this section in the same manner as to an amount apportioned to a landholder in the first instance under this Division.

(4) This section shall apply in the case of any one or more further subdivisions beyond that referred to in subsection (1) hereof.

Recovery by
distress.
Ibid., s. 43.

45. In addition and without prejudice to any other remedy, the Board may recover any instalment due to it from any landholder, which remains unpaid for three months after the same has become due, by distress and sale of any goods and chattels on any land upon which the debt due from the landholder to the Board is charged, or such instalment may be recovered in any Court of competent jurisdiction by action in the name of the Board from the landholder of such land for the time being, and no statute of limitations shall affect any such action.

46. The

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DIVISION I.

46. The Board may, in its discretion, with the approval of the Minister, remit the whole or any part of the amount due by any landholder as his proportion of the cost of the petition drain known as the Symon Petition Drain or as interest on the amount of such proportion.

Power to remit
cost of Symon
Petition Drain.
Ibid., s. 43A.

DIVISION II.—MAINTENANCE OF DRAINS AND THE DRAINAGE
RATE.

DIVISION II.

47. (1) It shall be the duty of the Board to maintain the drains and drainage works at all times in a proper state of efficiency, and from time to time as may be necessary to cleanse and repair them.

Duty of Board to
maintain drains.
1781, 1926, s. 44.

(2) The cost of cleansing and repairing the drains and drainage works, and of maintaining them in a proper state of efficiency and all other expenses connected with the care, control, and management of the drains and drainage works shall be defrayed out of moneys provided by Parliament for the purpose.

(3) The moneys derived from the drainage rate hereinafter mentioned shall be paid to the Treasurer of the State, and form part of the General Revenue thereof, and shall be credited to the repayment of moneys provided by Parliament for the purposes of subsection (2) hereof, and of the moneys paid by the Treasurer to the Public Debt Commission as a sinking fund contribution on the amount of any loan moneys spent on the construction of drains and drainage works in the South-East, not being loan moneys which pursuant to this Act are repayable by landholders.

48. In order to raise an annual sum sufficient to pay--

Drainage rate,
Ibid., s. 46.

(a) the cost of cleansing and repairing the drains and drainage works and maintaining them in a proper state of efficiency ;

(b) the other expenses connected with the care, control, and management of the drains and drainage works,

the Board shall declare and levy an annual rate (hereinafter called " the drainage rate ") as hereinafter mentioned.

49. (1) For the purpose of the drainage rate the Board shall prepare an assessment of the increase in the fee simple value which has accrued to all land within the South-East from the drains and drainage works, showing separately the increase in the fee simple value of the land of each landholder.

Assessment of
capital value of
benefit.

(2) If at the time when the Board makes the assessment under this section it is of opinion that any land within the South-East has derived no benefit from the drains and drainage works it shall not be obliged to include those lands in the assessment; but if at any later time the Board is of opinion that some benefit has accrued to the said land from the said drains and works after the making of the said assessment it may include such land in any subsequent assessment. Every such assessment shall be subject to objection in the same way as an original assessment.

(3) In

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(3) In making any assessment the Board may adopt the report of any person or persons who, in its opinion, is or are competent to assess the said increase, whether such report was prepared before or after the commencement of this Act.

(4) The Board shall publish the assessment in the *Gazette* as soon as practicable after the making thereof.

Appeals against assessments.

50. Any person may appeal against an assessment on any of the grounds following:—

- (i.) that any person shown on the assessment as the landholder of any land is not the landholder of that land or is the landholder of only part thereof:
- (ii.) that the assessed amount of the increase in the value of any land is more than the true amount of such increase in value:
- (iii.) that any land which ought to be included in the assessment is excluded therefrom:
- (iv.) that any land included in the assessment ought to be excluded therefrom.

Appeal to Board in first instance.

51. (1) Every appeal shall be made in the first instance to the Board.

(2) From the decision of the Board on any appeal there shall be a further appeal to the Local Court.

Provisions as to appeals to Board.

52. The following provisions shall apply in relation to appeals to the Board:—

- I. Every appeal to the Board shall be instituted by notice setting forth the grounds of appeal and particulars of all lands affected and the notice shall be given to the Board within one month from the publication in the *Gazette* of the assessment. The notice shall also be given within the period aforesaid to any other person whose land is sought to be included in the assessment:
- II. The Board shall fix a convenient time and place for hearing each appeal and shall give not less than seven days' notice to the appellant and to any other person whose land is sought to be included in the assessment:
- III. No notice of appeal under this section shall be invalid for want of form and it shall be sufficient if such notice clearly and reasonably states the purpose thereof.
- IV. The Board shall determine each appeal in such manner as it thinks just after hearing such witnesses as are called. The Board shall alter the assessment in accordance with any order made by it on such appeal which requires such alteration.
- V. The determination of the Board on appeal shall be subject to a further appeal to the Local Court.

53. (1) Every

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53. (1) Every such further appeal shall be to the Local Court nearest to the land in respect of which the appeal is made, and on the hearing of all appeals the said Local Court shall be constituted by a Special Magistrate.

Institution of
appeals.

(2) Every such appeal shall be instituted by notice setting forth the grounds of appeal and particulars of all lands affected, and the notice shall be given to the Board and the Clerk of the Local Court to which the appeal is made, and to any other respondent within one month from the publication in the *Gazette* of the assessment.

(3) The Local Court shall fix a convenient time and place for hearing each appeal, and shall give not less than seven days' notice to the appellant and the Board of such time and place.

(4) No notice of appeal under this section shall be invalid for want of form, and it shall be sufficient if such notice clearly and reasonably states the purpose thereof.

54. (1) The Court shall determine each appeal in such manner as it thinks just, and may make any order as to the costs of the appeal.

Determination of
appeals.

(2) The determination of the Court shall be final and without appeal.

(3) The Board shall alter the assessment in accordance with any order of the Court requiring such an alteration.

55. (1) The Board may from year to year alter the assessment in respect of any land, and include therein any additional land which has been included in the South-East by proclamation under section 6, and shall give notice of any such alteration or inclusion in the *Gazette*, and the provisions of the foregoing sections relating to objections against the original assessment shall apply with the necessary modifications to objections against any alteration of an assessment, or against the assessment of any additional land.

Alteration of
assessment.

(2) If in any year no notice of any such alteration or inclusion is given as aforesaid, the assessment previously in force shall remain in force without alteration for that year.

56. (1) The Board shall in each year declare on all lands shown in the assessment a drainage rate. The rate shall be of such amount per Pound sterling of the assessed amount of increase in value as the Board estimates will produce the revenue required for the purposes mentioned in section 47.

Amount of rate.

(2) Within fourteen days from the declaration of the rate the Board shall publish in the *Gazette* notice of the amount thereof.

57. If the amount of rates payable under this Division by any person would, apart from this section be less than Five Shillings, the amount so payable shall nevertheless be Five Shillings.

Minimum rate.

Recovery of
rates.

Ibid., s. 59.

58. (1) All drainage rates shall become due and payable when the notice of the amount thereof is published in the *Gazette*; but no rates shall be recoverable from any person until after the expiration of twenty-one days from the time when a notice in writing from an officer of the Board has been given to such person, informing him of the amount of the rates payable by him and in respect of what property the same are payable.

(2) Drainage rates may be recovered from the landholder or the occupier of the land on which they are declared.

Interest on unpaid
rates.

Ibid., s. 59A.

59. (1) If any drainage rates are not paid within three months from the time when they become recoverable, as provided in the last preceding section, a fine of Five Pounds per centum and interest at the current rate from the time when the rates became due and payable until payment thereof shall be added to such rates and shall be payable by and recoverable from the person liable to pay the same. The current rate in this section means the current rate in force when the rates are declared.

(2) The Board may remit the whole or any part of any fine due by any person under this section if it is satisfied that it is desirable to do so in order to prevent undue hardship, or for any other reason which the Board considers adequate.

Provisions for rating
prior to classifica-
tion.

1781, 1926, s. 60.

60. Until drainage rates are declared pursuant to the provisions of this Act, the Board may declare and levy an annual drainage rate in the manner provided by the South-Eastern Drainage Act Amendment Act, 1908, and amendments thereof, and for the purpose of such rates the Board may use any assessment in force under those Acts, and shall have all the powers, rights, and authorities which the South-Eastern Drainage Assessment Board had under the Acts repealed by the South-Eastern Drainage Act, 1926, and all the provisions of those Acts shall apply, *mutatis mutandis*, in respect of the rates so declared.

Limitation of
liability under
preceding section.

61. (1) In this section—

“transition period” means the period between the thirtieth day of June, nineteen hundred and twenty-seven, and the first day of the financial year during which the first annual drainage rate is declared under this Division:

(2) (a) If any person has paid as drainage rates declared during the transition period on any land any money in excess of the amount which he would have been liable to pay on that land if the total proceeds from the drainage rates declared during the transition period had been raised by means of a rate declared on the basis of the increase in fee-simple value of the lands in the South-East from the drains and drainage works as assessed for the purposes of this Division, he shall be entitled to have the amount of the excess credited or repaid to him as mentioned in this section:

(b) If

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(b) If any person has become liable to pay as drainage rates declared during the transition period more than the amount which he would have been liable to pay on the same land on the hypothesis mentioned in paragraph (a), but has in fact paid less than that amount or no money at all, his total liability for drainage rates during the said period shall be limited to the said amount.

(3) If any person who would but for this subsection be entitled to have any money repaid to him owes the Board any money under this Act or any Act repealed by this Act the Board shall retain so much of the money which would but for this subsection be repaid, as is necessary to meet the existing liabilities of the said person to the Board and the balance only, if any, shall be repaid.

62. Drainage rates may be recovered in the manner provided in Division III. of this Part.

Recovery of
drainage rates.
Ibid., s. 61.

DIVISION III.—RECOVERY OF RATES AND INSTALMENTS AND
GENERAL PROVISIONS APPLICABLE TO RATES.

DIVISION III.

63. In this Division the term “rates” includes drainage rates and instalments of the proportions of the cost of the Scheme Drains due by landholders under Part IV. of this Act, and any fine or interest added to such rates or instalments.

Definition.
1781, 1926, s. 62.

64. (1) Rates may be recovered in the name or on behalf of the Board from any person liable to pay them—

Recovery of rates.
Ibid., s. 63.

(a) by action in any Court of competent jurisdiction

(b) at any time within three years after they become due and payable in a summary way before any two or more Justices ; or

(c) by distress, as provided in the next section.

(2) In any proceedings for the recovery of any rates a document purporting to be a certificate under the seal of the Board stating any or all of the following matters, namely :—

(a) that any person is the landholder or occupier of any land :

(b) that any rates are due and owing in respect of any land :

(c) that any fine or interest is due on any arrears of rates in respect of any land,

shall be *prima facie* evidence of the matters so stated.

65. In addition, and without prejudice to any other remedy, the Board may recover any rates which remain unpaid for six months after they have become due, by distress and sale of any goods and chattels on any land in respect of which the rates are due to the Board.

Recovery by
distress.
Ibid., s. 64.

66. All

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Charging of rates
on land.
Ibid., s. 65.

66. All rates shall be a first charge upon the land in respect of which they are due, and such charge may be enforced by the Board as if it were a mortgagee under The Real Property Act, 1886.

Lessees' liability to
landholder for
proportion of rates.
Ibid., s. 66.

67. (1) Where any land on which any rates are payable is subject to a lease to any person other than the landholder of such land, the lessee under such lease shall pay to the landholder during the currency of such lease such proportion of the rates paid by the landholder as may be agreed between them.

(2) In default of agreement, the amount of the proportion to be paid by the lessee shall be settled by the Board on the application of either the landholder or the lessee.

(3) Such application shall be made by notice served on or sent by registered post to the other party and the Board.

(4) The application shall be heard by the Board at a time fixed by notice given to both parties, not being less than seven days after the giving of such notice, and at a place fixed by such notice: Provided that the hearing may be adjourned from time to time and from place to place as the Board deems convenient.

(5) The Board may inform itself in such manner as it deems fit for determining the proportion to be paid by the lessee, and shall not be bound to observe any rules of evidence or procedure.

(6) The Board shall determine the matter as it deems fair and equitable, and may order either party to pay the costs of the application, not exceeding Five Pounds.

(7) The determination of the Board shall be final, and not subject to any appeal or to be questioned in any way.

DIVISION IV.

DIVISION IV.—(GENERAL PROVISIONS RELATING TO THE
CONSTRUCTION AND MAINTENANCE OF DRAINS.

Property in water
in drains.
1781, 1926, s. 68.

68. All water flowing into, or being in any drains or drainage works, shall be and continue the absolute property of the Crown.

General powers of
Board.
Ibid., s. 69.

69. (1) In addition to the powers conferred on the Board by any other provision of this Act the Board, its officers, and servants may, for the purpose of constructing any drains or drainage works authorised to be constructed or of carrying out of its duties or functions under this Act with respect to any drains or drainage works—

(a) enter into and upon any land whatsoever for the purpose of depositing spoil thereon, or of constructing, altering or repairing any drain or drainage work, obtaining or carrying away therefrom materials for constructing, altering, or repairing any drain or drainage work, and for any other purpose connected with the administration of this Act;

(b) extend, lengthen, widen, strengthen, deepen, alter, divert, scour, or cleanse any drains or drainage works;

(c) alter

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- (c) alter or remove any drains or drainage works ;
- (d) dam, bar, and stop up with any weir or dam, any river, pool, stream, or watercourse ;
- (e) make any embankment against any lake, river, stream, or watercourse, and place on any land stones, piles, earth, soil, or other materials for the purposes of the drains or drainage works, or for the more effectual protection or defence of any land, or for the better conveying the waters from any land into the sea, or into any lake, stream, or watercourse, or gap, or outlet ;
- (f) erect any drainage work on any lake, stream, or watercourse for the purpose of keeping back a sufficiency of water for the use of cattle or sheep, or for the irrigation or warping of lands ;
- (g) stop up or divert any road, or remove any bridge, and make any new road or bridge ; and
- (h) do all such things and execute all such works as may be necessary or convenient for the purposes of this Act.

(2) The powers conferred on the Board by this section are in addition to and not in substitution for any powers which the Board might exercise under the Compulsory Acquisition of Land Act, 1925.

70. (1) The Board shall make compensation to all persons for any damage occasioned to them by the exercise of any of the powers aforesaid.

Compensation for damage.
1781, 1926, s. 70.

(2) If the amount of the compensation is not agreed between the owner or occupier and the Board, it shall be determined in the same manner as disputed claims for compensation for land acquired are determined under the Compulsory Acquisition of Land Act, 1925.

71. (1) The Board may, with the consent of the Minister, acquire land by agreement or by compulsory process for the purpose of carrying into execution any of its powers, duties, or functions under this Act.

Power to acquire land and sell lands not required.
Ibid., s. 71.

(2) The Board may, with the consent of the Minister, for such consideration as it may think proper, sell and convey any of the land which it has acquired under the provisions of this Act, and which is no longer required by the Board.

72. The Board may make such roads over any of the lands authorised to be taken as it considers necessary for carrying into effect the purposes of this Act, and for communicating with and maintaining the drains and drainage works, and may repair and fence such roads, and use the same exclusively for the said purposes, or permit any person to make use of the same, upon such terms and conditions as the Board thinks proper.

Power to make roads.
Ibid., s. 72.

73. (1) The

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South-Eastern Drainage Act.—1931.

Power to divert
water from drain.
Ibid., s. 73.

73. (1) The owner or occupier of any land adjacent to any drain or drainage work may, with the written consent of the Board, and for such period and in such manner as it may allow, divert any water in any such drain or drainage work into his land so that such water shall not be permanently retained on such land.

(2) Any person diverting water from any such drain or drainage work into his own land, or any other person's land without such consent, or for a longer period than that allowed, or in any other manner than that allowed as aforesaid shall be guilty of an offence, and shall be liable to a penalty of not less than Two Pounds nor more than Twenty Pounds, and a further penalty not exceeding Two Pounds for every day during which the offence is continued.

Power to impose
fee.
Ibid., s. 74.

74. (1) The Board may impose a fee of the prescribed amount for the use of water diverted from any drain or drainage work, to be estimated either according to the quantity diverted or the time elapsing between such diversion and the redelivery of the water to such drain or drainage work; and such fee may be recovered by distress of the goods and chattels of the person so using the same, or upon complaint before a Special Magistrate or two or more Justices in a summary way.

(2) Fees received under this section shall be paid into the General Revenue of the State.

Liability of
landholder for cost
of fence.
1781, 1926, s. 75.

75. (1) Where any fence or any part of a fence constructed by the Board forms the boundary or part of the boundary of any land (other than land vested in or in possession of the Board), the owner of such land shall be liable to pay to the Board the cost of constructing such fence or part of a fence.

(2) The said cost shall be a debt due to the Board by the owner of the land and may be recovered by the Board by action in any Court of competent jurisdiction or upon complaint before a Special Magistrate or two or more Justices in a summary way.

Penalty for obstruc-
tions or nuisances.
Ibid., s. 76.

76. Any person causing or permitting any obstruction in, or otherwise injuriously affecting any drain or drainage work, or causing any filthy or unwholesome water, or washings of manufactories or mines, or other foul or poisonous liquid to flow into any drain or drainage work without the consent of the Board first had and obtained, shall be guilty of an offence and shall be liable to a penalty not exceeding Twenty Pounds, and a further penalty not exceeding Two Pounds for every day during which the offence is continued.

Penalty for inter-
ference with
regulators, &c.
Ibid., s. 76A.

77. (1) No person shall destroy, damage, or interfere with any channel, apparatus, or other thing appertaining to or forming part of the drains or drainage works.

(2) No person shall without the authority of the Board (the proof of which authority shall be upon the defendant) open, shut, raise, lower, or tamper with any regulator, sluice, gate or weir appertaining to any of the drains or drainage works.

(3) Any

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(3) Any person contravening this section shall be guilty of an offence and shall be liable to a penalty not exceeding Fifty Pounds.

78. Any person who, without the written consent of the Board, cuts down or removes any timber, or excavates or removes gravel, sand, earth, or any other material in, adjacent to, or forming part of any drain, drainage work, or reserve adjoining any drain or drainage work shall be guilty of an offence and shall be liable to a penalty of not less than Two Pounds nor more than Twenty Pounds.

Penalty for removing timber or materials.
Ibid., s. 77.

79. Any person who, without the licence in writing of the Board, or contrary to any direction of the Board—

Penalty for cutting drain through road, etc.
Ibid., s. 78.

- (a) opens or cuts through any bank, roadway, or reserve adjacent to any drain or drainage work, which bank, roadway, or reserve is made out of materials excavated from any such drain ; or
- (b) makes any drain or opening through any roadway or reserve, or portion of any roadway or reserve, at the side of or adjacent to any drain or drainage work,

shall be guilty of an offence and shall be liable to a penalty of not less than Two Pounds nor more than Twenty Pounds.

80. (1) No person shall erect or make any bridge, culvert, or other work over, across, or along any drain or any road or reserve adjoining any drain or drainage work—

Penalty on building unauthorised bridges, &c.
1781, 1926, s. 79.

- (a) without the licence in writing of the Board ; or
- (b) otherwise than in accordance with the terms and conditions of such a licence.

Any person guilty of any contravention of this subsection shall be guilty of an offence and shall be liable to a penalty not exceeding Fifty Pounds.

(2) If any person who has obtained a licence from the Board, as mentioned in subsection (1) of this section, does not complete the bridge, culvert, or other work pursuant to and within the time limited by the licence, or fails to keep such bridge, culvert, or other work in good and substantial repair, the Board may complete or repair the same and recover the cost of so doing from such person upon complaint in a summary way : Provided that no complaint shall be made unless the Board has at least fourteen days previously given notice to such person stating the amount of the said cost and demanding payment thereof.

81. (1) No person shall construct any private drain or drainage works from which water discharges or is likely to discharge whether directly or indirectly into any drain or drainage work—

Licences to construct certain private drains.
Ibid., s. 79A.

- (a) unless he has first obtained a licence from the Board so to do ; or

(b) otherwise

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(b) otherwise than in accordance with the terms and conditions of such a licence.

Any person contravening this subsection shall be guilty of an offence, and shall, in addition to any other liability which he may incur, be liable to a penalty not exceeding Fifty Pounds.

If any drain or drainage work is constructed in contravention of this section, the Board may, by notice in writing, require the person who constructed the drain or drainage work or any other person who has succeeded him in title to any land for the benefit of which the drain or drainage work was constructed to take such steps as the Board thinks proper and as are specified in the notice, to render the drain or drainage work ineffective. If any person fails to comply with any requirement of the notice the Board may itself do the work specified in the notice, and by action in any Court of competent jurisdiction, recover from the said person the cost of so doing.

(2) Any licence granted under this section may authorise the person so licensed to construct, maintain, and use a private drain or private drainage works through or on any land; and any question of compensation between such person and the owners or occupiers of any land for any damage arising from or in connection with the construction, maintenance, and use of such drain or works shall be determined by the Board, whose decision shall be final and not subject to appeal or to be questioned in any way.

(3) If any person who has obtained a licence from the Board to construct any private drain or drainage works does not complete such drain or works in the manner and within the time (if any) mentioned in the licence, the Board may complete the same and recover the cost of so doing from such person on complaint in a summary way.

(4) The person constructing any private drain or drainage works, whether under this Act or the Acts repealed by this Act, and the successors in title of such person shall keep such drain and drainage works clean and in good repair, and if he or they fail to do so the Board may clean or repair the same and recover the cost of so doing from such person or his successors in title on complaint in a summary way.

(5) Any licence granted to any person under any Act repealed by this Act authorising such person to construct any drain or drainage works to connect with any main or district drain shall remain in force as if granted under this section.

(6) If any water discharges directly or indirectly into any drain or drainage work from any private drain or drainage work constructed after the commencement of this Act, and for which a licence has not been obtained under this section, the person who constructed that private drain or drainage work or his successor in title shall be guilty of an offence and liable to a penalty not exceeding Two Pounds for every day on which water discharges as aforesaid.

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- 82.** If the Board is of opinion that, for the purpose of carrying out any drainage works in the South-East it is necessary to rebuild or alter any existing bridge, culvert, or archway over any drain subject to its control, it shall be lawful for the Board to take down, remove, or alter such bridge, culvert, or archway: Provided that the Board shall (when in its opinion necessary) construct a temporary bridge, culvert, or archway in the place of that so to be taken down, removed, or altered, and support and maintain the same until the completion of the works necessary for the restoration to the public use of such bridge, culvert, or archway.
- Power to remove or alter any insufficient bridges, etc.
1781, 1926, s. 80.
- 83.** Where any land in the South-East is intersected by any drain whenever constructed other than a petition drain, or separated from a road by any such drain, the Board may, in its discretion, and out of moneys voted by Parliament for the purpose, construct a bridge over that drain for the accommodation of the occupier of the land.
- Power of Board to construct bridges.
- 84.** The Board by any of its officers or servants, or by any other person, may impound any horses, bullocks, cows, sheep, goats, pigs, and any other cattle, great or small, trespassing in or upon any drains or drainage works, or on any roadway or reserve adjacent thereto, and such animals, or any of them, shall not be released until full payment of the poundage fees and damages fixed by the impounding law for the time being in existence, and by any scale made pursuant to this Act.
- Animals trespassing on drains, &c.
Ibid., s. 81.
- 85.** In addition to all fines, penalties, fees, and damages by this Act imposed or authorised upon the breach of any of the provisions thereof, the Board may sue for and recover any special or other damages for the breach of any of such provisions, or for any injury done to any drain or drainage works under its control.
- Board may recover special damages.
Ibid., s. 82.
- 86.** Any person who wilfully hinders or prevents any other person from carrying out or performing any work which he is authorised or directed by the Board to do, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding Twenty Pounds.
- Penalty for hindering work.
1781, 1926, s. 83.
- 87.** If the person legally liable neglects to perform any act required by or pursuant to this Division to be done the Board may perform the same, after giving to such person or leaving at his last or usual place of abode or upon the land in respect of which such act is required to be done, fourteen days' notice in writing to do such act, and after the doing of such act the Board may recover the costs, charges, and expenses thereof from the person so in default by action in a Court of competent jurisdiction or upon complaint in a summary way.
- Board may do certain acts, and charge to defaulting person.
Ibid., s. 84.
- 88.** (1) Where any private drain is connected with or discharges directly or indirectly into any of the drains or drainage works, and the whole or any part of such private drain passes through or forms
- Maintenance of private drains.
Ibid., s. 85.

the boundary or part of the boundary of any land, the occupier of such land shall be liable to maintain such private drain in a state of proper efficiency and repair and shall keep such drain clear of all debris and other impediments.

(2) Any person failing to comply with this section shall be guilty of an offence and liable to a penalty not exceeding Fifty Pounds.

(3) Where any occupier of land incurs expense in complying with this section, he may recover a proportion (not exceeding one-half) of the expense so incurred in connection with such drain from the occupier of any other land benefited by the said drain. The proportion to be so recovered shall be in direct ratio to the benefit derived from the said drain by the said other land as compared with the benefit derived by the first mentioned land from the said drain. If the occupiers are unable to agree upon the proportion to be recovered from the occupier of the said other land, the decision of the Board as to the value of the benefits derived by the respective lands shall be final and conclusive for all purposes.

(4) "Private drain" means any drain not being a drain within the meaning of that term as defined in section 6 of this Act.

PART IV.

PART IV.

PROVISIONS RELATING TO PAYMENT OF PART OF
THE COST OF THE SCHEME DRAINS.

Exclusion of town
lands from this Part.
Ibid., s. 86.

89. In this Part "land" does not include any land situated within the boundary of any municipality, town, or township.

"Value of the benefit" means the amount of money representing the increase in the value of the fee simple of any land.

Area liable for cost
of scheme drains.
Ibid., s. 87.

90. Notwithstanding anything to the contrary in any other Act, a part of the cost of the construction of the scheme drains, calculated as provided in this Part and hereinafter called the "prescribed amount" shall be paid in accordance with this Part by the landholders for the time being of land within "the Drainage District" as defined in section 3 of the South-Eastern Drainage Scheme Act, 1908, hereinafter called "the Drainage District").

Mode of computing
amount of
liability of land-
holders.

91. The prescribed amount shall be ascertained as follows:—

The Board shall assess the total value of the benefit accruing to the lands in the Drainage District from the scheme drains.

If the total value of the benefit as so assessed after the consideration and determination of all objections under this Part is less than One Hundred and Fifty Thousand Pounds the prescribed amount shall be the said total value of the benefit.

If

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If the total value of the benefit as so assessed after the consideration and determination of all objections under this Part exceeds One Hundred and Fifty Thousand Pounds the prescribed amount shall be One Hundred and Fifty Thousand Pounds.

92. (1) Forthwith after the commencement of this Act the Board shall, for the purpose of apportioning the prescribed amount between the landholders in the drainage district, prepare an assessment of the value of the benefit which has accrued to all the lands within the drainage district from the scheme drains, showing separately the increase in the fee simple value of the land of each landholder.

Assessment of capital value of benefit.

(2) In making the assessment the Board may adopt the report of any person or persons who, in its opinion, is or are fitted to assess the said value, whether such report was prepared before or after the commencement of this Act.

(3) The Board shall publish the assessment in the *Gazette* as soon as practicable after the making thereof.

93. Any person may appeal against an assessment on any of the grounds following:—

Appeals against assessments for cost of Scheme Drains.

- (i.) that any person shown on the assessment as the landholder of any land is not the landholder of that land or is the landholder of only part thereof:
- (ii.) that the assessed amount of the increase in the value of any land is more than the true amount of such increase in value:
- (iii.) that any land which ought to be included in the assessment is excluded therefrom:
- (iv.) that any land included in the assessment ought to be excluded therefrom.

94. (1) Every appeal shall be made in the first instance to the Board.

Appeal to Board in first instance.

(2) From the decision of the Board on any appeal there shall be a further appeal to the Local Court.

95. The following provisions shall apply in relation to appeals to the Board:—

Provisions as to appeals to Board.

- I. Every appeal to the Board shall be instituted by notice setting forth the grounds of appeal and particulars of all lands affected, and the notice shall be given to the Board within one month from the publication in the *Gazette* of the assessment. The notice shall also be given within the period aforesaid to any other person whose land is sought to be included in the assessment:

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- ii. The Board shall fix a convenient time and place for hearing each appeal, and shall give not less than seven days' notice to the appellant and to any other person whose land is sought to be included in the assessment :
- iii. No notice of appeal under this section shall be invalid for want of form, and it shall be sufficient if such notice clearly and reasonably states the purpose thereof :
- iv. The Board shall determine each appeal in such manner as it thinks just after hearing such witnesses as are called. The Board shall alter the assessment in accordance with any order made by it on such appeal which requires such alteration :
- v. The determination of the Board on appeal shall be subject to a further appeal to the Local Court.

Institution of appeals.

96. (1) Every such further appeal shall be to the Local Court held nearest to the land in respect of which the appeal is made, and on the hearing of all appeals the said Local Court shall be constituted by a Special Magistrate.

(2) Every such appeal shall be instituted by notice setting forth the grounds of appeal and particulars of all lands affected, and the notice shall be given to the Board and the Clerk of the Local Court to which the appeal is made, and to any other respondent, within one month from the publication in the *Gazette* of the assessment.

(3) The Local Court shall fix a convenient time and place for hearing each appeal and shall give not less than seven days' notice to the appellant and the Board of such time and place.

(4) No notice of appeal under this section shall be invalid for want of form and it shall be sufficient if such notice clearly and reasonably states the purpose thereof.

Determination of appeals.

97. (1) The Court shall determine each appeal in such manner as it thinks just and may make any order as to the costs of the appeal.

(2) The determination of the Court shall be final and without appeal.

(3) The Board shall alter the assessment in accordance with any order of the Court requiring such an alteration.

Apportionment of prescribed amount between landholders.

98. (1) When the prescribed amount has been ascertained it shall be apportioned between all the landholders of land situated within the drainage district in the ratio which the assessed value of the benefit accruing to the land of each landholder bears to the total assessed value of the benefit accruing to the lands of all the landholders in the drainage district.

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(2) The amount apportioned to each landholder shall be paid to the Board with simple interest on the balance thereof for the time being owing at the rate of four per centum per annum in forty-two equal annual instalments. The interest shall be computed from the first day of July next after the publication in the *Gazette* of the amounts due by each landholder.

99. (1) The amount of each yearly instalment payable in respect of every One Hundred Pounds due by any landholder shall be calculated by the Board. Amount of instalments.

(2) In each yearly instalment there shall be included in addition the following sum, namely :—

One forty-second part of the amount representing simple interest on the amount apportioned to the landholder at the rate of four per centum per annum for the period from the first day of July nineteen hundred and seventeen until the first day of July next after the publication in the *Gazette* of the notice of the amount due by the landholder.

The said sum shall for all purposes be deemed part of the instalment.

100. (1) The Board shall as early as practicable after the apportionment has been made, publish in the *Gazette* a notice setting forth the total amount apportioned to each landholder, the amount of the annual instalment payable by him, and the additional amount payable pursuant to the last preceding section. Notice of amounts due by landholders.

(2) The notice shall be conclusive evidence of the amounts payable by each landholder.

101. (1) The first instalment shall become due on the first day of July next after the publication in the *Gazette* of the amount due by each landholder, and thereafter each instalment shall become due on the first day of July in each year : Provided that any landholder may at any time pay the balance due on his land with any interest due, whereupon his liability and the charge on his land shall cease. Time of payment of instalments.

(2) Interest at the current rate shall be paid on the amount of any instalment which remains unpaid for more than six months after it falls due. The interest shall be chargeable as from the day when the instalment falls due. In this section the current rate means the current rate in force when the instalment becomes due.

102. (1) If after the Board has published in the *Gazette* the notice of the amount due by each landholder, any land in respect of which the amount is due is subdivided, whether as the result of a sale or otherwise, and becomes vested in two or more different landholders, the Board shall apportion between such landholders the amount payable in respect of each part of the land and fix the amount to be paid by each of such landholders to the Board, and the date as from which the amounts are to be paid. Apportionment of liability when land subdivided. 1781, 1926, s. 45.

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(2) The Board shall publish in the *Gazette* a notice setting forth such apportionment, the amounts payable by each landholder, and the date as from which those amounts are to be paid, and such notice shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

(3) The provisions of this Act relating to payment of rates by landholders, to the liability of lessees to repay to landholders portion of the rates due in respect of leased land, and to the recovery of rates shall apply, *mutatis mutandis*, to and in respect of any amounts apportioned under the authority of this section in the same manner as they apply to the rates payable before the apportionment.

(4) This section shall apply in the case of any one or more further subdivisions beyond that referred to in subsection (1) hereof.

Appropriation of instalments already paid to payment of instalments under the Act.

Ibid., s. 98.

103. (1) Where a landholder has before the commencement of this Act paid any money on account of instalments due under the South-Eastern Drainage Scheme Act, 1908, and the Acts incorporated therewith, the Board may, in its discretion, and in such manner as it deems just, appropriate the money to the payment of any moneys due or accruing due to the Board under this Act or any Act repealed by this Act.

(2) If no such moneys are due or accruing due to the Board it shall repay to the landholder the amount of the said instalments.

(3) The Board shall credit each landholder who has paid any such moneys with simple interest thereon at the rate of four per centum per annum from the time of the payment of each instalment of such money until the time of the appropriation thereof to the payment of moneys due or accruing due by the landholder to the Board, or, as the case may be, until repayment.

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MISCELLANEOUS PROVISIONS.

Summary procedure for offences. 1781, 1926, s. 99.
Current rate of interest.

104. All offences against this Act shall be disposed of summarily.

105. The Treasurer may, by notice in the *Gazette*, certify the rate of interest payable on loans raised by or on behalf of the Government at the time of the notice, and may by subsequent notice alter the rate so certified. When such a notice has been published the rate of interest therein mentioned shall be deemed to be the current rate of interest for the purposes of this Act until altered by a subsequent notice.

Regulations.
Ibid., s. 100.

106. (1) The Governor may make all such regulations as are necessary or convenient for carrying this Act into operation and without limiting the generality of this provision for all or any of the following purposes :—

(a) to ensure the proper maintenance and protection of the drains and drainage works :

(b) to

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- (b) to ensure the proper maintenance, cleanliness, and freedom from obstruction of any private drains which discharge into the drains directly or indirectly :
- (c) for regulating the manner, times, and quantities in which water may be diverted from any drain or drainage work, and the person by whom and purposes for which water may be so diverted and the fees payable therefor :
- (d) for fixing the poundage fees payable by the owners of animals trespassing on the drains or drainage works or any land owned by or under the control of the Board :
- (e) prescribing forms to be used for the purposes of this Act, and modifying any forms contained in any Schedule to this Act.

(2) Any regulation made under this section may fix penalties not exceeding Fifty Pounds for breach of the same or any other regulation.

107. (1) No person holding a lease of Crown lands with a right of purchase shall be entitled to complete the purchase unless he pays to the Commissioner of Crown Lands all amounts, together with simple interest thereon at Four Pounds per centum per annum, paid during the term of the said lease by the Commissioner of Crown Lands in respect of the said land under Part IV. of the South-Eastern Drainage Act Amendment Act, 1908, or under the South-Eastern Drainage Scheme Acts, 1908 and 1910, or under Division I. of Part III. or under Part IV. of this Act.

Rights of Commissioner of Crown Lands in respect of right of purchase leases.

Ibid., s. 101.

Any such person shall also be liable to pay to the said Commissioner all amounts which the Commissioner is called upon to pay under the said Acts or Parts of Acts after the commencement of this Act :

Provided that no person shall be liable to pay to the Commissioner under this section any moneys which the Land Board certifies were included in the price of the land.

(2) If the said lease is a renewed lease pursuant to powers given by a prior lease with a right of purchase and a right of renewal, then the term of the lease mentioned in subsection (1) hereof shall, for the purposes of that subsection, be the total of the terms of the renewed lease and of the prior lease.

108. (1) No action or other proceedings shall be brought against the Board, the Minister, the Crown, or any employee of the Board, the Minister, or the Crown for any injury happening by reason of the overflowing of any drain or drainage work—

Liability of Board.

- (a) unless the injury arises through neglect to keep the drain or drainage work in repair ; and

(b) unless

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(b) unless the occupier or owner of the land or property injured had given written notice to the Board warning it of the probability of the injury and the Board neglected within a reasonable time thereafter to make any reasonable repairs to the drain or drainage work.

(2) No action or other proceedings shall be brought against the Board, the Minister, the Crown, or any employee of the Board, the Minister, or the Crown on the ground that the flow of water from, to, or through any land has been increased or diminished or altered in any way whatever by reason of any drain or drainage work.

Notices and
demands, how
served.

1781, 1920, s. 102.

109. The following provisions shall apply as to every notice required by this Act to be given to any person :—

- (1) Such notice shall be addressed to such person :
- (2) Such notice shall be deemed duly served or given if the same has been—
 - (a) given to such person personally ;
 - (b) left at his usual or last known place of abode ; or
 - (c) sent by post to such place of abode.
- (3) Any notice required to be given to the Board shall be sent by post or delivered to the Board at its office.
- (4) Where there is more than one landholder or occupier of the same land, and this Act requires notice to be given to the landholder or occupier of such land, service upon any one of them in manner aforesaid shall be deemed service upon all.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

A. HORE-RUTHVEN, Governor.

South-Eastern Drainage Act.—1931.

SCHEDULES.

 THE FIRST SCHEDULE.

“South-Eastern Drainage Act, 1931.”

Portion of the County of Cardwell bounded as follows :—

Commencing at the north-west corner of the Hundred of Duffield ; thence north-westerly along the coastline forming the western boundary of the Hundred of Neville to a point in line with the north boundary of block C, Hundred Neville ; thence east to the north-west corner of block C and along the north boundary of that block to the eastern boundary of the Hundred of Neville ; thence continuing east, in the same straight line, for a distance of eleven miles ; thence south to a point on the north boundary of the Hundred of Landseer, distant 174 chains 18 links east of the north-west corner of that hundred ; thence west along the north boundaries of the Hundreds of Landseer and Duffield to the point of commencement.

Portion of the Hundred of Rivoli Bay bounded as follows ;—

Commencing at the north-western corner of the Hundred of Rivoli Bay ; thence east along the north boundary of the Hundred of Rivoli Bay to the north-east corner of that Hundred ; thence south along the east boundary of the Hundred of Rivoli Bay to the north corner of section 17N ; thence south-westerly along the north-western boundaries of sections 17N, 17S, 18, 19, 20, 21, 41, 117, 118, 125, and 126 to Mount Pisgah Trigonometrical Station at the north-western corner of the last mentioned section ; thence along the boundary of the District of the District Council of Millicent to the coastline forming the south-western boundary of the Hundred of Rivoli Bay ; thence along that boundary to the point of commencement.

Portion of the Hundred of Mount Muirhead bounded as follows :—

Commencing at the north-east corner of the hundred of Mount Muirhead ; thence south along the east boundary of that Hundred to the south corner of section 209 ; thence north-westerly along the south-western boundaries of sections 209, 211, 212, Stone Reserve, sections 218 and 292 to the north boundary of the Hundred of Mount Muirhead ; thence east along that boundary to the point of commencement.

 THE SECOND SCHEDULE.

“South-Eastern Drainage Act, 1931.”

Form of Petition to Construct Drain.

To the South-Eastern Drainage Board, Adelaide.

We, the undersigned, being a majority of landholders, and representing three-fourths in value of the land to be improved by the construction of the drain hereinafter mentioned, hereby request you to construct the drain following, namely [*describe drain.*]

The following are the lands which will be benefited by such drain [*here set out sections or blocks and hundreds*].

And we each undertake to pay our proportion of the cost of the construction of such drain at the times and in the manner provided by the “South-Eastern Drainage Act, 1931.”

The

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The full names, addresses and occupations of each of us, and particulars of the lands to be benefited by the drain of which we are landholders, are set out below :—

Christian and Surname in full.	Address.	Occupation.	Particulars of Land, giving Section Number and Hundred.	Signature.	Signature of Witness.

Dated the.....day of.....19....

Declaration by Witness.

I solemnly and sincerely declare that the signatures to the above petition, opposite to which my name is signed, are the genuine signatures of the persons whose signatures they purport to be.

[Signature of Witness].....

Declared before me at.....this.....day of
....., 19....

.....*Justice of the Peace.*

THE THIRD SCHEDULE.

“South-Eastern Drainage Act, 1931.”

Notice of Apportionment.

The South-Eastern Drainage Board has made a preliminary apportionment of the cost of construction of [*describe drain*] amongst the landholders of the lands benefited by such drain.

Name of Landholder.	Section or Block and Hundred.	Amount of Apportionment.
John Smith	94, Grey.	£ s. d. 25 0 0
William Jones	110, Grey.	50 0 0

Dated the.....day of....., 19....
.....
..... } Members of the
..... } South-Eastern Drainage
..... } Board.

THE FOURTH SCHEDULE.

“South-Eastern Drainage Act, 1931.”

Notice of Objection.

To the South-Eastern Drainage Board, Adelaide.

Take notice that I object to the amount of the cost of [*here describe the drain by a name it is known by, or otherwise shortly and sufficient to identify it*] apportioned to me by the preliminary apportionment of the South-Eastern Drainage Board, on the ground that such amount is too much.

Dated the.....day of....., 19....

[Signature of objector].....

[Address and occupation]

THE

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THE FIFTH SCHEDULE.

“South-Eastern Drainage Act, 1931.”

Notice of final apportionment of the cost of constructing the [describe drain].

Name of Landholder.	Section or Block and Hundred.	Proportion of Cost to be borne by Landholder.	Interest for Five Years as per section 42	Amount of Annual Instalments to be paid by each Landholder.	Date when First Instalment becomes Due.
		£ s. d.		£ s. d.	
John Smith	94, Grey.	—	—	—	June 1st, 19....
William Jones	110, Grey.	—	—	—	June 1st, 19....

Dated the.....day of....., 19....

..... }
 } Members of the
 } South-Eastern Drainage
 } Board.