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c 129 Water Privileges Act

Ontario

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CHAPTER 129.

An Act respecting Water Privileges.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Water Privileges Act*.
1 Geo. V. c. 29, s. 1.

Meaning of "occupied water privilege," etc.

2. In this Act "Occupied Water Privilege" shall mean a mill privilege, or water power, which has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction.
1 Geo. V. c. 29, s. 2.

Protection of occupied water privilege.

3. Subject to the provisions of section 8 an occupied water privilege shall not be in any manner interfered with or encroached upon under the authority of this Act without the consent of the owner. 1 Geo. V. c. 29, s. 3.

Right of owner of water privilege to enter on and examine and survey lands.

4.—(1) A person desiring to use or improve a water privilege, of which or a part of which he is the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes by erecting a dam and creating a pond of water, increasing the head of water in any existing pond or extending the area thereof, diverting the waters of any stream, pond or lake into any other channel, constructing any raceway or other erection or work which he may require in connection with the improvement and use of the privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection or work, or any part thereof, shall have the right to enter upon any land which he may deem necessary to be examined and to make an examination and survey thereof, doing no unnecessary damage and making compensation for the actual damage done.

And after order by Judge to acquire lands for improving water privileges.

(2) If, upon an application to a Judge of the County or District Court, as hereinafter provided, such person obtains authority he may take, acquire, hold and use such portions of the land so examined or such rights over or in respect thereof as the Judge may deem necessary for the completion, improvement or maintenance of the water privilege and works in connection therewith. 1 Geo. V. c. 29, s. 4.

5.—(1) A person desiring to exercise the powers hereinbefore mentioned, or any of them, shall cause:—

Proceedings for obtaining the powers given by this Act.

(a) surveys and levels to be made and taken of the land sought to be taken, used or otherwise affected, and a map or plan thereof to be prepared;

(b) a statement to be prepared giving

(i) a general description of the land to be taken and of the powers intended to be exercised with regard to any land, describing them,

(ii) the names of the owners and occupiers of the land, so far as they can be ascertained, and

(iii) everything necessary for the right understanding of the map or plan, including a registrar's certified abstract of the titles to all the land to be affected by the application;

(c) the map or plan and the statement to be filed in the office of the clerk of the County or District Court of the county or district wherein the land or part thereof is situate.

(2) He may then apply to the Judge of such County or District Court for an order empowering him to exercise the powers or such of them as he may desire. 1 Geo. V. c. 29, s. 5.

Application to Judge.

6. In addition to any other notice which the Judge may direct to be given public notice of the application stating the time and place when and where the same is to be heard, shall be inserted for such period as the Judge may direct in a newspaper published in the county or district or one of the counties or districts where the proposed works are to be constructed or any of the land affected is situate. 1 Geo. V. c. 29, s. 6.

Public notice of application.

7. If the Judge is of the opinion that the allowance of the application in whole or in part is in the public interest and is proper and just under all the circumstances of the case he may make an order empowering the applicant to exercise such of the powers as the Judge may deem expedient, for such time and on such terms and conditions as he may determine, and the land affected shall be described in the order. 1 Geo. V. c. 29, s. 7.

Order when deemed proper and just.

8. Where evidence is produced which satisfies the Judge that the owner of a water privilege which has been but is not then in use for any of the purposes mentioned in sub-

Order as to privilege not in actual use.

section 1 of section 4 is holding the same with the intention of again using it for mechanical, manufacturing, milling or hydraulic purposes the Judge may make an order fixing the time within which the necessary works for the actual use of such water privilege shall be constructed and actually used, and, unless such evidence is produced or the terms of such order are complied with, the water privilege shall not be deemed to be an occupied water privilege within the meaning of this Act. 1 Geo. V. c. 29, s. 8.

The case of two claiming the powers under this Act.

9. Where two or more persons claim to exercise the powers conferred by this Act in respect of the same water privilege, or any part thereof, the Judge may impose such terms as he may deem just, and may also limit a time within which the person whose application he allows shall construct the necessary works and actually use such water privilege. 1 Geo. V. c. 29, s. 9.

Limit of size of ponds.

10. No pond shall be authorized to be made or enlarged so as to exceed twenty acres in extent unless the Judge for special reasons otherwise directs. 1 Geo. V. c. 29, s. 10.

What to be stated in order.

11.—(1) The Judge shall in the order state the height to which the water may be raised and fix the extent of the pond.

Compensation for injury.

(2) The Judge shall also assess the sum to be paid as the value of the land to be taken or used or of the powers to be exercised, and the damages, if any, to be paid as compensation by the applicant for any injury which may be occasioned by the proposed works, and may make such order as to costs as he may deem just.

Costs.

Scale and taxation.

(3) The costs shall be the same as in ordinary proceedings in the County Court and shall be taxed by the clerk. 1 Geo. V. c. 29, s. 11.

Payment of amount awarded.

12.—(1) The sums so assessed and the costs shall be paid to the persons entitled thereto, or into the Supreme Court, as the Judge may direct, before the powers or any of them are exercised and within sixty days after the order is made.

Enforcing or setting aside order. Rev. Stat. c. 79.

(2) If the same are not so paid the order may be enforced under *The Judges' Orders Enforcement Act*, or, at the option of any of the persons entitled to receive a sum so assessed, may, on application to the Judge, be set aside and vacated as to him, and in such case the Judge may make such order as to the costs of the proceedings and of the application as he may deem just. 1 Geo. V. c. 29, s. 12.

Conveyance of the land.

13. Upon the payment of the sums assessed and costs the applicant shall be entitled to a conveyance, to be settled by the Judge in case of dispute, of the land or rights mentioned in the order in respect of which payment is so made, and

shall be further entitled to have and exercise such of the powers mentioned in section 4 as he is authorized by the order to exercise. 1 Geo. V. c. 29, s. 13.

14. For the purpose of registration the order shall be deemed a judgment of the court to which the Judge belongs. 1 Geo. V. c. 29, s. 14. Registration of Judge's order.

15. The Judge shall have all the powers possessed by him or by a County or District Court in an action. 1 Geo. V. c. 29, s. 15. Judge's powers.

16. The Judge shall be entitled for his services to the like fees as are allowed to professional arbitrators. 1 Geo. V. c. 29, s. 16. Judge's fees.

17.—(1) By leave of a Judge of the Supreme Court an appeal shall lie from the final order of the Judge on any application under this Act to a Divisional Court. Appeal from County Judge.

(2) On such appeal the decision of the Judge upon questions of fact and all other questions shall be open to review. Review of decision.

(3) The application for leave to appeal shall be made within ten days from the day on which the order appealed from is made, or within such further time as a Judge of the Supreme Court may allow. Application for leave to appeal.

(4) The Judge to whom the application is made shall determine the time within which the appeal shall be set down to be heard, the persons upon whom notice of the appeal shall be served and all such other matters as he may deem necessary for the most speedy and least expensive determination of the appeal. Terms.

(5) If the appeal is not set down to be heard within the time limited, or if any other condition imposed is not complied with, the appeal shall, unless otherwise ordered by a Judge of the Supreme Court, be deemed to have been abandoned. Effect of non-compliance with conditions of appeal.

(6) The practice and procedure upon the appeal, except so far as is herein, or by the Judge to whom the application for leave is made, otherwise provided, shall be the same as upon an appeal from a County Court. 1 Geo. V. c. 29, s. 17. Practice on appeal.

18. No work shall be constructed under the authority of this Act in contravention of the provisions of *The Rivers and Streams Act*. 1 Geo. V. c. 29, s. 18. Effect of Rev. Stat. c. 139.