

Drainage Act [Cap 143]

LAWS OF FIJI

[1985 Edition]

CHAPTER 143

DRAINAGE

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[12 August 1961]

AN ACT TO PROVIDE FOR THE DECLARATION OF DRAINAGE TO AUTHORISE THE EXECUTION OF DRAINAGE WORKS AND THE ESTABLISHMENT OF DRAINAGE BOARDS AND TO DEFINE THEIR DUTIES AND PRESCRIBE THEIR POWERS, AND FOR PURPOSES CONNECTED WITH THE MATTERS AFORESAID

Short title

1. This Act may be cited as the Drainage Act.

Interpretation

2. In this Act, unless the context otherwise requires-

"Board" means a Drainage Board constituted under section 4;

"Controlling Authority" means the Land Conservation Board constituted under the Land Conservation and Improvement Act;

(Cap. 141.)

"drainage area" means any portion of land declared a drain under the provisions of this Act;

"drainage works"* means any works for the purpose of draining land or of preventing or mitigating flooding or erosion to which land is subject, and includes-

(a) the construction, cleansing, scouring, deepening, widening, straightening or diverting of any watercourse or outfall of water;

(b) the construction, installation, alteration or repair of any pump, pump machinery or pump house;

(c) the removal of any obstruction, natural or artificial, in any watercourse;

(d) the construction, repair, raising, lowering, widening, strengthening, altering or removal of any embankment, dam barrier, sluice, weir, wall, bridge, culvert or groyne or of any structure or erection for the purpose of defence against water; and

(e) the construction, maintenance, improvement, alteration and removal of fencing round drainage works;

*The words added to this definition by Act No. 13 of 1976, s. 2, are incorporated in the Drainage Act as section 3A.

"land" includes land covered by water;

"lease" includes a sublease and "lessee" includes a sublessee;

"owner" means the registered proprietor and, in the case of land registered in the Register of Native Lands, means the native owners and, in the case of Crown land, means the Director of Lands and Surveyor General†, and includes any person who has a right to, or licence or concession over, or permission to occupy, any land:

Provided that, in the case of land held under a registered lease or over which any person has any right, licence, concession or permission as hereinbefore specified, "owner" shall include the registered lessee during the term of such registered lease or the person having such right, licence, concession or permission;

† See Legal Notice No. 60 of 1978.

"public drain" means any watercourse serving land of more than one owner:
Provided that, in section 22, "public drain" shall be interpreted in the same manner as in the
Local Government Act;

(Cap. 125.)

"rateable area" means the area of the rateable land of an owner;

"rateable land" means land liable to be rated for drainage rates under this Act, whether or not
such land is actually so rated;

"watercourse" includes any estuary, river, stream, ditch, drain (whether open or closed), cut,
culvert, dyke or sluice.

(Amended by Act 39 of 1973, s. 2; 13 of 1976, s.2.)

Drainage areas

3.-(1) Where the Controlling Authority considers it desirable that any area of land should be a
drainage area, it may, with the prior consent of the Minister, give notice in the Gazette and in
Na Mata, and in such other manner as it considers best calculated to bring it to the attention of
persons living in the area, of its intention to declare the said land to be a drainage area.

(Amended by Ordinance 37 of 1966, s.93; Legal Notice 112 of 1970.)

(2) Such notice shall specify-

(a) the boundaries of the area to be affected;

(b) the general nature of drainage works which it is proposed to carry out in the area; and

(c) a date, not being less than 2 months after the publication of the later of such notices in the
Gazette and in *Na Mata*, within which objection may be made.

(Amended by Ordinance 37 of 1966, s. 93.)

(3) Within 2 weeks of the publication of the later of the 2 notices, copies of such notices in the
Gazette and in *Na Mata* together with a plan of the land shall be posted at the offices of-

(a) the nearest district officer of the Division in which the drainage area is proposed to be
situated; and

(b) the Controlling Authority. (Amended by Ordinance 37 of 1966, s. 93.)

(4) Any owner of land in the area in respect of which a notice is published under subsection
(1) may, within the time specified in the notice, object in writing to the Controlling Authority
against such declaration, stating in his objection the grounds thereof.

(5) The Controlling Authority shall-

(a) hear all persons submitting objections as aforesaid who wish to be heard;

- (b) consider all objections submitted within the specified time limit; and
- (c) give its decision thereon.

(6) Any objector aggrieved by a decision of the Controlling Authority may, within 30 days of notification thereof, appeal from such decision to the Minister whose decision on the matter at issue shall be final. *(Amended by Legal Notice 112 of 1970.)*

(7) Where-

- (a) no objection is received within the specified time for making objection; or
- (b) any objection has been made and decided by the Controlling Authority or, on appeal, by the Minister,

the Controlling Authority may, by notice in the manner provided in subsection (1), and in accordance with any decisions on objections, declare the whole or any part of the land described in the notice referred to in subsection (1) to be a drainage area.

(Amended by Legal Notice 112 of 1970.)

(8) The Controlling Authority shall, within 14 days of such declaration, lodge in the office of the Department of Lands and Survey a certified true copy of the plan of any area declared a drainage area.

(9) The Controlling Authority may, with the prior approval of the Minister-

- (a) vary the boundaries of any drainage area; or
- (b) declare the whole or any part of a drainage area to be no longer a drainage area:

Provided that, if any variation involves the inclusion within the boundaries of a drainage area of land which was not previously included in that drainage area, the procedure prescribed in subsections (1) to (9) shall be followed. *(Amended by Legal Notice 112 of 1970.)*

(10) Whenever it appears likely to the Controlling Authority that it may be desirable for any area of land to be declared a drainage area under the provisions of this section, it shall be lawful for any member of the Controlling Authority or any person duly authorised by the Controlling Authority, to do any of the following things:

- (a) to enter upon and survey and take levels of any land in such area;
- (b) to dig and bore in and under the ground;
- (c) to do all other acts necessary to ascertain whether any and, if so, what drainage measures are desirable;
- (d) to clear, set out and mark the boundaries of any areas proposed to be included in a drainage area and the intended line of any drainage works proposed to be carried out thereon:

Provided that-

- (i) no person shall enter any land within the curtilage of a dwelling house without first informing the occupier of his intention to do so;
- (ii) as soon as conveniently may be after entry, the Controlling Authority shall pay for all damage done and, in case of dispute as to the amount to be paid, either the Controlling Authority or the person claiming compensation may refer such dispute to the Commissioner of the Division in which the land is situated, whose decision shall be subject to an appeal to the Supreme Court.
- (Amended by Act 13 of 1976, s. 3.)*

(11) Any expenses lawfully incurred by the Controlling Authority under the provisions of this section shall be paid out of the Consolidated Fund.

Drainage works in drainage areas

3A.* Any drainage works may-

- (a) affect and be in respect of the whole of the land within a drainage area; or
- (b) for specific schemes (in this Act referred to as "drainage schemes), be in respect of such part or parts of a drainage area as the Board for that area shall decide.
- (Inserted by Act 13 of 1976, s. 2.)*

* Originally inserted as an addition to the definition of "drainage works" in section 2.

Drainage Boards

4.-(1) As soon as may be after any area has been declared a drainage area in accordance with subsection (7) of section 3, the Minister shall appoint Drainage Board for that drainage area.
(Amended by Legal Notice 112 of 1970)

(2) A Drainage Board shall consist of not less than 7 members each of whom shall be appointed by the Minister and hold office at the Minister's pleasure or until he dies or resigns from membership. *(Amended by Legal Notice 112 of 1970.)*

(3) Not less than 2 members of a Drainage Board shall be persons who are owners of land included in the drainage area for which the Board is responsible under the provisions of this Act.

(4) A land conservation officer and a drainage engineer shall be members of a Drainage Board and shall also perform the duties of executive officers of the Board.

(5) The Chairman shall be such member as the Minister shall appoint.
(Amended by Legal Notice 112 of 1970.)

(6) In the absence of the Chairman from any meeting of the Board, the members present shall select one of their number to be Chairman for the purpose of that meeting.

(6A) The land conservation officer who is a member of the Board under the provisions

subsection (4) shall be the secretary of that Board:

Provided that, for the avoidance of doubt, it is hereby declared that any land conservation officer may be a member and the secretary of more than one Drainage Board.

(Inserted by Act 13 of 1976, s. 4.)

(7) A Board shall be a body corporate and shall have perpetual succession and a common seal.

Quorum and proceedings

5.-(1) Four members of a Board shall constitute a quorum at any meeting of the Board.

(2) All acts and things authorised and required to be done by a Board shall be decided by a majority of those present and voting at any meeting at which a quorum is present.

(3) The Chairman at any meeting shall, in addition to his deliberative vote as member of a Board, have a casting vote.

(4) The procedure of the meetings of a Board shall be determined by the Board.

Appointments

6. A Board-

(a) may appoint such officers or servants as may, from time to time, be necessary to enable it to carry out the provisions of this Act; and

(b) shall be responsible for fixing and paying the remuneration of such officers and servants.

(Substituted by Act 13 of 1976, s. 5.)

Members and servants of a Board not liable personally

7. No act or omission done or made by a Board or by any member, officer or servant of a Board shall, if the act or omission was done or made *bona fide* and without negligence for the purpose of carrying out the provisions of this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever, and any expense properly incurred by any Board, member, officer or servant shall be borne and repaid out of the funds at the disposal of the Board.

Functions of a Board

8.-(1) A Board shall-

(a) be responsible for the maintenance and improvement of the drainage of all land within the drainage area for which it is appointed; and
(b) subject to any approval or consent which may be required under this Act, carry out such works and issue such orders concerning drainage works as it deems necessary for the maintenance and improvement of drainage within its drainage area.

(2) A board may, in writing, delegate to its secretary, or any other officer or servant, any of its functions under this Act on such conditions as it deems expedient.

(Inserted by Act 13 of 1976, s. 6.)

(3) Every delegation under subsection (2) shall be revocable in writing and no such delegation shall prevent the performance by the Board of any of its functions.

(Inserted by Act 13 of 1976, s. 6.)

Powers of Board

9. Every Board shall, within its own drainage area, have now necessary to carry out its functions under this Act and, in particular, shall have power -

- (a) to maintain drainage works;
- (b) to improve any drainage works;
- (c) to construct new drainage works;
- (d) with the prior consent of the Controlling Authority to enter into contracts in connection with drainage works:
Provided that a Board may enter into a contract involving a sum not exceeding \$10,000 without such consent;
- (e) to control livestock so as to prevent damage to drainage works;
- (f) to enter at any time, by means of any member, officer, servant or agent any lands within its area for the following purposes:-
 - (i) to do all acts necessary to ascertain whether any drainage measures are necessary or desirable;
 - (ii) to construct, maintain and improve drainage works;
 - (iii) to inspect drainage works;
 - (iv) to ascertain whether maintenance or other measures ordered by the Board have been or are being carried out;
 - (v) to survey and take levels of any land in a drainage area;
 - (vi) to dig and bore in and under the ground;
 - (vii) to clear, set out and mark the boundaries of any lands in connection with drainage works;
 - (viii) to prevent or detect the commission of an act constituting an offence under section **21**;
 - (ix) to secure the proper control of livestock in a drainage area:

Provided that the provisions contained in subsection 10 of section **3** relating to entering land within the cartilage of a dwelling house and relating to the assessment of compensation shall apply to any entry under the powers contained in this paragraph, save that an appeal shall lie in the first instance to the Controlling Authority instead of to the Commissioner of a Division;

(g) in connection with its functions under this Act, to hold title to land and, with the prior consent of the Controlling Authority, subject to the provisions of section 18, to acquire such land as it deems necessary for those purposes;

(h) to make, assess and levy rates required to cover the costs of improving, constructing and maintaining drainage works, the carrying out of any drainage measures and the operating costs of the Board;

(i) subject to the approval of the Minister, to make such by-laws as it may consider necessary from time to time in connection with drainage in its area;

(j) with the prior approval of the Controlling Authority, to borrow money for the purposes of improvement and construction of drainage works and to charge or mortgage its property as security.

(Amended by Legal Notice 112 of 1970; Act 39 of 1973, s. 3; 13 of 1976, s. 7.)

Drainage fund

10.-(1) There shall be established for each drainage area declared under this Act a fund to be known as the "drainage fund" of the particular drainage area in respect of which it is established.

(2) There shall be paid into the fund-

(a) all monies collected by the Board by way of drainage rates;

(b) all grants of money, whether in the form of advances, loans or otherwise, made to the Board for the purpose of discharging its functions under this Act;

(c) all sums, other than fines, recovered by the Board in any court proceedings.

(3) The accounts of every Board shall be audited by an auditor or auditors appointed by the Board and approved by the Controlling Authority.

(4) No member of a Board shall be capable of being an auditor for the Board of which he is a member.

(5) The appointment of an auditor shall be for a term of one year.

(6) The remuneration of an auditor shall be fixed and paid by the Board.

Drainage rate

11.-(1) Board may, from time to time, make and levy drainage rates on any land, including Crown land, affected by drainage works within its drainage area:

Provided that the prior approval of the Controlling Authority shall be obtained in the case of rates relating to any drainage scheme or drainage works which are estimated by the Board to cost more than \$10,000. *(Substituted by Act 13 of 1976, s. 8.)*

(2) Different rates may be assessed and levied within the same drainage area or drainage scheme area according to the amount of benefit received by any plot or plots from any

drainage works on the basis of the area of land receiving the full or any benefit therefrom:

Provided that, in the case of drainage works estimated by the Board to cost not more than \$1,000, it may assess and levy the rates according to the length of any public drain adjacent to or passing through an owner's land. (*Substituted by Act 13 of 1976, s. 8.*)

(2A) Where, in the opinion of the Board, any land has not received the full benefit of or a part of the benefit of any drainage works, the Board may, either generally or in any particular case, and subject to such conditions as it may think fit to impose, grant to the owner of such land a total or the partial remission of the drainage rate. (*Inserted by Act 13 of 1976, s. 8.*)

(3) The land conservation officer who is a member of the Board responsible for a drainage area shall-

(a) calculate the rateable areas in respect of the drainage scheme; and

(b) whenever possible, consult each owner of land which is to be affected by the proposed drainage scheme to endeavour to obtain the rateable areas involved,

and, after taking into consideration any representations by such owners, the board shall adopt the areas so calculated as the rateable areas for the purposes of the scheme.

(*Substituted by Act 13 of 1976, s. 8.*)

(4) A Board shall-

(a) cause to be published in a newspaper circulating in its area, once in each week for 2 successive weeks and in such other manner as the Board considers best calculated to bring it to the notice of all persons in the drainage area, a notice of the fact that a determination of the rateable areas has been made and entered in the rate book; and

(b) in such notice, declare a date, not being less than 2 months after the first of such publications, before which appeals may be brought against a determination of any such rateable area:

Provided that, in the case of any drainage scheme estimated by the Board to cost not more than \$1,000 if notice is given to every owner affected-

(i) that the determination of the rateable areas has been made, or that an assessment is proposed to be made on the basis of length of public drains affected by the said scheme; and

(ii) that an appeal may be made within a period to be specified in the notice, such publication shall not be necessary. (*Amended by Act 13 of 1976, s. 8.*)

(5) An assessment made in accordance with the preceding subsections shall not be invalid by reason of the fact that any rateable land has been erroneously omitted in making the assessment.

(6) The maximum rate which a Board may levy may be fixed by the Minister, who may fix different maxima for different Boards. (*Substituted by Act 13 of 1976, s. 8.*)

(7) Every rate shall be made by a resolution of a Board and shall be made for the period of 12

calendar months commencing on a date 90 days after the date on which the rate is approved by a resolution of the Board, or on such late date as the Board may, in its discretion, resolve.

(Amended by Act 39 of 1973, s. 4; 13 of 1976, s. 8.)

(8) As soon as may be after the making of a rate, the Board shall-

(a) exhibit at its offices, at the office of the nearest district officer of the Division in which the drainage area is situated and at the offices of the Controlling Authority a notice stating the particulars of the rate and the period in respect of which it is made; and

(b) publish the notice in at least 3 consecutive issues of a newspaper circulating in the drainage area to which the rate applies and in such other manner as it considers best calculated to bring it to the notice of all persons in the drainage area.

(9) Any person aggrieved by a determination of rateable area by a Board under subsection (3) may, within 2 months of first publication of such determination, or such longer time as the court may for good cause allow, appeal against such determination to a resident magistrate*.

(Amended by Legal Notice 118 of 1970; Act 13 of 1976, s. 8.)

*See Legal Notice No. 44 of 1977.

(10) An appeal shall be made by filing with the court a written notice of appeal, stating the grounds upon which the appeal is made, and a copy of such notice shall be served on the Board within 7 days after filing.

(11) In determining an appeal, the court may hear evidence and may order a survey to be made by a surveyor appointed by the court.

(12) The costs of the appeal, including the cost of survey, shall be in the discretion of the court.

(13) The decision of the court shall be final and conclusive and shall be communicated to the appellant and to the Board, which shall cause such alterations as are necessary to be entered in the rate book.

(14) An appeal shall not prevent the recovery of the rate before such appeal shall have been decided but, where the court reduces the rateable area determined by the Board, the Board shall, as soon as practicable, make such refund as is necessary to give effect to the decision of the court. *(Amended by Act 13 of 1976, s. 8.)*

Rate book

12.-(1) All assessments made under the provisions of this Act shall be entered in a rate book to be kept by a Board for this purpose, with such particulars of the rateable land as the Board may determine.

(2) The rate book shall be kept in the office of the Board and shall be open to the inspection of the public at all reasonable times, and the owner of rateable land included in the drainage area or his agent may take copies of entries relating to such land without fee.

(3) In any proceedings to levy and recover, or consequent on the levying or recovering of, the amount due in respect of any rate under the provisions of this Act, the rate book signed by the Chairman of the Board and all entries purporting to be made therein in manner by this Act directed, or certified copies thereof, or extracts therefrom signed by the Chairman of the Board shall, upon the production thereof, be *prima facie* evidence of the contents of such rate book and the due making of such rate and of the obligation of the person named in the rate book in respect of such rate to pay such rate.

(4) Alterations may be made in the rate book by resolution of the Board at any time in any case where it is found that there has been an error as to the area, ownership or occupation of land.

(5) Where there has been a change of owners and it is necessary in consequence to alter the names or other particulars forming part of the entry of evaluation, the Board may make such alterations in the rate book.

(6) Where any land has been subdivided and a portion sold or let under registered lease, the land may be apportioned by the Board into separate rateable areas.

(Amended by Act 13 of 1976, s. 9.)

(7) Alterations and apportionments under the preceding subsections shall, for the purpose of appeal, be deemed to be determinations of rateable areas. *(Amended by Act 13 of 1976, s. 9.)*

(8) It shall not be necessary to publish in a newspaper or otherwise alterations and apportionments under the preceding subsections but a notice shall be served upon the owner specifying that an appeal may be brought against the determination of his rateable area within 2 months of the date of service. *(Amended by Act 13 of 1976, s. 9.)*

Charge and deduction

12A.-(1) Subject to the provisions of section 15 of the Co-operative Societies Act and of the Housing Authority (Loans to Cane Growers) Act, but notwithstanding the provisions of any written or other law, or of any agreement between an owner who is a cane grower and any other person, the payment of rates imposed in pursuance of the provisions of this Act shall be a first charge on all proceeds due to such owner on the sale of his cane.

(2) Subject to the provisions of subsection (1), the Fiji Sugar Corporation Limited shall, in respect of any rates due and payable under the provisions of this Act remaining unpaid for one month, deduct from the amount to be paid to an owner who is a cane grower in accordance with the provisions of any contract of general application or otherwise for the time being in force an amount equal to such unpaid rates and shall forthwith pay the same to the Board. *(Inserted by Act 39 of 1973, s. 5.)*

By whom rates payable

13. The rates imposed in pursuance of this Act shall be payable the person who, on the first day of the period for which each such rate is made in accordance with the provisions of subsection (7) of section 11, is the owner of the rateable land and, if there is more than one owner on that date, they shall be jointly and severally liable for the rates:

Provided that, in the case of native land not let under a registered lease, such rates shall be payable by the persons who, on the first day of each such period, are the members of the land owning unit which is registered as owner of such land in the Native Lands Register and such persons shall be jointly and severally liable for the rates.

(Substituted by Act 13 of 1976, s. 10.)

Dates on which rates payable

13A. The rates imposed in pursuance of this Act shall become payable, without demand, on the first day of each period for which each such rate is made:

Provided that, in the case of the first period of 12 months for which a rate is imposed, the Board may, in its discretion, appoint a later date on which the rates shall become payable.

(Inserted by Act 13 of 1976, s. 11.)

Recovery of rates

14.-(1) If any amount due and payable in respect of any rate is not paid to the Board within 30 days after the date on which the rate became payable, it shall be lawful for a resident magistrate*, upon written request made by the Board to issue and cause to be executed a warrant for levying the amount with costs by distress and sale of the goods and chattels found on the premises of the person by whom such amount is payable.

(Amended by Ordinance 37 of 1966, s. 93.)

* See Legal Notice No. 44 of 1977.

(2) Such warrant shall authorise the person executing the same or his assistant to remain on the premises during the interval between such distress and sale, whether such authority be expressed or not in the warrant. *(Amended by Ordinance 37 of 1966, s. 93.)*

(3) The provisions of this section shall be without prejudice to the right of the Board to recover, by ordinary civil proceedings, any such amount which is due and payable.

(Amended by Ordinance 37 of 1966, s. 93.)

(4) Any such overdue amount-

(a) shall bear interest at the rate of 7 per cent per annum;

(b) shall be and remain a charge upon the rateable land in respect of which the same is payable; and

(c) may be recovered at any future time from any owner of such land, with full costs of suit, in any court of competent jurisdiction.

(5) Notwithstanding the other provisions of this Act, it shall be lawful for a Board, by resolution, to waive the whole or any part of any amount due in respect of a rate, and any cost incurred for the purpose of recovering that amount, if it appears to the Board that such amount is irrecoverable or that it should be written off on the grounds of the poverty of the person liable therefor and, if a warrant has issued in respect thereof, the court shall, upon being notified of such resolution, cancel the warrant.

Land may be sold for arrears of rates

15.-(1) If-

(a) the amount due and payable in respect of any rate remains unpaid for the term of 3 years in respect of any rateable land whatsoever, whether the owner thereof be resident in Fiji or not; and

(b) no sufficient distress can be found on the land,

the Board shall cause a notice to be signed by the Chairman and a copy thereof to be published in 3 successive issues of a newspaper circulating in the area of the Board, stating the amount due and unpaid in respect of such land.

(2) In default of the payment of the amount due and all expenses caused by non-payment of such amount within 2 months after the first publication of such notice, the Board may present to the Supreme Court a petition stating-

(a) the particulars of the land and the rate assessed thereon;

(b) the amount due and payable in respect of the rate;

(c) the fact that no distress can be found on the land sufficient to satisfy the amount due; and

(d) the publication of the notices aforesaid.

(3) The Supreme Court, on being satisfied, by affidavit or otherwise, of the proof of such circumstances, may order-

(a) the land, or such part thereof as is deemed sufficient to satisfy the amount due and all expenses caused by the non-payment thereof, to be sold by some person to be named in such order, by public auction; and

(b) the proceeds of such sale, less the expenses, to be paid to the Chief Registrar of the Supreme Court.

(4) The Chief Registrar shall-

- (a) out of the proceeds, pay to the Board the amount due and payable in respect of such rates up to the day of the sale, together with all costs and expenses; and
- (b) hold the surplus, if any, in trust for such person as may prove himself entitled thereto.

(5) The court may at the time of making any such order, give any directions that it may deem proper touching the time and place of sale and given thereof:

Provided that no neglect of any directions shall invalidate a sale, person neglecting such directions shall be deemed guilty of contempt of court, and may be ordered by the court to make compensation to any person injured or damnified by such neglect.

(6) The person selling any land in pursuance of the provision of this section shall give to the purchaser a certificate of sale in the form prescribed in the Schedule and the Registrar of Titles shall, notwithstanding any of the provisions of the Land Transfer Act, on production by the purchaser of the certificate and of a certified copy of the order, and on payment of the prescribed fees, forthwith register the certificate of sale as a transfer of the land therein mentioned.

(Cap 131)

(7) The provisions of this section shall not apply to native land, except to a lease or licence thereof.

Notice of change of ownership

16.-(1) Every owner of rateable land who-

- (a) sells or otherwise transfers the land or any part thereof; or
- (b) grants a lease in respect of the whole or any part of such land which is intended to be registered,

shall cause notice in writing thereof, together with the name and address of the purchaser, transferee or lessee, to be given to the Board for the drainage area in which the property is situated and, until such notice is given, he shall liable for all rates payable in respect of such land.

(2) Every registered lessee of rateable land, on the termination of his lease, shall cause notice in writing thereof, together with the name and address of the holder of the reversion immediately expectant on such termination, to be given to such Board and, until such notice is given, he shall be liable for all rates payable in respect of such land.

(3) Notice to the Board under the provisions of subsection (1) or (2) shall not release an owner from liability to pay any rates due at the time when such notice is given.

Acquisition of land

17. A Board may, for the purpose of any of its functions under this Act, with the prior consent of the Controlling Authority, by agreement acquire, whether by purchase, lease or exchange, any land situate within the boundaries of its drainage area.

Power to acquire compulsorily

18.-(1) If a Board is unable to purchase, by agreement and on reasonable terms, suitable land for any purpose for which it is authorised to acquire land, the Board may, with the consent of the Controlling Authority, represent the case to the Minister and, if the Minister is satisfied, after such inquiry, if any, as he may deem expedient, that-

- (a) suitable land for the said purpose cannot be purchased on reasonable terms by agreement;
- (b) the circumstances are such as to justify the compulsory acquisition of the land for the said purpose; and
- (c) the said land is necessary for the proper carrying out of the functions of the Board,

he may, subject to the provisions of the Constitution and the Crown Acquisition of Lands Act, authorise the Board to acquire the land compulsorily, at the expense of the Board.

(Amended by Legal Notice 112 of 1970; 118 of 1970.)

(2) The provisions of the Crown Acquisition of Lands Act shall apply to the compulsory acquisition of land by a Board under the provisions of this section.

(Amended by Act 14 of 1975, s. 33.)

(Cap. 135.)

Power to sell

19.-(1) A Board may, with the prior approval of the Controlling Authority and with the consent of the Minister-

- (a) sell any land which it may possess and which is not required for the purpose for which it was acquired or is being used; or
- (b) exchange any land which it may possess for other land, either with or without paying or receiving any money for equality of exchange.

(Amended by Legal Notice 112 of 1970.)

(2) In exercising its power under paragraph (a) of subsection (1), a Board shall first offer such land to the person from whom it was acquired at a fair market price as at the time of such offer.

(3) Any dispute as to what is a fair market price may be referred to arbitration in the manner provided under regulation 12 of the Crown Lands (Leases and Licences) Regulations*.

* See Chapter 132 (Legal Notice No. 36 of 1980)

Private drainage

20.-(1) A Board may issue orders requiring the owner of any rateable land, at his own expense-

(a) to lay, build, dig, construct, improve, maintain or alter any drain within his land (other than a public drain or part thereof) which the Board deems necessary in the interests of good drainage within the area for which it is responsible; and

(b) to take such steps in regard to any tree or other vegetation on any land of his adjacent to a public drain as may be necessary to ensure that no fruit, leaves, branches, tree-trunk or other vegetation shall-

(i) impede the free flow of water in any public drain; or

(ii) interfere with or damage in any way drainage works appurtenant to such public drain.

(2) Every such notice shall be deemed to have been served if a copy is-

(a) sent by registered post to the owner; or

(b) affixed to the property of the owner concerned.

(3) In the case of an order requiring the laying, building, digging, construction or improvement of a drain-

(a) an aggrieved owner may, within 14 days, appeal to the Controlling Authority; and

(b) the decision of the Controlling Authority shall be final.

(4) Any such order shall be a good and valid order notwithstanding any provisions in any document of title relating to such land, and compliance therewith shall not constitute a breach of any agreement, covenant or condition in any such document of title.

(5) If the owner fails to comply with any requirement of a notice served under subsection (2) within such time as the Board may require being not less than 30 days from-

(a) the date of service of the notice; or

(b) if the owner has appealed the determination of the appeal,

the Board may undertake the work and the cost shall be a debt to the Board and may be recovered in a court of competent jurisdiction.

Interference with public drainage work

21. Any person who, without the prior authority of the Board or a duly authorised officer or servant of the Board-

- (a) interferes with any public drainage works or any part thereof within the jurisdiction of the Board;
- (b) wilfully performs an act whereby the efficient operation of any drainage works or measures within the jurisdiction of the Board is impaired;
- (c) maliciously damages any public drainage works or part thereof within the jurisdiction of the Board;
- (d) obstructs or otherwise interferes with the free flow of any water in a public drain within the jurisdiction of the Board;
- (e) leads any animal, or suffers or permits any animal to stray upon the banks or side walls of any public drain within the jurisdiction of Board;
- (f) constructs any watercourse which connects directly to a public drain within the jurisdiction of the Board,

shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine not exceeding \$200 or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment.

Relation with local authorities

22.-(1) A local authority constituted under the provisions of the Public Health Act for any area included in a drainage area shall be subordinate to a Board constituted under this Act in so far as the drainage of that particular drainage area is concerned, and a town council shall comply with all the requirements of the Board for that drainage area in so far as public drains are concerned and in so far as such requirements are not prejudicial to public health.

(Amended by Ordinance 37 of 1966, s. 93; Act 14 of 1975, s. 33.)

(Cap 111.)

(2) Any dispute between a Drainage Board and a local authority in connection with matters of drainage which the Board and the local authority are unable to resolve by mutual agreement shall be referred to the Minister, whose decision shall be final.

(Amended by Ordinance 37 of 1966, s, 93; Legal Notice 112 of 1970.)

(3) Whenever an application for subdivision of land is referred by the Director of Town and Country Planning to a local authority under section 6 of the Subdivision of Land Act and the land concerned is in a drainage area, the local authority shall-

- (a) consult the Drainage Board for that drainage area; and
- (b) notify the Director of Town and Country Planning of the views of the Drainage Board.

SCHEDULE
(Section 15)

FORM OF CERTIFICATE OF SALE

Whereas default was made in the payment of due to the Board, being a drainage rate charged on the land hereinafter described, and whereas I, *(name)*, of *(address)*, licensed auctioneer, have been named by order of the Supreme Court dated, and ordered thereby, in accordance with the provisions of section **15** of the Drainage Act, to sell *(here describe land according to the description in the lease or instrument, specifying any encumbrances)* formerly *(granted, given, sold)* under *(specify the registered instrument)* by to, I hereby certify that I held a public auction at on the day of, 19, and the said land was bought by *(name)*, of *(address)* *(occupation)*, hereinafter called the purchaser for the sum of (\$c), the receipt of which I hereby acknowledge, and accordingly, in consideration of this sum paid as aforesaid, I transfer the said *(insert name of instrument)* to the purchaser and hereafter the said land shall vest in him.

Dates this day of 19.... .

A.B.
E.F.

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[Subsidiary Legislation]

CHAPTER 143

DRAINAGE

SECTION 3-DECLARATION OF DRAINAGE AREAS

Gazette Notice No. 1626 of 1972

1. BA/TAVUA DRAINAGE AREA

All that land containing an area of 228 square miles more or less, in the tikina of Vuda, Ba,

Magodro, and Tavua in the Province of Ba, and in the tikina of Rakiraki in the Province of Ra, extending from Teidamu Settlement to Rabulu Settlement and from the high water mark at the sea coast stretching inland in varying widths as far as Balevuto Village.

The above described area is more particularly shown verged blue on plan P.P. 95 kept at the office of the Director of Lands and Surveyor-General in Suva, copies whereof are posted at the offices of the District Officer at Ba and of the Controlling Authority in Suva.

Legal Notice No. 36 of 1979

2. DREKETI/BUA DRAINAGE AREA

All that land containing 305,960 acres more or less, in the tikina of Vuya, Bua and Waimanu in the Province of Bua and the tikina of Macuata and Sasa in the Province of Macuata bounded on the north and west by the high water mark of the sea coast and on the east generally by a direct line from Coconut Point on the sea coast to Uluivuya Trigonometrical Station, thence to Navotuvotu Trigonometrical Station, then to Delenacau Trigonometrical Station, thence to a point at the confluence of the Dreketi River and Naruwai Creek and thence to Naqumu.

The above described area is more particularly shown verged blue on Plan P.P. 154 kept at the office of the Director of Lands and Surveyor-General in Suva, copies of which are available for viewing at the offices of District Officers at Bua and Macuata and of the Controlling Authority, Suva.

Gazette Notice No. 1628 of 1972

3. LABASA DRAINAGE AREA

All that land containing an area of 340 square miles more or less in the tikina of Sasa, and Dogotuki in the Province of Macuata, extending generally from Yalava Village in the west to Qelewara Village in the east and from the high water mark at the sea coast in the north to the main dividing range in the south.

The above described area is more particularly shown verged blue on plan P.P. 97 kept at the office of the Director of Lands and Surveyor-General in Suva, copies whereof are posted at the offices of the District Officer at Labasa and of the Controlling Authority in Suva.

Gazette Notice No. 1625 of 1972

4. LAUTOKA DRAINAGE AREA

All that land containing an area of 50 square miles more or less in the tikina of Vuda in the Province of Ba, extending from Viseisei Village to Teidamu Settlement, and from the high water mark at the sea coast stretching inland for about 3 miles.

The above described area is more particularly shown verged blue on plan P.P. 95 kept at the office of the Director of Lands and Surveyor-General in Suva, copies whereof are posted at the offices of the District Officer at Lautoka and of the Controlling Authority in Suva.

Gazette Notice No. 1624 of 1972, Legal Notice No. 54 of 1975

5. NADI DRAINAGE AREA

All that land containing an area of 107 square miles more or less in the tikina of Malomalo in the Province of Nadroga and Navosa, and the tikinas of Nadi, Nawaka and Vuda in the Province of Ba, extending from Nabila Village in the south to Natalau Village in the north and from the high water mark at the sea coast stretching inland in varying widths as far as the Namulomulo settlement.

The above described area is more particularly shown verged blue on plan P.P. 131 kept at the office of the Director of Lands and Surveyor-General in Suva, copies whereof are posted at the offices of the District Officers at Nadi, and of the Controlling Authority in Suva.

Gazette No. 1627 of 1972

6. RA DRAINAGE AREA

All that land containing an area of 161 square miles more or less in the tikina of Rakiraki, Saivou, Nalawa and Nakarotubu in the Province of Ra extending from Rabulu Settlement to Nasava Bay and from the high water mark at the sea coast stretching inland as far as the Kauvadra Range.

The above described area is more particularly shown verged blue on plan P.P. 95 kept at the office of the Director of Lands and Surveyor-General in Suva, copies whereof are posted at the offices of the District Officer at Vaileka and of the Controlling Authority in Suva.

Gazette Notice No. 1623 of 1972

7. SIGATOKA DRAINAGE AREA

All that land containing an area of 408 square miles more or less, comprising the tikina of

Malomalo, Cuvu, Sigatoka, Ruwailevu, Baravi, and Navosa in the Province of Nadroga and Navosa, and the tikina of Nawaka in the Province of Ba, extending generally from Momi Bay to Namada Village and from the high water mark at the sea coast stretching inland in varying widths as far as Korovou Village in the upper reaches of the Sigatoka River.

The above described area is more particularly shown verged blue on plan P.P. 95 kept at the office of the Director of Lands and Surveyor-General in Suva, copies whereof are posted at the offices of the District Officer at Sigatoka and of the Controlling Authority in Suva.

SECTION 11-MAXIMUM DRAINAGE RATE

Legal Notice No. 57 of 1976

The maximum rate which a Drainage Board may levy is fixed as \$30 per acre per

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