



# Brine Pumping (Compensation for Subsidence) Act 1891

## 1891 CHAPTER 40

### *(iv.) Compensation Fund and Claims thereon*

#### **21 District compensation funds**

- (1) Every board shall form and maintain a compensation fund for their district.
- (2) The compensation fund for the district shall be formed and maintained by the assessment and levy as in this Act provided of such rate (not exceeding the limit or rate herein-after mentioned) for every one thousand gallons of brine pumped or raised within the district as the board from time to time think necessary and order to be levied.
- (3) The compensation fund for a district shall be solely applicable to compensation for damage happening within that district arising from subsidence, and for the expenses and liabilities of the board, and costs allowed by the board to any claimant or objector.

#### **22 Damage for which compensation may be made**

The damage for which compensation may be made under this Act shall be damage of any of the following kinds (and no other) arising from subsidence which has happened after the passing of this Act :—

- (1) Depreciation of land (but not including any erection or works on or under such land except as herein-after in this section provided) which shall subside or become permanently submerged, including any necessary expense of fencing in such land:
- (2) Destruction or structural damage of buildings and walls of all kinds, but not including damage to machinery or fixtures, whether removable or not:
- (3) The proper and necessary expense of building retaining walls or bolting together or underpinning or otherwise supporting, raising, or repairing buildings and walls:
- (4) The proper and necessary expense of altering the approaches to or the levels of lands or buildings :

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- (5) The proper and necessary expense of raising, lowering, diverting, or making good private roads, bridges, fences, sewers, or drains.

Provided that no claim shall be made by any person unless he has such title to or interest in the property so damaged or some part thereof as would entitle him to recover in respect of such damage if the same had been caused by the wrongful excavation by any other person of strata underlying or supporting such property, and no claim shall be made except for damage as hereinbefore defined, and any compensation award shall in no case exceed the amount of the actual loss sustained by the person making the claim (herein referred to as the claimant), or exceed the amount of the expense necessary to make good any damage sustained, as herein-before defined, all circumstances which in the opinion of the board or other tribunal are material being taken into consideration.

The compensation board shall have power to make contributions out of any sum to be levied under this Act towards the extra cost of building, rebuilding, or replacing any existing or future building within the area of its district on some system or style of building, whereby it can conveniently be raised, and may also provide plans and models of buildings recommended as suitable and convenient for the purpose aforesaid.

## 23 Claims for compensation

- (1) Any claimant who alleges the following matters, that, is to say—
- (i.) That any damage as in this Act defined has been caused to any property by subsidence of the same or of any other land, and that the subsidence is the result of pumping or raising of brine, and has happened after the passing of this Act; and
  - (ii.) That he has such title to or interest in the property so damaged or some part thereof as would entitle him to recover in respect of such damage if the same had been caused by the wrongful excavation by any other person of strata underlying or supporting such property;
- and who has given notice in writing to the board, or if there be no such board, then to the sanitary authority of the district in which such property is situated, of such damage within six months after the same became apparent, may send in to the board a claim for such damage to the extent of his title or interest.
- (2) It shall be lawful for a compensation board from time to time by regulations under this Act to prescribe the form of any such claim and the time within which and the manner in which any such claim shall be made, and the proofs by which the claim is to be accompanied, and no claim shall be allowed with respect to any damage of which the prescribed notice shall not have been, given, nor in respect of which the provisions of such regulations (unless dispensed with for cause which the board shall deem reasonable and sufficient) are not observed.
- (3) Every board shall, once or oftener in each year, give notice by such advertisement as shall be prescribed in such regulations requiring all claims intended to be made under this Act to be sent, in to such board, and requiring such claims to be so sent in within a time to be named in such advertisement.
- (4) On the expiration of the period within which claims are to be sent in to the board, such board shall give to every brine pumper within their district notice of all claims (if any) received by such board, specifying in such notice the names of the claimants, the amount claimed, and the property in respect of which each such claim is made, and

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shall give by advertisement in any newspaper circulating in the district one month's notice of the day on which such board intends to proceed to adjudicate on such claims.

- (5) The board shall, on the day appointed for adjudication, and on any subsequent day or days appointed by them for the purpose, consider all claims duly made and which have not been previously adjudicated on, and shall, so far as they think practicable and convenient, adjudicate thereon in such manner as they shall think fit, and allow or disallow all such claims or any items thereof, or by agreement with the claimant may refer any claim to arbitration.

## **24 Mode of dealing with claims**

A board shall disallow any claim for damage which in their opinion was not caused by subsidence of any land or was caused by subsidence of land which is proved not to have been caused by brine pumping, or in respect of which in their opinion (subject to appeal as in this Act mentioned) the claimant has not such title or interest as would entitle him to recover under this Act; and shall disallow any claim to the extent to which in their opinion the damage in respect of which the claim was made has been occasioned or increased by any neglect or default of the claimant or of any person by whose acts he is affected or bound, or by the buildings or other matters in respect of which the claim was made, having been of an unnecessarily expensive kind, or improperly constructed, having regard to the liability of the district or any part thereof to subsidence. The brine pumpers shall be entitled to be heard before the board on all claims exceeding one thousand pounds.

## **25 Power to board to commute claims**

A board may, by resolution passed at a meeting whereof not less than twenty-one days notice specifying the objects of the meeting has been served on the members of the board, provide that the damage in any particular case, if in their opinion likely to recur or to be permanent or to continue for a number of years, shall be ascertained, settled, and paid for either once for all, or for such number of years as they think just, instead of being claimed from time to time:

## **26 Recovery of sums awarded**

Any sum awarded by a compensation board to be paid under any of the provisions of this Act shall be certified by the clerk of the board under his hand, and may, subject to the provisions of this Act, be recovered as a debt at the expiration of three months from the date of such certificate in the county court within whose jurisdiction the property to which the claim relates is situate.

## **27 Appeal on questions of title**

- (1) If a board disallow a claim or any item thereof on the ground that the claimant had not, as respects such claim or item, such title or interest in the property damaged by subsidence as would entitle him to recover under this Act, the claimant may appeal in manner in this section mentioned on the ground that he had such title or interest.
- (2) If a board allow a claim or any item thereof, any person assessed to the last rate made under this Act in and for the district may appeal in manner in this section mentioned against such allowance on the ground that the board ought to have decided that the

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claimant had not (as respects such claim or item) such title or interest as herein-before mentioned,

- (3) Notice of appeal under this section must be given in writing to the board at the meeting at which the decision appealed against is given, or within three weeks afterwards.
- (4) The appeal shall be brought in the county court within whose jurisdiction the land is situate, in manner prescribed by rules made or to be made by the authority for the time being empowered to make rules for the procedure and practice of county courts.
- (5) The judgment of the county court shall be binding on all persons, subject to an appeal to the Supreme Court according to the practice for the time being in use with respect to appeals from county courts.
- (6) The costs of any appeal under this section shall be in the discretion of the court in which the same are incurred.
- (7) If as a consequence of any decision on appeal under this section any damage is to be assessed, increased, or reduced, the claim shall stand remitted to the board to be adjudicated, and allowed, altered, increased, or reduced as the case may require.

## **28 Special case**

Any person aggrieved who desires to question an order or determination of the board on the ground that it is erroneous in point of law, may apply to the board to state a special case, setting forth the facts of the case and the grounds on which the order or determination is questioned, and if the board decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

The application shall be made and the case stated, heard, and determined in accordance with the provisions of section thirty-three, sub-section two of the Summary Jurisdiction Act, 1879, as if the case stated by the board were a case stated by a court of summary jurisdiction.

## **29 Limit of appeal**

In no case shall there be any appeal, by special case or otherwise, where the amount claimed does not exceed one hundred pounds.

## **30 Board may require compensation to be expended in repairs, &c**

A board may require any compensation in respect of lands, buildings, or works to be expended in the filling up of holes in such lands, or the restoration or repair of such buildings or works, and may refuse to pay such compensation except on their surveyor's certificate that the amount thereof has been properly expended in such filling up, restoration, or repair.

## **31 Power to purchase by agreement**

Any board may, for the purposes of this Act, by agreement purchase or take on lease, sell, or exchange any lands within the district of such board, and may pull down and remove any buildings thereon which such board may consider in a dangerous state or likely to become so.

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**32 Power to purchase otherwise than by agreement**

A board may by resolution passed at a meeting whereof not less than twenty-one days' notice specifying the objects of the meeting has been served on the members of the board, resolve that it is desirable that no buildings should be erected on any land scheduled to such resolution, or that any buildings on such land should be pulled down and removed, or that for any good and sufficient reason any land scheduled to such resolution should be purchased, and thereupon all the powers to purchase land other than by agreement conferred upon a local authority by the Public Health Act, 1875, or any statutory modification thereof shall be vested in such board in respect of any land so scheduled, but subject to the conditions under which a local authority can exercise such powers.

**33 Power to sell**

A board may sell any land acquired under this Act subject to such conditions as to the future use of such lands and with such restrictions or prohibition as to building thereon as to such board may seem fit.

**34 Power to keep register**

The board shall cause a book to be kept in which shall be entered from time to time particulars of the lands in respect of which the damage has been ascertained either once for all or for a number of years, and of any lands sold by the board subject to restrictive or prohibitive conditions, and the board shall provide an ordnance map or ordnance maps of convenient size containing such lands on which shall be shown from time to time by the use of colours the situation and extent of such lands. Such book and map or maps shall be kept at the offices of the board or such other place as shall be from time to time appointed by the board, and shall at all times be open to inspection without fee by all persons.