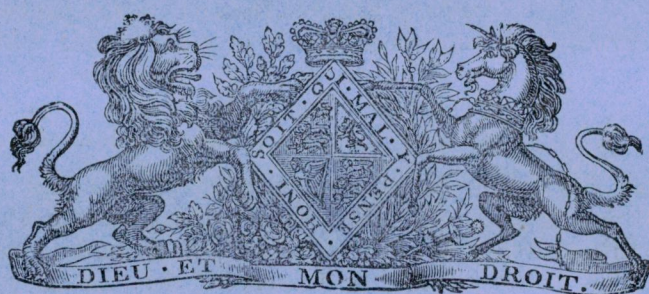


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber, }
Sydney, 27 March, 1861.*

CHA. TOMPSON,
Clerk of Legislative Assembly.

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled 5 and by the authority of the same as follows:—

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

10 "Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted to any person in fee simple.

15 "Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.

"Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

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- “Orders in Council”—The Orders in Council and Regulations or some or one of them from time to time issued under the Imperial Act ninth and tenth Victoria chapter one hundred and four.
- 5 “Minister”—The Minister for the time being charged with the administration of the Public Lands.
- “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land
- 10 Offices of their Districts respectively.
- “Appraisement”—Settlement of price value or damage by appraisers.
- “Arbitration”—Settlement of boundaries by arbitrators.
- 15 “Improvements”—Improvements on Crown Lands to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than one pound per acre.
- 20 “Frontage”—Frontage to any river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.
- 25 2. On and from the day of the commencement of this Act the Orders in Council shall be repealed Repeal of Orders in Council &c. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with
- 30 respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight during the currency of such leases as fully as if the same had not been hereby repealed.
3. Any Crown Lands may lawfully be granted in fee simple or Alienation of Crown Lands. dedicated to any public purpose under and subject to the provisions of this Act but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands.
4. The Governor with the advice of the Executive Council may Publication of notice of sites of cities towns suburban lands reserves &c. by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban lands to be dedicated to public purposes and what lands shall be
- 45 reserved from sale until surveyed for the preservation of water supply or other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached or dedicated accordingly Provided that the Governor with the advice aforesaid may by notice in the *Gazette* rescind the determination of boundaries
- 50 or reservations under previous notices or of existing reservations in whole or in part in any cases in which sales of town allotments shall not have taken place in the reserves Provided also that within one month should Parliament be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be
- 55 laid before both Houses of Parliament an abstract of all such declarations and rescissions.

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5. The Governor with the advice aforesaid may by notice in the *Gazette* grant reserve or dedicate in such manner as may seem best for the public interest any Crown Lands required for any railway or railway station—any public road canal or other internal communication—any public quay or landing-place—any public reservoir aqueduct or watercourse—
 5 or for any purpose of defence—or as the site of any place of public worship—or of any hospital asylum or infirmary—or of any public market or slaughter-house—or for the interment of the dead—or for any college school mechanics' institute public library museum
 10 or other institution for public instruction or amusement—or for any pasturage common—or as any area for public health recreation convenience or enjoyment—or for any other public purpose—And upon any such notice being published in the *Gazette* such lands shall become and be granted reserved or dedicated accordingly Provided that an abstract of
 15 any such intended grant reservation or dedication shall be laid before both Houses of Parliament one calendar month before such grant reservation or dedication is made. Dedication of Crown Lands to public purposes.
Abstract to be laid before Parliament.
6. Crown Lands held under lease or promise of lease issued or made previously to the twenty-second day of February one thousand eight
 20 hundred and fifty-eight shall during the currency of such lease be exempt from sale under this Act except where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding Provided that the lessee may be permitted to
 25 exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre Provided nevertheless that any land purchased under the Orders in Council pre-
 30 viously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid And provided that such appraisement shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* for the period of one calendar month before the sale is completed. Exception from sale of certain lands.
Limitation of pre-emptive right of purchase.
7. Upon application made within twelve months after the passing
 35 of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within twelve months after the notification in the *Gazette* of any reserve from lease or promise of lease under the Orders in Council within which improvements may be situated or upon application by the holder of
 40 any lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or his alienee made at any period for the sale of improved lands in proclaimed Gold Fields the Governor may with the like advice sell and grant such lands to the owner of such improvements without
 45 competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth in section twenty of this Act and in no case less than one pound per acre Provided that such appraisement shall not include any value for improvements Provided that nothing herein contained shall be held to
 50 require the sale of any land which may contain auriferous deposits Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or country and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half
 55 an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands. Sales in consideration of improvements

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8. The Governor with the like advice may authorize any proprietor of land having frontage to any harbor or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly Provided always that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.
9. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road which may be proclaimed through any land may render unnecessary a reserved or other road bounding such land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period not less than two months after the first publication of such notice a grant or grants of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.
10. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty of this Act.
11. The Governor may with the like advice by a memorandum in writing under his hand declare that any reservation of any water frontage or land adjoining such frontage contained in any Crown grant shall be rescinded wholly or to such extent as shall be specified in such memorandum and subject to such conditions or restrictions as shall be therein specified and such reservation shall be so rescinded accordingly and the land shall by virtue and according to the terms of such memorandum on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty of this Act become vested in the owner of the land conveyed in such Crown grant Provided that nothing in this clause contained shall empower the Governor to interfere with any land heretofore used as a public thoroughfare or with any land already set apart and dedicated for any public purpose Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such memorandum.
12. Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants

Reclamation of lands
by proprietor of
adjoining lands.

Closing and aliena-
tion of unnecessary
roads.

Sales without com-
petition in special
cases.

Rescission of reser-
vation of water
frontage.

Conditional sale of
unimproved lands
without competition

or

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or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section six of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.

13. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the twelfth section of this Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled to compensation for the value other than auriferous of the lands and improvements such value to be determined by appraisement.

14. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

15. If at the time of conditional purchase of any Crown Land under sections twelve and thirteen of this Act such Land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him.

16. Crown Lands conditionally purchased under this Act shall if measured previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the first class Settled Districts have a depth of not less than twenty chains and otherwise shall have a depth of not less than forty chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and

Conditional sale in Gold Fields.

Record by Land Agent.

Temporary boundaries of land until surveyed by Government.

Form of measurement of portions selected and reservation of roads and water.

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and with boundaries directed to such cardinal points Provided that should it seem to the Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement.

17. At the expiration of three years from the date of conditional purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration under the Act ninth Victoria number nine to the effect that permanent improvements have been made upon such land and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands Sales Agent or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the remaining purchase money and a grant of the fee simple but with reservation of any minerals which the land may contain shall be made to the then rightful owner Provided that should interest at the rate of five per centum on the balance of the purchase money be paid within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months of the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year But on default of a compliance with the requirements of this section the land shall revert to Her Majesty and be liable to be sold and the deposit shall be forfeited Provided that when any such sale shall result in payment to the Government of more money than would have been payable under the original conditions of purchase the surplus after paying the expenses of sale shall be paid to the party who was entitled to purchase without competition.
18. Crown Lands conditionally purchased under sections twelve and thirteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three years from the date of purchase shall be forfeited and may be sold at auction.
19. Conditional purchasers of portions of Crown Lands under sections twelve and thirteen of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence.
20. Holders in fee simple of lands granted by the Crown in areas not exceeding two hundred and eighty acres who may reside on such lands and may make conditional purchases adjoining such lands the areas of which shall not with that of the freehold exceed three hundred and twenty acres shall not be subject to the condition of residence applicable to conditional purchases in other cases.
21. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding three hundred and twenty acres each at such places and times as the Minister shall direct to be notified by advertisement in the *Gazette* And the upset prices per acre shall not be lower than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound Provided that the upset prices may be respectively fixed at any higher amounts.

Conditions of residence and improvement and payment of purchase money.

Sale by Auction of lands abandoned by selectors.

Additional selection of adjoining lands.

Additional selection of lands adjoining land already granted.

Sale by auction of other lands.

Upset prices.

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22. Town lands and suburban lands without valuable improvements shall be sold by Public Auction only. Sale by auction of town and suburban lands.

23. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner. Provided that all lands As to lands put up and not sold.
5 other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon. Provided also that the Minister may withdraw any such lands from selection and again submit them to Public Auction.

10 24. A deposit of twenty-five per centum of the purchase money for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale. And unless the remainder of such purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited. Should the
15 purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay. Payment of purchase moneys.

25. Every Land Agent shall duly enter in a book to be provided Record by Land Agent.
for the purpose the particulars of all sales under sections nineteen twenty
20 and twenty-one of this Act.

26. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the amount of any compensation to be made under the provisions of this Act
25 and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say:—

30 (1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such
35 appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred. And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute under
40 their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.

45 (2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation. Appointment not to be revoked.

50 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed
55 by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties. Single appraiser or arbitrator to act in certain cases.

(4.)

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- (4.) The award of any appraiser or appraisers arbitrator or arbit- Award to be binding.
trators appointed in pursuance of this Act shall be binding
final and conclusive upon all persons and to all intents and
purposes whatsoever.
- 5 (5.) If before the determination of any matter so referred any In case of death of
appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may or failure to act by
appoint in writing another person in his stead and if he fail appraiser or arbi-
trator.
10 so to do for the space of sixty days after notice in
writing from the other party in that behalf the remaining
appraiser or arbitrator may proceed *ex parte* and every
appraiser or arbitrator so appointed shall have the same
powers and authorities as were vested in the appraiser or
arbitrator in whose stead the appointment is made.
- 15 (6.) In case a single arbitrator die or become incapable to act In case of death or
before the making of his award or fail to make his award failure to act by a
within sixty days after his appointment or within such single appraiser or
extended time if any not exceeding thirty days as shall have arbitrator.
been duly appointed by him for that purpose the matters
20 referred to him shall be again referred to appraisement or
arbitration under the provisions of this Act as if no former
reference had been made.
- (7.) In case there be more than one appraiser or arbitrator the Appraisers or arbi-
appraisers or arbitrators shall before they enter upon the trators to appoint an
reference appoint by writing under their hands an umpire umpire.
and if the person appointed to be umpire die or become
incapable to act the appraisers or arbitrators shall forth-
with appoint another person in his stead and in case the
appraisers or arbitrators neglect or refuse to appoint an
30 umpire within thirty days after being requested so
to do by any party to the appraisement or arbitration
the Minister may appoint an umpire and he is
hereby empowered so to do and the award of the umpire
shall be binding final and conclusive upon all persons and
35 to all intents and purposes whatsoever.
- (8.) In case appraisers or arbitrators fail to make their award Determination by
within sixty days after the day on which the last of them umpire in certain
was appointed or within such extended time if any not exceed- cases.
ing thirty days as shall have been duly appointed by them
40 for that purpose the matters referred shall be determined
by the umpire and the provisions of this Act with respect
to the time for making an appraisement or award and
with respect to extending the same in the case of a
single arbitrator shall apply to any umpirage.
- 45 (9.) Any appraiser arbitrator or umpire appointed by virtue of Production of docu-
this Act may require the production of such documents.
in the possession or power of either party as he may
think necessary for determining the matters referred and
may examine the parties as witnesses on oath.
- 50 (10.) All costs of and consequent upon the reference shall be in Determination of
the discretion of the appraiser or appraisers arbitrator or costs.
arbitrators or of the umpire in case the matters referred
are determined by an umpire.
- 55 (11.) Any submission to arbitration under the provisions of this Arbitration subject
Act may be made a Rule of the Supreme Court of the said to rule of Supreme
Colony on the application of any party thereto. Court.
- (12.) Before any appraiser arbitrator or umpire shall enter upon Declaration by ap-
the consideration of any matter referred to him as praiser arbitrator or
60 aforesaid he shall make out and subscribe a declaration in umpire.
the form following before a Justice of the Peace that is to
say—
I

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5 I A B do solemnly and sincerely declare that I am
not directly or indirectly interested in the matter
referred to me and that I will faithfully honestly
and to the best of my skill and ability hear
and determine the matters referred to me under
the Crown Lands Alienation Act of 1861.

(13.) And such declaration shall be annexed to the appraisement Declaration to be
or award when made and if any appraiser arbitrator or annexed to appraise-
umpire shall wilfully act contrary to such declaration he ment.
shall be guilty of a misdemeanor.

10 (14.) Every appraisement or award shall be in writing and shall Appraisement to be
be transmitted to the Surveyor General and deposited in transmitted to Sur-
veyor General.
his office

27. Any instrument of sale or conveyance made and issued Instruments under
15 under this Act may be proved in all legal proceedings by the production of Act to be evidence.
a certified copy thereof signed by the officer to be authorized for that
purpose under any regulation made as hereinafter enacted.

28. The Governor with the advice aforesaid may make regula- Governor in Council
tions for carrying this Act into full effect so as to provide for all proceed- to make and proclaim
20 ings—forms of grants and other instruments—and all other matters and regulations.
things arising under and consistent with this Act and not herein expressly
provided for And all such regulations shall upon being published in
the *Gazette* be as valid in law as if contained herein Provided that
25 a copy of every such regulation shall be laid before both Houses of
Parliament within one month from the issue thereof if Parliament be
then in Session or otherwise within one month after the commencement of
the next ensuing Session.

29. This Act shall commence on the first of January next Commencement and
And shall be styled and may be cited as the "Crown Lands Alienation Short Title.
" Act of 1861."

Legislative Council.

No. 1. CONTINGENT NOTICES OF MOTION.

CROWN LANDS ALIENATION BILL OF 1861.

1. MR. DOCKER to move the following Amendments (*in the Committee of the Whole on this Bill.*)

Page 4, clause 12, line 52. Omit "and not being within a proclaimed
"gold field"

Page 5, line 7. Omit "conditional"

" " 9. Omit "conditional"

" " 12. Omit "a deposit of twenty-five per centum"

" " 13. After "deposit" insert "of purchase money"

" " 14. Omit "conditional"

" " 16. After "deposit" insert "of purchase money"

" After Clause 12, insert the following new clause:—

If at the time and place appointed for such application the applicant shall be unable to pay the amount of the purchase money such person may tender to the land agent a written application for a lease for seven years of any of such lands not less than forty acres nor more than six hundred and forty acres at a yearly rental of not less than five per centum upon the amount of the purchase money of the same at the price of twenty shillings per acre and shall pay to such land agent the amount of the first year's rental Provided that if any application and deposit of purchase money for the said land be tendered at the same time the person tendering for the purchase shall be declared the purchaser thereof And if no application and deposit of purchase money for the said land be tendered at the same time the person tendering for the lease thereof shall be declared to be the Lessee thereof at the rental aforesaid Provided that if more than one application and deposit for the lease of the said land or any part thereof shall be tendered at the same time to the land agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the lessee thereof.

Lease of lands allowable in case of inability to purchase.

Proviso.

Page 5, Clause 13. Omit this Clause.

" Clause 14, lines 33 and 34. Omit "conditional"

" " line 34. After "purchase" insert "or lease"

" Clause 15, line 38. Omit "conditional"; after "purchase" insert "or lease"

" " line 41. Omit "conditional"; after "purchaser" insert "or lessee"

" " line 42. After "purchaser" insert "or lessee"

" " line 47. Omit "conditional"

" Clause 16, line 50. Omit "conditionally"; after "purchased" insert "or leased"

Page 6, Clauses 17, 18, 19, and 20. Omit these Clauses.

Page 9, Clause 28, line 18. Omit "may"; insert "shall appoint three or more persons who shall constitute a Board for the administration of the Crown lands of the Colony with power to"

Page 9, Clause 28. At end of Clause add "Provided that the Minister for the time being shall *ex officio* be a member of such Board and shall resign his seat therein upon retiring from office but no other member of such Board shall be removable from office on political grounds."

Proviso.

CROWN LANDS OCCUPATION BILL OF 1861.

MR. DOCKER to move the following Amendments (*in Committee on this Bill.*)

Page 3, clause 11, line 33. Before Proviso insert "For agricultural purposes in the first and second class Settled districts and in the Agricultural reserves in the Unsettled districts Seven years."

Page 8. After Clause 20 insert following New Clause:—

Leases for Agricultural purposes

The Governor with the advice aforesaid may grant leases for Agricultural purposes to any person of any Crown Lands not specially reserved from sale or lease not exceeding six hundred and forty acres for the period of seven years and with a right of renewal of the same for a further period not exceeding seven years upon the next following conditions on the breach of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council.

Authority to select Agricultural lots.

(1.) Persons may on any land office day tender to the land agent a written application for the occupation by lease of any Crown lands not specially reserved from sale or lease being not less than forty acres nor more than six hundred and forty acres and may pay to such land agent a deposit of five per centum upon the amount of the purchase money of such land at the price of twenty shillings per acre.

Payment of rent.

(2.) The rent shall be five per centum upon such estimated value of the lands per acre payable annually in advance and thereafter within the month of September for each ensuing year and leases shall in all cases end on the thirty-first day of December.

Necessary expenditure during lease.

(3.) Lessees shall expend at the rate of ten shillings sterling per acre upon their lots during the period of their lease.

Pre-emptive right of lease of adjoining lands not conferred.

(4.) The lessee of such lands shall not be entitled to any pre-emptive right of lease of adjoining lands.

Determination of leases.

(5.) Lessees may determine their leases by giving to the Minister (or Board for the administration of the Crown Lands) three months notice of their desire to do so but no rent shall in any such case be refunded.

Renewal of leases.

(6.) Lessees may on application to the in writing during the sixth year of their leases obtain a renewal of the same for a further period not exceeding seven years and the fine to be paid on such renewal shall not exceed five per centum of the appraised value of such land per acre at the period of renewal irrespective of any improvements effected thereon.

Pre-emptive right of purchase of lands leased.

(7.) Lessees may during the sixth year of their lease intimate to the in writing their intention to purchase the lands held by them under lease at the price per acre on which their annual rental was calculated and shall have a right to effect such purchase without competition at the period of the expiration of their lease And the value of the permanent improvements made by such lessee upon the said lands during the period of his lease shall be determined by appraisement and the amount thereof shall be deducted from the purchase money of the said lands Provided that in no case shall the amount so deducted exceed One pound per acre.

Valuation of improvements.

Page 12, Clause 34, line 9.—*At commencement, omit "make and"*.

CROWN LANDS ALIENATION BILL, 1861.

SCHEDULE of the Amendments made by the Legislative Council in the Bill, intituled, "An Act for regulating the Alienation of Crown Lands," returned to the Legislative Assembly with Message of 6th May, 1861.

R. O'CONNOR,
Clerk of the Legislative Council.

- Page 1, Clause 1, line 12. *Omit "to any person"*
 " " line 18. *After "Council" insert "'First-class Settled Districts'—Lands declared to be of the Settled Class by the Orders in Council. 'Second-class Settled Districts'—Lands converted into the Settled Class by the Act twenty-three Victoria number four."*
- Page 2, " line 12. *After "appraisers" insert "appointed in manner prescribed by this Act."*
 " " line 14. *After "arbitrators" insert "appointed in manner prescribed by this Act."*
 " " line 16. *After "Lands" insert "or Lands conditionally sold"*
 " " line 23. *After "than" insert "the unimproved value of the lands to be in like manner determined not being less than"*
 " " line 26. *After "any" insert "road"*
 " " line 30. *After "Act" insert "such parts of"*
 " " line 31. *After "Council" insert "and Regulations now in force as are repugnant to any provision of this Act."*
 " " lines 34 to 39. *After "respectively" omit remainder of Clause.*
 " " 3, lines 42 and 43. *Omit "with the advice of the Executive Council"*
 " " 4, lines 54 to 58. *Omit Proviso.*
 " " line 58. *After "Provided" omit "also"*
 " " line 62. *Omit "and rescissions"*
- Page 3, Clause 5, line 2. *Omit "grant"*
 " " lines 5 and 6. *After "watercourse" insert "or for the preservation of water supply"—*
 " " line 14. *Omit "granted"*
 " " line 15. *Omit "grant"*
 " " line 16. *Omit "grant"*
 " *After Clause 5 insert Clause 6.*
 " Clause 7, 6, lines 28 to 33. *Omit "issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight"; insert "except in the first class Settled Districts and in the second class Settled Districts when held in such districts respectively under lease or promise of lease made since the twenty-second day of February one thousand eight hundred and fifty-eight."*
 " " lines 34 to 36. *After "lease" insert "and any renewal or new lease thereof issued under any Act for regulating the occupation of Crown Lands"*
 " " lines 36 and 37. *Omit "except"; insert "unless."*
 " " lines 39 to 50. *After "holding" omit remainder of Clause.*
 " *After Clause 7, 6, insert new Clause 8:—*
- Page 4, Clause 9, 7, line 18. *After "twenty" insert "four"*
 " " line 19. *Omit "Provided that" insert "but"*
 " " line 23. *Omit "country" insert "other lands"*
 " " 10, 8, lines 35 to 39. *After "always" insert "that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and Provided also"*
 " " 11, 9, line 43. *After "and" insert "is."*
 " " line 50. *Omit "two," insert "three."*
 " " line 51. *Before "road" insert "site of the"*
- Page 5, Clause 12, 10, line 7. *After "twenty" insert "four"*
 " Clause 13, 11, lines 9 and 10. *Omit "by a memorandum in writing under his hand declare that"; insert "rescind"*
 " " line 10. *Omit "any"*
 " " line 11. *After "frontage" insert "on the sea coast or any bay inlet harbour or navigable river"*
 " " lines 12 and 13. *Omit "shall be rescinded" insert "either"*
 " " lines 13 and 14. *Omit "as shall be specified in such memorandum"*
 " " lines 14 to 16. *Omit "therein specified and such reservation shall be so rescinded accordingly" insert "deemed advisable."*
 " " line 16. *After "land" insert "being the subject of such rescission."*
 " " lines 16 and 17. *Omit "by virtue and according to the terms of such memorandum"*
 " " line 20. *After "twenty" insert "four"*
 " " *Omit "become vested in" insert "be granted to"*
 " " line 21. *Omit "such" insert "the original"*
 " " lines 21 and 22. *After "grant" insert "accordingly"*
 " " line 23. *After "Governor" insert "to grant any land below high-water mark or"*

- Page 5, Clause **13**, 11, line 24. *Omit "heretofore"*
 " " line 25. *Omit "already"*
 " " line 27. *Omit "memorandum" insert "grant"*
 " " **14**, 12, lines 41 to 44. *After "Act" insert "and not being under application
 " for purchase at auction by persons who have paid or tendered at
 " the time of application a deposit of fifty per cent. upon the minimum
 " price"*
 " " line 49. *Omit "twenty-five," insert "fifty"*
 " " line 59. *At the end of the Clause insert Proviso.*
 Page 6, Clause **15**, 13, line 9. *Omit "twelfth" insert "fourteenth"*
 " " lines 15 to 19. *Omit "the value other than auriferous of the lands
 " and improvements such" insert "any loss or damage which he may
 " sustain by the surrender of the lands exclusive of their auriferous
 " value but including the value of any improvements which he may
 " have effected thereon such loss or damage and"*
 " Clause **16**, 14, lines 22 and 23. *Omit "thirteen and" and after "fourteen"
 insert "and fifteen"*
 " Clause **17**, 15, line 27. *Omit "twelve and thirteen" insert "fourteen and fifteen."*
 " " lines 37 to 42. *At end of Clause insert "or the purchaser shall have
 " the option of having the land surveyed by a duly qualified licensed
 " surveyor and the expense of such survey shall be allowed to such
 " purchaser as part payment of his purchase money such expense to be
 " allowed in accordance with the scale of charges fixed or to be fixed
 " by the Surveyor General."*
 " Clause **18**, 16, line 48. *Omit "twenty," insert "forty"*
 " " line 49. *Omit "forty," insert "sixty"*
 " " lines 57 to 61. *At end of Clause insert Proviso.*
 Page 7, Clause **19**, 17, lines 4 to 6. *After "declaration" insert "by the conditional purchaser
 " or his alienee or some other person in the opinion of the Minister
 " competent in that behalf"*
 " " line 7. *Omit "permanent"*
 " " line 8. *After "land" insert "specifying the nature extent and value
 " of such improvements"*
 " " lines 19 to 24. *Omit Proviso.*
 Page 7, Clause **19**, 17, lines 27 to 31. *Omit Proviso.*
 " *After Clause 19, 17, insert new Clause 20.*
 Page 8, Clause **21**, 18, lines 1 and 2. *Omit "twelve and thirteen" insert "fourteen and
 " fifteen."*
 " " line 5. *Omit "may be"*
 " Clause **22**, 19, line 8. *Omit "twelve and thirteen" insert "fourteen and fifteen"*
 " " lines 13 to 15. *At end of Clause insert Proviso.*
 " Clause **23**, 20, line 18. *After "lands" omit "and."*
 " " line 20. *After "acres" insert "and"*
 " Clause **24**, 21, line 24. *Omit "three hundred and twenty," insert "six hundred
 " and forty."*
 " " line 25. *After "places" insert "in the Police District in which the
 " lands are situated."*
 " " lines 25 and 26. *After "and," insert "at such"*
 " " lines 27 and 28. *After "Gazette" insert "not less than one month nor
 " more than three months before the day of sale"*
 " Clause **25**, 22, line 32. *Omit "valuable"*
 " Clause **26**, 23, line 34. *After "lands" insert "except as aforesaid"*
 " Clause **27**, 24, lines 43 to 45. *After "sale" insert "excepting in such cases in
 " which a deposit of fifty per centum has been paid by such purchaser
 " at the period of application for sale by auction."*
 " " lines 47 to 53. *After "forfeited" insert "excepting where a deposit of
 " fifty per centum shall have been made on the application for the sale by
 " auction in which case if the applicant become the purchaser he shall
 " be entitled to the same credit and terms of payment in respect of
 " the balance of the purchase money as are applicable to conditional
 " purchasers under Clause nineteen of this Act."*
 " Clause **28**, 25, line 57. *After "sales" insert "made by him"*
 " " lines 57 to 58. *After "under" omit "sections nineteen twenty and
 " twenty-one of"*
 " Clause **29**, 26, lines 38 to 49. *Omit paragraph 4, insert new paragraph 4.*
 Page 10, " lines 18 to 20. *Omit "the Minister may" insert "it shall be lawful
 " for any Judge of the Supreme Court on the application of either
 " party to such arbitration to"*
 " " lines 21 to 23. *Omit "And the award of the umpire shall be binding
 " final and conclusive upon all persons and to all intents and purposes
 " whatsoever."*
 Page 11, Clause **31**, 28, line 13. *Before "valid" omit "as"*
 " " *After "law" omit "as if contained herein."*
 " Clause **32**, 29, lines 19 to 21. *After "next" insert "Provided that an Act intituled
 " 'An Act for regulating the occupation of Crown Lands' shall during
 " the present session be passed by the Legislature of this Colony"*
 " " line 21. *After "And" insert "this Act"*

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 27 March, 1861. }*

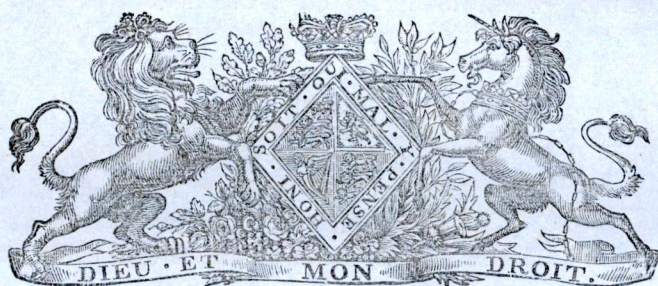
*CHA. TOMPSON,
Clerk of Legislative Assembly.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill, with Amendments.

*Legislative Council Chamber,
Sydney, 6 May, 1861. }*

*R. O'CONNOR,
Clerk of the Legislative Council.*

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled 5 and by the authority of the same as follows:—

Preamble.

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

Interpretation.

10 "Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted to any person in fee simple.

15 "Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.

"Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

20 "First Class Settled Districts"—Lands declared to be of the Settled Class by the Orders in Council.

"Second Class Settled Districts"—Lands converted into the Settled Class by the Act twenty-three Victoria number four.

"Orders

NOTE:—The words to be omitted are ruled through; the words to be inserted are printed in black letter.

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- “Orders in Council”—The Orders in Council and Regulations or some or one of them from time to time issued under the Imperial Act ninth and tenth Victoria chapter one hundred and four.
- 5 “Minister”—The Minister for the time being charged with the administration of the Public Lands.
- “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land
- 10 Offices of their Districts respectively.
- “Appraisement”—Settlement of price value or damage by appraisers **appointed in manner prescribed by this Act.**
- 15 “Arbitration”—Settlement of boundaries by arbitrators **appointed in manner prescribed by this Act.**
- “Improvements”—Improvements on Crown Lands or **Lands conditionally sold** to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than **the unimproved value of the lands to be in like manner determined not being less than one pound per acre.**
- 20
- 25 “Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.
- 30 2. On and from the day of the commencement of this Act **such parts of the Orders in Council and Regulations now in force as are repugnant to any provision of this Act** shall be repealed. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively
- 35 or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight during the currency of such leases as fully as if the same had not been hereby repealed.
- 40 3. Any Crown Lands may lawfully be granted in fee simple or dedicated to any public purpose under and subject to the provisions of this Act but not otherwise. And the Governor ~~with the advice of the Executive Council~~ is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands. Repeal of Orders in Council &c.
- 45 4. The Governor with the advice of the Executive Council may by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban
- 50 lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose. And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached or dedicated accordingly. Provided that the Governor with the advice afore-
- 55 said may by notice in the *Gazette* rescind the determination of boundaries or reservations under previous notices or of existing reservations in whole or in part in any cases in which sales of town allotments shall not have taken place in the reserves. Provided also that within one month should Parliament be then in Session and otherwise within one month after the
- 60 commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations. **and rescissions.** Publication of notice of sites of cities towns suburban lands reserves &c.
- 5.

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5. The Governor with the advice aforesaid may by notice in the *Gazette* grant reserve or dedicate in such manner as may seem best for the public interest any Crown Lands required for any railway or railway station—any public road canal or other internal communication—any public quay or landing-place—any public reservoir aqueduct or watercourse—**or for the preservation of water supply**—or for any purpose of defence—or as the site of any place of public worship—or of any hospital asylum or infirmary—or of any public market or slaughter-house—or for the interment of the dead—or for any college school mechanics' institute public library museum or other institution for public instruction or amusement—
 10 or for any pasturage common—or as any area for public health recreation convenience or enjoyment—or for any other public purpose—And upon any such notice being published in the *Gazette* such lands shall become and be granted reserved or dedicated accordingly. Provided that an abstract of any such intended grant reservation or dedication shall be laid before both Houses of Parliament one calendar month before such grant reservation or dedication is made.

Dedication of Crown Lands to public purposes.

Abstract to be laid before Parliament.

6. After any land shall have been temporarily reserved from sale the same shall not be sold or otherwise disposed of until such reservation shall be revoked by the Governor with the advice aforesaid and the notice of such revocation published in the *Gazette*. And all lands which have hitherto been or shall hereafter be permanently reserved for any of the purposes aforesaid shall be deemed to be set apart attached and dedicated accordingly and every conveyance or alienation thereof except for the purpose for which such reservation shall have been made shall be absolutely void as well against Her Majesty as all other persons whomsoever.

Temporary reservations.

Permanent reservations.

7. Crown Lands held under lease or promise of lease ~~issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight~~ except in the first class Settled Districts and in the second class Settled Districts when held in such districts respectively under lease or promise of lease made since the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease and any renewal or new lease thereof issued under any Act for regulating the occupation of Crown Lands be exempt from sale under this Act except unless where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding. Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre. Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid. And provided that such appraisement shall not include any value for improvements. And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* for the period of one calendar month before the sale is completed.

Exception from sale of certain lands.

Limitation of pre-emptive right of purchase.

8. Lessees of Crown Lands having under the Orders in Council a right of pre-emptive purchase of land shall be permitted in the exercise of such right to purchase a portion not exceeding six hundred and forty acres in each block of twenty-five square miles of the lands comprised in their leases the price to be determined by appraisement not being less than One Pound per acre subject nevertheless to the reservations restrictions limitations and conditions in the said Orders in Council contained. Provided that such appraisement shall not include any

Limitation of pre-emptive right of purchase.

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any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the Government Gazette for the period of one calendar month before the sale is completed.

- 5 9. 7. Upon application made within twelve months after the passing of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within twelve months after the notification in the *Gazette* of any reserve from lease or promise of lease under the Orders in Council within which
10 improvements may be situated or upon application by the holder of any lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or his alienee made at any period for the sale of improved lands in proclaimed Gold Fields the Governor may with the like advice
15 sell and grant such lands to the owner of such improvements without competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth in section twenty-four of this Act and in no case less than one pound per acre ~~Provided that~~ but such appraisement shall not include any value for
20 improvements Provided that nothing herein contained shall be held to require the sale of any land which may contain auriferous deposits Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or ~~country~~ other
25 lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

10. 8. The Governor with the like advice may authorize any proprietor of land having frontage to any harbor or river to fill in and reclaim any
30 land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor
35 and may be granted to him accordingly Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbor or river or with the rights or interests of adjoining proprietors and
40 Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.

11. 9. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the
45 Minister to close such road or whenever any road which may be proclaimed through any land may render unnecessary a reserved or other road bounding such land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period
50 not less than ~~two~~ three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.

12. 10. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street

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street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-four of this Act.

10 **13. 11.** The Governor may with the like advice ~~by a memorandum in~~ ^{Rescission of reser-} ~~writing under his hand declare that rescind~~ any reservation of any water ^{vation of water} frontage ^{frontage.} **on the sea coast or any bay inlet harbor or navigable river** or land adjoining such frontage contained in any Crown grant shall be ~~rescinded~~ **either** wholly or to such extent as shall be specified in such memo-
15 ~~randum~~ and subject to such conditions or restrictions as shall be therein ~~specified and such reservation shall be so rescinded accordingly~~ **deemed** advisable and the land **being the subject of such rescission** shall by ~~virtue and according to the terms of such memorandum~~ on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land
20 as set forth in section twenty-four of this Act ~~become vested in~~ **be granted** to the owner of the land conveyed in such **the original** Crown grant **accordingly** Provided that nothing in this clause contained shall empower the Governor **to grant any land below high water mark or** to interfere with any land ~~heretofore~~ used as a public thoroughfare or with
25 any land ~~already~~ set apart and dedicated for any public purpose Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such ~~memorandum~~ **grant.**

14. 12. Crown Lands other than town lands or suburban lands ^{Conditional sale of} and not being within a proclaimed Gold Field and not being ^{unimproved lands} within areas bounded by lines bearing north east south and ^{without competition.} west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants
30 or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for
40 any public purpose and not containing improvements and not excepted from sale under section six of this Act **and not being under application for purchase at auction by persons who have paid or tendered at the time of application a deposit of fifty per cent upon the minimum price** shall be open for conditional sale by selection
45 in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of ~~twenty-five~~ **fifty** per centum of the
50 purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof
55 shall be tendered at the same time to the Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser **Provided further that any deposit paid by an applicant for sale by** ^{Proviso.} **auction**

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auction in manner beforementioned shall be forfeited if the land shall not be sold when the auction takes place but if sold to the applicant he shall be allowed credit for such deposit in the purchase of the land and if sold to any other person the applicant shall be entitled
5 to receive back his deposit.

15. 13. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the ~~twelfth~~ **fourteenth** section of this
10 Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled
15 to compensation for ~~the value other than auriferous of the lands and improvements such~~ any loss or damage which he may sustain by the surrender of the lands exclusive of their auriferous value but including the value of any improvements which he may have effected thereon such loss or damage and value to be determined by appraisement.

Conditional sale in Gold Fields.

20 16. 14. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections ~~thirteen and fourteen and fifteen~~ of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom
25 shewing the particulars of all such applications for the week preceding.

Record by Land Agent.

17. 15. If at the time of conditional purchase of any Crown Land under sections ~~twelve and thirteen~~ **fourteen and fifteen** of this Act such Land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within
30 one month occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for
35 the conditional purchaser by notice in writing to the Land Agent to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the option of having the land surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such
40 purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

Temporary boundaries of land until surveyed by Government.

18. 16. Crown Lands conditionally purchased under this Act shall if measured previously to such purchase be taken in portions
45 as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the first class Settled Districts have a depth of not less than ~~twenty~~ **forty** chains and otherwise shall have a depth of not less than ~~forty~~ **sixty** chains and shall have their boundaries other than
50 the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points Provided that should it seem to the Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the
55 frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement Provided also that in all cases in which the country has been divided into sections of square miles such conditional purchases shall be measured in accordance with the general
60 sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office.

Form of measurement of portions selected and reservation of roads and water.

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19. 17. At the expiration of three years from the date of conditional purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration by the conditional purchaser or
 5 his alienee or some other person in the opinion of the Minister competent in that behalf under the Act ninth Victoria number nine to the effect that ~~permanent~~ improvements have been made upon such land specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ*
 10 *fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration
 15 and the certificate of the Lands Sales Agent or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the remaining purchase money and a grant of the fee simple but with reservation of any minerals which the land may contain shall be made to the then rightful owner ~~Provided that should interest~~
 20 ~~at the rate of five per centum on the balance of the purchase money be paid within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months of the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year~~
 25 But on default of a compliance with the requirements of this section the land shall revert to Her Majesty and be liable to be sold and the deposit shall be forfeited ~~Provided that when any such sale shall result in payment to the Government of more money than would have been payable under the original conditions of purchase the~~
 30 ~~surplus after paying the expenses of sale shall be paid to the party who was entitled to purchase without competition.~~

20. Crown Lands may be conditionally selected for the purposes of mining other than gold mining under section fourteen of this Act except that in such case the price shall be forty shillings per acre and
 35 except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of Two pounds per acre has been expended in mining operations other than gold mining on the land And upon such conditions being
 40 satisfied as hereby altered and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired
 45 And a grant may be made in like manner of any portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than Five Pounds per acre on the land so to be granted And in that case the pur-
 50 chase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to
 55 be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.

Purchases under mining conditions.

Crown Lands Alienation Act.—1861.

21. 18. Crown Lands conditionally purchased under sections ~~twelve and thirteen~~ **fourteen and fifteen** of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three 5 years from the date of purchase shall be forfeited and ~~may be~~ sold at auction.

Sale by Auction of lands abandoned by selectors.

22. 19. Conditional purchasers of portions of Crown Lands under sections ~~twelve and thirteen~~ **fourteen and fifteen** of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional 10 selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence **Provided that in the measurement of such additional** 15 **selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres.**

Additional selection of adjoining lands.

Proviso.

23. 20. Holders in fee simple of lands granted by the Crown in areas not exceeding two hundred and eighty acres who may reside on such 20 lands and may make conditional purchases adjoining such lands the areas of which shall not with that of the freehold exceed three hundred and twenty acres and shall not be subject to the condition of residence applicable to conditional purchases in other cases.

Additional selection of lands adjoining land already granted.

24. 21. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding ~~three hundred and twenty~~ **six hundred and forty** acres each at 25 such places **in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the Gazette not less than one month nor more than three months before the day of sale** And the upset prices per acre shall not be lower 30 than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound **Provided that the upset prices may be respectively fixed at any higher amounts.**

Sale by auction of other lands.

Upset prices.

25. 22. Town lands and suburban lands without ~~valuable~~ improvements shall be sold by public auction only.

Sale by auction of town and suburban lands.

26. 23. Any Crown Lands **except as aforesaid** put up for sale by public 35 auction and not sold may be again put up in like manner **Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon** **Provided also that the Minister may withdraw any such** 40 **lands from selection and again submit them to public auction.**

As to lands put up and not sold.

27. 24. A deposit of twenty-five per centum of the purchase money 45 for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale **excepting in such cases in which a deposit of fifty per centum has been paid by such purchaser at the period of application for sale by auction** And unless the remainder of such purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited **excepting where a deposit of fifty per centum shall have been made on the application for the sale by auction in which case if the** 50 **applicant become the purchaser he shall be entitled to the same credit and terms of payment in respect of the balance of the purchase money as are applicable to conditional purchasers under Clause nineteen of this Act** Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not 55 accept any bid by the person so failing to pay.

Payment of purchase moneys.

28. 25. Every Land Agent shall duly enter in a book to be provided 60 for the purpose the particulars of all sales **made by him under sections nineteen twenty and twenty one of this Act.**

Record by Land Agent.

Crown Lands Alienation Act.—1861.

29. 26. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say:—

- 10 (1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute under their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.
- 15
- 20
- 25 (2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation.
- 30 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties.
- 35
- 40 (4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever.
- 45 (4.) In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge shall have power at any time and from time to time to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be upon such terms as to costs and otherwise as to the said Court or Judge may seem proper.
- 50 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made.
- 55

Mode of appraisement or arbitration.

Appointment of appraisers or arbitrators.

Appointment not to be revoked.

Single appraiser or arbitrator to act in certain cases.

Award to be binding.

Power to refer back award.

In case of death of or failure to act by appraiser or arbitrator.

(6.)

Crown Lands Alienation Act.—1861.

- (6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made. In case of death or failure to act by a single appraiser or arbitrator.
- 5
- (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration ~~the Minister may~~ **it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever.** Appraisers or arbitrators to appoint an umpire.
- 10
- 15
- 20
- (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. Determination by umpire in certain cases.
- 25
- 30
- (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath. Production of documents.
- 35
- (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire. Determination of costs.
- 40
- (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto. Arbitration subject to rule of Supreme Court.
- 45
- (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say— Declaration by appraiser arbitrator or umpire.
- 50
- I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861.
- 55
- (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor. Declaration to be annexed to appraisement.
- (14.)

Crown Lands Alienation Act.—1861.

(14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office. Appraisement to be transmitted to Surveyor General.

5 30. 27. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted. Instruments under Act to be evidence.

10 31. 28. The Governor with the advice aforesaid may make regulations for carrying this Act into full effect so as to provide for all proceedings—forms of grants and other instruments—and all other matters and things arising under and consistent with this Act and not herein expressly provided for. And all such regulations shall upon being published in the *Gazette* be as valid in law as if contained herein. Governor in Council to make and proclaim regulations. Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

15 32. 29. This Act shall commence on the first of January next. Commencement and Short Title. Provided that an Act intituled “An Act for regulating the occupation of Crown Lands” shall during the present Session be passed by the Legislature of this Colony. And this Act shall be styled and may be cited as the “Crown Lands Alienation Act of 1861.”

CROWN LANDS ALIENATION BILL, 1861.

SCHEDULE of Disagreements from Legislative Council's Amendments. Message, 8 May, 1861.

- Page 2, Clause 2, lines 30, 31, and 32. *Omit* "proposed amendments."
 " " lines 35 to 39. *Re-insert* "or to prevent the several provisions
 " of the said Orders in Council from being carried into
 " effect with respect to lands under lease or promise of lease
 " made previously to the twenty-second day of February
 " one thousand eight hundred and fifty-eight during the
 " currency of such leases as fully as if the same had not
 " been hereby repealed."
 " Clause 3, lines 42 and 43. *Re-insert* "with the advice of the Executive
 " Council."
 Page 3, Clause 5, line 2. *Re-insert* "grant."
 " " line 14. *Re-insert* "granted."
 " " line 15. *Re-insert* "grant."
 " " line 16. *Re-insert* "grant."
 Page 3, Clause 7, lines 27, 28, and 29. *Re-insert* "issued or made previously to
 " the twenty-second day of February one thousand eight
 " hundred and fifty-eight."
 " " lines 29 to 32. *Omit* "proposed amendment."
 " " lines 33 to 35. *Omit* "proposed amendment."
 " " lines 38 to 49. *Re-insert* "Provided that the lessee may be per-
 " mitted to exercise a pre-emptive right of purchase over one
 " portion and no more of an area not exceeding six hundred
 " and forty acres out of each block of twenty-five square miles
 " and at a value to be determined by appraisement not being
 " less than one pound per acre Provided nevertheless that
 " any land purchased under the Orders in Council previously
 " to the passing of this Act shall be estimated in the six
 " hundred and forty acres aforesaid And provided that such
 " appraisement shall not include any value for improvements
 " And provided that every application for the purchase of
 " land under these conditions shall be advertised in the
 " *Government Gazette* for the period of one calendar month
 " before the sale is completed."
 " Clause 8, lines 50 to 60. *Omit* "proposed new Clause."
 Page 5, Clause 13, 14, lines 34 to 37. *Omit* "proposed amendment."
 " " line 42. *Re-insert* "twenty-five"; *omit* "fifty."
 " " lines 51 to 56. *Omit* "proposed new proviso."
 Page 7, Clause 18, 19, lines 16 to 22. *Re-insert* "Provided that should interest at
 " the rate of five per centum on the balance of the purchase
 " money be paid within the said three months to the Colonial
 " Treasurer the payment of such balance may be deferred to
 " a period within three months of the first day of January
 " then next ensuing and may be so deferred from year to
 " year by payment of such interest during the first quarter
 " of each year."
 Page 8, Clause 23, 24, line 13. *Re-insert* "three hundred and twenty;" *omit* "six
 " hundred and forty."
 " Clause 25, 26, line 23. *Omit* "except as aforesaid."
 " Clause 26, 27, lines 32 to 34. *Omit* "proposed amendment."
 " " lines 37 to 41. *Omit* "proposed amendment."
 Page 9, Clause 28, 29, lines 27 to 38. *Re-insert* "(4.) The award of any appraiser or
 " appraisers arbitrator or arbitrators appointed in pursuance
 " of this Act shall be binding final and conclusive upon all
 " persons and to all intents and purposes whatsoever." *Omit*
 " proposed new paragraph (4.)"
 Page 10, " " line 10. *Re-insert* "the Minister may."
 " " lines 10 to 12. *Omit* "proposed amendment."
 " " lines 13 to 15. *Re-insert* "and the award of the umpire
 " shall be binding final and conclusive upon all persons and
 " to all intents and purposes whatsoever."
 Page 11, " 31, 32, lines 11 to 13. *Omit* "proposed amendments."

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 27 March, 1861. }*

CHA. TOMPSON,
Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to this Bill, with Amendments.

*Legislative Council Chamber,
Sydney, 6 May, 1861. }*

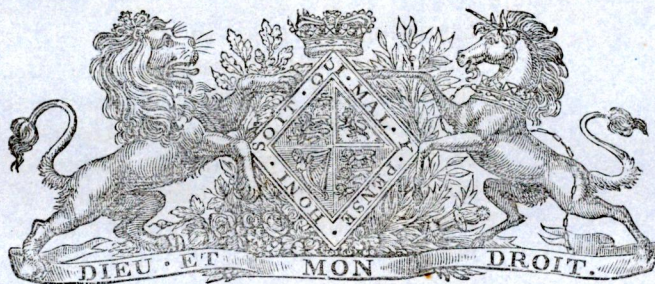
R. O'CONNOR,
Clerk of the Legislative Council.

The LEGISLATIVE ASSEMBLY has this day agreed to some, and disagreed from others of the Amendments made by the LEGISLATIVE COUNCIL in this Bill.

*Legislative Assembly Chamber,
Sydney, 8 May, 1861. }*

For CHA. TOMPSON,
Clerk of Legislative Assembly,
F. ELDERSHAW,
Clerk Assistant.

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled 5 and by the authority of the same as follows:—

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

10 "Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted in fee simple.

"Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.

15 "Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

"First Class Settled Districts"—Lands declared to be of the Settled Class by the Orders in Council.

20 "Second Class Settled Districts"—Lands converted into the Settled Class by the Act twenty-three Victoria number four.

"Orders

NOTE:—The words to be omitted are ruled through; the words to be re-inserted are printed in black letter.

Crown Lands Alienation Act.—1861.

“Orders in Council”—The Orders in Council and Regulations or some or one of them from time to time issued under the Imperial Act ninth and tenth Victoria chapter one hundred and four.

5 “Minister”—The Minister for the time being charged with the administration of the Public Lands.

“Land Agent”—Any person duly appointed to sell Crown Lands.

10 “Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.

“Appraisement”—Settlement of price value or damage by appraisers appointed in manner prescribed by this Act.

15 “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.

20 “Improvements”—Improvements on Crown Lands or Lands conditionally sold to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than the unimproved value of the lands to be in like manner determined not being less than one pound per acre.

25 “Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.

30 2. On and from the day of the commencement of this Act such parts of the Orders in Council and regulations now in force as are repugnant to any provision of this Act shall be repealed. Repeal of Orders in Council &c. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively

35 or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight during the currency of such leases as fully as if the same had not been hereby repealed.

40 3. Any Crown Lands may lawfully be granted in fee simple or dedicated to any public purpose under and subject to the provisions of this Act but not otherwise And the Governor with the advice of the **Executive Council** is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands. Alienation of Crown Lands.

45 4. The Governor with the advice of the Executive Council may by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban

50 lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached or dedicated accordingly Provided that within one month should Parliament

55 be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations. Publication of notice of sites of cities towns suburban lands reserves &c.

Crown Lands Alienation Act.—1861.

5. The Governor with the advice aforesaid may by notice in the *Gazette* **grant** reserve or dedicate in such manner as may seem best for the public interest any Crown Lands required for any railway or railway station—any public road canal or other internal communication—any public 5 quay or landing-place—any public reservoir aqueduct or watercourse— or for the preservation of water supply—or for any purpose of defence —or as the site of any place of public worship—or of any hospital asylum or infirmary—or of any public market or slaughter-house—or for the interment of the dead—or for any college school mechanics' institute public 10 library museum or other institution for public instruction or amusement— or for any pasturage common—or as any area for public health recreation convenience or enjoyment—or for any other public purpose—And upon any such notice being published in the *Gazette* such lands shall become and be **granted** reserved or dedicated accordingly Provided that an abstract 15 of any such intended **grant** reservation or dedication shall be laid before both Houses of Parliament one calendar month before such **grant** reservation or dedication is made.
6. After any land shall have been temporarily reserved from sale the same shall not be sold or otherwise disposed of until such reservation 20 shall be revoked by the Governor with the advice aforesaid and the notice of such revocation published in the *Gazette* And all lands which have hitherto been or shall hereafter be permanently reserved for any of the purposes aforesaid shall be deemed to be set apart attached and dedicated accordingly and every conveyance or alienation thereof except for the 25 purpose for which such reservation shall have been made shall be absolutely void as well against Her Majesty as all other persons whomsoever.
7. Crown Lands held under lease or promise of lease **issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight** except in the first class Settled Districts 30 and in the second class Settled Districts when held in such districts respectively under lease or promise of lease made since the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease and any renewal or new lease thereof issued under any Act for regulating the occupation of Crown- 35 Lands be exempt from sale under this Act unless where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one 40 portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the 45 six hundred and forty acres aforesaid And provided that such appraisement shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the Government Gazette for the period of one calendar month before the sale is completed.
- 50 8. Lessees of Crown Lands having under the Orders in Council a right of pre-emptive purchase of land shall be permitted in the exercise of such right to purchase a portion not exceeding six hundred and forty acres in each block of twenty-five square miles of the lands comprised in their leases the price to be determined by appraisement not being 55 less than One Pound per acre subject nevertheless to the reservations restrictions limitations and conditions in the said Orders in Council contained Provided that such appraisement shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* 60 for the period of one calendar month before the sale is completed.

Dedication of Crown Lands to public purposes.

Abstract to be laid before Parliament.

Temporary reservations.

Permanent reservations.

Exception from sale of certain lands.

Limitation of pre-emptive right of purchase.

Limitation of pre-emptive right of purchase.

Proviso.

Crown Lands Alienation Act.—1861.

8. 9. Upon application made within twelve months after the passing of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within twelve months after the notification in the *Gazette* of any reserve from
 5 lease or promise of lease under the Orders in Council within which improvements may be situated or upon application by the holder of any lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or his alienee made at any period for the sale of improved lands in
 10 proclaimed Gold Fields the Governor may with the like advice sell and grant such lands to the owner of such improvements without competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth in section twenty-four of this Act and in no case less than one pound per
 15 acre but such appraisement shall not include any value for improvements. Provided that nothing herein contained shall be held to require the sale of any land which may contain auriferous deposits. Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or other lands
 20 and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

9. 10. The Governor with the like advice may authorize any proprietor of land having frontage to any harbor or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already
 30 have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly. Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbor or river or with the rights or interests of adjoining proprietors and
 35 Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.

10. 11. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise
 40 required for public use or convenience shall make application to the Minister to close such road or whenever any road which may be proclaimed through any land may render unnecessary a reserved or other road bounding such land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if
 45 any that such reserved or boundary road will be closed and at any period not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners. Provided that an adequate money
 50 consideration to be determined by appraisement shall be paid for the same.

11. 12. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which
 55 a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor

Sales in consideration of improvements

Reclamation of lands by proprietor of adjoining lands.

Not to interfere with navigation nor with adjoining proprietors.

Closing and alienation of unnecessary roads.

Sales without competition in special cases.

Crown Lands Alienation Act.—1861.

Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-four of this Act.

12. 13. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbor or navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject of such rescission shall on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-four of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly. Provided that nothing in this clause contained shall empower the Governor to grant any land below high water mark or to interfere with any land used as a public thoroughfare or with any land set apart and dedicated for any public purpose. Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

Rescission of reservation of water frontage.

13. 14. Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section seven of this Act and not being under application for purchase at auction by persons who have paid or tendered at the time of application a deposit of fifty per cent. upon the minimum price shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of **twenty-five** ~~fifty~~ per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid. Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser. Provided further that any deposit paid by an applicant for sale by auction in manner before mentioned shall be forfeited if the land shall not be sold when the auction takes place but if sold to the applicant he shall be allowed credit for such deposit in the purchase of the land and if sold to any other person the applicant shall be entitled to receive back his deposit.

Conditional sale of unimproved lands without competition.

Proviso.

Crown Lands Alienation Act.—1861.

14. 15. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the fourteenth section of this Act. Conditional sale in Gold Fields.
- 5 Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled
- 10 to compensation for any loss or damage which he may sustain by the surrender of the lands exclusive of their auriferous value but including the value of any improvements which he may have effected thereon such loss or damage and value to be determined by appraisement.
- 15 15. 16. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections fourteen and fifteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding. Record by Land Agent.
- 20 16. 17. If at the time of conditional purchase of any Crown Land under sections fourteen and fifteen of this Act such Land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month occupy the land. And any dispute between such purchaser and
- 25 any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration. Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the option of having the land surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance
- 30 with the scale of charges fixed or to be fixed by the Surveyor General. Temporary boundaries of land until surveyed by Government.
- 35 17. 18. Crown Lands conditionally purchased under this Act shall if measured previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended
- 40 road shall if within the first class Settled Districts have a depth of not less than forty chains and otherwise shall have a depth of not less than sixty chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks
- 45 and with boundaries directed to such cardinal points. Provided that should it seem to the Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves
- 50 excluded from such measurement. Provided also that in all cases in which the country has been divided into sections of square miles such conditional purchases shall be measured in accordance with the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office. Form of measurement of portions selected and reservation of roads and water.
- 55 18. 19. At the expiration of three years from the date of conditional purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Conditions of residence and improvement and payment of purchase money.

Treasurer

Crown Lands Alienation Act.—1861.

Treasurer together with a declaration by the conditional purchaser or his alienee or some other person in the opinion of the Minister competent in that behalf under the Act ninth Victoria number nine to the effect that improvements have been made upon such land
 5 specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that no such alienation has been made by any holder thereof until
 10 after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands Sales Agent or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the remaining purchase money and a grant of the fee simple but
 15 with reservation of any minerals which the land may contain shall be made to the then rightful owner **Provided that should interest at the rate of five per centum on the balance of the purchase money be paid within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three**
 20 **months of the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year** But on default of a compliance with the requirements of this section the land shall revert to Her Majesty and be liable to be sold and the deposit shall be forfeited.

25 **19. 20.** Crown Lands may be conditionally selected for the purposes of mining other than gold mining under section fourteen of this Act Purchases under mining conditions. except that in such case the price shall be forty shillings per acre and except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration
 30 shall be required only of the fact that not less than an average sum of Two pounds per acre has been expended in mining operations other than gold mining on the land And upon such conditions being satisfied as hereby altered and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than
 35 gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired And a grant may be made in like manner of any portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure
 40 in such mining operations as aforesaid of an average sum of not less than Five pounds per acre on the land so to be granted And in that case the purchase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted **Provided further that if the Minister**
 45 **shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.**

20. 21. Crown Lands conditionally purchased under sections fourteen Sale by Auction of lands abandoned by selectors. and fifteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three years from the date of purchase shall be forfeited and sold at auction.

21. 22. Conditional purchasers of portions of Crown Lands under Additional selection of adjoining lands. sections fourteen and fifteen of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all
 the

Crown Lands Alienation Act.—1861.

the conditions applicable to the original purchase except residence Provided Proviso. that in the measurement of such additional selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres.

5 **22. 23.** Holders in fee simple of lands granted by the Crown in areas Additional selection of lands adjoining land already granted. not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the freehold exceed three hundred and twenty acres and shall not be subject to the condition of residence applicable

10 to conditional purchases in other cases.

23. 24. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding **three hundred and twenty** ~~six hundred and forty~~ acres each at such places in the Police District in which the lands are situated and Sale by auction of other lands. 15 at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not less than one month nor more than three months before the day of sale And the upset prices per acre shall not be lower Upset prices. than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound Provided that the upset prices may be 20 respectively fixed at any higher amounts.

24. 25. Town lands and suburban lands without improvements shall Sale by auction of town and suburban lands. be sold by public auction only.

25. 26. Any Crown Lands ~~except as aforesaid~~ put up for sale by public auction and not sold may be again put up in like manner As to lands put up and not sold. Provided that all 25 lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction.

30 **26. 27.** A deposit of twenty-five per centum of the purchase money for all lands sold by auction under any provision of this Act shall Payment of purchase moneys. be paid by the purchaser at the time of sale ~~excepting in such cases in which a deposit of fifty per centum has been paid by such purchaser at the period of application for sale by auction~~ And unless the 35 remainder of such purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited ~~excepting where a deposit of fifty per centum shall have been made on the application for the sale by auction in which case if the applicant become the purchaser he shall be entitled to the same credit and terms of~~ 40 ~~payment in respect of the balance of the purchase money as are applicable to conditional purchasers under Clause nineteen of this Act~~ Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay.

45 **27. 28.** Every Land Agent shall duly enter in a book to be provided Record by Land Agent. for the purpose the particulars of all sales made by him under this Act.

28. 29. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the Mode of appraisement or arbitration. 50 amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

55 (1.) The Minister or an Officer authorized by him in that Appointment of appraisers or arbitrators. behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested

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- interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall
- 5 appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute under
- 10 their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.
- 15 (2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation. Appointment not to be revoked.
- (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party
- 20 who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed
- 25 by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties. Single appraiser or arbitrator to act in certain cases.
- (4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be
- 30 binding final and conclusive upon all persons and to all intents and purposes whatsoever. Award to be binding.
- (4.) In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge shall have
- 35 power at any time and from time to time to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrators or umpire as the case may be upon such terms as to costs and otherwise as to the said Court or Judge may seem proper. Power to refer back award.
- (5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to
- 40 act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining
- 45 appraiser or arbitrator may proceed *ex parte* and every appraiser or arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made.
- (6.) In case a single arbitrator die or become incapable to act
- 50 before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or
- 55 arbitration under the provisions of this Act as if no former reference had been made. In case of death or failure to act by a single appraiser or arbitrator.

(7.)

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- (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration ~~the Minister may it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to~~ appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. Appraisers or arbitrators to appoint an umpire.
- (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. Determination by umpire in certain cases.
- (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath. Production of documents.
- (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire. Determination of costs.
- (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto. Arbitration subject to rule of Supreme Court.
- (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say—
I
I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861. Declaration by appraiser arbitrator or umpire.
- (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor. Declaration to be annexed to appraisement.
- (14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office. Appraisement to be transmitted to Surveyor General.
29. 30. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted. Instruments under Act to be evidence.

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30. 31. The Governor with the advice aforesaid may make regula-
 tions for carrying this Act into full effect so as to provide for all proceed-
 ings—forms of grants and other instruments—and all other matters and
 things arising under and consistent with this Act and not herein expressly
 5 provided for And all such regulations shall upon being published in
 the *Gazette* be valid in law Provided that a copy of every such regulation
 shall be laid before both Houses of Parliament within one month from the
 issue thereof if Parliament be then in Session or otherwise within one
 month after the commencement of the next ensuing Session.
- 10 31. 32. This Act shall commence on the first of January next
 Provided that an Act intituled "~~An Act for regulating the occupation~~
 of Crown Lands" shall during the present Session be passed by the
 Legislature of this Colony And this Act shall be styled and may be cited
 as the "Crown Lands Alienation Act of 1861."

Governor in Council
 to make and proclaim
 regulations.

Commencement and
 Short Title.

A BILL

For regulating the Alienation of Crown Lands.

[MR. ROBERTSON ;—4 September, 1861.]

WHEREAS it is expedient to make better provision for the alienation Preamble.
of Crown Lands Be it enacted by the Queen's Most Excellent
Majesty by and with the advice and consent of the Legislative Council
and Legislative Assembly of New South Wales in Parliament assembled
5 and by the authority of the same as follows :—

1. The following terms within inverted commas shall for the Interpretation.
purposes of this Act unless the context otherwise indicate bear the
meanings set against them respectively—

10 “Crown Lands”—All Lands vested in Her Majesty which have
not been dedicated to any public purpose
or which have not been granted or lawfully
contracted to be granted in fee simple.

“Town Lands”—Crown Lands in any City Town or Village or
set apart as a site for the same.

15 “Suburban Lands”—Crown Lands declared in the *Gazette* to be
Suburban by the Governor and Executive
Council.

“First Class Settled Districts”—Lands declared to be of the
Settled Class by the Orders in Council.

20 “Second Class Settled Districts”—Lands converted into the
Settled Class by the Act twenty-three
Victoria number four.

25 “Orders in Council”—The Orders in Council and Regulations or
some or one of them from time to time
issued under the Imperial Act fifth and
sixth Victoria chapter thirty-six and
ninth and tenth Victoria chapter one
hundred and four.

30 “Minister”—The Minister for the time being charged with the
administration of the Public Lands.

“Land Agent”—Any person duly appointed to sell Crown Lands.

“Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.

“Appraisement”—Settlement of price value or damage by appraisers appointed in manner prescribed by this Act.

“Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.

“Improvements”—Improvements on Crown Lands or Lands conditionally sold to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than the unimproved value of the lands to be in like manner determined not being less than one pound per acre.

“Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.

Repeal of Orders in Council &c.

2. On and after the passing of this Act the Orders in Council shall be repealed Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight during the currency of such leases as fully as if the same had not been hereby repealed.

Alienation of Crown Lands.

3. Any Crown Lands may lawfully be granted in fee simple or dedicated to any public purpose under and subject to the provisions of this Act but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands.

4. The Governor with the advice of the Executive Council may by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached or dedicated accordingly Provided that within one month should Parliament be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations.

Publication of notice
of sites of cities
towns suburban
lands reserves &c.

5. The Governor with the advice aforesaid may by notice in the *Gazette* reserve or dedicate in such manner as may seem best for the public interest any Crown Lands for any railway or railway station—any public road canal or other internal communication—any public quay or landing-place—any public reservoir aqueduct or watercourse—or for the preservation of water supply—or for any purpose of defence—or as the site for any place of public worship any hospital asylum or infirmary any public market or slaughter-house any college school mechanics' institute public library museum or other institution for public instruction or amusement—or for any pasturage common—or for public health recreation convenience or enjoyment—or for the interment of the dead—or for any other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be reserved or dedicated accordingly and may at any time thereafter be granted for such purposes in fee simple Provided that an abstract of any intended reservation or dedication shall be laid before both Houses of Parliament one calendar month before such reservation or dedication is made.

Dedication of Crown
Lands to public pur-
poses.

Abstract to be laid
before Parliament.

6. After any land shall have been temporarily reserved from sale the same shall not be sold or otherwise disposed of until such reservation shall be revoked by the Governor with the advice aforesaid and the notice of such revocation published in the *Gazette* And all lands which have hitherto been or shall hereafter be permanently reserved for any of the purposes aforesaid shall be deemed to be set apart attached and dedicated accordingly and every conveyance or alienation thereof except for the purpose for which such reservation shall have been made shall be absolutely void as well against Her Majesty as all other persons whomsoever.

Temporary reserva-
tions.

Permanent reserva-
tions.

Exception from sale
of certain lands.

Limitation of pre-
emptive right of
purchase.

Sales in considera-
tion of improvements

7. Crown Lands held under lease or promise of lease issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease be exempt from sale under this Act unless where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding 5
Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound 10 per acre Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid And provided that such appraisement shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be 15 advertised in the *Government Gazette* for the period of one calendar month before the sale is completed.

8. Upon application made within twelve months after the passing of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within 20 twelve months after the notification in the *Gazette* of any reserve from lease or promise of lease under the Orders in Council within which improvements may be situated or upon application by the holder of any lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or 25 his alienee made at any period for the sale of improved lands in proclaimed Gold Fields the Governor may with the like advice sell and grant such lands to the owner of such improvements without competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth 30 in section twenty-three of this Act and in no case less than one pound per acre but such appraisement shall not include any value for improvements Provided that nothing herein contained shall be held to require the sale of any land which may contain auriferous deposits Provided also that such sales shall be made in accordance with the 35 general sub-division of the land whether town suburban or other lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

9. The Governor with the like advice may authorize any proprietor of land having frontage to any harbour or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly. Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.
10. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road which may be proclaimed through any land may render unnecessary a reserved or other road bounding such land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners. Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.
11. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act.

Reclamation of lands
by proprietor of
adjoining lands.

Not to interfere with
navigation nor with
adjoining pro-
prieters.

Closing and aliena-
tion of unnecessary
roads.

Sales without com-
petition in special
cases.

Rescission of reservation of water frontage.

12. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbour or navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject 5 of such rescission shall on payment of an adequate money consideration to be determined by appraisal being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly Provided that nothing in this clause contained 10 shall empower the Governor to grant any land below high-water-mark or to interfere with any land used as a public thoroughfare or with any land set apart and dedicated for any public purpose Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

15

Conditional sale of unimproved lands without competition.

13. On and from the first day of January one thousand eight hundred and sixty-two Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city 20 or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles 25 from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section seven of this Act shall be open for conditional sale 30 by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the 35 purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the Land Agent he shall unless all 40 such

such

such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.

14. Crown Lands within proclaimed Gold Fields and not Conditional sale in Gold Fields.
 5 within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the thirteenth section of this Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands
 10 selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled to compensation for any loss or damage which he may sustain by the surrender of the lands exclusive of their auriferous value but including
 15 the value of any improvements which he may have effected thereon such loss or damage and value to be determined by appraisalment.

15. Every Land Agent shall duly enter at the time in a book to Record by Land Agent.
 be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen
 20 and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

16. If at the time of conditional purchase of any Crown Land Temporary boundaries of land until surveyed by Government.
 under sections thirteen and fourteen of this Act such land shall not
 25 have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration
 30 Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the
 35 option of having the land surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

Form of measurement of portions selected and reservation of roads and water.

17. Crown Lands conditionally purchased under this Act shall if measured previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the First Class Settled Districts have a depth of not less than forty chains 5 and otherwise shall have a depth of not less than sixty chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points Provided that should it seem to the Minister to be expedient the 10 boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement Provided also that in all cases in which the country has been divided into sections of square 15 miles such conditional purchases shall be measured in accordance with the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office.

Conditions of residence and improvement and payment of purchase money.

18. At the expiration of three years from the date of conditional purchase of any such land as aforesaid or within three months thereafter the 20 balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration by the conditional purchaser or his alienee or some other person in the opinion of the Minister competent in that behalf under the Act ninth Victoria number nine to the effect that improvements have been made upon such land 25 specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that no such alienation has been made by any holder thereof until after the 30 *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands Sales Agent or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the remaining purchase money and a grant of the fee simple but with reser- 35 vation of any minerals which the land may contain shall be made to the then rightful owner Provided that should interest at the rate of five per centum on the balance of the purchase money be paid within the said three months to the Colonial Treasurer the payment of such balance may be

be deferred to a period within three months of the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year But on default of a compliance with the requirements of this section the land shall revert to Her Majesty and be liable to be sold and the deposit shall be forfeited.

19. Crown Lands may be conditionally selected for the purposes ^{Purchases under mining conditions.} of mining other than gold mining under section thirteen of this Act except that in such case the price shall be forty shillings per acre and except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of two pounds per acre has been expended in mining operations other than gold mining on the land And upon such conditions being satisfied as hereby altered and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired And a grant may be made in like manner of any portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than five pounds per acre on the land so to be granted And in that case the purchase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.

20. Crown Lands conditionally purchased under sections thirteen ^{Sale by auction of lands abandoned by selectors.} and fourteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three years from the date of purchase shall be forfeited and sold at auction.

21. Conditional purchasers of portions of Crown Lands under ^{Additional selection of adjoining lands.} sections thirteen and fourteen of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the

Proviso.

the conditions applicable to the original purchase except residence Provided that in the measurement of such additional selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres.

Additional selection of lands adjoining land already granted

22. Holders in fee simple of lands granted by the Crown in areas 5 not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the lands held in fee simple exceed three hundred and twenty acres and which shall not be subject to the condition of residence applicable to conditional purchases in other cases. 10

Sale by auction of other lands.

23. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding three hundred and twenty acres each at such places in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not 15 less than one month nor more than three months before the day of sale And the upset prices per acre shall not be lower than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound Provided that the upset prices may be respectively fixed at any higher amounts. 20

Upset prices.

Sale by auction of town and suburban lands.

24. Town lands and suburban lands without improvements shall be sold by public auction only.

As to lands put up and not sold.

25. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the 25 upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction.

Payment of purchase moneys.

26. A deposit of twenty-five per centum of the purchase money 30 for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale And unless the remainder of such purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited Should the purchaser fail to pay the deposit the land shall be forthwith again put up by 35 the Agent and who shall not accept any bid by the person so failing to pay.

Record by Land Agent.

27. Every Land Agent shall duly enter in a book to be provided for the purpose the particulars of all sales made by him under this Act.

28. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

- 10 (1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such
- 15 appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute
- 20 under their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.
- 25 (2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation.
- 30 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an
- 35 appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties.
- 40 (4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. (5.)

Mode of appraisement or arbitration.

Appointment of appraisers or arbitrators.

Appointment not to be revoked.

Single appraiser or arbitrator to act in certain cases.

Award to be binding.

In case of death of or failure to act by appraiser or arbitrator.

(5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from 5 the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made. 10

In case of death or failure to act by a single appraiser or arbitrator.

(6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters 15 referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made.

Appraisers or arbitrators to appoint an umpire.

(7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the 20 reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an 25 umpire within thirty days after being requested so to do by any party to the appraisement or arbitration the Minister may appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes 30 whatsoever.

Determination by umpire in certain cases.

(8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them 35 for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. 40

(9.)

(9.) Any appraiser arbitrator or umpire appointed by virtue of Production of documents.
this Act may require the production of such documents
in the possession or power of either party as he may
think necessary for determining the matters referred and
may examine the parties as witnesses on oath.

(10.) All costs of and consequent upon the reference shall be in Determination of costs.
the discretion of the appraiser or appraisers arbitrator or
arbitrators or of the umpire in case the matters referred are
determined by an umpire.

10 (11.) Any submission to arbitration under the provisions of this Arbitration subject to Rule of Supreme Court.
Act may be made a Rule of the Supreme Court of the said
Colony on the application of any party thereto.

(12.) Before any appraiser arbitrator or umpire shall enter Declaration by appraiser arbitrator or umpire.
upon the consideration of any matter referred to him as
15 aforesaid he shall make out and subscribe a declaration in
the form following before a Justice of the Peace that is to
say—

I A B do solemnly and sincerely declare that I am
not directly or indirectly interested in the matter
20 referred to me and that I will faithfully honestly
and to the best of my skill and ability hear
and determine the matters referred to me under
the Crown Lands Alienation Act of 1861.

(13.) And such declaration shall be annexed to the appraisement Declaration to be annexed to appraisement.
25 or award when made and if any appraiser arbitrator or
umpire shall wilfully act contrary to such declaration he
shall be guilty of a misdemeanor.

(14.) Every appraisement or award shall be in writing and shall Appraisement to be transmitted to Surveyor General.
be transmitted to the Surveyor General and deposited in
30 his office.

29. Any instrument of sale or conveyance made and issued under Instruments under Act to be evidence.
this Act may be proved in all legal proceedings by the production of a
certified copy thereof signed by the officer to be authorized for that purpose
under any regulation made as hereinafter enacted.

35 30. The Governor with the advice aforesaid may make regulations Governor in Council to make and proclaim regulations.
for carrying this Act into full effect so as to provide for all proceedings—
forms of grants and other instruments—and all other matters and things
arising under and consistent with this Act and not herein expressly pro-
vided for And all such regulations shall upon being published in the

Gazette

Gazette be valid in law Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

Short title.

31. This Act shall be styled and may be cited as the "Crown 5
Lands Alienation Act of 1861."

[Price, 4d.]

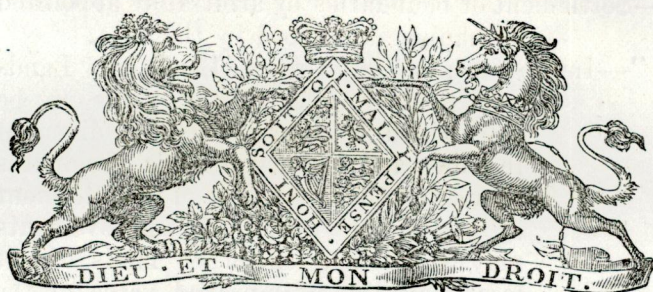
Sydney: Thomas Richards, Government Printer,—1861.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 20 September, 1861. }*

CHA. TOMPSON,
Clerk of Legislative Assembly,

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. .

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled 5 and by the authority of the same as follows :—

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

- 10 "Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted in fee simple.
- "Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.
- 15 "Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.
- "First Class Settled Districts"—Lands declared to be of the Settled Class by the Orders in Council.
- 20 "Second Class Settled Districts"—Lands converted into the Settled Class by the Act twenty-three Victoria number four.

19—A

(b)

"Orders

Crown Lands Alienation—1861.

- 5 “Orders in Council”—The Orders in Council and Regulations or some or one of them from time to time issued under the Imperial Act fifth and sixth Victoria chapter thirty-six and ninth and tenth Victoria chapter one hundred and four.
- 10 “Minister”—The Minister for the time being charged with the administration of the Public Lands.
- 10 “Land Agent”—Any person duly appointed to sell Crown Lands.
- 10 “Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.
- 15 “Appraisalment”—Settlement of price value or damage by appraisers appointed in manner prescribed by this Act.
- 15 “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
- 20 “Improvements”—Improvements on Crown Lands or Lands conditionally sold to the value to be determined by appraisalment if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than the unimproved value of the lands to be in like manner determined not being less than one pound per acre.
- 25 “Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.
- 30 2. On and after the passing of this Act the Orders in Council shall be repealed. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight during the currency of such leases as fully as if the same had not been hereby repealed. Repeal of Orders in Council &c.
- 45 3. Any Crown Lands may lawfully be granted in fee simple or dedicated to any public purpose under and subject to the provisions of this Act but not otherwise. And the Governor with the advice of the Executive Council is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands. Alienation of Crown Lands.
- 50 4. The Governor with the advice of the Executive Council may by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose. And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached or dedicated accordingly. Provided that within one month should Parliament be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations. Publication of notice of sites of cities towns suburban lands reserves &c.

Crown Lands Alienation—1861.

5. The Governor with the advice aforesaid may by notice in the *Gazette* reserve or dedicate in such manner as may seem best for the public interest any Crown Lands for any railway or railway station—any public road canal or other internal communication—any public
 5 quay or landing-place—any public reservoir aqueduct or water course—
 —or for the preservation of water supply—or for any purpose of defence
 —or as the site for any place of public worship any hospital asylum
 or infirmary any public market or slaughter-house any college school
 mechanics' institute public library museum or other institution for public
 10 instruction or amusement—or for any pasturage common—or for public
 health recreation convenience or enjoyment—or for the interment of the
 dead—or for any other public purpose And upon any such notice being
 published in the *Gazette* such lands shall become and be reserved or dedicated
 accordingly and may at any time thereafter be granted for such purposes
 15 in fee simple Provided that an abstract of any intended reservation
 or dedication shall be laid before both Houses of Parliament one calendar
 month before such reservation or dedication is made.

Dedication of Crown
Lands to public pur-
poses.Abstract to be laid
before Parliament.

6. After any land shall have been temporarily reserved from sale
 the same shall not be sold or otherwise disposed of until such reservation
 20 shall be revoked by the Governor with the advice aforesaid and the notice
 of such revocation published in the *Gazette* And all lands which have
 hitherto been or shall hereafter be permanently reserved for any of the
 purposes aforesaid shall be deemed to be set apart attached and dedicated
 accordingly and every conveyance or alienation thereof except for the
 25 purpose for which such reservation shall have been made shall be absolutely
 void as well against Her Majesty as all other persons whomsoever.

Temporary reserva-
tions.Permanent reserva-
tions.

7. Crown Lands held under lease or promise of lease issued or
 made previously to the twenty-second day of February one thousand eight
 hundred and fifty-eight shall during the currency of such lease be exempt
 30 from sale under this Act unless where such lands have been lawfully with-
 drawn from the holding of the lessee in accordance with the Orders in
 Council or may hereafter be lawfully withdrawn from such holding
 Provided that the lessee may be permitted to exercise a pre-emptive right
 of purchase over one portion and no more of an area not exceeding six
 35 hundred and forty acres out of each block of twenty-five square miles and
 at a value to be determined by appraisement not being less than one pound
 per acre Provided nevertheless that any land purchased under the Orders
 in Council previously to the passing of this Act shall be estimated in the
 six hundred and forty acres aforesaid And provided that such appraise-
 40 ment shall not include any value for improvements And provided that
 every application for the purchase of land under these conditions shall be
 advertised in the *Government Gazette* for the period of one calendar month
 before the sale is completed.

Exception from sale
of certain lands.Limitation of pre-
emptive right of
purchase.

8. Upon application made within twelve months after the passing
 45 of this Act by any person or his alienee who may prior thereto have
 made improvements on any Crown Lands or upon application within
 twelve months after the notification in the *Gazette* of any reserve from
 lease or promise of lease under the Orders in Council within which
 improvements may be situated or upon application by the holder of
 50 any lease of Crown Lands containing improvements made previously to
 the expiration of such lease or upon application by the improver or
 his alienee made at any period for the sale of improved lands in
 proclaimed Gold Fields the Governor may with the like advice sell
 and grant such lands to the owner of such improvements without
 55 competition in fee simple at a price to be fixed by appraisement not
 being less than the minimum upset price of the class of land as set forth
 in section twenty-three of this Act and in no case less than one pound per
 acre but such appraisement shall not include any value for im-
 provements Provided that nothing herein contained shall be held to
 60 require the sale of any land which may contain auriferous deposits
 Provided

Sales in considera-
tion of improvements

Crown Lands Alienation—1861.

Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or other lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

9. The Governor with the like advice may authorize any proprietor of land having frontage to any harbour or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly. Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.

Reclamation of lands by proprietor of adjoining lands.

Not to interfere with navigation nor with adjoining proprietors.

10. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road which may be proclaimed through any land may render unnecessary a reserved or other road bounding such land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners. Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.

Closing and alienation of unnecessary roads.

11. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act.

Sales without competition in special cases.

12. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbour or navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject of such rescission shall on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly. Provided that nothing in this clause contained shall empower the Governor to grant any land below high-water-mark or to interfere with any land used as a public thoroughfare or with any land set apart and dedicated for any public purpose. Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

Rescission of reservation of water frontage.

Crown Lands Alienation—1861

13. On and from the first day of January one thousand eight hundred and sixty-two Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section seven of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.

Conditional sale of
unimproved lands
without competition.

14. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the thirteenth section of this Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled to compensation for the value other than auriferous of the lands and improvements such value to be determined by appraisalment.

Conditional sale in
Gold Fields.

15. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

Record by Land
Agent.

16. If at the time of conditional purchase of any Crown Land under sections thirteen and fourteen of this Act such land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the option of having the land surveyed by a duly qualified licensed surveyor and

Temporary boun-
daries of land until
surveyed by Govern-
ment.

Crown Lands Alienation—1861.

and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

17. Crown Lands conditionally purchased under this Act shall
 5 if measured previously to such purchase be taken in portions as measured
 if not exceeding three hundred and twenty acres and if unmeasured and
 having frontage to any river creek road or intended road shall if within
 the First Class Settled Districts have a depth of not less than twenty chains
 and otherwise shall have a depth of not less than forty chains and shall
 10 have their boundaries other than the frontages directed to the cardinal
 points by compass and if having no frontages as aforesaid shall be mea-
 sured in square blocks and with boundaries directed to such cardinal
 points Provided that should it seem to the Minister to be expedient the
 boundaries of portions having frontages may be made approximately at
 15 right angles with the frontage and otherwise modified and the boundaries
 of portions having no frontages may be modified and necessary roadways
 and water reserves excluded from such measurement.

Form of measure-
 ment of portions
 selected and
 reservation of roads
 and water.

18. At the expiration of three years from the date of conditional
 purchase of any such land as aforesaid or within three months thereafter the
 20 balance of the purchase money shall be tendered at the office of the Colonial
 Treasurer together with a declaration by the conditional purchaser or
 his alienee or some other person in the opinion of the Minister compe-
 tent in that behalf under the Act ninth Victoria number nine to the
 effect that improvements have been made upon such land
 25 specifying the nature extent and value of such improvements and
 that such land has been from the date of occupation the *bonâ fide*
 residence either continuously of the original purchaser or of some alienee
 or successive alienees of his whole estate and interest therein and that
 no such alienation has been made by any holder thereof until after the
 30 *bonâ fide* residence thereon of such holder for one whole year at the least
 And upon the Minister being satisfied by such declaration and the
 certificate of the Lands Sales Agent or other proper officer of the facts
 aforesaid the Colonial Treasurer shall receive and acknowledge the
 remaining purchase money and a grant of the fee simple but with reser-
 35 vation of any minerals which the land may contain shall be made to the
 then rightful owner Provided that should interest at the rate of five per
 centum on the balance of the purchase money be paid within the said
 three months to the Colonial Treasurer the payment of such balance may
 be deferred to a period within three months of the first day of January
 40 then next ensuing and may be so deferred from year to year by payment
 of such interest during the first quarter of each year But on default of
 a compliance with the requirements of this section the land shall revert
 to Her Majesty and be liable to be sold and the deposit shall be forfeited.

Conditions of resi-
 dence and improve-
 ment and payment
 of purchase money.

19. Crown Lands may be conditionally selected for the purposes
 45 of mining other than gold mining under section thirteen of this Act
 except that in such case the price shall be forty shillings per acre and
 except that in such case instead of the conditions applicable to other cases
 in regard to the declaration and certificate required a declaration shall be
 required only of the fact that not less than an average sum of two pounds
 50 per acre has been expended in mining operations other than gold mining
 on the land And upon such conditions being satisfied as hereby altered
 and on payment of the balance of purchase money a grant in fee simple
 shall be made without reservation of minerals other than gold and the
 same may be made on satisfaction of such conditions and payment of such
 55 balance notwithstanding the period of three years required in other cases
 shall not have expired And a grant may be made in like manner of any
 portion (not being less than forty acres) of a larger portion originally selected
 for purchase upon a declaration shewing an expenditure in such mining
 operations

Purchases under
 mining conditions.

Crown Lands Alienation—1861.

- operations as aforesaid of an average sum of not less than five pounds per acre on the land so to be granted And in that case the purchase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.
- 10 20. Crown Lands conditionally purchased under sections thirteen and fourteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three years from the date of purchase shall be forfeited and sold at auction. Sale by auction of lands abandoned by selectors.
- 15 21. Conditional purchasers of portions of Crown Lands under sections thirteen and fourteen of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence Provided that in the measurement of such additional selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres. Additional selection of adjoining lands.
- 20 22. Holders in fee simple of lands granted by the Crown in areas not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the lands held in fee simple exceed three hundred and twenty acres and which shall not be subject to the condition of residence applicable to conditional purchases in other cases. Proviso: Additional selection of lands adjoining land already granted
- 25 23. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding three hundred and twenty acres each at such places in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not less than one month nor more than three months before the day of sale And the upset prices per acre shall not be lower than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound Provided that the upset prices may be respectively fixed at any higher amounts. Sale by auction of other lands. Upset prices.
- 30 24. Town lands and suburban lands without improvements shall be sold by public auction only. Sale by auction of town and suburban lands.
- 35 25. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction. As to lands put up and not sold.
- 40 26. A deposit of twenty-five per centum of the purchase money for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale And unless the remainder of such purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay. Payment of purchase moneys.
- 45 27. Every Land Agent shall duly enter in a book to be provided for the purpose the particulars of all sales made by him under this Act. Record by Land Agent.
- 50 28. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may Mode of appraisement or arbitration.
- 55 may

Crown Lands Alienation—1861.

may be fixed or ascertained by appraisement in case of dispute as to the amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

- 10 (1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute under their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.
- 15 (2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation.
- 20 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties.
- 25 (4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever.
- 30 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made.
- 35 (6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made.

Appointment of appraisers or arbitrators.

Appointment not to be revoked.

Single appraiser to arbitrator to act in certain cases.

Award to be binding.

In case of death of or failure to act by appraiser or arbitrator.

In case of death or failure to act by a single appraiser or arbitrator.

(7.)

Crown Lands Alienation—1861.

- (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration the Minister may appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever.
- (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage.
- (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath.
- (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire.
- (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto.
- (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say—
- I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861.
- (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor.
- (14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office.
29. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted.

Appraisers or arbitrators to appoint an umpire.

Determination by umpire in certain cases.

Production of documents.

Determination of costs.

Arbitration subject to Rule of Supreme Court.

Declaration by appraiser arbitrator or umpire.

Declaration to be annexed to appraisement.

Appraisement to be transmitted to Surveyor General.

Instruments under Act to be evidence.

Crown Lands Alienation—1861.

30. The Governor with the advice aforesaid may make regulations for carrying this Act into full effect so as to provide for all proceedings—forms of grants and other instruments—and all other matters and things arising under and consistent with this Act and not herein expressly provided for And all such regulations shall upon being published in the *Gazette* be valid in law Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

Governor in Council
to make and proclaim
regulations.

31. This Act shall be styled and may be cited as the “Crown Lands Alienation Act of 1861.”

Short title.

Sydney: Thomas Richards, Government Printer.—1861.

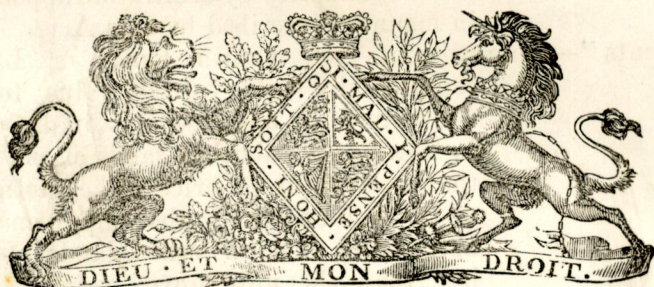
[Price, 3d.]

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 20 September, 1861. }*

*CHA. TOMPSON,
Clerk of Legislative Assembly,*

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. .

(As amended in Committee of the Whole.)

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation ^{Preamble.}
of Crown Lands Be it enacted by the Queen's Most Excellent
Majesty by and with the advice and consent of the Legislative Council
and Legislative Assembly of New South Wales in Parliament assembled
5 and by the authority of the same as follows :—

1. The following terms within inverted commas shall for the ^{Interpretation.}
purposes of this Act unless the context otherwise indicate bear the
meanings set against them respectively—

10 “Crown Lands”—All Lands vested in Her Majesty which have
not been dedicated to any public purpose
or which have not been granted or lawfully
contracted to be granted in fee simple.

“Town Lands”—Crown Lands in any City Town or Village or
set apart as a site for the same.

15 “Suburban Lands”—Crown Lands declared in the *Gazette* to be
Suburban by the Governor and Executive
Council.

“First Class Settled Districts”—Lands declared to be of the
Settled Class by the **Queen's** Orders in
Council.

20 “Second Class Settled Districts”—Lands converted into the
Settled Class by the Act twenty-three
Victoria number four or **that may be here-**
after so converted.

“Orders

NOTE.—The words to be omitted are ruled through: the words to be inserted are printed in black letter.

Crown Lands Alienation—1861.

- “Orders in Council”—The Orders in Council and Regulations ~~or some or one of them~~ from time to time issued under the Imperial Act fifth and sixth Victoria chapter thirty-six and ninth and tenth Victoria chapter one hundred and four.
- “Minister”—The Minister for the time being charged with the administration of the Public Lands.
- “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.
- “Appraisement”—Settlement of price value or damage by appraisers appointed in manner prescribed by this Act.
- “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
- “Improvements”—Improvements on Crown Lands or Lands conditionally sold to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than the unimproved value of the lands to be in like manner determined not being less than one pound per acre.
- “Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.
2. On and after the passing of this Act the Orders in Council shall be repealed. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight ~~during the currency of such leases~~ as fully as if the same had not been hereby repealed. Repeal of Orders in Council &c.
3. Any Crown Lands may lawfully be granted in fee simple or dedicated to any public purpose under and subject to the provisions of this Act but not otherwise. And the Governor with the advice of the Executive Council is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands. Alienation of Crown Lands.
4. The Governor with the advice of the Executive Council may by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose. And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached ~~or~~ dedicated or reserved accordingly. Provided that within one month should Parliament be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations. Publication of notice of sites of cities towns suburban lands reserves &c.

Crown Lands Alienation—1861.

5. The Governor with the advice aforesaid may by notice in the *Gazette* reserve or dedicate in such manner as may seem best for the public interest any Crown Lands for any railway or railway station—any public road canal or other internal communication—any public quay or landing-place—any public reservoir aqueduct or water course—
 5 or for the preservation of water supply—or for any purpose of defence—or as the site for any place of public worship any hospital asylum or infirmary any public market or slaughter-house any college school mechanics' institute public library museum or other institution for public instruction or amusement—or for any pasturage common—or for public health recreation convenience or enjoyment—or for the interment of the dead—or for any other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be reserved or dedicated accordingly and may at any time thereafter be granted for such purposes
 15 in fee simple Provided that an abstract of any intended reservation or dedication shall be laid before both Houses of Parliament one calendar month before such reservation or dedication is made. Dedication of Crown Lands to public purposes.
6. After any land shall have been temporarily reserved from sale the same shall not be sold or otherwise disposed of until such reservation shall be revoked by the Governor with the advice aforesaid and the notice of such revocation published in the *Gazette* And all lands which have hitherto been or shall hereafter be permanently reserved for any of the purposes aforesaid shall be deemed to be set apart attached and dedicated accordingly and every conveyance or alienation thereof except for the purpose for which such reservation shall have been made shall be absolutely void as well against Her Majesty as all other persons whomsoever. Temporary reservations.
7. Crown Lands held under lease or promise of lease issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease be exempt from sale under this Act unless where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid And provided that such appraisement shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* for the period of one calendar month before the sale is completed. Permanent reservations.
8. Upon application made within twelve months after the passing of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within twelve months after the notification in the *Gazette* of any reserve from lease or promise of lease under the Orders in Council within which improvements may be situated or upon application by the holder of any lease or promise of lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or his alienee made at any period for the sale of improved lands in proclaimed Gold Fields the Governor may with the like advice sell and grant such lands to the owner of such improvements without competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth in section twenty-three of this Act and in no case less than one pound per acre but such appraisement shall not include any value for improvements Provided that nothing herein contained shall be held to require the sale of any land which may contain auriferous deposits Exception from sale of certain lands.
- Limitation of pre-emptive right of purchase.
- Sales in consideration of improvements
- Provided

Crown Lands Alienation—1861.

Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or other lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

9. The Governor with the like advice may authorize any proprietor of land having frontage to any harbour or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly. Reclamation of lands by proprietor of adjoining lands. Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and Not to interfere with navigation nor with adjoining proprietors. Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.

10. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road ~~may be~~ shall have been proclaimed through any land ~~may render~~ shall have rendered unnecessary a reserved or other road bounding or traversing such or neighbouring land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners. Closing and alienation of unnecessary roads. Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.

11. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act. Sales without competition in special cases.

12. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbour or navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject of such rescission shall on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly. Rescission of reservation of water frontage. Provided that nothing in this clause contained shall empower the Governor to grant any land below high-water-mark or to interfere with any land used as a public thoroughfare or with any land set apart and dedicated for any public purpose. Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

Crown Lands Alienation—1861

13. On and from the first day of January one thousand eight hundred and sixty-two Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field **nor under lease for mining purposes to any person other than the applicant for purchase** 5 and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants 10 or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale 15 for any public purpose and not containing improvements and not excepted from sale under section seven of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent **for the district** a written application for the conditional purchase of any such lands not less than 20 forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the 25 price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to ~~the~~ **such** Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which 30 of the applicants shall become the purchaser.

Conditional sale of unimproved lands without competition.

*+ no under action
distinction for
sale by auction
under sect. 23
of this act*

14. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the thirteenth section of this 35 Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled 40 to compensation for the value other than auriferous of the lands and improvements such value to be determined by appraisalment.

Conditional sale in Gold Fields.

15. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen 45 and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

Record by Land Agent.

16. If at the time of conditional purchase of any Crown Land under sections thirteen and fourteen of this Act such land shall not 50 have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month **after such time of purchase** occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries 55 shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent **for the District** to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit 60 paid by him or the purchaser shall have the option of having the land surveyed

Temporary boundaries of land until surveyed by Government.

Crown Lands Alienation—1861.

surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

5 17. Crown Lands conditionally purchased under this Act shall if measured previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the First Class Settled Districts have a depth of not less than twenty chains 10 and otherwise shall have a depth of not less than ~~forty~~ **sixty** chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points Provided that should it seem to the Minister to be expedient the 15 boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement.

Form of measurement of portions selected and reservation of roads and water.

18. At the expiration of three years from the date of conditional 20 purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration by the conditional purchaser or his alienee or some other person in the opinion of the Minister competent in that behalf under the Act, ninth Victoria number nine to the effect that 25 improvements **as hereinbefore defined** have been made upon such land specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that 30 no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands—Sales Agent or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the 35 remaining purchase money and a grant of the fee simple but with reservation of any minerals which the land may contain shall be made to the then rightful owner Provided that **should such lands have been occupied and improved as aforesaid** and should interest at the rate of five per centum **per annum** on the balance of the purchase money be paid 40 within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months ~~of~~ **after** the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year But on default of a compliance with the requirements of this section 45 the land shall revert to Her Majesty and be liable to be sold **at auction** and the deposit shall be forfeited.

Conditions of residence and improvement and payment of purchase money.

19. Crown Lands may be conditionally selected for the purposes of mining other than gold mining under section thirteen of this Act except that in such case the price shall be forty shillings per acre and 50 except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of two pounds per acre has been expended in mining operations other than gold mining on the land And upon such conditions being satisfied as hereby altered 55 and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired And a grant may be made in like manner of any portion

Purchases under mining conditions.

Crown Lands Alienation—1861.

portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than five pounds per acre on the land so to be granted And in that case the purchase of
 5 the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under
 10 this Act and the issue of a grant shall in that case be dependent on the award thereon.

20. Crown Lands conditionally purchased under sections thirteen and fourteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his
 15 legal alienee before the expiration of three years from the date of purchase shall be **declared forfeited by notice in the Government Gazette and may then be sold at auction.** Sale by auction of lands abandoned by selectors.

21. Conditional purchasers of portions of Crown Lands under sections thirteen and fourteen of this Act not exceeding two hundred and
 20 eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence Provided that in the measurement of such additional selection of lands the frontage
 25 shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres **Provided also that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.** Additional selection of adjoining lands. Proviso.

22. Holders in fee simple of lands granted by the Crown in areas
 30 not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the lands held in fee simple exceed three hundred and twenty acres and which shall not be subject to the condition of residence applicable to conditional purchases in other cases **Provided**
 35 **that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.** Additional selection of lands adjoining land already granted

23. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not
 40 exceeding three hundred and twenty acres each at such places in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not less than one month nor more than three months before the day of sale And the upset prices per acre shall not be lower than for Town Lands
 45 Eight pounds—Suburban Lands Two pounds—other Lands One pound Upset prices. Provided that the upset prices may be respectively fixed at any higher amounts.

24. Town lands and suburban lands without improvements shall
 be sold by public auction only. Sale by auction of town and suburban lands.

50 25. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon
 55 Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction. As to lands put up and not sold.

26. A deposit of twenty-five per centum of the purchase money
 for all lands sold by auction under any provision of this Act shall be paid
 by the purchaser at the time of sale And unless the remainder of such
 purchase Payment of purchase moneys.

Crown Lands Alienation—1861.

purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay.

5 27. Every Land Agent shall duly enter in a book to be provided for the purpose the particulars of all sales made by him under this Act. Record by Land Agent.

28. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the 10 amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

15 (1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appoint- 20 ment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and 25 the claimant or by the parties to the matter in dispute under their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a 30 submission to appraisement or to arbitration as the case may be by the parties making the same.

(2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation. Appointment not to be revoked.

35 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an 40 appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties.

45 (4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. Award to be binding.

50 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or 55 arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made. In case of death of or failure to act by appraiser or arbitrator.

(6.)

Crown Lands Alienation—1861.

- 5 (6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made. In case of death or failure to act by a single appraiser or arbitrator.
- 10 (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration the Minister may appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. Appraisers or arbitrators to appoint an umpire.
- 15 (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. Determination by umpire in certain cases.
- 20 (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath. Production of documents.
- 25 (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire. Determination of costs.
- 30 (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto. Arbitration subject to Rule of Supreme Court.
- 35 (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say— Declaration by appraiser arbitrator or umpire.
- 40 I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861.
- 45 (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor. Declaration to be annexed to appraisement.
- 50
- 55

(14.)

Crown Lands Alienation—1861.

(14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office. Appraisement to be transmitted to Surveyor General.

29. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted. Instruments under Act to be evidence.

30. The Governor with the advice aforesaid may make regulations for carrying this Act into full effect so as to provide for all proceedings— Governor in Council to make and proclaim regulations.
10 forms of grants and other instruments—and all other matters and things arising under and consistent with this Act and not herein expressly provided for And all such regulations shall upon being published in the *Gazette* be valid in law Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the
15 issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

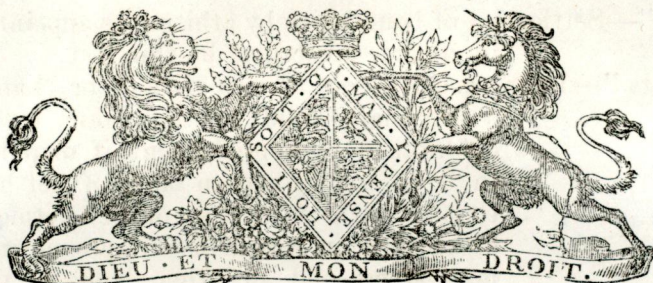
31. This Act shall be styled and may be cited as the “Crown Short title.
Lands Alienation Act of 1861.”

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 20 September, 1861. }*

*CHA. TOMPSON,
Clerk of Legislative Assembly,*

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. .

(As amended [on Re-committal] in Committee of the Whole.)

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled 5 and by the authority of the same as follows :—

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

10 "Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted in fee simple.

"Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.

15 "Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

20 "First Class Settled Districts"—Lands declared to be of the Settled Class by the Queen's Orders in Council.

25 "Second Class Settled Districts"—Lands converted into the Settled Class by the Act twenty-three Victoria number four or that may be hereafter so converted under the Crown Lands Occupation Act of 1861.

"Orders

NOTE.—The words to be omitted are ruled through: the words to be inserted are printed in black letter.

Crown Lands Alienation—1861.

- “Orders in Council”—The Orders in Council and Regulations ~~or~~
~~some or one of them~~ from time to time
 issued under the Imperial Act fifth and
 sixth Victoria chapter thirty-six and
 ninth and tenth Victoria chapter one
 hundred and four.
- “Minister”—The Minister for the time being charged with the
 administration of the Public Lands.
- “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Land Office Days”—Days notified in the *Gazette* upon which
 Land Agents shall attend at the Land
 Offices of their Districts respectively.
- “Appraisement”—Settlement of price value or damage by
 appraisers appointed in manner prescribed
 by this Act.
- “Arbitration”—Settlement of boundaries by arbitrators appointed
 in manner prescribed by this Act.
- “Improvements”—Improvements on Crown Lands or Lands
 conditionally sold to the value to be
 determined by appraisement if disputed
 in Town and Suburban lands of not less
 than twice the upset price of the allotment
 or portion on which the improvements
 may stand and in other lands of not
 less than the unimproved value of the
 lands to be in like manner determined
 not being less than one pound per acre.
- “Frontage”—Frontage to any road river stream or watercourse
 which according to the practice of the
 Survey Department ought to form a
 boundary between different sections or
 lots of land.
2. On and after the passing of this Act the Orders in Council Repeal of Orders in
 Council &c.
 shall be repealed Provided that nothing herein shall prejudice
 or affect anything already lawfully done or commenced or con-
 tracted to be done thereunder respectively or to prevent the several
 provisions of the said Orders in Council from being carried into effect
 with respect to lands under lease or promise of lease made previously to
 the twenty-second day of February one thousand eight hundred and fifty-
 eight during the currency of such leases as fully as if the same had not
 been hereby repealed.
3. Any Crown Lands may lawfully be granted in fee simple or Alienation of Crown
 Lands.
 dedicated to any public purpose under and subject to the provisions of
 this Act but not otherwise And the Governor with the advice of the
 Executive Council is hereby authorized in the name and on the behalf of
 Her Majesty so to grant or dedicate any Crown Lands.
4. The Governor with the advice of the Executive Council may Publication of notice
 of sites of cities
 towns suburban
 lands reserves &c.
 by notice in the *Gazette* declare what portions of Crown Lands shall be set
 apart as the sites of new cities towns or villages and define the limits
 of the suburban lands to be attached thereto and to any existing city
 town or village and also the portions of town lands or suburban lands to
 be dedicated to public purposes and what lands shall be reserved from sale
 until surveyed for the preservation of water supply or other public pur-
 pose And upon any such notice being published in the *Gazette* such
 lands shall become and be set apart attached ~~or~~ dedicated **or reserved**
 accordingly Provided that within one month should Parliament be then in
 Session and otherwise within one month after the commencement of the
 next ensuing Session of Parliament there shall be laid before both Houses
 of Parliament an abstract of all such declarations.

Crown Lands Alienation—1861.

5. The Governor with the advice aforesaid may by notice in the *Gazette* reserve or dedicate in such manner as may seem best for the public interest any Crown Lands for any railway or railway station—any public road canal or other internal communication—any public
 5 quay or landing-place—any public reservoir aqueduct or water course—or for the preservation of water supply—or for any purpose of defence—or as the site for any place of public worship any hospital asylum or infirmary any public market or slaughter-house any college school mechanics' institute public library museum or other institution for public
 10 instruction or amusement—or for any pasturage common—or for public health recreation convenience or enjoyment—or for the interment of the dead—or for any other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be reserved or dedicated accordingly and may at any time thereafter be granted for such purposes
 15 in fee simple Provided that an abstract of any intended reservation or dedication shall be laid before both Houses of Parliament one calendar month before such reservation or dedication is made. Dedication of Crown Lands to public purposes.
6. After any land shall have been temporarily reserved from sale the same shall not be sold or otherwise disposed of until such reservation
 20 shall be revoked by the Governor with the advice aforesaid and the notice of such revocation published in the *Gazette* And all lands which have hitherto been or shall hereafter be permanently reserved for any of the purposes aforesaid shall be deemed to be set apart attached and dedicated accordingly and every conveyance or alienation thereof except for the purpose
 25 for which such reservation shall have been made shall be absolutely void as well against Her Majesty as all other persons whomsoever. Temporary reservations.
7. Crown Lands held under lease or promise of lease issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease be exempt
 30 from sale under this Act unless where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six
 35 hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid And provided that such appraise-
 40 ment shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* for the period of one calendar month before the sale is completed. Exception from sale of certain lands.
8. Upon application made within twelve months after the passing of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within twelve months after the notification in the *Gazette* of any reserve from lease or promise of lease under the Orders in Council within which improvements may be situated or upon application by the holder of
 50 any lease or promise of lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or his alienee made at any period for the sale of improved lands in proclaimed Gold Fields the Governor may with the like advice sell and grant such lands to the owner of such improvements without
 55 competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth in section twenty-three of this Act and in no case less than one pound per acre but such appraisement shall not include any value for improvements Provided that nothing herein contained shall be held to
 60 require the sale of any land which may contain auriferous deposits
 Provided

Crown Lands Alienation—1861.

Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or other lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half
 5 an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

9. The Governor with the like advice may authorize any proprietor of land having frontage to any harbour or river to fill in and reclaim any
 land adjoining thereto and lying beyond or below high-water-mark or to
 10 erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly Provided always that no such
 15 reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and
 Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before
 20 such land is granted in fee simple.

Reclamation of lands by proprietor of adjoining lands.

Not to interfere with navigation nor with adjoining proprietors.

10. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road ~~may be~~ shall have
 25 been proclaimed through any land ~~may render~~ shall have rendered unnecessary a reserved or other road bounding or traversing such or neighbouring land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period
 30 not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners Provided that an adequate money consideration to be determined by appraisement shall be paid for the
 35 same.

Closing and alienation of unnecessary roads.

11. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a
 40 street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price
 45 to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act.

Sales without competition in special cases.

12. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbour or
 50 navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject of such rescission shall on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset
 55 price per acre of the class of land as set forth in section twenty-three of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly Provided that nothing in this clause contained shall empower the Governor to grant any land below high-water-mark or to interfere with any land used as a public thoroughfare or with any land
 60 set apart and dedicated for any public purpose Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

Rescission of reservation of water frontage.

Crown Lands Alienation—1861

13. On and from the first day of January one thousand eight hundred and sixty-two Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field **nor under lease for mining purposes to any person other than the applicant for purchase** and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section seven of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent **for the district** a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the **such** Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.

Conditional sale of
unimproved lands
without competition.

14. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the thirteenth section of this Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled to compensation for the value other than auriferous of the lands and improvements such value to be determined by appraisement.

Conditional sale in
Gold Fields.

15. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

Record by Land
Agent.

16. If at the time of conditional purchase of any Crown Land under sections thirteen and fourteen of this Act such land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month **after such time of purchase** occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent **for the District** to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the option of having the land surveyed

Temporary bound-
aries of land until
surveyed by Govern-
ment.

Crown Lands Alienation—1861.

surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

- 5 17. Crown Lands conditionally purchased under this Act shall if measured **by the authority of the Government** previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the First Class Settled Districts have a
 10 depth of not less than twenty chains and otherwise shall have a depth of not less than ~~forty~~ **sixty** chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points. Provided that should it seem to the
 15 Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement.
18. At the expiration of three years from the date of conditional
 20 purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration by the conditional purchaser or his alienee or some other person in the opinion of the Minister competent in that behalf under the Act ninth Victoria number nine to the effect that
 25 improvements as **hereinbefore defined** have been made upon such land specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that
 30 no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands—Sales Agent **for the District** or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the
 35 remaining purchase money and a grant of the fee simple but with reservation of any minerals which the land may contain shall be made to the then rightful owner. Provided that **should such lands have been occupied and improved as aforesaid** and should interest at the rate of five per centum **per annum** on the balance of the purchase money be paid
 40 within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months **of after** the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year. But on default of a compliance with the requirements of this section
 45 the land shall revert to Her Majesty and be liable to be sold **at auction** and the deposit shall be forfeited.

Form of measurement of portions selected and reservation of roads and water.

Conditions of residence and improvement and payment of purchase money.

19. Crown Lands may be conditionally selected for the purposes of mining other than gold mining under section thirteen of this Act except that in such case the price shall be forty shillings per acre and
 50 except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of two pounds per acre has been expended in mining operations other than gold mining on the land. And upon such conditions being satisfied as hereby altered
 55 and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired. And a grant may be made in like manner of any
 portion

Purchases under mining conditions.

Crown Lands Alienation—1861.

portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than five pounds per acre on the land so to be granted And in that case the purchase of
 5 the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under
 10 this Act and the issue of a grant shall in that case be dependent on the award thereon.

20. Crown Lands conditionally purchased under sections thirteen and fourteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his
 15 legal alienee before the expiration of three years from the date of purchase shall be declared forfeited by notice in the Government Gazette and may then be sold at auction.

21. Conditional purchasers of portions of Crown Lands under sections thirteen and fourteen of this Act not exceeding two hundred and
 20 eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence Provided
 25 that in the measurement of such additional selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres Provided also that nothing herein
 contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.

22. Holders in fee simple of lands granted by the Crown in areas
 30 not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the lands held in fee simple exceed three hundred and twenty acres and which shall not be subject to the condition of residence applicable to conditional purchases in other cases Provided
 35 that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.

23. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not
 40 exceeding three hundred and twenty acres each at such places in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not less than one month nor more than three months before the day of sale And the upset prices per acre shall not be lower than for Town Lands
 45 Eight pounds—Suburban Lands Two pounds—other Lands One pound Provided that the upset prices may be respectively fixed at any higher amounts.

24. Town lands and suburban lands without improvements shall be sold by public auction only.

50 25. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon
 55 Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction.

26. A deposit of twenty-five per centum of the purchase money for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale And unless the remainder of such
 purchase

Sale by auction of lands abandoned by selectors.

Additional selection of adjoining lands.

Proviso.

Additional selection of lands adjoining land already granted

Sale by auction of other lands.

Upset prices.

Sale by auction of town and suburban lands.

As to lands put up and not sold.

Payment of purchase moneys.

Crown Lands Alienation—1861.

purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay.

5 27. Every Land Agent shall duly enter in a book to be provided Record by Land Agent. for the purpose the particulars of all sales made by him under this Act.

28. Whenever it shall become necessary or desirable to fix or Mode of appraisement or arbitration. ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the
10 amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

15 (1.) The Minister or an Officer authorized by him in that Appointment of appraisers or arbitrators. behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this

20 Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and
25 the claimant or by the parties to the matter in dispute under their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a
30 submission to appraisement or to arbitration as the case may be by the parties making the same.

(2.) After the making of any such appointment the same shall Appointment not to be revoked. not be revoked without the consent of both parties nor shall the death of either party operate as a revocation.

35 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator Single appraiser to arbitrator to act in certain cases. to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment
40 the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties.

45 (4.) The award of any appraiser or appraisers arbitrator or Award to be binding. arbitrators appointed in pursuance of this Act shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever.

50 (5.) If before the determination of any matter so referred any In case of death of or failure to act by appraiser or arbitrator. appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint
55 in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made.

(6.)

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- (6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made. In case of death or failure to act by a single appraiser or arbitrator.
- (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration the Minister may appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. Appraisers or arbitrators to appoint an umpire.
- (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. Determination by umpire in certain cases.
- (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath. Production of documents.
- (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire. Determination of costs.
- (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto. Arbitration subject to Rule of Supreme Court.
- (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say—
 I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861. Declaration by appraiser arbitrator or umpire.
- (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor. Declaration to be annexed to appraisement.

(14.)

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(14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office. Appraisement to be transmitted to Surveyor General.

29. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted. Instruments under Act to be evidence.

30. The Governor with the advice aforesaid may make regulations for carrying this Act into full effect so as to provide for all proceedings— Governor in Council to make and proclaim regulations.
 10 forms of grants and other instruments—and all other matters and things arising under and consistent with this Act and not herein expressly provided for. And all such regulations shall upon being published in the *Gazette* be valid in law. Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the
 15 issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

31. This Act shall be styled and may be cited as the “Crown Short title.
 Lands Alienation Act of 1861.”

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 20 September, 1861. }*

*CHA. TOMPSON,
Clerk of Legislative Assembly,*

The LEGISLATIVE COUNCIL has this day agreed to this Bill, with amendments.

*Legislative Council Chamber,
Sydney, October, 1861. }*

Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. .

An Act for regulating the Alienation of Crown Lands.

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

10 "Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted in fee simple.

"Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.

15 "Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

20 "First Class Settled Districts"—Lands declared to be of the Settled Class by the Queen's Orders in Council.

25 "Second Class Settled Districts"—Lands converted into the Settled Class by the Act twenty-three Victoria number four or that may be hereafter so converted under the Crown Lands Occupation Act of 1861.

"Orders

NOTE.—The words to be omitted are ruled through: the words to be inserted are printed in black letter.

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- 5 “Orders in Council”—The Orders in Council and Regulations ~~or some or one of them~~ from time to time issued under the Imperial Act fifth and sixth Victoria chapter thirty-six and ninth and tenth Victoria chapter one hundred and four.
- 10 “Minister”—The Minister for the time being charged with the administration of the Public Lands.
- “Land Agent”—Any person duly appointed to sell Crown Lands.
- 10 “Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.
- 15 “Appraisement”—Settlement of price value or damage by appraisers appointed in manner prescribed by this Act.
- “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
- 20 “Improvements”—Improvements on Crown Lands or Lands conditionally sold to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than the unimproved value of the lands to be in like manner determined not being less than one pound per acre.
- 25 “Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.
- 30 2. On and after the passing of this Act the Orders in Council shall be repealed Repeal of Orders in Council &c. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-
40 eight during the currency of such leases as fully as if the same had not been hereby repealed.
3. Any Crown Lands may lawfully be granted in fee simple or Alienation of Crown Lands. dedicated to any public purpose under and subject to the provisions of this Act but not otherwise And the Governor with the advice of the
45 Executive Council is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands.
4. The Governor with the advice of the Executive Council may Publication of notice of sites of cities towns suburban lands reserves &c. by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits
50 of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose And upon any such notice being published in the *Gazette* such
55 lands shall become and be set apart attached ~~or~~ dedicated ~~or~~ reserved accordingly Provided that within one month should Parliament be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations.

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5. The Governor with the advice aforesaid may by notice in the *Gazette* reserve or dedicate in such manner as may seem best for the public interest any Crown Lands for any railway or railway station—any public road canal or other internal communication—any public
 5 quay or landing-place—any public reservoir aqueduct or water course—
 —or for the preservation of water supply—or for any purpose of defence
 —or as the site for any place of public worship any hospital asylum
 or infirmary any public market or slaughter-house any college school
 mechanics' institute public library museum or other institution for public
 10 instruction or amusement—or for any pasturage common—or for public
 health recreation convenience or enjoyment—or for the interment of the
 dead—or for any other public purpose And upon any such notice being
 published in the *Gazette* such lands shall become and be reserved or dedicated
 accordingly and may at any time thereafter be granted for such purposes
 15 in fee simple Provided that an abstract of any intended reservation
 or dedication shall be laid before both Houses of Parliament one calendar
 month before such reservation or dedication is made.

Dedication of Crown
Lands to public pur-
poses.Abstract to be laid
before Parliament.

6. After any land shall have been temporarily reserved from sale
 the same shall not be sold or otherwise disposed of until such reservation
 20 shall be revoked by the Governor with the advice aforesaid and the notice
 of such revocation published in the *Gazette* And all lands which have
 hitherto been or shall hereafter be permanently reserved for any of the
 purposes aforesaid shall be deemed to be set apart attached and dedicated
 accordingly and every conveyance or alienation thereof except for the pur-
 25 pose for which such reservation shall have been made shall be absolutely void
 as well against Her Majesty as all other persons whomsoever.

Temporary reserva-
tions.Permanent reserva-
tions.

7. Crown Lands held under lease or promise of lease issued or
 made previously to the twenty-second day of February one thousand eight
 hundred and fifty-eight shall during the currency of such lease be exempt
 30 from sale under this Act unless where such lands have been lawfully with-
 drawn from the holding of the lessee in accordance with the Orders in
 Council or may hereafter be lawfully withdrawn from such holding
 Provided that the lessee may be permitted to exercise a pre-emptive right
 of purchase over one portion and no more of an area not exceeding six
 35 hundred and forty acres out of each block of twenty-five square miles and
 at a value to be determined by appraisement not being less than one pound
 per acre Provided nevertheless that any land purchased under the Orders
 in Council previously to the passing of this Act shall be estimated in the
 six hundred and forty acres aforesaid And provided that such appraise-
 40 ment shall not include any value for improvements And provided that
 every application for the purchase of land under these conditions shall be
 advertised in the *Government Gazette* for the period of one calendar month
 before the sale is completed.

Exception from sale
of certain lands.Limitation of pre-
emptive right of
purchase.

8. Upon application made within twelve months after the passing
 45 of this Act by any person or his alienee who may prior thereto have
 made improvements on any Crown Lands or upon application within
 twelve months after the notification in the *Gazette* of any reserve from
 lease or promise of lease under the Orders in Council within which
 improvements may be situated or upon application by the holder of
 50 any lease or promise of lease of Crown Lands containing improvements
 made previously to the expiration of such lease or upon application by the
 improver or his alienee made at any period for the sale of improved lands
 in proclaimed Gold Fields the Governor may with the like advice sell
 and grant such lands to the owner of such improvements without
 55 competition in fee simple at a price to be fixed by appraisement not
 being less than the minimum upset price of the class of land as set forth
 in section twenty-three of this Act and in no case less than one pound per
 acre but such appraisement shall not include any value for im-
 provements Provided that nothing herein contained shall be held to
 60 require the sale of any land which may contain auriferous deposits

Sales in considera-
tion of improvements

Provided

Crown Lands Alienation—1861.

Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or other lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

9. The Governor with the like advice may authorize any proprietor of land having frontage to any harbour or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly. Reclamation of lands by proprietor of adjoining lands. Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and Not to interfere with navigation nor with adjoining proprietors. Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.

10. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road ~~may be~~ shall have been proclaimed through any land ~~may render~~ shall have rendered unnecessary a reserved or other road bounding or traversing such or neighbouring land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners. Closing and alienation of unnecessary roads. Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.

11. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act. Sales without competition in special cases.

12. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbour or navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject of such rescission shall on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly. Rescission of reservation of water frontage. Provided that nothing in this clause contained shall empower the Governor to grant any land below high-water-mark or to interfere with any land used as a public thoroughfare or with any land set apart and dedicated for any public purpose. Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

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13. On and from the first day of January one thousand eight hundred and sixty-two Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field **nor under lease for mining purposes to any person other than the applicant for purchase** and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section seven of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent **for the district** a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the **such** Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.

Conditional sale of
unimproved lands
without competition.

14. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the thirteenth section of this Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled to compensation for the value other than auriferous of the lands and improvements such value to be determined by appraisement.

Conditional sale in
Gold Fields.

15. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

Record by Land
Agent.

16. If at the time of conditional purchase of any Crown Land under sections thirteen and fourteen of this Act such land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month **after such time of purchase** occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent **for the District** to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the option of having the land surveyed

Temporary bound-
aries of land until
surveyed by Govern-
ment.

Crown Lands Alienation—1861.

surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

5 17. Crown Lands conditionally purchased under this Act shall if measured by the authority of the Government previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the First Class Settled Districts have a
10 depth of not less than twenty chains and otherwise shall have a depth of not less than ~~forty~~ sixty chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points Provided that should it seem to the
15 Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement.

Form of measurement of portions selected and reservation of roads and water.

18. At the expiration of three years from the date of conditional
20 purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration by the conditional purchaser or his alienee or some other person in the opinion of the Minister competent in that behalf under the Act ninth Victoria number nine to the effect that
25 improvements as hereinbefore defined have been made upon such land specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that
30 no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands—Sales Agent for the District or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the
35 remaining purchase money and a grant of the fee simple but with reservation of any minerals which the land may contain shall be made to the then rightful owner Provided that should such lands have been occupied and improved as aforesaid and should interest at the rate of five per centum *per annum* on the balance of the purchase money be paid
40 within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months of after the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year But on default of a compliance with the requirements of this section
45 the land shall revert to Her Majesty and be liable to be sold at auction and the deposit shall be forfeited.

Conditions of residence and improvement and payment of purchase money.

19. Crown Lands may be conditionally selected for the purposes
of mining other than gold mining under section thirteen of this Act except that in such case the price shall be forty shillings per acre and
50 except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of two pounds per acre has been expended in mining operations other than gold mining on the land And upon such conditions being satisfied as hereby altered
55 and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired And a grant may be made in like manner of any
portion

Purchases under mining conditions.

Crown Lands Alienation—1861.

portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than five pounds per acre on the land so to be granted And in that case the purchase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.

20. Crown Lands conditionally purchased under sections thirteen and fourteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three years from the date of purchase shall be **declared forfeited by notice in the Government Gazette** and may then be sold at auction. Sale by auction of lands abandoned by selectors.

21. Conditional purchasers of portions of Crown Lands under sections thirteen and fourteen of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence Provided that in the measurement of such additional selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres **Provided also that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.** Additional selection of adjoining lands. Proviso.

22. Holders in fee simple of lands granted by the Crown in areas not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the lands held in fee simple exceed three hundred and twenty acres and which shall not be subject to the condition of residence applicable to conditional purchases in other cases **Provided that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.** Additional selection of lands adjoining land already granted

23. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding three hundred and twenty acres each at such places in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not less than one month nor more than three months before the day of sale And the upset prices per acre shall not be lower than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound Provided that the upset prices may be respectively fixed at any higher amounts. Sale by auction of other lands. Upset prices.

24. Town lands and suburban lands without improvements shall be sold by public auction only. Sale by auction of town and suburban lands.

25. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction. As to lands put up and not sold.

26. A deposit of twenty-five per centum of the purchase money for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale And unless the remainder of such purchase Payment of purchase moneys.

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purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay.

5 27. Every Land Agent shall duly enter in a book to be provided for the purpose the particulars of all sales made by him under this Act. Record by Land Agent.

28. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the 10 amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

15 (1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appoint- Appointment of appraisers or arbitrators.

20 ment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute under their hands in writing or if such party be a corpora- 25 tion aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.

30 (2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation. Appointment not to be revoked.

35 (3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties. Single appraiser to arbitrator to act in certain cases.

40 (4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be 45 binding final and conclusive upon all persons and to all intents and purposes whatsoever. Award to be binding.

50 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or 55 arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made. In case of death of or failure to act by appraiser or arbitrator.

(6.)

Crown Lands Alienation—1861.

- 5 (6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made. In case of death or failure to act by a single appraiser or arbitrator.
- 10 (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration the Minister may appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. Appraisers or arbitrators to appoint an umpire.
- 15 (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. Determination by umpire in certain cases.
- 20 (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath. Production of documents.
- 25 (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire. Determination of costs.
- 30 (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto. Arbitration subject to Rule of Supreme Court.
- 35 (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say— Declaration by appraiser arbitrator or umpire.
- 40 I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861.
- 45 (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor. Declaration to be annexed to appraisement.
- 50
- 55

(14.)

Crown Lands Alienation—1861.

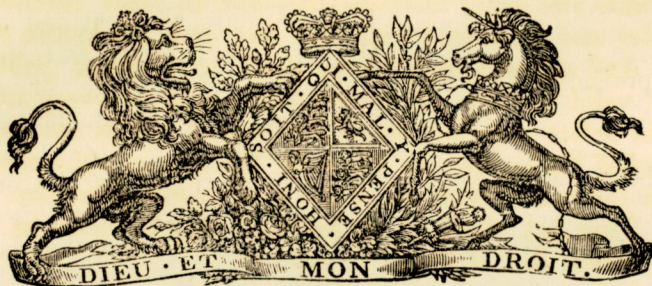
(14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office. Appraisement to be transmitted to Surveyor General.

29. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted. Instruments under Act to be evidence.

30. The Governor with the advice aforesaid may make regulations for carrying this Act into full effect so as to provide for all proceedings—forms of grants and other instruments—and all other matters and things arising under and consistent with this Act and not herein expressly provided for. And all such regulations shall upon being published in the *Gazette* be valid in law. Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session. Governor in Council to make and proclaim regulations.

31. This Act shall be styled and may be cited as the “Crown Short Title. Lands Alienation Act of 1861.”

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. I.

An Act for regulating the Alienation of Crown Lands. [Assented to, 18th October, 1861.]

WHEREAS it is expedient to make better provision for the alienation of Crown Lands Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

“Crown Lands”—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted in fee simple.

“Town Lands”—Crown Lands in any City Town or Village or set apart as a site for the same.

“Suburban Lands”—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

“First Class Settled Districts”—Lands declared to be of the Settled Class by the Queen's Orders in Council.

“Second Class Settled Districts”—Lands converted into the Settled Class by the Act twenty-three Victoria number four or that may be hereafter so converted under the Crown Lands Occupation Act of 1861.

“Orders

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“Orders in Council”—The Orders in Council and Regulations from time to time issued under the Imperial Act fifth and sixth Victoria chapter thirty-six and ninth and tenth Victoria chapter one hundred and four.

“Minister”—The Minister for the time being charged with the administration of the Public Lands.

“Land Agent”—Any person duly appointed to sell Crown Lands.

“Land Office Days”—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.

“Appraisement”—Settlement of price value or damage by appraisers appointed in manner prescribed by this Act.

“Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.

“Improvements”—Improvements on Crown Lands or Lands conditionally sold to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than the unimproved value of the lands to be in like manner determined not being less than one pound per acre.

“Frontage”—Frontage to any road river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.

Repeal of Orders in Council &c.

2. On and after the passing of this Act the Orders in Council shall be repealed Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease made previously to the twenty-second day of February one thousand eight hundred and fifty-eight during the currency of such leases as fully as if the same had not been hereby repealed.

Alienation of Crown Lands.

3. Any Crown Lands may lawfully be granted in fee simple or dedicated to any public purpose under and subject to the provisions of this Act but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on the behalf of Her Majesty so to grant or dedicate any Crown Lands.

Publication of notice of sites of cities towns suburban lands reserves &c.

4. The Governor with the advice of the Executive Council may by notice in the *Gazette* declare what portions of Crown Lands shall be set apart as the sites of new cities towns or villages and define the limits of the suburban lands to be attached thereto and to any existing city town or village and also the portions of town lands or suburban lands to be dedicated to public purposes and what lands shall be reserved from sale until surveyed for the preservation of water supply or other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be set apart attached dedicated or reserved accordingly Provided that within one month should Parliament be then in Session and otherwise within one month after the commencement of the next ensuing Session of Parliament there shall be laid before both Houses of Parliament an abstract of all such declarations.

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5. The Governor with the advice aforesaid may by notice in the *Gazette* reserve or dedicate in such manner as may seem best for the public interest any Crown Lands for any railway or railway station—any public road canal or other internal communication—any public quay or landing-place—any public reservoir aqueduct or water course—or for the preservation of water supply—or for any purpose of defence—or as the site for any place of public worship any hospital asylum or infirmary any public market or slaughter-house any college school mechanics' institute public library museum or other institution for public instruction or amusement—or for any pasturage common—or for public health recreation convenience or enjoyment—or for the interment of the dead—or for any other public purpose And upon any such notice being published in the *Gazette* such lands shall become and be reserved or dedicated accordingly and may at any time thereafter be granted for such purposes in fee simple Provided that an abstract of any intended reservation or dedication shall be laid before both Houses of Parliament one calendar month before such reservation or dedication is made.

Dedication of Crown Lands to public purposes.

Abstract to be laid before Parliament.

6. After any land shall have been temporarily reserved from sale the same shall not be sold or otherwise disposed of until such reservation shall be revoked by the Governor with the advice aforesaid and the notice of such revocation published in the *Gazette* And all lands which have hitherto been or shall hereafter be permanently reserved for any of the purposes aforesaid shall be deemed to be set apart attached and dedicated accordingly and every conveyance or alienation thereof except for the purpose for which such reservation shall have been made shall be absolutely void as well against Her Majesty as all other persons whomsoever.

Temporary reservations.

Permanent reservations.

7. Crown Lands held under lease or promise of lease issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease be exempt from sale under this Act unless where such lands have been lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council or may hereafter be lawfully withdrawn from such holding Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid And provided that such appraisement shall not include any value for improvements And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* for the period of one calendar month before the sale is completed.

Exception from sale of certain lands.

Limitation of pre-emptive right of purchase.

8. Upon application made within twelve months after the passing of this Act by any person or his alienee who may prior thereto have made improvements on any Crown Lands or upon application within twelve months after the notification in the *Gazette* of any reserve from lease or promise of lease under the Orders in Council within which improvements may be situated or upon application by the holder of any lease or promise of lease of Crown Lands containing improvements made previously to the expiration of such lease or upon application by the improver or his alienee made at any period for the sale of improved lands in proclaimed Gold Fields the Governor may with the like advice sell and grant such lands to the owner of such improvements without competition in fee simple at a price to be fixed by appraisement not being less than the minimum upset price of the class of land as set forth in section twenty-three of this Act and in no case less than one pound per acre but such appraisement shall not include any value for improvements Provided that nothing herein contained shall be held to require the sale of any land which may contain auriferous deposits

Sales in consideration of improvements.

Provided

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Provided also that such sales shall be made in accordance with the general sub-division of the land whether town suburban or other lands and shall embrace only allotments or portions on which improvements may stand and that the area shall not for each improvement exceed half an acre for town land two acres for suburban land and land on Gold Fields and three hundred and twenty acres for other lands.

Reclamation of lands
by proprietor of
adjoining lands.

Not to interfere with
navigation nor with
adjoining pro-
prieters.

Closing and aliena-
tion of unnecessary
roads.

Sales without com-
petition in special
cases.

Rescission of reser-
vation of water
frontage.

9. The Governor with the like advice may authorize any proprietor of land having frontage to any harbour or river to fill in and reclaim any land adjoining thereto and lying beyond or below high-water-mark or to erect a wharf or jetty upon or over the same and on payment of an adequate money consideration to be determined by appraisement for the unimproved value of the land such land or any land which may already have been reclaimed shall become vested in fee simple in such proprietor and may be granted to him accordingly Provided always that no such reclamation shall be authorized which shall be calculated in any way to interrupt or interfere with the navigation of such harbour or river or with the rights or interests of adjoining proprietors and Provided also that the intention to grant such land shall have been previously announced in the *Gazette* for four consecutive weeks before such land is granted in fee simple.

10. Whenever the owner or owners of any lands adjoining a road which has been reserved for access to such lands only and is not otherwise required for public use or convenience shall make application to the Minister to close such road or whenever any road which shall have been proclaimed through any land shall have rendered unnecessary a reserved or other road bounding or traversing such or neighbouring land it shall be lawful for the Governor with the advice aforesaid to notify in the *Gazette* and in the local newspapers if any that such reserved or boundary road will be closed and at any period not less than three months after the first publication of such notice a grant or grants of the site of the road so closed may issue to the owner or owners of adjoining lands in fair proportion or in accordance with agreement among such owners Provided that an adequate money consideration to be determined by appraisement shall be paid for the same.

11. In cases in which no way of access to any portion of Crown Land may exist or may be attainable or in which any such portion may be insufficient in area for sale conditional or by auction or in which a portion of Crown Land may lie between land already granted and a street or road which forms or should form the way of approach to such granted land or in which buildings erected on lands already granted may have extended over Crown Land or in any other cases of a like kind the Governor may with the advice aforesaid sell and grant such lands to the holder or holders of adjacent lands without competition and at a price to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act.

12. The Governor may with the like advice rescind any reservation of water frontage on the sea coast or any bay inlet harbour or navigable river or land adjoining such frontage contained in any Crown grant either wholly or to such extent and subject to such conditions or restrictions as shall be deemed advisable and the land being the subject of such rescission shall on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty-three of this Act be granted to the owner of the land conveyed in the original Crown grant accordingly Provided that nothing in this clause contained shall empower the Governor to grant any land below high-water-mark or to interfere with any land used as a public thoroughfare or with any land set apart and dedicated for any public purpose Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such grant.

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13. On and from the first day of January one thousand eight hundred and sixty-two Crown Lands other than town lands or suburban lands and not being within a proclaimed Gold Field nor under lease for mining purposes to any person other than the applicant for purchase and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand inhabitants or three miles from the outside boundary of any town containing according to the then last Census one thousand inhabitants or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of water or from sale for any public purpose and not containing improvements and not excepted from sale under section seven of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent for the district a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money thereof And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to such Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.

Conditional sale of
unimproved lands
without competition.

14. Crown Lands within proclaimed Gold Fields and not within areas excluded by special proclamation and not occupied for gold mining purposes shall be open for conditional sale subject to all the provisions applicable to sales under the thirteenth section of this Act Provided that at any period persons specially authorized by the Minister shall be at liberty to dig and search for gold within the lands selected and that should the land be found to contain auriferous deposits it shall be in the power of the Governor and Executive Council to annul the sale and thereupon the conditional purchaser shall be entitled to compensation for the value other than auriferous of the lands and improvements such value to be determined by appraisement.

Conditional sale in
Gold Fields.

15. Every Land Agent shall duly enter at the time in a book to be provided for the purpose the particulars of every application for conditional purchase lodged with him under the provisions of sections thirteen and fourteen of this Act and shall transmit to the proper Officer of the Government on Monday in each week a true extract therefrom shewing the particulars of all such applications for the week preceding.

Record by Land
Agent.

16. If at the time of conditional purchase of any Crown Land under sections thirteen and fourteen of this Act such land shall not have been surveyed by the Government temporary boundaries thereof shall be determined by the conditional purchaser who shall within one month after such time of purchase occupy the land And any dispute between such purchaser and any other person other than a holder in fee or his alienee claiming any interest therein respecting such boundaries shall be settled by arbitration Provided that if such land shall not be surveyed by the Government within twelve months from the date of application it shall be lawful for the conditional purchaser by notice in writing to the Land Agent for the district to withdraw his application and thereupon he shall be entitled to demand and recover back any deposit paid by him or the purchaser shall have the option of having the land surveyed

Temporary boun-
daries of land until
surveyed by Govern-
ment.

Crown Lands Alienation—1861.

surveyed by a duly qualified licensed surveyor and the expense of such survey shall be allowed to such purchaser as part payment of his purchase money such expense to be allowed in accordance with the scale of charges fixed or to be fixed by the Surveyor General.

Form of measurement of portions selected and reservation of roads and water.

17. Crown Lands conditionally purchased under this Act shall if measured by the authority of the Government previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the First Class Settled Districts have a depth of not less than twenty chains and otherwise shall have a depth of not less than sixty chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points. Provided that should it seem to the Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement.

Conditions of residence and improvement and payment of purchase money.

18. At the expiration of three years from the date of conditional purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration by the conditional purchaser or his alienee or some other person in the opinion of the Minister competent in that behalf under the Act ninth Victoria number nine to the effect that improvements as hereinbefore defined have been made upon such land specifying the nature extent and value of such improvements and that such land has been from the date of occupation the *bonâ fide* residence either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least. And upon the Minister being satisfied by such declaration and the certificate of the Land Agent for the District or other proper officer of the facts aforesaid the Colonial Treasurer shall receive and acknowledge the remaining purchase money and a grant of the fee simple but with reservation of any minerals which the land may contain shall be made to the then rightful owner. Provided that should such lands have been occupied and improved as aforesaid and should interest at the rate of five per centum per annum on the balance of the purchase money be paid within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months after the first day of January then next ensuing and may be so deferred from year to year by payment of such interest during the first quarter of each year. But on default of a compliance with the requirements of this section the land shall revert to Her Majesty and be liable to be sold at auction and the deposit shall be forfeited.

Purchases under mining conditions.

19. Crown Lands may be conditionally selected for the purposes of mining other than gold mining under section thirteen of this Act except that in such case the price shall be forty shillings per acre and except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of two pounds per acre has been expended in mining operations other than gold mining on the land. And upon such conditions being satisfied as hereby altered and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have expired. And a grant may be made in like manner of any portion

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portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than five pounds per acre on the land so to be granted. And in that case the purchase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land granted. Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.

20. Crown Lands conditionally purchased under sections thirteen and fourteen of this Act and proved to the satisfaction of the Governor and Executive Council to have been abandoned by the purchaser thereof or his legal alienee before the expiration of three years from the date of purchase shall be declared forfeited by notice in the *Government Gazette* and may then be sold at auction.

Sale by auction of lands abandoned by selectors.

21. Conditional purchasers of portions of Crown Lands under sections thirteen and fourteen of this Act not exceeding two hundred and eighty acres or their legal alienees may make additional selection of lands adjoining to the first selection or to each other but not otherwise and not exceeding in the whole three hundred and twenty acres and subject to all the conditions applicable to the original purchase except residence. Provided that in the measurement of such additional selection of lands the frontage shall not exceed the extent which would be allowed to an original selection of three hundred and twenty acres. Provided also that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.

Additional selection of adjoining lands.

Proviso.

22. Holders in fee simple of lands granted by the Crown in areas not exceeding two hundred and eighty acres who may reside on such lands may make conditional purchases adjoining such lands the areas of which shall not with that of the lands held in fee simple exceed three hundred and twenty acres and which shall not be subject to the condition of residence applicable to conditional purchases in other cases. Provided that nothing herein contained shall prevent the sale of the adjoining lands to any other person before such further conditional purchase shall have been made.

Additional selection of lands adjoining land already granted.

23. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding three hundred and twenty acres each at such places in the Police District in which the lands are situated and at such times as the Minister shall direct to be notified by advertisement in the *Gazette* not less than one month nor more than three months before the day of sale. And the upset prices per acre shall not be lower than for Town Lands Eight pounds—Suburban Lands Two pounds—other Lands One pound. Provided that the upset prices may be respectively fixed at any higher amounts.

Sale by auction of other lands.

Upset prices.

24. Town lands and suburban lands without improvements shall be sold by public auction only.

Sale by auction of town and suburban lands.

25. Any Crown Lands put up for sale by public auction and not sold may be again put up in like manner. Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case of a higher price having been offered for the same then at such higher price less in either case the deposit if any paid thereon. Provided also that the Minister may withdraw any such lands from selection and again submit them to public auction.

As to lands put up and not sold.

26. A deposit of twenty-five per centum of the purchase money for all lands sold by auction under any provision of this Act shall be paid by the purchaser at the time of sale. And unless the remainder of such purchase

Payment of purchase moneys.

purchase

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purchase money be paid within three months thereafter the sale and contract shall be void and the deposit shall be forfeited Should the purchaser fail to pay the deposit the land shall be forthwith again put up by the Agent and who shall not accept any bid by the person so failing to pay.

Record by Land Agent.

27. Every Land Agent shall duly enter in a book to be provided for the purpose the particulars of all sales made by him under this Act.

Mode of appraisal or arbitration.

28. Whenever it shall become necessary or desirable to fix or ascertain any price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement in case of dispute as to the amount of any compensation to be made under the provisions of this Act and in case of any matter which by this Act is authorized or directed to be settled by arbitration the appraiser or appraisers arbitrator or arbitrators and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—

Appointment of appraisers or arbitrators.

(1.) The Minister or an Officer authorized by him in that behalf and the claimant in matters hereinbefore directed or authorized to be settled by appraisement or the parties interested in any dispute which by the provisions of this Act may be left to arbitration may concur in the appointment of a single appraiser or arbitrator or failing such appointment each party on the request of the other shall appoint an appraiser or arbitrator as the case may require to whom the matter shall be referred And every such appointment shall be made by the Minister or Officer and the claimant or by the parties to the matter in dispute under their hands in writing or if such party be a corporation aggregate under its common seal and such appointment shall be delivered to the appraisers or arbitrators and attached to the award when made and shall be deemed a submission to appraisement or to arbitration as the case may be by the parties making the same.

Appointment not to be revoked.

(2.) After the making of any such appointment the same shall not be revoked without the consent of both parties nor shall the death of either party operate as a revocation.

Single appraiser or arbitrator to act in certain cases.

(3.) If for the space of sixty days after any such dispute or matter shall have arisen and notice in writing by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be referred and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator the appraiser or arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties.

Award to be binding.

(4.) The award of any appraiser or appraisers arbitrator or arbitrators appointed in pursuance of this Act shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever.

In case of death of or failure to act by appraiser or arbitrator.

(5.) If before the determination of any matter so referred any appraiser or arbitrator die or become incapable to act the party by whom such arbitrator was appointed may appoint in writing another person in his stead and if he fail so to do for the space of sixty days after notice in writing from the other party in that behalf the remaining appraiser or arbitrator may proceed *ex parte* and every appraiser or arbitrator so appointed shall have the same powers and authorities as were vested in the appraiser or arbitrator in whose stead the appointment is made.

(6.)

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- (6.) In case a single arbitrator die or become incapable to act before the making of his award or fail to make his award within sixty days after his appointment or within such extended time if any not exceeding thirty days as shall have been duly appointed by him for that purpose the matters referred to him shall be again referred to appraisement or arbitration under the provisions of this Act as if no former reference had been made. In case of death or failure to act by a single appraiser or arbitrator.
- (7.) In case there be more than one appraiser or arbitrator the appraisers or arbitrators shall before they enter upon the reference appoint by writing under their hands an umpire and if the person appointed to be umpire die or become incapable to act the appraisers or arbitrators shall forthwith appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire within thirty days after being requested so to do by any party to the appraisement or arbitration the Minister may appoint an umpire and he is hereby empowered so to do and the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever. Appraisers or arbitrators to appoint an umpire.
- (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was appointed or within such extended time if any not exceeding thirty days as shall have been duly appointed by them for that purpose the matters referred shall be determined by the umpire and the provisions of this Act with respect to the time for making an appraisement or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. Determination by umpire in certain cases.
- (9.) Any appraiser arbitrator or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as he may think necessary for determining the matters referred and may examine the parties as witnesses on oath. Production of documents.
- (10.) All costs of and consequent upon the reference shall be in the discretion of the appraiser or appraisers arbitrator or arbitrators or of the umpire in case the matters referred are determined by an umpire. Determination of costs.
- (11.) Any submission to arbitration under the provisions of this Act may be made a Rule of the Supreme Court of the said Colony on the application of any party thereto. Arbitration subject to Rule of Supreme Court.
- (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say—
 I A B do solemnly and sincerely declare that I am not directly or indirectly interested in the matter referred to me and that I will faithfully honestly and to the best of my skill and ability hear and determine the matters referred to me under the Crown Lands Alienation Act of 1861. Declaration by appraiser arbitrator or umpire.
- (13.) And such declaration shall be annexed to the appraisement or award when made and if any appraiser arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanor. Declaration to be annexed to appraisement.

(14.)

Crown Lands Alienation—1861.

Appraisement to be transmitted to Surveyor General.

(14.) Every appraisement or award shall be in writing and shall be transmitted to the Surveyor General and deposited in his office.

Instruments under Act to be evidence.

29. Any instrument of sale or conveyance made and issued under this Act may be proved in all legal proceedings by the production of a certified copy thereof signed by the officer to be authorized for that purpose under any regulation made as hereinafter enacted.

Governor in Council to make and proclaim regulations.

30. The Governor with the advice aforesaid may make regulations for carrying this Act into full effect so as to provide for all proceedings—forms of grants and other instruments—and all other matters and things arising under and consistent with this Act and not herein expressly provided for. And all such regulations shall upon being published in the *Gazette* be valid in law. Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

Short Title.

31. This Act shall be styled and may be cited as the "Crown Lands Alienation Act of 1861."

By Authority: THOMAS RICHARDS, Government Printer, Sydney, 1861.

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