

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.

No. .

An Act for regulating the Occupation of the Crown Lands.

WHEREAS it is expedient to make better provision for the occupa- Preamble.
tion of the 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
5 assembled and by the authority of the same as follows:—

1. The following terms within inverted commas whenever used Interpretation.
herein shall 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 law-
fully contracted to be granted to any
person in fee simple.

15 "1st Class Settled Districts"—The Lands declared to be of the
Settled class under the Orders in Council.

"2nd Class Settled Districts"—The Lands converted into the
Settled class by the Act of Council twenty-
third Victoria number four.

"Unsettled Districts"—All other Crown Lands.

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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 ninth and tenth Victoria chapter one hundred and four.
- 10 “Old Run” — Any portion of Crown Lands within the Second class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight.
- 15 “Run”—Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight.
- “Minister.”—The Minister for the time being charged with the administration of the Crown Lands.
- 20 “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Appraisement”—Settlement of rent or value by appraisers appointed in manner prescribed by this Act.
- “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
- 25 2. On and from the day of the commencement of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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
30 affect anything already lawfully done or commenced or contracted to be done thereunder respectively. Partial Repeal of Acts Orders in Council and Regulations.
3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such District to be of the class of 2nd Class Settled Districts and
35 such District or portion of District shall on such proclamation become and be of the 2nd Class Settled Districts under this Act provided that such proclamation shall in no case affect existing leases. Extension of 2nd Class Settled Districts.
4. Existing leases of Crown Lands shall not be renewed but may upon the application of the Lessees be converted into leases under the
40 provisions of this Act. Conversion of existing Leases.
5. The Governor with the advice of the Executive Council may by notice in the *Gazette* withdraw from any Old Run or Run any lands which may be required for the site of any City Town or Village or for any roadway for general traffic or for passage of stock or for access to back runs or for
45 sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for commonage or for the working of any Mines of Gold or other minerals or for any public purpose whatsoever. Withdrawal of land from lease.
6. In cases in which two or more persons entitled to leases under
50 the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been or may be declared by the Governor or by the Minister to have been legally established and in any such case in which the right to a lease shall not have been so established the lease may be granted to the person
55 who may be by arbitration declared entitled thereto. Conflicting claims to leases.
7. In any case in which the rent of an old run or any other matter required by the Orders in Council to be determined by valuers appointed in the manner therein prescribed shall not have been so determined it
shall When valuations under Orders in Council neglected.

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shall be lawful for the Minister to direct that such rent or other matter shall be determined by appraisalment under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council.

5 8. It shall not be lawful for any holder of any old run or run to obstruct any Government Surveyor or other officer in entering on such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may empower in that behalf from entering upon such run searching for and
10 removing gold and other minerals or cutting and removing therefrom indigenous timber or digging and removing gravel stone brick earth or other material.

Lessee not to obstruct authorized persons.

9. It shall be lawful for any Officer duly authorized by the Minister to mark on the ground the boundaries of any runs whether
15 undisputed or determined after dispute by decision of the Governor or otherwise by competent authority and the boundaries so marked shall be and be held to be the boundaries of such runs.

Marking of boundaries.

10. Any Crown Lands not being comprised within an old run may be demised or let upon lease under and subject to the provisions of this
20 Act or under the provisions of the Gold Fields Act 20 Victoria No. 29 but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to demise or lease any such Crown Lands as hereinafter enacted.

Leasing of lands.

11. Crown Lands may be demised by lease for any terms not
25 exceeding the following:—

Duration of leases.

For pastoral purposes in the first class Settled Districts One year.

For pastoral purposes in the second class Settled Districts or the Unsettled Districts Five years.

30 For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.

For mineral purposes other than gold mining Fourteen years.

Provided that lands within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any
35 city or town containing according to the then last Census ten thousand inhabitants or five miles from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according to the last Census for the time being one hundred inhabitants or lands
40 set apart for sites of towns or villages or for sale for agricultural purposes or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes.

Reservations from lease.

12. Leases of Runs within the first class Settled Districts may be granted subject to the next following conditions and to the general
45 provisions of this Act:—

Leases of runs in first class Settled Districts.

(1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for.

Size of portions to be leased.

50 (2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December.

Period of leases.

(3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and Leases not so renewed
55 may be brought to sale by public auction.

Renewal of leases.

(4.)

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- 5 (4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act. Conversion of existing leases into leases under this Act.
- 10 (5.) The holders in fee simple of any lands may be allowed leases of Crown Lands adjacent to their respective properties without competition at the rate of two pounds per section of 640 acres and to the extent of three times their own purchased or granted lands if there be so much vacant Crown Lands available. Provided that the rent to be charged for land so leased to parties not having the right to take six hundred and forty acres shall in no case be less than one pound. Pre-emptive leases to holders of land in fee simple.
- 15 (6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them shall be settled by arbitration. Provided that if such land be of less extent than 640 acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment. Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing to the several claimants of portions not less than 640 acres the names of their competitors an award shall not have been arrived at and duly communicated to the Minister the leases of the lands so circumstanced may be offered for sale by auction. Determination of conflicting claims by arbitration.
- 25 (7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by auction. Notification of pre-emptive leases.
- 30 (8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either on application or otherwise but no such sale of leases shall take place without one month's notice thereof having been given in the *Gazette*. Leases at auction.
- 35 (9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale. Upset price of lots.
- 40 (10.) Any lease bid for but the price of which may not be forthwith paid shall thereupon be again offered for sale at auction. Leases bid for but not paid for.
- 45 (11.) The lease of any land which may have been offered for sale at auction and not bid for may be obtained on payment of the upset price to the Land Agent of the District. Selection of leases not bid for.

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- (12.) The sale conditional or otherwise of any portion of land under lease shall cancel such lease. Leases may also be cancelled by the Minister for other sufficient reason and the balance of rent from the date of cancellation shall in either case be returned to the lessee. Cancellation of leases.
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13. The Governor with the advice of the Executive Council may grant leases of Crown Lands in the second class Settled Districts or in the Unsettled Districts subject to the following conditions and to the general provisions of this Act :— Pastoral leases in the second class Settled or the Unsettled Districts.
- 10 (1.) Leases of runs shall be converted into leases for five years under this Act by payment to the Colonial Treasurer not later than two months from the date of a notice in the *Gazette* to that effect of rent to be determined by appraisal of the fair annual value for pastoral purposes of the Lands comprised in the runs. Provided that in estimating such value neither the construction of dams or reservoirs nor the laying down of grass nor the making of any other improvement by the occupier shall be taken into account. Provided also that the rent shall in no case be less than ten pounds per annum. Leases of old runs may on their expiration be in like manner converted into leases under this Act.
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- 20 (2.) The rent shall be payable to the Colonial Treasurer in Sydney for each year after the first year during the month of September of the year preceding. Provided that a fine shall be payable for the whole time during which any rent due shall remain unpaid at the rate of five per centum on the amount if not more than three months in arrear—and if more than three months then at the rate of ten per centum. And if the rent be not paid at or before the end of six months together with such fine the lease shall then become forfeited. Commencement of rent addition of interest and forfeiture of lease.
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- 30 (3.) Leases shall not confer any right to purchase by pre-emption.
- 35 (4.) Crown Lands may be resumed from lease for the site of any City Town or Village or for Commonage or for any public purpose whatever and no compensation shall be payable to the holder of such lease for any such resumption excepting re-payment of rent to an extent proportionate to the area withdrawn and the period unexpired. Provided also that in any case of partial withdrawal the holder may if he think fit surrender his lease and have the full balance of rent refunded for the unexpired portion of the time for which it was paid. No pre-emptive right of purchase. Resumption of lands leased.
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- 45 14. The Governor with the advice of the Executive Council may proclaim any second class settled or unsettled district to be open for the formation of runs and may from time to time alter the boundaries of such districts or of any district now existing and leases of such runs may be obtained subject to the next following conditions. Provided that no district not so proclaimed shall be open for the formation of such runs :— Proclamation of districts for the formation of runs.
- 50 (1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose. Area and capabilities of runs.
- 55 (2.) Tenders for runs may be deposited in a box to be kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be Tenders for runs.
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- 5 be appointed for that purpose by the Governor with the
advice aforesaid and the person making the earliest tender
for any run shall be entitled to a lease thereof Provided
that should two or more tenders for any run be opened at
the same time the lease shall be granted to the person
whose tender shall contain the offer of the highest premium
Provided also that should two or more tenders embrace a
portion of the same land the common boundary may be
determined by arbitration Provided also that should such
10 boundary not be so determined within three months of the
date of a notice in the *Gazette* informing the parties of the
conflict by their tenders the whole of the lands tendered for
may be leased by auction sale Provided also that should a
run not be occupied and stocked with not less than two
15 hundred head of cattle or one thousand sheep within six
months of the notification of the acceptance of the tender
the run shall be forfeited and may be leased by auction sale.
- (3.) The Minister may cause to be modified the boundaries
20 proposed in any tender so as to make the run a compact
block of rectangular form in which the external lines shall
run east and west and north and south subject however to
such deviations as the general features of the country and
the adoption of natural boundaries may require and subject
also to the exclusion of water necessary to the beneficial
25 occupation of adjoining lands.
- (4.) Tenders shall be in a form to be prescribed by the Governor
with the advice of the Executive Council and shall contain
30 clear descriptions of the boundaries of the runs applied for
and the marks or natural features by which such boundaries
are indicated and also estimates of the areas and pastoral
capabilities of such runs.
- (5.) Every tender must be accompanied by a receipt shewing that
35 a sum of money equivalent to twenty-five per centum of
the rent offered in such tender has been deposited in
the Colonial Treasury and in the event of the ultimate
acceptance of the tender the tenderer shall receive credit
for the amount of the deposit in the first year's rent and
in the event of the tender being rejected the amount shall
be returned to the tenderer.
- (6.) Runs may be held from year to year at a rent of ten pounds
40 per annum payable in accordance with condition number two
under section thirteen of this Act and to assessment at the
same rate and subject to the same conditions as the runs
under the Act twenty-second Victoria number seventeen
45 until an appraisalment shall be made of the fair annual
value thereof for pastoral purposes whereupon the holdings
shall be converted into leases under section thirteen of this
Act.
- (7.) If in any case it shall appear that at the time of the
50 appraisalment the run in its natural state was incapable of
sustaining four thousand sheep or eight hundred head of
cattle in all seasons of the year the lessee thereof may
during the first quarter of the last year of his lease apply
for a re-appraisalment thereof and if it shall then appear
55 that such run has by the adoption of artificial means been
rendered capable of permanently depasturing the said
number of sheep or cattle the duration of the lease shall
be extended to ten years at the same rent and on the same
terms and conditions as the original lease.

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15. Old runs or runs which have been forfeited or vacated shall be submitted to sale by auction in leases for the term of five years at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the time of sale and any such run if unsold may be again put up for sale in like manner at a reduced upset rental not being less than ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or may be again put up for sale by auction. Sale at auction of leases of forfeited runs.
16. The sale conditional or otherwise of any Land within any lease granted under this Act in the second class Settled Districts or in the Unsettled Districts for pastoral purposes shall cancel so much of the leasehold as relates to the land so sold and to three times the area thereof adjacent which last mentioned area may be held by the new purchaser under pre-emptive lease to which all conditions and liabilities attached to pre-emptive leases in the first class Settled Districts shall apply. Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.
17. Any person driving horses cattle or sheep along any track used or required for the purpose of travelling may depasture the same on any Crown Lands within the distance of one half mile of such track notwithstanding any lease of any such lands for pastoral purposes. Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours. Passage of stock.
18. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands. Use of timber or material by lessees.
19. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to restrict other persons duly authorized by the Minister or by such officer as he may empower in that behalf either from cutting or removing timber or material for building or other purposes or from searching for any metal or mineral within the land leased. Removal of timber and material by others than lessees.
20. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council. Leases for mining purposes other than gold mining.
- (1.) Persons may on application to the Minister obtain authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any such lots and to make provision for reservation of water supply. Provided that applications made prior to the passing of this Act may be accepted under it and shall take precedence in the order of their date. Authority to select mineral lots.
- (2.) The rent shall be five shillings per acre payable annually in advance at the Colonial Treasury the first payment to be made on application for authority to select 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. Payment of rent.
- (3.) Lessees shall expend at the rate of five pounds sterling per acre annually on their lots. Necessary annual expenditure.
- (4.)

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- (4.) Lessees may determine their leases by giving to the Minister three months notice of their desire to do so but no rent shall in any such case be refunded. Determination of leases.
- 5 (5.) Lessees may on application to the Minister in writing during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisement and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to renewal. Renewal of leases.
- 10 (6.) If any lease be forfeited or not renewed the lessee shall be at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease. Removal of machinery.
- 15 21. Whenever it shall become necessary or desirable to fix or ascertain any rent price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement and 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 :—
- 25 (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 of appraisers or arbitrators.
- 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 And if for the space of six calendar months after a notice published in the *Gazette* by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner act on behalf of both parties. Single appraiser or arbitrator to act in certain cases.
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(4.)

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- (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.
- 5 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or refuse 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 thirty 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. In case of death of or failure to act by appraiser or arbitrator.
- 10 (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.
- 15 (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 for 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. Appointment of umpire.
- 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 not exceeding thirty days if any 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 (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.
- 30 (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.
- 35 (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.
- 40 (12.) Before any appraiser arbitrator or umpire shall enter upon the consideration of any matter referred to him as aforesaid Declaration by appraiser arbitrator or umpire.

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he shall make out and subscribe a declaration in the form following before a Justice of the Peace that is to say—

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 same under the Crown Lands Occupation Act of 1861.

10 (13.) And such declaration shall be annexed to the appraisalment 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.

15 (14.) Every appraisalment or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office.

22. It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of a run to mark on the ground such boundary and such boundary so marked shall be
20 held to be the boundary of such run. Marking of boundaries by arbitrators or umpire.

23. It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any run to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such representation
25 and such plan shall thenceforth become and be legal evidence of the boundary or boundaries of the lands to be demised by the Crown. Attestation of maps and plans.

24. If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorised officer arbitrators or umpire as aforesaid he
30 shall be guilty of a misdemeanor. Obliteration of boundary marks a misdemeanor.

25. In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby intended to be conveyed be defined according to the best description of such land and of the boundaries thereof which may have
35 been procurable notwithstanding that such description may not have been prepared after actual survey and no such lease or other instrument shall be liable to be set aside by reason only of the imperfection of any such description so long as the land shall thereby be defined with reasonable certainty. Descriptions of leased lands.

40 26. In the trial by the Supreme Court of any action brought to recover possession or to recover damages for trespass upon any Crown Lands it shall be lawful for the plaintiff or the defendant as the case may be to plead and put in evidence any promise engagement or contract from or with the Crown or its agents lawfully authorised for the granting
45 under the Orders in Council or under this Act for any term unexpired of a lease of such lands and the party who may be proved to be entitled to a lease shall in all cases be held to be lawfully possessed of the *locus in quo*. Right of Lease may be given in evidence in actions.

50 27. The Governor with the advice aforesaid may proclaim and set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other specified locality and may make and proclaim regulations for the management of such commonage. Commonage proclamation and regulations.

55 28. The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for Wharfs Bridges Punt Houses Ferries and for the erection of machinery for saw mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall

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shall seem fit Provided that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the *Gazette*.

29. The Governor with the aforesaid advice may subject to
 5 any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice
 10 aforesaid may fix for such license shall be paid in advance.

Licenses to cut timber and procure other materials.

30. On information in writing preferred by any Commissioner
 of Crown Lands or other person duly authorized to any Justice of the Peace setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under color of
 15 any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or
 20 more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or at his usual or last place of abode or business shall hear and inquire into the subject matter of such information And on being satisfied of the truth
 25 thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or other proper officer requiring him forthwith to dispossess and remove such person from such land and to take possession of the same on behalf of Her
 30 Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution.

Removal of trespassers.

31. Any person unless lawfully claiming under any subsisting
 lease or license or otherwise under the Orders in Council or under this Act or under the Act twentieth Victoria number twenty-nine who shall be found
 35 occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building thereon or by clearing digging up enclosing or cultivating any part thereof or cutting timber other than firewood not for sale thereon shall be liable on conviction to a penalty not exceeding five pounds for the first offence
 40 and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence Provided that no information shall be laid for any second or subsequent offence until thirty clear days shall have elapsed from the date of the previous conviction.

Penalties for trespassing.

32. All actions or other proceedings against any Commis-
 45 sioner of Crown Lands or other Officer acting under the provisions of this Act for anything wrongfully done under or against the provisions of this Act shall be commenced within six months after the matter complained of was committed and not otherwise And notice in writing of any such action and of the cause thereof shall be given to the defendant one month
 50 at least before the commencement of the proceeding And in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon And no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a
 55 sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs incurred up to that time And if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff
 the

Limitation of actions.

Crown Lands Occupation Act.—1861.

the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in other cases.

33. Any lease or other instrument 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.

34. The Governor with the advice of the Executive Council may make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for. And all such regulations shall upon publication in the *Gazette* be as valid in law as if contained herein. 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 then next ensuing Session. Governor in Council to make and proclaim Regulations.

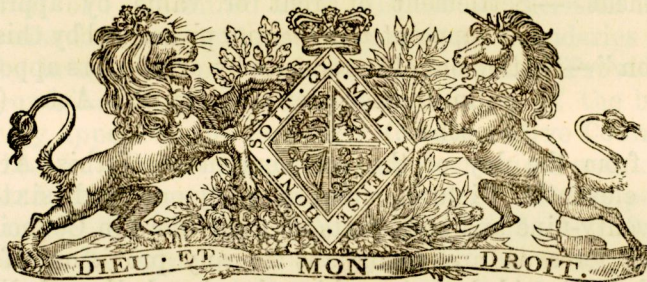
35. This Act shall commence on the first day of January next. And may be styled and cited as the “Crown Lands Occupation Act of 1861.” Commencement and Short Title.

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.

No. .

An Act for regulating the Occupation of the Crown Lands.

WHEREAS it is expedient to make better provision for the occupa- Preamble.
tion of the 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
5 assembled and by the authority of the same as follows:— (Postponed.)

1. The following terms within inverted commas whenever used Interpretation.
herein shall 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 law-
fully contracted to be granted to any
person in fee simple.

15 “ 1st Class Settled Districts ”—The Lands declared to be of the
Settled class under the Orders in Council.

“ 2nd Class Settled Districts ”—The Lands converted into the
Settled class by the Act of Council twenty-
third Victoria number four.

“ Unsettled Districts ”—All other Crown Lands.

c

“ Orders

Crown Lands Occupation Act.—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 ninth and tenth Victoria chapter one hundred and four.
- 10 “Old Run”—Any portion of Crown Lands within the Second class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight.
- 15 “Run”—Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight.
- 20 “Minister”—The Minister for the time being charged with the administration of the Crown Lands.
- “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Appraisement”—Settlement of rent or value by appraisers appointed in manner prescribed by this Act.
- “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act. (*Postponed.*)
- 25 2. On and from the day of the commencement of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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
- 30 affect anything already lawfully done or commenced or contracted to be done thereunder respectively. (*Postponed.*)
3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such District to be of the class of 2nd Class Settled Districts and
- 35 such District or portion of District shall on such proclamation become and be of the 2nd Class Settled Districts under this Act provided that such proclamation shall in no case affect then existing leases or any rights thereunder Provided that no such proclamation shall take effect until the expiration of three months after it shall have been laid
- 40 before both Houses of Parliament. (*Carried.*)
4. Existing leases of Crown Lands shall not be renewed but may upon the application of the Lessees be converted into leases except under the provisions of this Act. (*Carried.*)
5. The Governor with the advice of the Executive Council may by
- 45 notice in the *Gazette* withdraw from any Old Run or Run any lands which may be required for the site of any City Town or Village or for any roadway for general traffic or for passage of stock or for access to back runs or for sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for commonage or for the
- 50 working of any Mines of Gold or other minerals or for any public purpose whatsoever. (*Postponed.*)
6. In cases in which two or more persons entitled to leases under the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been
- 55 or may be declared by the Governor ~~or by the Minister~~ with the advice aforesaid to have been legally established and in any such case in which the right to a lease shall not have been so established the lease may be granted to the person who may be by arbitration declared entitled thereto. (*Carried.*)

Partial Repeal of Acts Orders in Council and Regulations.

Extension of 2nd Class Settled Districts.

Conversion of existing Leases.

Withdrawal of land from lease.

Conflicting claims to leases.

Crown Lands Occupation Act.—1861.

7. In any case in which the rent of an old run or any other matter required by the Orders in Council to be determined by valuers appointed in the manner therein prescribed shall not have been so determined it shall be lawful for the Minister to direct that such rent or other matter shall be determined by appraisalment under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council. (*Carried.*)
8. It shall not be lawful for any holder of any old run or run to obstruct any Government Surveyor or other authorized officer in entering on such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may empower in that behalf from entering upon such run searching for and removing gold and other minerals or cutting and removing therefrom indigenous timber or digging and removing gravel stone brick earth or other material **Provided that nothing herein contained shall prevent a rectification of the boundary in case of error by appeal to the Governor and Executive Council.** (*Carried.*)
9. It shall be lawful for any Officer duly authorized by the Minister to mark on the ground the boundaries of any runs whether undisputed or determined after dispute by decision of the Governor or otherwise by competent authority and the boundaries so marked shall be and be held to be the boundaries of such runs **Provided that nothing herein contained shall prevent a rectification of the boundary in case of error by appeal to the Governor and Executive Council.** (*Carried.*)
10. Any Crown Lands not being comprised within an old run may be demised or let upon lease under and subject to the provisions of this Act or under the provisions of the Gold Fields Act 20 Victoria No. 29 or any other Act which may be passed for the management of the Gold Fields but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to demise or lease any such Crown Lands as hereinafter enacted. (*Carried.*)
11. Crown Lands may be demised by lease for any terms not exceeding the following:—
- For pastoral purposes in the first class Settled Districts One year.
 For pastoral purposes in the second class Settled Districts or Five years and in the Unsettled Districts Five Ten years.
 For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.
 For mineral purposes other than gold mining Fourteen years.
- Provided that lands 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 from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according to the last Census for the time being one hundred inhabitants or lands set apart for sites of towns or villages or for sale for agricultural purposes or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes.** (*Carried.*)
12. Leases of Runs within the first class Settled Districts may be granted subject to the next following conditions and to the general provisions of this Act:—
- (1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for.
- (2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December.
- (3.)

When valuations under Orders in Council neglected.

Lessee not to obstruct authorized persons.

Marking of boundaries.

Leasing of lands.

Duration of leases.

Reservations from lease.

Leases of runs in first class Settled Districts.

Size of portions to be leased.

Period of leases.

Crown Lands Occupation Act.—1861.

- (3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and Leases not so renewed may be brought to sale by public auction. Renewal of leases.
- 5
- (4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act. Conversion of existing leases into leases under this Act.
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- (5.) The holders in fee simple of any lands may be allowed leases of Crown Lands adjacent to their respective properties without competition at the rate of two pounds per section of 640 acres and to the extent of three times their own purchased or granted lands if there be so much vacant Crown Lands available Provided that the rent to be charged for land so leased to parties not having the right to take six hundred and forty acres shall in no case be less than one pound. Pre-emptive leases to holders of land in fee simple.
- 25
- (6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them shall be settled by arbitration Provided that if such land be of less extent than 640 acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing to the several claimants of portions not less than 640 acres the names of their competitors an award shall not have been arrived at and duly communicated to the Minister the leases of the lands so circumstanced may be offered for sale by auction. Determination of conflicting claims by arbitration.
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- (7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by auction. Notification of pre-emptive leases.
- 45
- (8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either on application or otherwise but no such sale of leases shall take place without one month's notice thereof having been given in the *Gazette*. Leases at auction.
- 50
- (9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings if upset price of lots.
- 55

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- if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale.
- 5 (10.) Any lease bid for but the price of which may not be forth- Leases bid for but
with paid shall thereupon be again offered for sale at auction. not paid for.
- (11.) The lease of any land which may have been offered for sale Selection of leases
at auction and not bid for may be obtained on payment of not bid for.
- 10 (12.) The sale conditional or otherwise of any portion of land Cancellation of
under lease shall cancel such lease Leases may also be leases.
cancelled by the Minister for other sufficient reason and
the balance of rent from the date of cancellation shall in
either case be returned to the lessee.
- 15 13. The Governor with the advice of the Executive Council Pastoral leases in the
may grant leases of Crown Lands in the second class Settled Districts second class Settled
or in the Unsettled Districts subject to the following conditions and to or the Unsettled
the general provisions of this Act :— Districts.
- 20 (1.) Leases of existing runs shall be converted into leases for Conversion of leases
five years under this Act if situated in the second class of existing runs into
Settled Districts for a period of five years and if in the leases under this Act
Unsettled Districts for a period of ten years by payment
to the Colonial Treasurer not later than two months
25 from the date of a notice in the *Gazette* to that effect
of rent to be determined by appraisalment of the fair
annual value for pastoral purposes of the Lands com-
prised in the runs Provided that in estimating such
value neither the construction of dams or reservoirs
nor the laying down of grass nor the making of any other
improvement by the occupier shall be taken into account
30 Provided also that the rent shall in no case be less than
ten pounds per annum.
- (2.) Leases of old runs may on their expiration be in like and of leases of old
manner converted into leases for a term of five years runs.
- 35 (3.) At any time after the expiration of five years from the Leases granted on
commencement of any lease granted on or after the or after 22 Feb-
twenty-second day of February one thousand eight ruary 1858.
- 40 (3.) At any time after the expiration of five years from the Re-adjustment of
commencement of any lease granted on or after the rent.
twenty-second day of February one thousand eight
hundred and fifty-eight for any longer period than five
years the Minister if he shall see fit or if called upon by
the lessee shall order an appraisalment of the rent to be
again made in the manner hereinbefore directed and the
lessee shall pay such re-adjusted rent as shall be so
determined.
- 45 (4.) (2.) The rent shall be payable to the Colonial Treasurer in Commencement of
Sydney for each year after the first year during the month rent addition of
of September of the year preceding between the first day interest and forfei-
of January and the thirty-first day of March Provided ture of lease.
that a fine shall be payable for the whole time during which
any rent due shall remain unpaid after the date last
50 mentioned at the rate of five eight per centum on the
amount if not more than three months in arrear—and if
more than three months then at the rate of ten per
centum And if the rent be not paid at or before the end of
six months after such last mentioned date together with
55 such fine the lease shall then become forfeited.
- (3.) Leases shall not confer any right to purchase by pre-emption. No pre-emptive
right of purchase.
- (5.) (4.) Crown Lands may be resumed from lease for the site of any Resumption of
City Town or Village or for Commonage for the same or for lands leased.
any public purpose whatever and no compensation shall be
payable

Crown Lands Occupation Act.—1861.

- payable to the holder of such lease for any such resumption excepting re-payment of rent to an extent proportionate to the area withdrawn and the period unexpired Provided also that in any case of partial withdrawal the holder may if he think fit surrender his lease and have the full balance of rent refunded for the unexpired portion of the time for which it was paid. (*Carried.*)
- 5
14. The Governor with the advice of the Executive Council may proclaim any Pastoral Districts in the second class settled or unsettled districts to be open for the formation of runs and may from time to time alter the boundaries of such Pastoral districts or of any such district now existing and leases of such runs may be obtained subject to the next following conditions Provided that no district not so proclaimed shall be open for the formation of such runs :—
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- 15 (1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose. Area and capabilities of runs.
- 20
- (2.) Tenders for runs may be deposited in a box to be kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be appointed for that purpose by the Governor with the advice aforesaid and the person making the earliest tender for any run shall be entitled to a lease thereof Provided that should two or more tenders for any run be opened at the same time the lease shall be granted to the person whose tender shall contain the offer of the highest premium Provided also that should two or more tenders embrace a portion of the same land the common boundary may be determined by arbitration Provided also that should such boundary not be so determined within three months of the date of a notice in the *Gazette* informing the parties of the conflict by their tenders the whole of the lands tendered for may be leased by auction sale Provided also that should a run not be occupied and stocked with not less than two hundred head of cattle or one thousand sheep within six months or in the event of its being necessary to provide water by artificial means within twelve months of the notification of the acceptance of the tender the run shall be forfeited and may be leased by auction sale.
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- 45 (3.) The Minister may cause to be modified the boundaries proposed in any tender so as to make the run a compact block of rectangular form in which the external lines shall run east and west and north and south subject however to such deviations as the general features of the country and the adoption of natural boundaries may require and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands. Direction of boundaries in tenders.
- 50
- (4.) Tenders shall be in a form to be prescribed by the Governor with the advice of the Executive Council and shall contain clear descriptions of the boundaries of the runs applied for and the marks or natural features by which such boundaries are indicated and also estimates of the areas and pastoral capabilities of such runs. Descriptions in Tenders.
- 55
- (5.) Every tender must be accompanied by a receipt shewing that a sum of money equivalent to twenty-five per centum of the rent offered in such tender has been deposited in
- 60
- the

Crown Lands Occupation Act.—1861.

- the Colonial Treasury and in the event of the ultimate acceptance of the tender the tenderer shall receive credit for the amount of the deposit in the first year's rent and in the event of the tender being rejected the amount shall be returned to the tenderer.
- 5 (6.) Runs may be held from year to year at a rent of ten pounds per annum payable in accordance with condition number two under section thirteen of this Act and to assessment at the same rate and subject to the same conditions as the runs under the Act twenty-second Victoria number seventeen until an appraisalment shall be made of the fair annual value thereof for pastoral purposes whereupon the holdings shall be converted into leases under section thirteen of this Act.
- 10 (7.) If in any case it shall appear that at the time of the appraisalment the run in its natural state was incapable of sustaining four thousand sheep or eight hundred head of cattle in all seasons of the year the lessee thereof may during the first quarter of the last year of his lease apply for a re-appraisalment thereof and if it shall then appear that such run has by the adoption of artificial means been rendered capable of permanently depasturing the said number of sheep or cattle the duration of the lease shall be extended to ~~ten~~ fifteen years at the same rent and on the same terms and conditions as the original lease.
- 15 (Carried.)
- 20 15. ~~Forfeited or vacated~~ old runs or runs which ~~have been~~ forfeited or vacated shall be submitted to sale by auction in leases if situated in the second class Settled Districts for the term of five years or if situated in the Unsettled Districts for the term of ten years at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the time of sale and any such run if unsold may be again put up for sale in like manner at a reduced upset rental not being less than
- 25 ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or may be again put up for sale by auction. (Carried.)
- 30 16. The sale conditional or otherwise of any Land within any lease granted under this Act in the second class Settled Districts or in the Unsettled Districts for pastoral purposes shall cancel so much of the lease held as relates to the land so sold and to three times the area thereof adjacent adjoining thereto which last mentioned area may be held by the new purchaser under pre-emptive lease to which all conditions and liabilities attached to pre-emptive leases in the first class Settled Districts shall apply. (Carried.)
- 35 17. Any person driving horses cattle or sheep along any customary track used ~~or required~~ for the purpose of travelling may depasture the same on any Crown Lands within the distance of one ~~half~~ quarter of a mile of such track notwithstanding any lease of any such lands for pastoral purposes Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours. (Carried.)
- 40 18. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands. (Carried.)
- 45 19. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to restrict

Tenure of run at fixed rent and assessment pending appraisalment.

Sale at auction of leases of forfeited runs.

Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.

Passage of stock.

Use of timber or material by lessees.

Removal of timber and material by others than lessees.

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restrict other persons duly authorized by the Minister or by such officer as he may empower in that behalf either from cutting or removing timber or material for building or other purposes or from searching for any metal or mineral within the land leased. (*Carried.*)

- 5 20. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal
10 for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council.
- (1.) Persons may on application to the Minister obtain
15 authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any such lots and to make provision for reservation of water supply Provided that applications made prior to the passing
20 of this Act may be accepted under it and shall take precedence in the order of their date.
- (2.) The rent shall be five shillings per acre payable annually in
25 advance at the Colonial Treasury the first payment to be made on application for authority to select 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.
- (3.) Lessees shall expend at the rate of five pounds sterling per
30 acre annually on their lots **within the first three years of the lease.**
- (4.) Lessees may determine their leases by giving to the Minister
35 three months notice of their desire to do so but no rent shall in any such case be refunded.
- (5.) Lessees may on application to the Minister in writing
40 during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisement and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to renewal.
- (6.) If any lease be forfeited or not renewed the lessee shall be
45 at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease. (*Carried.*)
21. Whenever it shall become necessary or desirable to fix or
ascertain any rent price value or sum of money which by this Act it is pro-
50 vided may be fixed or ascertained by appraisement and 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
55 shall be conducted in manner hereinafter mentioned that is to say:—
- (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

Leases for mining purposes other than gold mining.

Authority to select mineral lots.

Payment of rent.

Necessary annual expenditure.

Determination of leases.

Renewal of leases.

Removal of machinery.

Mode of appraisement or arbitration.

Appointment of appraisers or arbitrators.

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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 appraisal or to arbitration as the case may be by the parties making the same.

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(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 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 And if for the space of six calendar months after a notice published in the *Gazette* by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner 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 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 power at any time and from time to time to remit the matters referred or any or either of them to the reconsideration and redetermination 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 refuse 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 thirty 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. 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 referred to him shall be again referred to appraisal 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.)

Crown Lands Occupation Act.—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 for 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.** Appointment of 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 not exceeding thirty days if any 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 same under the Crown Lands Occupation 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.
- (14.) Every appraisement or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office. (*Carried.*)
22. It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of ~~a~~ **an old run or run** to mark on the ground such boundary and such boundary so marked shall be held to be the boundary of such **old run or run.** Marking of boundaries by arbitrators or umpire.

Crown Lands Occupation Act.—1861.

23. It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any **old run or run** to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such representation and such plan shall thenceforth become and be legal evidence of the **such** boundary or boundaries of the lands to be demised by the Crown. (*Carried.*)

Attestation of maps and plans.

24. If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorised officer arbitrators or umpire as aforesaid he shall be guilty of a misdemeanor.

Obliteration of boundary marks a misdemeanor.

25. In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby intended to be conveyed be defined according to the best by a general description of such land and of the boundaries thereof which may have been procurable notwithstanding that such description may not have been prepared after actual survey and no such lease or other instrument shall be liable to be set aside by reason only of the imperfection of any such description so long as Provided the land shall thereby be defined with reasonable certainty. (*Carried.*)

Descriptions of leased lands.

26. In the trial by the Supreme Court of any action brought to recover possession or to recover damages for trespass upon any Crown Lands it shall be lawful for the plaintiff or the defendant as the case may be to plead and put in evidence any promise engagement or contract from or with the Crown or its agents lawfully authorised for the granting under the Orders in Council or under this Act for any term unexpired of a lease of such lands and the party who may be proved to be entitled to a lease shall in all cases be held to be lawfully possessed of the *locus in quo*. (*Postponed.*)

Right of Lease may be given in evidence in actions.

27. The Governor with the advice aforesaid may proclaim and set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other specified locality and may make and proclaim regulations for the management of such commonage. (*Carried.*)

Commonage proclamation and regulations.

28. The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for Wharfs Bridges Punt Houses Ferries and for the erection of machinery for saw mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall seem fit Provided that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the *Gazette*. (*Carried.*)

Leases for wharfs bridges ferries and other objects.

29. The Governor with the aforesaid advice may subject to any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice aforesaid may fix for such license shall be paid in advance. (*Carried.*)

Licenses to cut timber and procure other materials.

30. On information in writing preferred by any Commissioner of Crown Lands or other person duly authorized to any Justice of the Peace setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under color of any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or

Removal of trespassers.

MORE

Crown Lands Occupation Act.—1861.

more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or at his usual or last place of abode or business shall hear and inquire into
 5 the subject matter of such information And on being satisfied of the truth thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or other proper officer requiring him forthwith to dispossess and remove such
 10 person from such land and to take possession of the same on behalf of Her Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution. (*Carried.*)

31. Any person unless lawfully claiming under any subsisting lease or license or otherwise under the Orders in Council or under this Act
 15 or under the Act twentieth Victoria number twenty-nine who shall be found occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building thereon or by clearing digging up enclosing or cultivating any part thereof or cutting timber other than firewood not for sale thereon shall be liable
 20 on conviction to a penalty not exceeding five pounds for the first offence and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence Provided that no information shall be laid for any second or subsequent offence until thirty clear days shall have elapsed from the date of the previous conviction.
 25 (*Carried.*)

32. All actions or other proceedings against any Commissioner of Crown Lands or other Officer acting under the provisions of this Act for anything wrongfully done under or against the provisions of this Act shall be commenced within six ~~twelve~~ months after the matter complained
 30 of was committed and not otherwise And notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the proceeding And in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon And
 35 no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs incurred up to that time And if a verdict shall pass for the defendant
 40 or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in other cases. (*Carried.*)

33. Any lease or other instrument issued under this Act may
 45 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. (*Carried.*)

34. The Governor with the advice of the Executive Council may
 50 make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for And all such regulations shall upon publication in the *Gazette* be as valid in law as if contained
 55 herein 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 then next ensuing Session. (*Carried.*)

35. This Act shall commence on the first day of January
 60 next And may be styled and cited as the “Crown Lands Occupation Act
 “of 1861.” (*Carried.*)

Penalties for trespassing.

Limitation of actions.

Instruments under Act to be evidence.

Governor in Council to make and proclaim Regulations.

Commencement and Short Title.

1861.

Legislative Council.

CROWN LANDS OCCUPATION BILL OF 1861.

(Amended new Clause to be proposed in Committee of the Whole by
MR. DEAS THOMSON. To follow Clause 16.)

. In order to form a fund for compensation to lessees of old runs ^{Pastoral Lessees} and runs which may be wholly or partly withdrawn from them under the ^{Compensation Fund.} provisions of this Act every such lessee shall in addition to the assessment imposed and payable under the provisions of the "Increased Assessment and Rent Act of 1858" be charged with and pay an assessment at the rate of for every thousand sheep or their equivalent in cattle and such additional assessment shall be subject to the same provisions in respect of collection time and mode of payment and enforcement as apply in the case of assessment payable under the said Act and all sums so received under the authority of this Act shall be carried to the credit of a separate fund to be opened by the Colonial Treasurer and to be called "The Pastoral Lessees Compensation Fund" and the proceeds of such fund shall be issued and applied only in granting compensation to the lessees of old runs or runs for any loss or damage which they may sustain by the withdrawal of the whole or any portion thereof for any of the purposes contemplated in this Act such loss or damage in case of dispute to be ascertained by appraisement Provided that in borrowing money upon any such old runs or run the lessee thereof may by way of additional security by a clause in the mortgage deed or other instrument for securing re-payment of such money create a charge upon the said "Pastoral Lessees Compensation Fund" to any extent not exceeding the amount of compensation out of such fund to which such lessee may contingently become entitled under this Act And every such charge shall be valid and effectual in the law in favour of the mortgagee or other *bonâ fide* lender of such money and may be enforced by the Supreme Court in its Equitable Jurisdiction by petition in a summary way and otherwise in like manner and by like modes of proceeding and process as any valid charge upon any other fund created by any borrower in favour of any lender of money may be enforced.

General Statement

REPORT OF THE DIRECTOR OF THE BUREAU OF REVENUE

for the year ending 31st March 1911

The following statement shows the results of the operations of the Bureau of Revenue for the year ending 31st March 1911. It is divided into two parts, the first showing the results of the operations of the Bureau of Revenue as a whole, and the second showing the results of the operations of the various branches of the Bureau.

The total amount of revenue received by the Bureau of Revenue for the year ending 31st March 1911 was £1,000,000,000. This was an increase of 10% on the total amount of revenue received for the year ending 31st March 1910, which was £900,000,000.

The increase in revenue was due to a number of causes, the principal of which were the increase in the amount of duty on imports, the increase in the amount of duty on exports, and the increase in the amount of duty on the sale of spirits.

The amount of duty on imports for the year ending 31st March 1911 was £400,000,000, which was an increase of 15% on the amount of duty on imports for the year ending 31st March 1910, which was £340,000,000.

The amount of duty on exports for the year ending 31st March 1911 was £300,000,000, which was an increase of 10% on the amount of duty on exports for the year ending 31st March 1910, which was £270,000,000.

The amount of duty on the sale of spirits for the year ending 31st March 1911 was £300,000,000, which was an increase of 10% on the amount of duty on the sale of spirits for the year ending 31st March 1910, which was £270,000,000.

The amount of duty on the sale of other goods for the year ending 31st March 1911 was £400,000,000, which was an increase of 10% on the amount of duty on the sale of other goods for the year ending 31st March 1910, which was £360,000,000.

The amount of duty on the sale of other goods for the year ending 31st March 1911 was £400,000,000, which was an increase of 10% on the amount of duty on the sale of other goods for the year ending 31st March 1910, which was £360,000,000.

CROWN LANDS OCCUPATION BILL OF 1861.

SCHEDULE of the Amendments made by the Legislative Council in the Bill, intituled, "An Act for regulating the Occupation of the " Crown Lands," returned to the Legislative Assembly with Message of 9th May, 1861.

R. O'CONNOR,
Clerk of Legislative Council.

- Page 1, Clause 1, line 17. *Omit " of Council "*
- Page 2, Clause 3, *Omit " Clause "*
- " Clause 3, 4, lines, 37 and 38. *Omit " but may upon the application of the " lessees be converted into leases " insert " except "*
- " Clause 4, 5, line 45. *Before " commonage " insert " temporary "*
- " " line 46. *After " commonage " insert " for the use of any such City " Town or Village "*
- " Clause 5, 6, line 52. *Omit " legally "*
- " " line 52. *After " established " omit remainder of clause.*
- Page 3, Clause 7, 8, line 5. *After " other " insert " authorized "*
- " Clause 8, 9, line 16. *At end of clause add Proviso.*
- " Clause 9, 10, lines 21 and 22. *After " No. 29 " insert " or any other Act which may " be passed for the Management of the Gold Fields."*
- " Clause 10, 11, lines 29 and 30. *After " Districts " omit " or " insert " Five years " and in "*
- " " line 30. *Omit " Five " insert " Ten "*
- Page 4, Clause 11, 12, line 16. *Omit " adjacent " insert " adjoining "*
- " " lines 20 to 28. *After " available " insert Proviso.*
- " " line 28. *After " Provided " insert " further "*
- " " line 42. *Omit " Minister " insert " proper Officer "*
- Page 5, " lines 10 to 13. *After " cancel " omit remainder of Clause; insert " so " much of the lease as relates to the land so sold and to three times " the area thereof adjoining thereto Provided that the lessee of " the lands from which such sale shall be made shall be at liberty " either to retain the remaining portion thereof paying however the " same amount of rent as for the whole section or surrender the " same."*
- " Clause 12, 13, line 24. *After " Leases of " ; insert " existing "*
- " " lines 24 and 25. *Omit " for five years."*
- " " lines 25 to 27. *After " Act," insert " if situated in the second class " Settled Districts for a period of five years and if in the Unsettled " Districts for a period of ten years."*
- " " line 38. *Commence with Leases new paragraph (2.)*
- " " line 39. *After " Leases " insert " for the term of five years."*
- " " lines 41 to 49. *After " This Act " insert new paragraph (3.)*
- " " lines 51 to 53. *Omit " during the month of September of the year " preceding " insert " between the first day of January and the " thirty-first day of March "*
- " " lines 55 and 56. *After " unpaid " insert " after the date last mentioned "*
- " " line 56. *Omit " five " insert " eight "*
- Page 6, " line 3. *After " months " insert " after such last mentioned date "*
- " " line 5. *Omit paragraph (3.)*
- " " line 7. *After " Commonage " insert " for the same "*
- " Clause 13, 14, line 17. *Omit " any " insert " Pastoral Districts in the "*
- " " line 18. *Add " s " to " District "*
- " " line 19. *After " such " insert " Pastoral "*
- " " line 19. *After " any " insert " such "*
- " " lines 48 and 49. *After " months " insert " or in the event of its " being necessary to provide water by artificial means within twelve " months "*
- Page 7, " lines 16 and 17. *Omit " two " insert " four "*
- " " line 17. *Omit " thirteen " insert " twelve "*
- " " lines 22 and 23. *Omit " thirteen " insert " twelve "*
- " " line 33. *Omit " ten " insert " fifteen "*
- " Clause 14, 15, line 35. *Before " old " insert " forfeited or vacated "*
- " " lines 35 and 36. *Omit " which have been forfeited or vacated shall " insert " may "*
- " " lines 36 and 37. *After " leases " insert " if situated in the second class " Settled Districts "*
- " " line 38. *After " years " insert " or if situated in the Unsettled Districts " for the term of ten years "*
- " Clause 15, 16, line 49. *Omit " hold "*
- " " line 50. *Omit " Adjacent," insert " adjoining thereto "*
- " Clause 16, 17, line 54. *After " any " at end of line, insert " customary "*
- " " line 55. *Omit " or required "*
- " " line 56. *Omit " half," insert " quarter of a "*

- Page 8, Clause 18, 19, lines 11 and 12. Omit "by the Minister or by such Officer as he
" "may empower"
- " Clause 19, 20, line 40. Omit "annually"
- " " lines 40 and 41. After "lots" insert "within the first three years
" "of the lease"
- Page 9, Clause 20, 21, lines 43 to 46. Omit paragraph (4.), insert new paragraph (4.)
- Page 10, " lines 22 to 25. 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 26 to 28. Omit "and the award of the umpire shall be binding
" "final and conclusive upon all persons and to all intents and pur-
" "poses whatsoever."
- Page 11, Clause 21, 22, lines 10 and 11. Omit "a," insert "an old run or"
- " " line 12. After "such," insert "old run or"
- " Clause 22, 23, line 15. After "any," insert "old run or"
- " " line 18. Omit "the," insert "such"
- " " lines 18 and 19. Omit "of the lands to be demised by the Crown."
- " Clause 24, 25, lines 26 and 27. Omit "according to the best," insert "by a
" "general"
- " " lines 28 to 31. Omit "which may have been procurable notwithstand-
" "ing that such description may not have been prepared after actual
" "survey and no such lease or other instrument shall be liable to be
" "set aside by reason only of the imperfection of any such descrip-
" "tion so long as, insert "Provided."
- " Clause 25, 26, line 33. Omit "the trial by the Supreme Court of"
- " " After "action" insert "or suit."
- " " lines 34 and 35. After "upon" insert "or otherwise in relation to"
- " " lines 35 and 36. After "Lands" insert "of which no lease from the
" "Crown shall be in force."
- " " lines 36 and 37. Omit "the plaintiff or the defendant as the case
" "may be"; insert "any party thereto"
- " " lines 40 to 46. After "lands" omit remainder of clause; insert "And
" "such promise engagement or contract shall as between the parties
" "in such action or suit have the same effect as if a lease from the
" "Crown of such lands had been duly issued in pursuance of such
" "promise engagement or contract to the party entitled thereunder
" "to such lease."
- Page 12, Clause 31, 32, line 44. Omit "six"; insert "twelve."
- Page 13, Clause 33, 34, line 10. Before "valid," omit "as"
- " " lines 10 and 11. Omit "as if contained herein"
- " Clause 34, 35, lines 15 and 16. Omit "January"; insert "July"

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. }*

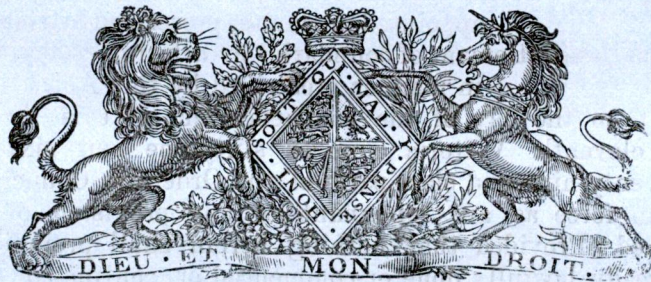
CHA. TOMPSON,
Clerk of Legislative Assembly.

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

*Legislative Council Chamber, }
Sydney, 9 May, 1861. }*

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

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act for regulating the Occupation of the Crown Lands.

WH^PREAS it is expedient to make better provision for the occupa- Preamble.
tion of the 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
5 assembled and by the authority of the same as follows :—

1. The following terms within inverted commas whenever used Interpretation.
herein shall 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 law-
fully contracted to be granted to any
person in fee simple.

15 “ 1st Class Settled Districts ”—The Lands declared to be of the
Settled class under the Orders in Council.

“ 2nd Class Settled Districts ”—The Lands converted into the
Settled class by the Act of Council twenty-
third Victoria number four.

“ Unsettled Districts ”—All other Crown Lands.

c

“ Orders

Crown Lands Occupation Act.—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 ninth and tenth Victoria chapter one hundred and four.
- 10 “Old Run”—Any portion of Crown Lands within the Second class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight.
- 15 “Run”—Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight.
- “Minister”—The Minister for the time being charged with the administration of the Crown Lands.
- 20 “Land Agent”—Any person duly appointed to sell Crown Lands.
- “Appraisalment”—Settlement of rent or value by appraisers appointed in manner prescribed by this Act.
- “Arbitration”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
- 25 2. On and from the day of the commencement of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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. Partial Repeal of Acts Orders in Council and Regulations.
- 30 3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such District to be of the class of 2nd Class Settled Districts and such District or portion of District shall on such proclamation become Extension of 2nd Class Settled Districts.
- 35 and be of the 2nd Class Settled Districts under this Act provided that such proclamation shall in no case affect existing leases.
- 40 3. 4. Existing leases of Crown Lands shall not be renewed but may Conversion of existing Leases. upon the application of the Lessees be converted into leases except under the provisions of this Act.
- 45 4. 5. The Governor with the advice of the Executive Council may by notice in the *Gazette* withdraw from any Old Run or Run any lands which may be required for the site of any City Town or Village or for any roadway for general traffic or for passage of stock or for access to back runs or for sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for temporary commonage Withdrawal of land from lease. for the use of any such City Town or Village or for the working of any Mines of Gold or other minerals or for any public purpose whatsoever.
- 50 5. 6. In cases in which two or more persons entitled to leases under the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been or may be declared by the Governor or by the Minister to have been legally established and in any such case in which the right to a lease shall not have been so established the lease may be granted to the person who may be by arbitration declared entitled thereto. Conflicting claims to leases.
- 55 6. 7. In any case in which the rent of an old run or any other matter required by the Orders in Council to be determined by valuers appointed in the manner therein prescribed shall not have been so determined it shall be lawful for the Minister to direct that such rent or other matter shall When valuations under Orders in Council neglected.

Crown Lands Occupation Act.—1861.

shall be determined by appraisement under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council.

5 7. 8. It shall not be lawful for any holder of any old run or run to obstruct any Government Surveyor or other **authorized** officer in entering on such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may empower in that behalf from entering upon such run searching for and removing gold and other minerals or cutting and removing therefrom
10 indigenous timber or digging and removing gravel stone brick earth or other material.

Lessee not to obstruct authorized persons.

8. 9. It shall be lawful for any Officer duly authorized by the Minister to mark on the ground the boundaries of any runs whether undisputed or determined after dispute by decision of the Governor
15 or otherwise by competent authority and the boundaries so marked shall be and be held to be the boundaries of such runs **Provided that nothing herein contained shall prevent a rectification of the boundary in case of error by appeal to the Governor and Executive Council.**

Marking of boundaries.

9. 10. Any Crown Lands not being comprised within an old run may
20 be demised or let upon lease under and subject to the provisions of this Act or under the provisions of the Gold Fields Act 20 Victoria No. 29 or any other Act which may be passed for the management of the Gold Fields but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to
25 demise or lease any such Crown Lands as hereinafter enacted.

Leasing of lands.

10. 11. Crown Lands may be demised by lease for any terms not exceeding the following:—

Duration of leases.

30 For pastoral purposes in the first class Settled Districts One year.
For pastoral purposes in the second class Settled Districts or **Five years and in the Unsettled Districts Five Ten years.**
For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.

35 For mineral purposes other than gold mining Fourteen years.
40 **Provided that lands 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 from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according to the last Census for the time being one hundred inhabitants or lands set apart for sites of towns or villages or for sale for agricultural purposes or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes.**

Reservations from lease.

45 11. 12. Leases of Runs within the first class Settled Districts may be granted subject to the next following conditions and to the general provisions of this Act:—

Leases of runs in first class Settled Districts.

- 50 (1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for.
- (2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December.
- 55 (3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose

Size of portions to be leased.

Period of leases.

Renewal of leases.

Crown Lands Occupation Act.—1861.

- purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and Leases not so renewed may be brought to sale by public auction.
- 5 (4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than 10 two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act. Conversion of existing leases into leases under this Act.
- 15 (5.) The holders in fee simple of any lands may be allowed leases of Crown Lands ~~adjacent~~ **adjoining** to their respective properties without competition at the rate of two pounds per section of 640 acres and to the extent of three times 20 their own purchased or granted lands if there be so much vacant Crown Lands available **Provided that such Crown Lands shall be taken in a compact block of rectangular form in which the external lines shall be directed to the cardinal points and if the country has been divided into sections of square miles then according to the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands** Provided further that the rent to be charged for land so leased to parties not having the right to take six hundred and forty acres shall in no case be less 25 than one pound. Pre-emptive leases to holders of land in fee simple.
- 30 (6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them shall be settled by arbitration Provided that if such 35 land be of less extent than 640 acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing to the several claimants of portions not less than 640 acres the names of their competitors an award shall not have been arrived at and duly communicated to the ~~Minister~~ **proper officer** the leases of the lands so circumstanced may be offered for sale by auction. Determination of conflicting claims by arbitration.
- 40 (7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been 45 paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by auction. Notification of pre-emptive leases.
- 50 (8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either on application or otherwise but no such sale of leases shall 55 take place without one month's notice thereof having been given in the *Gazette*. Leases at auction.
- (9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings if 60 the upset price of lots.

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if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale.

- 5 (10.) Any lease bid for but the price of which may not be forth-
with paid shall thereupon be again offered for sale at auction. Leases bid for but not paid for.
- (11.) The lease of any land which may have been offered for sale
at auction and not bid for may be obtained on payment of Selection of leases not bid for.
the upset price to the Land Agent of the District.
- 10 (12.) The sale conditional or otherwise of any portion of land
under lease shall cancel ~~such lease~~ Cancellation of leases.
~~Leases may also be cancelled by the Minister for other sufficient reason and the balance of rent from the date of cancellation shall in either case be returned to the lessee so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto~~ **Provided that the lessee of the Lands from which such sale shall be made shall be at liberty either to retain the remaining portion thereof paying however the same amount of rent as for the whole section or surrender the same.**
- 15
- 20 **12. 13.** The Governor with the advice of the Executive Council
may grant leases of Crown Lands in the second class Settled Districts
or in the Unsettled Districts subject to the following conditions and to
the general provisions of this Act :— Pastoral leases in the second class Settled or the Unsettled Districts.
- 25 (1.) Leases of **existing** runs shall be converted into leases ~~for~~ Conversion of leases of existing runs into leases under this Act.
~~five years~~ under this Act **if situated in the second class Settled Districts for a period of five years and if in the Unsettled Districts for a period of ten years** by payment to the Colonial Treasurer not later than two months from the date of a notice in the *Gazette* to that effect of rent to be determined by appraisement of the fair annual value for pastoral purposes of the Lands comprised in the runs **Provided that in estimating such value neither the construction of dams or reservoirs nor the laying down of grass nor the making of any other improvement by the occupier shall be taken into account** **Provided also that the rent shall in no case be less than ten pounds per annum.**
- 30
- 35 (2.) Leases of old runs may on their expiration be in like manner converted into leases **for the term of five years** and of leases of old runs.
under this Act.
- 40 (3.) **At any time after the expiration of five years from the commencement of any lease granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight for any longer period than five years the Minister if he shall see fit or if called upon by the lessee shall order an appraisement of the rent to be again made in the manner hereinbefore directed and the lessee shall pay such re-adjusted rent as shall be so determined.** Leases granted on or after 22 February 1858.
- 45
- 50 (4.) (2.) The rent shall be payable to the Colonial Treasurer in Sydney for each year after the first year ~~during the month of September of the year preceding~~ **between the first day of January and the thirty-first day of March** Re-adjustment of rent.
Provided that a fine shall be payable for the whole time during which any rent due shall remain unpaid after the date last mentioned at the rate of ~~five~~ eight per centum on the amount if not more than three months in arrear—and if
more
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more than three months then at the rate of ten per centum And if the rent be not paid at or before the end of six months **after such last mentioned date** together with such fine the lease shall then become forfeited.

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~~(3.)~~ Leases shall not confer any right to purchase by pre-emption.

Not pre-emptive right of purchase. Resumption of lands leased.

(5.) (4.) Crown Lands may be resumed from lease for the site of any City Town or Village or for Commonage **for the same** or for any public purpose whatever and no compensation shall be payable to the holder of such lease for any such resumption excepting re-payment of rent to an extent proportionate to the area withdrawn and the period unexpired Provided also that in any case of partial withdrawal the holder may if he think fit surrender his lease and have the full balance of rent refunded for the unexpired portion of the time for which it was paid.

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13. 14. The Governor with the advice of the Executive Council may proclaim any **Pastoral Districts in the** second class settled or unsettled districts to be open for the formation of runs and may from time to time alter the boundaries of such **Pastoral** districts or of any **such** district now existing and leases of such runs may be obtained subject to the next following conditions Provided that no district not so proclaimed shall be open for the formation of such runs :—

Proclamation of districts for the formation of runs.

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(1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose.

Area and capabilities of runs.

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(2.) Tenders for runs may be deposited in a box to be kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be appointed for that purpose by the Governor with the advice aforesaid and the person making the earliest tender for any run shall be entitled to a lease thereof Provided that should two or more tenders for any run be opened at the same time the lease shall be granted to the person whose tender shall contain the offer of the highest premium Provided also that should two or more tenders embrace a portion of the same land the common boundary may be determined by arbitration Provided also that should such boundary not be so determined within three months of the date of a notice in the *Gazette* informing the parties of the conflict by their tenders the whole of the lands tendered for may be leased by auction sale Provided also that should a run not be occupied and stocked with not less than two hundred head of cattle or one thousand sheep within six months **or in the event of its being necessary to provide water by artificial means within twelve months** of the notification of the acceptance of the tender the run shall be forfeited and may be leased by auction sale.

Tenders for runs.

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(3.) The Minister may cause to be modified the boundaries proposed in any tender so as to make the run a compact block of rectangular form in which the external lines shall run east and west and north and south subject however to such deviations as the general features of the country and the adoption of natural boundaries may require and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands.

Direction of boundaries in tenders.

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(4.)

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- (4.) Tenders shall be in a form to be prescribed by the Governor with the advice of the Executive Council and shall contain clear descriptions of the boundaries of the runs applied for and the marks or natural features by which such boundaries are indicated and also estimates of the areas and pastoral capabilities of such runs. Descriptions in Tenders.
- 5
- (5.) Every tender must be accompanied by a receipt shewing that a sum of money equivalent to twenty-five per centum of the rent offered in such tender has been deposited in the Colonial Treasury and in the event of the ultimate acceptance of the tender the tenderer shall receive credit for the amount of the deposit in the first year's rent and in the event of the tender being rejected the amount shall be returned to the tenderer. Deposit on tenders.
- 10
- (6.) Runs may be held from year to year at a rent of ten pounds per annum payable in accordance with condition number ~~two~~ **four** under section ~~thirteen~~ **twelve** of this Act and to assessment at the same rate and subject to the same conditions as the runs under the Act twenty-second Victoria number seventeen until an appraisalment shall be made of the fair annual value thereof for pastoral purposes whereupon the holdings shall be converted into leases under section ~~thirteen~~ **twelve** of this Act. Tenure of run at fixed rent and assessment pending appraisalment.
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- (7.) If in any case it shall appear that at the time of the appraisalment the run in its natural state was incapable of sustaining four thousand sheep or eight hundred head of cattle in all seasons of the year the lessee thereof may during the first quarter of the last year of his lease apply for a re-appraisalment thereof and if it shall then appear that such run has by the adoption of artificial means been rendered capable of permanently depasturing the said number of sheep or cattle the duration of the lease shall be extended to ~~ten~~ **fifteen** years at the same rent and on the same terms and conditions as the original lease.
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- 35 **14. 15. Forfeited or vacated** old runs or runs which have been ~~forfeited or vacated shall~~ **may** be submitted to sale by auction in leases **if situated in the second class Settled Districts for the term of five years or if situated in the Unsettled Districts for the term of ten years** at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the time of sale and any such run if unsold may be again put up for sale in like manner at a reduced upset rental not being less than ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or
- 40
- 45 may be again put up for sale by auction. Sale at auction of leases of forfeited runs.
- 15. 16.** The sale conditional or otherwise of any Land within any lease granted under this Act in the second class Settled Districts or in the Unsettled Districts for pastoral purposes shall cancel so much of the lease ~~held~~ as relates to the land so sold and to three times the area thereof ~~adjacent adjoining thereto~~ which last mentioned area may be held by the new purchaser under pre-emptive lease to which all conditions and liabilities attached to pre-emptive leases in the first class Settled Districts shall apply. Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.
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- 16. 17.** Any person driving horses cattle or sheep along any **customary** track used ~~or required~~ for the purpose of travelling may depasture the same on any Crown Lands within the distance of one ~~half~~ **quarter** of a mile of such track notwithstanding any lease of any such lands for pastoral purposes. Passage of stock.
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purposes Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours.

5 **17. 18.** Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands. Use of timber or material by lessees.

10 **18. 19.** Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to restrict other persons duly authorized ~~by the Minister or by such officer as he may empower~~ in that behalf either from cutting or removing timber or material for building or other purposes or from searching for any metal or mineral within the land leased. Removal of timber and material by others than lessees.

15 **19. 20.** The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal 20 for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council. Leases for mining purposes other than gold mining.

25 (1.) Persons may on application to the Minister obtain authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any such lots and to make provision for reservation of water supply Provided that applications made prior to the passing of this Act may be accepted under it and shall take precedence in the order of their date. Authority to select mineral lots.

30 (2.) The rent shall be five shillings per acre payable annually in advance at the Colonial Treasury the first payment to be made on application for authority to select 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. Payment of rent.

35 (3.) Lessees shall expend at the rate of five pounds sterling per acre ~~annually~~ on their lots **within the first three years of the lease.** Necessary annual expenditure.

40 (4.) Lessees may determine their leases by giving to the Minister three months notice of their desire to do so but no rent shall in any such case be refunded. Determination of leases.

45 (5.) Lessees may on application to the Minister in writing during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisement and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to renewal. Renewal of leases.

50 (6.) If any lease be forfeited or not renewed the lessee shall be at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease. Removal of machinery.

55 **20. 21.**

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20. ~~21.~~ Whenever it shall become necessary or desirable to fix or ascertain any rent price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement and 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.
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- 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 And if for the space of six calendar months after a notice published in the *Gazette* by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner 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 reconsideration and redetermination 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 refuse 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 thirty days after notice in writing

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.

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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.

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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.

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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 for 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.**

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- (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 not exceeding thirty days if any 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.

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- (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.

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- (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.

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- (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.

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- (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—

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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 same under the Crown Lands Occupation Act of 1861.

(13.)

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- (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.
- 5 (14.) Every appraisement or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office.
- 10 **21. 22.** It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of ~~a~~ **an old run or run** to mark on the ground such boundary and such boundary so marked shall be held to be the boundary of such **old run or run**. Marking of boundaries by arbitrators or umpire.
- 15 **22. 23.** It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any **old run or run** to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such representation and such plan shall thenceforth become and be legal evidence of the **such** boundary or boundaries ~~of the lands to be demised by the Crown.~~ Attestation of maps and plans.
- 20 **23. 24.** If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorised officer arbitrators or umpire as aforesaid he shall be guilty of a misdemeanor. Obliteration of boundary marks a misdemeanor.
- 25 **24. 25.** In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby intended to be conveyed be defined according to the best **by a general** description of such land and of the boundaries thereof which may have been procurable notwithstanding that such description may not have been prepared after actual survey and no such lease or other instrument shall be liable to be set aside by reason only of the ~~imperfection of any such description so long as~~ **Provided** the land shall thereby be defined with reasonable certainty. Descriptions of leased lands.
- 30 **25. 26.** ~~In the trial by the Supreme Court of any action or suit brought to recover possession or to recover damages for trespass upon or otherwise in relation to any Crown Lands of which no lease from the Crown shall be in force it shall be lawful for the plaintiff or the defendant as the case may be any party thereto to plead and put in evidence any promise engagement or contract from or with the Crown or its agents lawfully authorized for the granting under the Orders in Council or under this Act for any term unexpired of a lease of such lands and the party who may be proved to be entitled to a lease shall in all cases be held to be lawfully possessed of the locus in que and such promise engagement or contract shall as between the parties in such action or suit have the same effect as if a lease from the Crown of such Lands had been duly issued in pursuance of such promise engagement or contract to the party entitled thereunder to such lease.~~ Right of Lease may be given in evidence in actions.
- 40 **26. 27.** The Governor with the advice aforesaid may proclaim and set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other specified locality and may make and proclaim regulations for the management of such commonage. Commonage proclamation and regulations.
- 50 **27. 28.** The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for Wharfs Bridges Punt Houses Ferries and for the erection of machinery for saw mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall seem fit **Provided** that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the *Gazette*. Leases for wharfs bridges ferries and other objects.

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28. 29. The Governor with the aforesaid advice may subject to Licenses to cut timber and procure other materials.
any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom
5 any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice aforesaid may fix for such license shall be paid in advance.

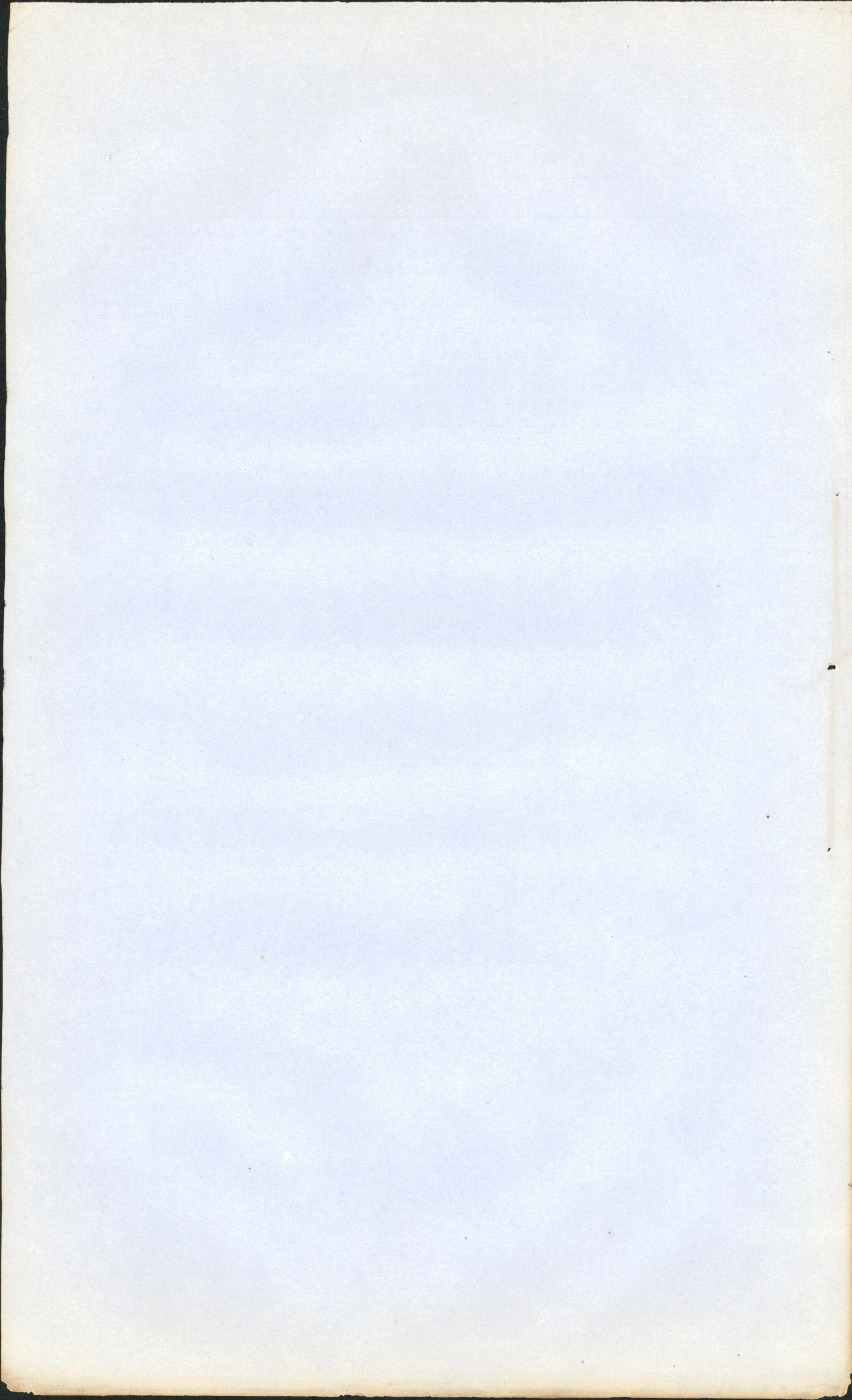
29. 30. On information in writing preferred by any Commissioner Removal of trespassers.
of Crown Lands or other person duly authorized to any Justice of the Peace
10 setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under color of any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for
15 which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or
20 at his usual or last place of abode or business shall hear and inquire into the subject matter of such information And on being satisfied of the truth thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or
25 other proper officer requiring him forthwith to dispossess and remove such person from such land and to take possession of the same on behalf of Her Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution.

30. 31. Any person unless lawfully claiming under any subsisting Penalties for trespassing.
lease or license or otherwise under the Orders in Council or under this Act or under the Act twentieth Victoria number twenty-nine who shall be found occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building thereon or by clearing digging up enclosing or cultivating any part thereof
35 or cutting timber other than firewood not for sale thereon shall be liable on conviction to a penalty not exceeding five pounds for the first offence and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence Provided that no information shall be laid for any second or subsequent offence until thirty
40 clear days shall have elapsed from the date of the previous conviction.

31. 32. All actions or other proceedings against any Commissioner of Crown Lands or other Officer acting under the provisions of this Act Limitation of actions.
for anything wrongfully done under or against the provisions of this Act shall be commenced within ~~six~~ twelve months after the matter complained
45 of was committed and not otherwise And notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the proceeding And in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon And
50 no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs incurred up to that time And if a verdict shall pass for the defendant
55 or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in other cases.

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32. ~~33.~~ Any lease or other instrument 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.
- 5 33. ~~34.~~ The Governor with the advice of the Executive Council may make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for. And all such regulations shall upon publication 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 then next ensuing Session.
- 10
- 15 34. ~~35.~~ This Act shall commence on the first day of ~~January~~ Commencement and Short Title. **July** next And may be styled and cited as the “Crown Lands Occupation Act of 1861.”
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A BILL

For regulating the Occupation of Crown Lands.

[MR. ROBERTSON;—4 September, 1861.]

WHEREAS it is expedient to make better provision for the occupa-^{Preamble.}
tion of the 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
5 assembled and by the authority of the same as follows :—

1. The following terms within inverted commas whenever used^{Interpretation.}
herein shall 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 law-
fully contracted to be granted to any
person in fee simple.

15 " First Class Settled Districts "—The lands declared to be of the
Settled class under the Orders in Council.

" Second Class Settled Districts "—The lands converted into the
Settled class by the Act twenty-third
Victoria number four.

" Unsettled Districts "—All other Crown Lands.

20 " 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.

“ Old Run ” — Any portion of Crown Lands within the Second Class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight. 5

“ Run ” — Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight. 10

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

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

“ Appraisement ” — Settlement of rent or value by appraisers appointed in manner prescribed by this Act. 15

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

Partial Repeal of Acts Orders in Council and Regulations.

2. On and after the passing of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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. 20 25

Extension of Second Class Settled Districts.

3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such district to be of the class of Second Class Settled Districts and such district or portion of district shall on such proclamation become and be of the Second Class Settled Districts under this Act. Provided that such proclamation shall in no case effect existing leases. 30

Conversion of existing leases.

4. Existing leases of Crown Lands shall not be renewed except under the provisions of this Act. 35

5. The Governor with the advice of the Executive Council may by ^{Withdrawal of land from lease.} notice in the *Gazette* withdraw from any old run or run any lands which may be required for the site of any city town or village or for any roadway for general traffic or for passage of stock or for access to back runs or for
5 sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for temporary commonage for the use of any such city town or village or for the working of any Mines of Gold or other minerals or for any public purpose whatsoever.

6. In cases in which two or more persons entitled to leases under ^{Conflicting claims to leases.} the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been or may be established after due inquiry to the satisfaction of the Governor or the Minister and in any such case in which the right of either claimant to a lease of the land in dispute shall not have been so established it shall
10 be lawful for the Minister to require such right to be inquired into and determined by arbitration and the lease may be granted in accordance with the award of such arbitration.

7. In any case in which the rent of an old run or any other matter ^{When valuations under Orders in Council neglected.} required by the Orders in Council to be determined by valuers appointed
20 in the manner therein prescribed shall not have been so determined it shall be lawful for the Minister to direct that such rent or other matter shall be determined by appraisement under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council.

8. It shall not be lawful for any holder of any old run or run to ^{Lessee not to obstruct authorized persons.} obstruct any Government Surveyor or other authorized officer in entering on
25 such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may empower in that behalf from entering upon such run searching for and
30 removing gold and other minerals or cutting and removing therefrom indigenous timber or digging and removing gravel stone brick earth or other material.

9. It shall be lawful for any Officer duly authorized by the ^{Marking of boundaries.} Minister to mark on the ground the boundaries whether undisputed or
35 determined after dispute by decision of the Governor or otherwise by competent authority of any old run or run of which no lease from the Crown shall be in force and the boundaries so marked shall be and be held to be the boundaries of such old run or run.

10. Any Crown Lands not being comprised within an old run may ^{Leasing of lands.} be demised or let upon lease under and subject to the provisions of this
40 Act or under the provisions of the Gold Fields Act twentieth Victoria
number

number twenty-nine or any other Act which may be passed for the management of the Gold Fields but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to demise or lease any such Crown Lands as hereinafter enacted.

5

Duration of leases.

11. Crown Lands may be demised by lease for any terms not exceeding the following:—

For pastoral purposes in the First Class Settled Districts One year.

For pastoral purposes in the Second Class Settled Districts or the Unsettled Districts Five years. 10

For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.

For mineral purposes other than gold mining Fourteen years.

Reservations from lease.

Provided that lands within areas bounded by lines bearing north east 15 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 from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according 20 to the last Census for the time being one hundred inhabitants or lands set apart for sites of towns or villages or for sale for agricultural purposes or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes.

Leases of runs in First Class Settled Districts.

12. Leases of runs within the First Class Settled Districts may 25 be granted subject to the next following conditions and to the general provisions of this Act:—

Size of portions to be leased.

(1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for. 30

Period of leases.

(2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December.

Renewal of leases.

(3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for 35 the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose

purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and leases not so renewed may be brought to sale by public auction.

- 5 (4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than 10 two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act.
- 15 (5.) The holders in fee simple of any lands may be allowed leases of Crown Lands adjoining to their respective 20 properties without competition at the rate of two pounds per section of six hundred and forty acres and to the extent of three times their own purchased or granted lands if there be so much vacant Crown Lands available Provided that such Crown Lands shall be taken in a block of rectangular form in which the external lines shall be 25 directed to the cardinal points and if the country has been divided into sections of square miles then according to the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands Provided further that the rent to be charged for land so leased to parties not having the right 30 to take six hundred and forty acres shall in no case be less than one pound.
- 35 (6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them may be settled by arbitration Provided that if such land be of less extent than six hundred and forty acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing

Conversion of existing leases into leases under this Act.

Pre-emptive leases to holders of land in fee simple.

Determination of conflicting claims by arbitration.

to

- to the several claimants of portions not less than six hundred and forty acres the names of their competitors an award shall not have been arrived at and duly communicated to the proper officer the leases of the lands so circumstanced may be offered for sale by auction. 5
- Notification of pre-emptive leases. (7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by 10 auction.
- Leases at auction. (8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either 15 on application or otherwise but no such sale of leases shall take place without one month's notice thereof having been given in the *Gazette*.
- Upset price of lots. (9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings 20 if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale.
- Leases bid for but not paid for. (10.) Any lease bid for but the price of which may not be forthwith paid shall thereupon be again offered for sale at auction. 25
- Selection of leases not bid for. (11.) The lease of any land which may have been offered for sale at auction and not bid for may be obtained on payment of the upset price to the Land Agent of the District.
- Cancellation of leases. (12.) The sale conditional or otherwise of any portion of land under lease shall cancel so much of the lease as relates to 30 the land so sold and to three times the area thereof adjoining thereto Leases may also be cancelled by the Minister for other sufficient reason and the balance of rent from the date of such cancellation shall in either case be returned to the lessee Provided that the lessee of the lands from 35 which such sale shall be made shall be at liberty either to retain the remaining portion thereof paying however the same amount of rent as for the whole section or surrender the same.

13. The Governor with the advice of the Executive Council may grant leases of Crown Lands in the Second Class Settled Districts or in the Unsettled Districts subject to the following conditions and to the general provisions of this Act :—

- 5 (1.) Leases of runs shall be converted into leases for five years under this Act by payment to the Colonial Treasurer not later than two months from the date of a notice in the *Gazette* to that effect of rent to be determined by appraisement of the fair annual value for pastoral purposes of the lands comprised in such runs. Provided that in estimating such value neither the construction of dams or reservoirs nor the laying down of grass nor the making of any other improvement by the occupier shall be taken into account. Provided also that the rent shall in no case be less than ten pounds per annum. Provided also that upon such conversion as aforesaid such runs shall cease to be liable to assessment under the Act twenty-second Victoria number seventeen.
- 10
- 15
- 20 (2.) Leases of old runs may on their expiration be in like manner converted into leases for the term of five years under this Act.
- 25 (3.) The rent shall be payable to the Colonial Treasurer in Sydney for each year after the first year on or before the thirty-first day of December of the year preceding. Provided that a fine shall be payable for the whole time during which any rent due shall remain unpaid after that date at the rate of eight per centum on the amount if not more than three months in arrear—and of ten per centum if more than three months. And if the rent be not paid at or before the end of six months after such date together with such fine the lease shall then become forfeited.
- 30
- 35 (4.) Leases shall not confer any right to purchase by pre-emption.
- 40 (5.) Crown Lands may be resumed from lease for the site of any city town or village or for commonage for the same or for any public purpose whatever and no compensation shall be payable to the holder of such lease for any such resumption excepting re-payment of rent to an extent proportionate to the area withdrawn and the period unexpired. Provided also that in any case of partial withdrawal the holder may if he think fit surrender his lease and have the full balance of rent refunded for the unexpired portion of the time for which it was paid.

Pastoral leases in the Second Class Settled or the Unsettled Districts.

Conversion of leases of existing runs into leases under this Act

and of leases of old runs.

Commencement of rent addition of interest and forfeiture of lease.

No pre-emptive right of purchase.

Resumption of lands leased.

Proclamation of districts for the formation of runs.

14. The Governor with the advice of the Executive Council may proclaim Pastoral Districts in the Second Class Settled or Unsettled Districts to be open for the formation of runs and may from time to time alter the boundaries of such Pastoral Districts or of any such district now existing and leases of such runs may be granted subject 5 to the next following conditions Provided that no district not so proclaimed shall be open for the formation of such runs :—

Area and capabilities of runs.

(1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose.

Tenders for runs.

(2.) Tenders for runs may be deposited in a box to be 15 kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be appointed for that purpose by the Governor with the advice aforesaid and the person making the earliest tender for any run shall be entitled to a lease thereof Provided 20 that should two or more tenders for any run be opened at the same time the lease shall be granted to the person whose tender shall contain the offer of the highest premium Provided also that should two or more tenders embrace a portion of the same land the common boundary may be 25 determined by arbitration Provided also that should such boundary not be so determined within three months of the date of a notice in the *Gazette* informing the parties of the conflict by their tenders the whole of the lands tendered for may be leased by auction sale Provided also that should a 30 run not be occupied and stocked with not less than two hundred head of cattle or one thousand sheep within six months or in the event of its being necessary to provide water by artificial means within twelve months of the notification of the acceptance of the tender the run shall 35 be forfeited and may be leased by auction sale.

Direction of boundaries in tenders.

(3.) The Minister may cause to be modified the boundaries proposed in any tender so as to make the run a compact block of rectangular form in which the external lines shall run east and west and north and south subject however to 40

such

such deviations as the general features of the country and the adoption of natural boundaries may require and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands.

- 5 (4.) Tenders shall be in a form to be prescribed by the Governor Descriptions in tenders.
with the advice of the Executive Council and shall contain clear descriptions of the boundaries of the runs applied for and the marks or natural features by which such boundaries are indicated and also estimates of the areas and pastoral capabilities of such runs.
- 10
- (5.) Every tender must be accompanied by a receipt shewing that Deposit on tenders.
a sum of money equivalent to twenty-five per centum of the rent offered in such tender has been deposited in the Colonial Treasury and in the event of the ultimate acceptance of the tender the tenderer shall receive credit for the amount of the deposit in the first year's rent and in the event of the tender being rejected the amount shall be returned to the tenderer.
- 15
- (6.) Runs may be held from year to year subject to a rent of ten Tenure of run at fixed rent and assessment pending appraisalment.
pounds per annum payable in accordance with condition number four under section thirteen of this Act and to assessment at the same rate and subject to the same conditions as the runs under the Act twenty-second Victoria number seventeen until an appraisalment shall be made of the fair annual value thereof for pastoral purposes whereupon the holdings shall be converted into leases under section thirteen of this Act and the runs shall cease to be liable to such assessment as aforesaid.
- 20
- 25
- (7.) If in any case it shall appear that at the time of the appraisalment the run in its natural state was incapable of sustaining four thousand sheep or eight hundred head of cattle in all seasons of the year the lessee thereof may during the first quarter of the last year of his lease apply for a re-appraisalment thereof and if it shall then appear that such run has by the adoption of artificial means been rendered capable of permanently depasturing the said number of sheep or cattle the duration of the lease shall be extended to ten years at the same rent and on the same terms and conditions as the original lease.
- 30
- 35

Sale at auction of leases of forfeited runs.

15. Forfeited or vacated old runs or runs may be submitted to sale by auction in leases for the term of five years at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the time of sale and any such run if unsold may be again put up for sale in 5 like manner at a reduced upset rental not being less than ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or may be again submitted to sale by auction.

Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.

16. The sale conditional or otherwise of any land within any lease 10 granted under this Act in the Second Class Settled Districts or in the Unsettled Districts for pastoral purposes shall cancel so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto which last mentioned area may be held by the new purchaser under pre-emptive lease to which all conditions and 15 liabilities attached to pre-emptive leases in the First Class Settled Districts shall apply.

Passage of stock.

17. Any person driving horses cattle or sheep along any track used or required for the purpose of travelling may depasture the same on any Crown Lands within the distance of one half mile of such track 20 notwithstanding any lease of any such lands for pastoral purposes Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours.

Use of timber or material by lessees.

18. Lessees of Crown Lands for pastoral purposes either in the 25 Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands.

Removal of timber and material by others than lessees.

19. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to 30 restrict other persons duly authorized in that behalf either from cutting or removing timber or material for building or other purposes or from searching for any metal or mineral within the land leased.

Leases for mining purposes other than gold mining.

20. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person 35 of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal
for

for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council.

- 5 (1.) Persons may on application to the Minister obtain Authority to select mineral lots. authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any
- 10 such lots and to make provision for reservation of water supply Provided that applications made prior to the passing of this Act may be accepted under it and shall take precedence in the order of their date.
- 15 (2.) The rent shall be five shillings per acre payable annually in Payment of rent. advance at the Colonial Treasury the first payment to be made on application for authority to select 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.
- 20 (3.) Lessees shall expend at the rate of five pounds sterling per Necessary annual expenditure. acre on their lots within the first three years of the lease.
- 25 (4.) Lessees may determine their leases by giving to the Minister Determination of leases. three months' notice of their desire to do so but no rent shall in any such case be refunded.
- 30 (5.) Lessees may on application to the Minister in writing Renewal of leases. during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisalment and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to renewal.
- 35 (6.) If any lease be forfeited or not renewed the lessee shall be Removal of machinery. at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease.

Mode of appraisal-
ment or arbitration.

21. Whenever it shall become necessary or desirable to fix or ascertain any rent price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisalment and 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 appraisalment 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 appraisalment or the parties interested in any dispute which by the provisions of this Act may be settled by 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 by whom the matter shall be determined 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 appraisalment or to arbitration as the case may be by the parties making the same. 25

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 after any such dispute or matter shall have been referred to arbitration and a notice in writing shall have been given by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be determined and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator within the space of sixty days after such notice 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 And if for the space of three calendar months after a notice published in the

Gazette

Gazette by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner act on behalf of both parties.

- 5 (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 parties to the appraisal or arbitration for all intents and purposes whatsoever.
- 10 (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 refuse 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 thirty days after notice in writing from the other party in that behalf the remaining
- 15 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.
- 20 (6.) In case a single arbitrator die or become incapable to act In case of death or failure to act by a single appraiser or arbitrator. 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 appraisal or arbitration under the provisions of this Act as if
- 25 no former reference had been made.
- 30 (7.) In case there be more than one appraiser or arbitrator the Appointment of umpire. 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 for thirty days after being requested so to do by
- 35 any party to the appraisal 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 parties concerned for all intents and purposes whatsoever.

(8.)

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 not exceeding thirty days if any 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 appraisal or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage. 5

Production of documents.

(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

Determination of costs.

(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. 15

Arbitration subject to Rule of Supreme Court.

(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. 20

Declaration by appraiser arbitrator or umpire.

(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— 25

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 same under the Crown Lands Occupation Act of 1861. 30

(13.) And such declaration shall be annexed to the appraisal 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. 35

(14.) No appointment or award shall be set aside for irregularity or error in matter of form.

(15.) Every appraisal or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office. 40

22. It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of an old run or run to mark on the ground such boundary and such boundary so marked shall be held to be the boundary of such old run or run so long
5 as no lease thereof from the Crown shall be in force.

Marking of boundaries by arbitrators or umpire.

23. It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any old run or run to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such
10 representation and such plan shall thenceforth become and be legal evidence of such boundary or boundaries.

Attestation of maps and plans.

24. If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorized officer arbitrators or umpire as aforesaid he
15 shall be guilty of a misdemeanor.

Obliteration of boundary marks a misdemeanor.

25. In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby conveyed be defined by a general description of such land and of the boundaries thereof and no such lease or other instrument
20 shall be held to be void by reason of the imperfection of any such description so long as the land shall thereby be defined with reasonable certainty.

Descriptions of leased lands.

26. In any action or suit brought to recover possession or to recover damages for trespass upon or otherwise in relation to any Crown Lands of
25 which no lease from the Crown shall be in force it shall be lawful for any party thereto to plead and put in evidence any promise engagement or contract from or with the Crown or its agents lawfully authorized for the granting under the Orders in Council or under this Act for any term unexpired of a lease of such lands and such promise engagement
30 or contract shall as between the parties in such action or suit have the same effect as if a lease from the Crown of such lands had been duly issued in pursuance of such promise engagement or contract to the party entitled thereunder to such lease.

Right of lease may be given in evidence in actions.

27. The Governor with the advice aforesaid may proclaim and
35 set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other specified locality and may make and proclaim regulations for the management of such commonage.

Commonage proclamation and regulations.

28. The Governor with the advice aforesaid may grant by
40 auction or otherwise leases of any portion of Crown Lands for wharfs bridges punt houses ferries and for the erection of machinery for saw
mills

Leases for wharfs bridges ferries and other objects.

mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall seem fit Provided that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the *Gazette*. 5

Licenses to cut timber and procure other materials.

29. The Governor with the aforesaid advice may subject to any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom 10 any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice aforesaid may fix for such license shall be paid in advance.

Removal of trespassers.

30. On information in writing preferred by any Commissioner of Crown Lands or other person duly authorized to any Justice of the Peace 15 setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under colour of any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for 20 which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or 25 at his usual or last place of abode or business shall hear and inquire into the subject matter of such information And on being satisfied of the truth thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or 30 other proper officer requiring him forthwith to dispossess and remove such person from such land and to take possession of the same on behalf of Her Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution.

Penalties for trespassing.

31. Any person unless lawfully claiming under any subsisting 35 lease or license or otherwise under the Orders in Council or under this Act or under the Act twentieth Victoria number twenty-nine who shall be found occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building thereon or by clearing digging up enclosing or cultivating any part thereof 40

or

or cutting timber other than firewood not for sale thereon shall be liable on conviction to a penalty not exceeding five pounds for the first offence and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence. Provided that no
 5 information shall be laid for any second or subsequent offence until thirty clear days shall have elapsed from the date of the previous conviction.

32. All actions or other proceedings against any Commis-^{Limitation of actions.} sioner of Crown Lands or other officer acting under the provisions of this Act for anything wrongfully done under or against the provisions of this Act
 10 shall be commenced within twelve months after the matter complained of was committed and not otherwise. And notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the proceeding. And in every such proceeding the defendant may plead the general issue and give this Act
 15 and the special matter in evidence at any trial to be had thereupon. And no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs
 20 incurred up to that time. And if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in
 25 other cases.

33. Any lease or other instrument issued under this Act may ^{Instruments under Act to be evidence.} 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.

30 34. The Governor with the advice of the Executive Council may ^{Governor in Council to make and proclaim regulations.} make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for. And all such regulations
 35 shall upon publication 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 then next ensuing Session.

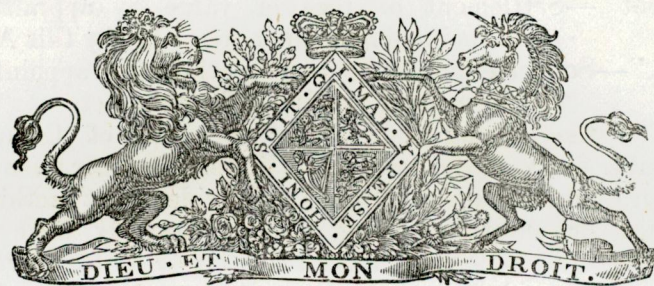
40 35. This Act may be styled and cited as the “Crown Lands Occupation Act of 1861.”

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. .

An Act for regulating the Occupation of Crown Lands.

WHEREAS it is expedient to make better provision for the occupation of the 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 whenever used herein shall 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 "First Class Settled Districts"—The lands declared to be of the Settled class under the Orders in Council.

"Second Class Settled Districts"—The lands converted into the Settled class by the Act twenty-third Victoria number four.

20 "Unsettled Districts"—All other Crown Lands.

"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.

21—A

(b)

"Old

Crown Lands Occupation—1861.

- “ Old Run ” — Any portion of Crown Lands within the Second Class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight.
- 5
- “ Run ” — Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight.
- 10
- “ Minister ” — The Minister for the time being charged with the administration of the Crown Lands.
- “ Land Agent ” — Any person duly appointed to sell Crown Lands.
- 15
- “ Appraisalment ” — Settlement of rent or value by appraisers appointed in manner prescribed by this Act.
- “ Arbitration ” — Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
2. On and after the passing of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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.
- 25
3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such district to be of the class of Second Class Settled Districts and such district or portion of district shall on such proclamation become and be of the Second Class Settled Districts under this Act Provided that such proclamation shall in no case affect existing leases.
- 30
4. Existing leases of Crown Lands shall not be renewed except under the provisions of this Act.
- 35
5. The Governor with the advice of the Executive Council may by notice in the *Gazette* withdraw from any old run or run any lands which may be required for the site of any city town or village or for any roadway for general traffic or for passage of stock or for access to back runs or for sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for temporary commonage for the use of any such city town or village or for the working of any Mines of Gold or other minerals or for any public purpose whatsoever.
- 40
6. In cases in which two or more persons entitled to leases under the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been or may be established after due inquiry to the satisfaction of the Governor or the Minister and in any such case in which the right of either claimant to a lease of the land in dispute shall not have been so established it shall be lawful for the Minister to require such right to be inquired into and determined by arbitration and the lease may be granted in accordance with the award of such arbitration.
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7. In any case in which the rent of an old run or any other matter required by the Orders in Council to be determined by valuers appointed in the manner therein prescribed shall not have been so determined it shall be lawful for the Minister to direct that such rent or other matter shall be determined by appraisalment under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council.
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Partial Repeal of Acts Orders in Council and Regulations.

Extension of Second Class Settled Districts.

Conversion of existing leases.

Withdrawal of land from lease.

Conflicting claims to leases.

When valuations under Orders in Council neglected.

Crown Lands Occupation—1861.

8. It shall not be lawful for any holder of any old run or run to obstruct any Government Surveyor or other authorized officer in entering on such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may 5 empower in that behalf from entering upon such run searching for and removing gold and other minerals or cutting and removing therefrom indigenous timber or digging and removing gravel stone brick earth or other material.

Lessee not to obstruct authorized persons.

9. It shall be lawful for any Officer duly authorized by the 10 Minister to mark on the ground the boundaries whether undisputed or determined after dispute by decision of the Governor or otherwise by competent authority of any old run or run of which no lease from the Crown shall be in force and the boundaries so marked shall be and be held to be the boundaries of such old run or run.

Marking of boundaries.

10. Any Crown Lands not being comprised within an old run may 15 be demised or let upon lease under and subject to the provisions of this Act or under the provisions of the Gold Fields Act twentieth Victoria number twenty-nine or any other Act which may be passed for the management of the Gold Fields but not otherwise And the Governor with the 20 advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to demise or lease any such Crown Lands as hereinafter enacted.

Leasing of lands.

11. Crown Lands may be demised by lease for any terms not exceeding the following :—

Duration of leases.

25 For pastoral purposes in the First Class Settled Districts One year.
For pastoral purposes in the Second Class Settled Districts or the Unsettled Districts Five years.

30 For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.

For mineral purposes other than gold mining Fourteen years.
Provided that lands 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 35 inhabitants or five miles from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according to the last Census for the time being one hundred inhabitants or lands set apart for sites of towns or villages or for sale for agricultural purposes 40 or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes.

Reservations from lease.

12. Leases of runs within the First Class Settled Districts may be granted subject to the next following conditions and to the general provisions of this Act :—

Leases of runs in First Class Settled Districts.

45 (1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for.

Size of portions to be leased.

(2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December.

Period of leases.

50 (3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and leases not so renewed 55 may be brought to sale by public auction.

Renewal of leases.

(4.)

Crown Lands Occupation—1861.

- 5 (4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act. Conversion of existing leases into leases under this Act.
- 10
- 15 (5.) The holders in fee simple of any lands may be allowed leases of Crown Lands adjoining to their respective properties without competition at the rate of two pounds per section of six hundred and forty acres and to the extent of three times their own purchased or granted lands if there be so much vacant Crown Lands available. Provided that such Crown Lands shall be taken in a block of rectangular form in which the external lines shall be directed to the cardinal points and if the country has been divided into sections of square miles then according to the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands. Provided further that the rent to be charged for land so leased to parties not having the right to take six hundred and forty acres shall in no case be less than one pound. Pre-emptive leases to holders of land in fee simple.
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- 30 (6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them may be settled by arbitration. Provided that if such land be of less extent than six hundred and forty acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment. Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing to the several claimants of portions not less than six hundred and forty acres the names of their competitors an award shall not have been arrived at and duly communicated to the proper officer the leases of the lands so circumstanced may be offered for sale by auction. Determination of conflicting claims by arbitration.
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- 45 (7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by auction. Notification of pre-emptive leases.
- 50 (8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either on application or otherwise but no such sale of leases shall take place without one month's notice thereof having been given in the *Gazette*. Leases at auction.
- 55 (9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale. Upset price of lots.

(10.)

Crown Lands Occupation—1861.

- (10.) Any lease bid for but the price of which may not be forth-
with paid shall thereupon be again offered for sale at auction. Leases bid for but not paid for.
- 5 (11.) The lease of any land which may have been offered for sale
at auction and not bid for may be obtained on payment of
the upset price to the Land Agent of the District. Selection of leases not bid for.
- 10 (12.) The sale conditional or otherwise of any portion of land
under lease shall cancel so much of the lease as relates to
the land so sold and to three times the area thereof adjoining
thereto. Leases may also be cancelled by the Minister for
other sufficient reason and the balance of rent from the
date of such cancellation shall in either case be returned
to the lessee. Provided that the lessee of the lands from
15 which such sale shall be made shall be at liberty either to
retain the remaining portion thereof paying however the
same amount of rent as for the whole section or surrender
the same.
- 20 13. The Governor with the advice of the Executive Council
may grant leases of Crown Lands in the Second Class Settled Districts
or in the Unsettled Districts subject to the following conditions and to
the general provisions of this Act :— Pastoral leases in the Second Class Settled or the Unsettled Districts.
- (1.) Leases of runs shall be converted into leases for five years
under this Act by payment to the Colonial Treasurer not
later than two months from the date of a notice in the
25 *Gazette* to that effect of rent to be determined by appraisement
of the fair annual value for pastoral purposes of the
lands comprised in such runs. Provided that in estimating
such value neither the construction of dams or reservoirs
nor the laying down of grass nor the making of any other
improvement by the occupier shall be taken into account
30 Provided also that the rent shall in no case be less than
ten pounds per annum. Provided also that upon such conversion
as aforesaid such runs shall cease to be liable to
assessment under the Act twenty-second Victoria number
seventeen.
- 35 (2.) Leases of old runs may on their expiration be in like
manner converted into leases for the term of five years
under this Act. and of leases of old runs.
- 40 (3.) The rent shall be payable to the Colonial Treasurer in
Sydney for each year after the first year on or before the
thirty-first day of December of the year preceding. Provided
that a fine shall be payable for the whole time during which
any rent due shall remain unpaid after that date at the
rate of eight per centum on the amount if not more
45 than three months in arrear—and of ten per centum if
more than three months. And if the rent be not paid at
or before the end of six months after such date together
with such fine the lease shall then become forfeited.
- (4.) Leases shall not confer any right to purchase by pre-emption. No pre-emptive right of purchase.
- 50 (5.) Crown Lands may be resumed from lease for the site of any
city town or village or for commonage for the same or for
any public purpose whatever and no compensation shall be
payable to the holder of such lease for any such resump-
tion excepting re-payment of rent to an extent propor-
tionate to the area withdrawn and the period unexpired
55 Provided also that in any case of partial withdrawal the
holder may if he think fit surrender his lease and have the
full balance of rent refunded for the unexpired portion
of the time for which it was paid.

Crown Lands Occupation—1861.

14. The Governor with the advice of the Executive Council may proclaim Pastoral Districts in the Second Class Settled or Unsettled Districts to be open for the formation of runs and may from time to time alter the boundaries of such Pastoral Districts or of any such district now existing and leases of such runs may be granted subject to the next following conditions Provided that no district not so proclaimed shall be open for the formation of such runs :—
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- 10 (1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose.
- 15 (2.) Tenders for runs may be deposited in a box to be kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be appointed for that purpose by the Governor with the advice aforesaid and the person making the earliest tender for any run shall be entitled to a lease thereof Provided that should two or more tenders for any run be opened at the same time the lease shall be granted to the person whose tender shall contain the offer of the highest premium Provided also that should two or more tenders embrace a portion of the same land the common boundary may be determined by arbitration Provided also that should such boundary not be so determined within three months of the date of a notice in the *Gazette* informing the parties of the conflict by their tenders the whole of the lands tendered for may be leased by auction sale Provided also that should a run not be occupied and stocked with not less than two hundred head of cattle or one thousand sheep within six months or in the event of its being necessary to provide water by artificial means within twelve months of the notification of the acceptance of the tender the run shall be forfeited and may be leased by auction sale.
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- 30 (3.) The Minister may cause to be modified the boundaries proposed in any tender so as to make the run a compact block of rectangular form in which the external lines shall run east and west and north and south subject however to such deviations as the general features of the country and the adoption of natural boundaries may require and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands.
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- 40 (4.) Tenders shall be in a form to be prescribed by the Governor with the advice of the Executive Council and shall contain clear descriptions of the boundaries of the runs applied for and the marks or natural features by which such boundaries are indicated and also estimates of the areas and pastoral capabilities of such runs.
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- 50 (5.) Every tender must be accompanied by a receipt shewing that a sum of money equivalent to twenty-five per centum of the rent offered in such tender has been deposited in the Colonial Treasury and in the event of the ultimate acceptance of the tender the tenderer shall receive credit for the amount of the deposit in the first year's rent and in the event of the tender being rejected the amount shall be returned to the tenderer.
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Proclamation of districts for the formation of runs.

Area and capabilities of runs.

Tenders for runs.

Direction of boundaries in tenders.

Descriptions in tenders.

Deposit on tenders.

(6.)

Crown Lands Occupation—1861.

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- (6.) Runs may be held from year to year subject to a rent of ten pounds per annum payable in accordance with condition number four under section thirteen of this Act and to assessment at the same rate and subject to the same conditions as the runs under the Act twenty-second Victoria number seventeen until an appraisalment shall be made of the fair annual value thereof for pastoral purposes whereupon the holdings shall be converted into leases under section thirteen of this Act and the runs shall cease to be liable to such assessment as aforesaid. Tenure of run at fixed rent and assessment pending appraisalment.
- (7.) If in any case it shall appear that at the time of the appraisalment the run in its natural state was incapable of sustaining four thousand sheep or eight hundred head of cattle in all seasons of the year the lessee thereof may during the first quarter of the last year of his lease apply for a re-appraisalment thereof and if it shall then appear that such run has by the adoption of artificial means been rendered capable of permanently depasturing the said number of sheep or cattle the duration of the lease shall be extended to ten years at the same rent and on the same terms and conditions as the original lease. *with or vice versa extend*
15. Forfeited or vacated old runs or runs may be submitted to sale by auction in leases for the term of five years at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the time of sale and any such run if unsold may be again put up for sale in like manner at a reduced upset rental not being less than ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or may be again submitted to sale by auction. Sale at auction of leases of forfeited runs.
16. The sale conditional or otherwise of any land within any lease granted under this Act in the Second Class Settled Districts or in the Unsettled Districts for pastoral purposes shall cancel so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto which last mentioned area may be held by the new purchaser under pre-emptive lease to which all conditions and liabilities attached to pre-emptive leases in the First Class Settled Districts shall apply. Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.
17. Any person driving horses cattle or sheep along any track used or required for the purpose of travelling may depasture the same on any Crown Lands within the distance of one half mile of such track notwithstanding any lease of any such lands for pastoral purposes Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours. Passage of stock.
18. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands. Use of timber or material by lessees.
19. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to restrict other persons duly authorized in that behalf either from cutting or removing timber or material for building or other purposes or from searching for any metal or mineral within the land leased. Removal of timber and material by others than lessees.
20. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal for
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Crown Lands Occupation—1861.

for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council.

- 5 (1.) Persons may on application to the Minister obtain Authority to select
authority in writing to select on Crown Lands within mineral lots.
twelve months from the date thereof coal or other mineral
lots and may take possession of such lots and hold
them for the period mentioned in such authority but the
10 right shall be reserved to determine the boundaries of any
such lots and to make provision for reservation of water
supply Provided that applications made prior to the passing
of this Act may be accepted under it and shall take prece-
dence in the order of their date.
- 15 (2.) The rent shall be five shillings per acre payable annually in Payment of rent.
advance at the Colonial Treasury the first payment to be
made on application for authority to select 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.
- 20 (3.) Lessees shall expend at the rate of five pounds sterling per Necessary annual
acre on their lots within the first three years of the expenditure.
lease.
- 25 (4.) Lessees may determine their leases by giving to the Minister Determination of
three months' notice of their desire to do so but no leases.
rent shall in any such case be refunded.
- 30 (5.) Lessees may on application to the Minister in writing Renewal of leases.
during the thirteenth year of their leases obtain a renewal
of the same for a further period not exceeding fourteen years
and the fine to be paid on such renewal not being less
than two pounds ten shillings per acre shall be determined
by appraisement and full information of the working and
returns of the mine shall be afforded to the appraisers by
the lessees on pain of forfeiting their claim to renewal.
- 35 (6.) If any lease be forfeited or not renewed the lessee shall be Removal of ma-
at liberty within six months from the termination of his chinery.
lease to remove or otherwise dispose of all machinery
and improvements and the minerals brought to the surface
during the term of his lease.
- 40 21. Whenever it shall become necessary or desirable to fix or Mode of appraise-
ascertain any rent price value or sum of money which by this Act it is pro- ment or arbitration.
vided may be fixed or ascertained by appraisement and 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
45 and umpire shall be appointed and the appraisement or arbitration shall
be conducted in manner hereinafter mentioned that is to say :—
- 50 (1.) The Minister or an officer authorized by him in that behalf Appointment of
and the claimant in matters hereinbefore directed or appraisers or
authorized to be settled by appraisement or the parties arbitrators.
interested in any dispute which by the provisions of this
Act may be settled by arbitration may concur in the appoint-
ment of a single appraiser or arbitrator or failing such
appointment each party on the request of the other shall
55 appoint an appraiser or arbitrator as the case may require
by whom the matter shall be determined 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

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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.

- 5 (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.
- 10 (3.) If after any such dispute or matter shall have been referred to arbitration and a notice in writing shall have been given by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be determined and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator within the space of sixty days after such notice 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. And if for the space of three calendar months after a notice published in the *Gazette* by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner act on behalf of both parties. Single appraiser or arbitrator to act in certain cases.
- 15 (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 parties to the appraisement or arbitration for all intents and purposes whatsoever. Award to be binding.
- 20 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or refuse 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 thirty 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. In case of death of or failure to act by appraiser or arbitrator.
- 25 (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.
- 30 (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 for 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 parties concerned for all intents and purposes whatsoever. Appointment of umpire.
- 35 (8.) In case appraisers or arbitrators fail to make their award within sixty days after the day on which the last of them was
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- Determination by umpire in certain cases.

Crown Lands Occupation—1861.

- was appointed or within such extended time not exceeding thirty days if any 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.
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- (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.
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- (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.
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- (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.
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- (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—
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- 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 same under the Crown Lands Occupation Act of 1861.
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- (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.
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- (14.) No appointment or award shall be set aside for irregularity or error in matter of form.
- (15.) Every appraisement or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office.
- 40
22. It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of an old run or run to mark on the ground such boundary and such boundary so marked shall be held to be the boundary of such old run or run so long as no lease thereof from the Crown shall be in force. Marking of boundaries by arbitrators or umpire.
- 45
23. It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any old run or run to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such representation and such plan shall thenceforth become and be legal evidence of such boundary or boundaries. Attestation of maps and plans.
- 50
24. If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorized officer arbitrators or umpire as aforesaid he shall be guilty of a misdemeanor. Obliteration of boundary marks a misdemeanor.
- 55
25. In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby conveyed be defined by a general description of such land and of the boundaries thereof and no such lease or other instrument shall be held to be void by reason of the imperfection of any such description so long as the land shall thereby be defined with reasonable certainty. Descriptions of leased lands.
- 60

Crown Lands Occupation—1861.

26. In any action or suit brought to recover possession or to recover damages for trespass upon or otherwise in relation to any Crown Lands of which no lease from the Crown shall be in force it shall be lawful for any party thereto to plead and put in evidence any promise engagement or
 5 contract from or with the Crown or its agents lawfully authorized for the granting under the Orders in Council or under this Act for any term unexpired of a lease of such lands and such promise engagement or contract shall as between the parties in such action or suit have the same effect as if a lease from the Crown of such lands had been duly
 10 issued in pursuance of such promise engagement or contract to the party entitled thereunder to such lease.

Right of lease may be given in evidence in actions.

27. The Governor with the advice aforesaid may proclaim and set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other
 15 specified locality and may make and proclaim regulations for the management of such commonage.

Commonage proclamation and regulations.

28. The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for wharfs bridges punt houses ferries and for the erection of machinery for saw
 20 mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall seem fit Provided that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the
 25 *Gazette*.

Leases for wharfs bridges ferries and other objects.

29. The Governor with the aforesaid advice may subject to any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom
 30 any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice aforesaid may fix for such license shall be paid in advance.

Licenses to cut timber and procure other materials.

30. On information in writing preferred by any Commissioner of Crown Lands or other person duly authorized to any Justice of the Peace
 35 setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under colour of any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for
 40 which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or
 45 at his usual or last place of abode or business shall hear and inquire into the subject matter of such information And on being satisfied of the truth thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or
 50 other proper officer requiring him forthwith to dispossess and remove such person from such land and to take possession of the same on behalf of Her Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution.

Removal of trespassers.

31. Any person unless lawfully claiming under any subsisting
 55 lease or license or otherwise under the Orders in Council or under this Act or under the Act twentieth Victoria number twenty-nine who shall be found occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building thereon or by clearing digging up enclosing or cultivating any part thereof

Penalties for trespassing.

OR

Crown Lands Occupation—1861.

or cutting timber other than firewood not for sale thereon shall be liable on conviction to a penalty not exceeding five pounds for the first offence and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence. Provided that no information shall be laid for any second or subsequent offence until thirty clear days shall have elapsed from the date of the previous conviction.

32. All actions or other proceedings against any Commissioner of Crown Lands or other officer acting under the provisions of this Act for anything wrongfully done under or against the provisions of this Act shall be commenced within twelve months after the matter complained of was committed and not otherwise. And notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the proceeding. And in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon. And no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs incurred up to that time. And if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in other cases.

Limitation of actions.

33. Any lease or other instrument 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.

34. The Governor with the advice of the Executive Council may make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for. And all such regulations shall upon publication 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 then next ensuing Session.

Governor in Council to make and proclaim regulations.

35. This Act may be styled and cited as the "Crown Lands Occupation Act of 1861."

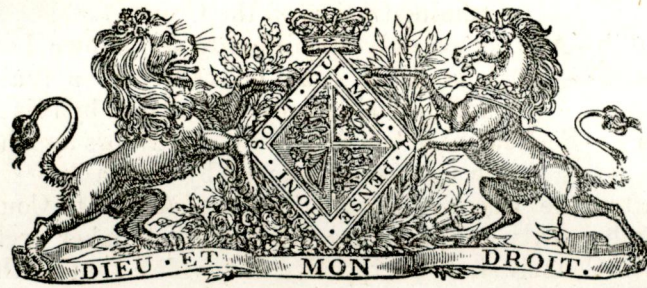
Short Title.

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 Occupation of Crown Lands.

WHEREAS it is expedient to make better provision for the occupa-^{Preamble.}
tion of the 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
5 assembled and by the authority of the same as follows:—

1. The following terms within inverted commas whenever used ^{Interpretation.}
herein shall 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 law-
fully contracted to be granted to any
person in fee simple.

15 "First Class Settled Districts"—The lands declared to be of the
Settled class under the Orders in Council.

"Second Class Settled Districts"—The lands converted into the
Settled class by the Act twenty-third
Victoria number four or that may be
hereafter so converted under this Act.

20 "Unsettled Districts"—All other Crown Lands.

"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.

25

21—A

(b)

"Old

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

Crown Lands Occupation—1861.

- 5 “ Old Run ” — Any portion of Crown Lands within the Second Class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight.
- 10 “ Run ”—Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight.
- “ Minister ”—The Minister for the time being charged with the administration of the Crown Lands.
- 15 “ Land Agent ”—Any person duly appointed to sell Crown Lands.
- “ Appraisement ”—Settlement of rent or value by appraisers appointed in manner prescribed by this Act.
- “ Arbitration ”—Settlement of boundaries by arbitrators appointed in manner prescribed by this Act.
- 20 2. On and after the passing of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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
25 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.
- 30 3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such district to be of the class of Second Class Settled Districts and such district or portion of district shall on such proclamation become and be of the Second Class Settled Districts under this Act Provided that such proclamation shall in no case affect existing leases.
- 35 4. Existing leases of Crown Lands shall not be renewed except under the provisions of this Act.
- 40 5. The Governor with the advice of the Executive Council may by notice in the *Gazette* withdraw from any old run or run any lands which may be required for the site of any city town or village or for any roadway for general traffic or for passage of stock or for access to back runs or for sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for temporary commonage for the use of any such city town or village or for the working of any Mines of Gold or other minerals or for any public purpose whatsoever.
- 45 6. In cases in which two or more persons entitled to leases under the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been or may be established after due inquiry to the satisfaction of the Governor or the Minister and in any such case in which the right of either claimant
50 to a lease of the land in dispute shall not have been so established it shall be lawful for the Minister to require such right to be inquired into and determined by arbitration and the lease may be granted in accordance with the award of such arbitration.
- 55 7. In any case in which the rent of an old run or any other matter required by the Orders in Council to be determined by valuers appointed in the manner therein prescribed shall not have been so determined it shall be lawful for the Minister to direct that such rent or other matter shall be determined by appraisement under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council.
- 8.

Partial Repeal of Acts Orders in Council and Regulations.

Extension of Second Class Settled Districts.

Conversion of existing leases.

Withdrawal of land from lease.

Conflicting claims to leases.

When valuations under Orders in Council neglected.

Crown Lands Occupation—1861.

8. It shall not be lawful for any holder of any old run or run to obstruct any Government Surveyor or other authorized officer in entering on such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may empower in that behalf from entering upon such run searching for and removing gold and other minerals or cutting and removing therefrom indigenous timber or digging and removing gravel stone brick earth or other material. Lessee not to obstruct authorized persons.
9. It shall be lawful for any Officer duly authorized by the Minister to mark on the ground the boundaries whether undisputed or determined after dispute by decision of the Governor or otherwise by competent authority of any old run or run of which no lease from the Crown shall be in force and the boundaries so marked shall be and be held to be the boundaries of such old run or run. Marking of boundaries.
10. Any Crown Lands not being comprised within an old run may be demised or let upon lease under and subject to the provisions of this Act or under the provisions of the Gold Fields Act twentieth Victoria number twenty-nine or any other Act which may be passed for the management of the Gold Fields but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to demise or lease any such Crown Lands as hereinafter enacted. Leasing of lands.
11. Crown Lands may be demised by lease for any terms not exceeding the following :— Duration of leases.
- 25 For pastoral purposes in the First Class Settled Districts One year.
For pastoral purposes in the Second Class Settled Districts or the Unsettled Districts Five years.
- 30 For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.
- For mineral purposes other than gold mining Fourteen years.
- Provided that lands 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 from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according to the last Census for the time being one hundred inhabitants or lands set apart for sites of towns or villages or for sale for agricultural purposes or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes. Reservations from lease.
12. Leases of runs within the First Class Settled Districts may be granted subject to the next following conditions and to the general provisions of this Act :— Leases of runs in First Class Settled Districts.
- 45 (1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for. Size of portions to be leased.
- (2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December. Period of leases.
- 50 (3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and leases not so renewed may be brought to sale by public auction. Renewal of leases.
- 55
- (4.)

Crown Lands Occupation—1861.

- 5 (4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act. Conversion of existing leases into leases under this Act.
- 10
- 15 (5.) The holders in fee simple of any lands may be allowed leases of Crown Lands adjoining to their respective properties without competition at the rate of two pounds per section of six hundred and forty acres and to the extent of three times their own purchased or granted lands if there be so much vacant Crown Lands available Provided that such Crown Lands shall be taken in a block of rectangular form in which the external lines shall be directed to the cardinal points and if the country has been divided into sections of square miles then according to the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands Provided further that the rent to be charged for land so leased to parties not having the right to take six hundred and forty acres shall in no case be less than one pound. Pre-emptive leases to holders of land in fee simple.
- 20
- 25
- 30 (6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them may be settled by arbitration Provided that if such land be of less extent than six hundred and forty acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing to the several claimants of portions not less than six hundred and forty acres the names of their competitors an award shall not have been arrived at and duly communicated to the proper officer the leases of the lands so circumstanced may be offered for sale by auction. Determination of conflicting claims by arbitration.
- 35
- 40
- 45 (7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by auction. Notification of pre-emptive leases.
- 50 (8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either on application or otherwise but no such sale of leases shall take place without one month's notice thereof having been given in the *Gazette*. Leases at auction.
- 55 (9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale. Upset price of lots.

(10.)

Crown Lands Occupation—1861.

- (10.) Any lease bid for but the price of which may not be forth-
with paid shall thereupon be again offered for sale at auction. Leases bid for but not paid for.
- (11.) The lease of any land which may have been offered for sale
at auction and not bid for may be obtained on payment of
the upset price to the Land Agent of the District. Selection of leases not bid for.
- 5 (12.) The sale conditional or otherwise of any portion of land
under lease shall cancel so much of the lease as relates to
the land so sold and to three times the area thereof adjoining
thereto. Leases may also be cancelled by the Minister for
10 other sufficient reason and the balance of rent from the
date of such cancellation shall in either case be returned
to the lessee. Provided that the lessee of the lands from
which such sale shall be made shall be at liberty either to
15 retain the remaining portion thereof paying however the
same amount of rent as for the whole section or surrender
the same.
13. The Governor with the advice of the Executive Council
may grant leases of Crown Lands in the Second Class Settled Districts
or in the Unsettled Districts subject to the following conditions and to
20 the general provisions of this Act :—
- (1.) Leases of runs shall be converted into leases for five years
under this Act by payment to the Colonial Treasurer not
later than two months from the date of a notice in the
25 *Gazette* to that effect of rent to be determined by appraisement
of the fair annual value for pastoral purposes of the
lands comprised in such runs. Provided that in estimating
such value neither the construction of dams or reservoirs
nor the laying down of grass nor the making of any other
30 improvement by the occupier shall be taken into account.
Provided also that the rent shall in no case be less than
ten pounds per annum. Provided also that upon such conversion
as aforesaid such runs shall cease to be liable to
assessment under the Act twenty-second Victoria number
seventeen.
- 35 (2.) Leases of old runs may on their expiration be in like
manner converted into leases for the term of five years
under this Act. and of leases of old runs.
- (3.) The rent shall be payable to the Colonial Treasurer in
40 Sydney for each year after the first year on or before the
thirty-first day of December of the year preceding. Provided
that a fine shall be payable for the whole time during which
any rent due shall remain unpaid after that date at the
rate of eight per centum on the amount if not more
45 than three months in arrear—and of ten per centum if
more than three months. And if the rent be not paid at
or before the end of six months after such date together
with such fine the lease shall then become forfeited.
- (4.) Leases shall not confer any right to purchase by pre-emption. No pre-emptive right of purchase.
- 50 (5.) Crown Lands may be resumed from lease for the site of any
city town or village or for commonage for the same or for
any public purpose whatever and no compensation shall be
payable to the holder of such lease for any such resump-
tion excepting re-payment of rent to an extent propor-
tionate to the area withdrawn and the period unexpired
55 Provided also that in any case of partial withdrawal the
holder may if he think fit surrender his lease and have the
full balance of rent refunded for the unexpired portion
of the time for which it was paid.

Crown Lands Occupation—1861.

14. The Governor with the advice of the Executive Council may proclaim Pastoral Districts in the Second Class Settled or Unsettled Districts to be open for the formation of runs and may from time to time alter the boundaries of such Pastoral Districts or of any such district now existing and leases of such runs may be granted subject to the next following conditions Provided that no district not so proclaimed shall be open for the formation of such runs :—
- 5
- 10 (1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose.
- 15 (2.) Tenders for runs may be deposited in a box to be kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be appointed for that purpose by the Governor with the advice aforesaid and the person making the earliest tender for any run shall be entitled to a lease thereof Provided that should two or more tenders for any run be opened at the same time the lease shall be granted to the person whose tender shall contain the offer of the highest premium Provided also that should two or more tenders embrace a portion of the same land the common boundary may be determined by arbitration Provided also that should such boundary not be so determined within three months of the date of a notice in the *Gazette* informing the parties of the conflict by their tenders the whole of the lands tendered for may be leased by auction sale Provided also that should a run not be occupied and stocked with not less than two hundred head of cattle or one thousand sheep within six months or in the event of its being necessary to provide water by artificial means within ~~twelve~~ **eighteen** months of the notification of the acceptance of the tender the run shall be forfeited and may be leased by auction sale.
- 20
- 25
- 30 (3.) The Minister may cause to be modified the boundaries proposed in any tender so as to make the run a compact block of rectangular form in which the external lines shall run east and west and north and south subject however to such deviations as the general features of the country and the adoption of natural boundaries may require and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands.
- 35
- 40 (4.) Tenders shall be in a form to be prescribed by the Governor with the advice of the Executive Council and shall contain clear descriptions of the boundaries of the runs applied for and the marks or natural features by which such boundaries are indicated and also estimates of the areas and pastoral capabilities of such runs.
- 45
- 50 (5.) Every tender must be accompanied by a receipt shewing that a sum of money equivalent to twenty-five per centum of the rent offered in such tender has been deposited in the Colonial Treasury and in the event of the ultimate acceptance of the tender the tenderer shall receive credit for the amount of the deposit in the first year's rent and in the event of the tender being rejected the amount shall be returned to the tenderer.
- 55

Proclamation of districts for the formation of runs.

Area and capabilities of runs.

Tenders for runs.

Direction of boundaries in tenders.

Descriptions in tenders.

Deposit on tenders.

(6.)

Crown Lands Occupation—1861.

- (6.) Runs may be held from year to year subject to a rent of ten pounds per annum payable in accordance with condition number ~~four~~ three under section thirteen of this Act and to assessment at the same rate and subject to the same conditions as the runs under the Act twenty-second Victoria number seventeen until an appraisalment shall be made of the fair annual value thereof for pastoral purposes whereupon the holdings shall be converted into leases under section thirteen of this Act and the runs shall cease to be liable to such assessment as aforesaid.
- 5
- 10
- (7.) 15. If in any case it shall appear that at the time of the appraisalment **Extension of Leases on account of improvements.** the any run in its natural state was incapable of sustaining four thousand sheep or eight hundred head of cattle in all seasons of the year the lessee thereof may during the first quarter of the last year of his lease
- 15 apply for a re-appraisalment thereof and if it shall then appear that such run has by the adoption of artificial means been rendered capable of permanently depasturing the said number of sheep or cattle or if it shall appear upon a like application in respect of any run of whatever capacity that such run has by adoption of artificial means been rendered
- 20 capable of permanently depasturing an additional number by one half or more beyond the number of sheep or cattle which the run in its natural state was capable of depasturing the duration of the lease shall be extended to ten years at the same rent and on the same terms and conditions as the original lease.
- 25 16. The holders of land in fee simple within the Unsettled and **Pre-emptive Leases to holders in fee simple.** Second Class Settled Districts shall be allowed pre-emptive leases of Crown Lands adjoining to their respective properties to the extent and in like manner and subject to the like conditions as hereinbefore provided in respect of holders of lands in fee simple in the First Class
- 30 Settled Districts.
15. 17. Forfeited or vacated old runs or runs may be submitted to sale by auction in leases for the term of five years at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the
- 35 time of sale and any such run if unsold may be again put up for sale in like manner at a reduced upset rental not being less than ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or may be again submitted to sale by auction.
- 40 16. 18. The sale conditional or otherwise of any land within any lease granted under this Act in the Second Class Settled Districts or in the **Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.** Unsettled Districts for pastoral purposes shall cancel so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto which last mentioned area may be held by the new
- 45 purchaser under pre-emptive lease to which all conditions and liabilities attached to pre-emptive leases in the First Class Settled Districts shall apply.
17. 19. Any person driving horses cattle or sheep along any track used or required for the purpose of travelling may depasture the same
- 50 on any Crown Lands within the distance of one half mile of such track notwithstanding any lease of any such lands for pastoral purposes Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours.
- 55 18. 20. Lessees of Crown Lands for pastoral purposes either in the **Use of timber or material by lessees.** Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands.

Crown Lands Occupation—1861.

19. 21. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to restrict other persons duly authorized in that behalf either from cutting or removing timber or material for building or other purposes or from 5 searching for any metal or mineral within the land leased. Removal of timber and material by others than lessees.
20. 22. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots 10 for any period not exceeding fourteen years and with a right of renewal for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council. Leases for mining purposes other than gold mining.
- 15 (1.) Persons may on application to the Minister obtain authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any 20 such lots and to make provision for reservation of water supply Provided that applications made prior to the passing of this Act may be accepted under it and shall take precedence in the order of their date. Authority to select mineral lots.
- 25 (2.) The rent shall be five shillings per acre payable annually in advance at the Colonial Treasury the first payment to be made on application for authority to select 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. Payment of rent.
- 30 (3.) Lessees shall expend at the rate of five pounds sterling per acre on their lots within the first three years of the lease. Necessary annual expenditure.
- 35 (4.) Lessees may determine their leases by giving to the Minister three months' notice of their desire to do so but no rent shall in any such case be refunded. Determination of leases.
- 40 (5.) Lessees may on application to the Minister in writing during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisement and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to renewal. Renewal of leases.
- 45 (6.) If any lease be forfeited or not renewed the lessee shall be at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease. Removal of machinery.
- 50 24. 23. Whenever it shall become necessary or desirable to fix or ascertain any rent price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement and 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 55 and umpire shall be appointed and the appraisement or arbitration shall be conducted in manner hereinafter mentioned that is to say :—
- (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 60 interested Appointment of appraisers or arbitrators.

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interested in any dispute which by the provisions of this Act may be settled by 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 by whom the matter shall be determined 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.

- 5
- 10
- 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.
- 20 (3.) If after any such dispute or matter shall have been referred to arbitration and a notice in writing shall have been given by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be determined and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator within the space of sixty days after such notice 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 And if for the space of three calendar months after a notice published in the *Gazette* by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner act on behalf of both parties. Single appraiser or arbitrator to act in certain cases.
- 25
- 30 (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 parties to the appraisement or arbitration for all intents and purposes whatsoever. Award to be binding.
- 35
- 40 (5.) If before the determination of any matter so referred any appraiser or arbitrator die or refuse 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 thirty 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. In case of death or failure to act by appraiser or arbitrator.
- 45
- 50 (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.
- 55 (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 forth-

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- with appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire for thirty days after being requested so to do by any party to the appraisal 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 parties concerned for all intents and purposes whatsoever.
- 5
- (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 not exceeding thirty days if any 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 appraisal or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage.
- 10
- (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.
- 15
- (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.
- 20
- (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.
- 25
- (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—
- 30
- 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 same under the Crown Lands Occupation Act of 1861.
- 35
- (13.) And such declaration shall be annexed to the appraisal 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.
- 40
- (14.) No appointment or award shall be set aside for irregularity or error in matter of form.
- 45
- (15.) Every appraisal or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office.
- 50
- ~~22.~~ 24. It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of an old run or run to mark on the ground such boundary and such boundary so marked shall be held to be the boundary of such old run or run so long as no lease thereof from the Crown shall be in force.
- 55
- ~~23.~~ 25. It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any old run or run to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such representation and such plan shall thenceforth become and be legal evidence of such boundary or boundaries.
- 60

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24. 26. If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorized officer arbitrators or umpire as aforesaid he shall be guilty of a misdemeanor. Obliteration of boundary marks a misdemeanor.
- 5 25. 27. In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby conveyed be defined by a general description of such land and of the boundaries thereof and no such lease or other instrument shall be held to be void by reason of the imperfection of any such description so long as the land shall thereby be defined with reasonable Descriptions of leased lands.
- 10 26. 28. In any action or suit brought to recover possession or to recover damages for trespass upon or otherwise in relation to any Crown Lands of which no lease from the Crown shall be in force it shall be lawful for any party thereto to plead and put in evidence any promise engagement or contract from or with the Crown or its agents lawfully authorized for the granting under the Orders in Council or under this Act for any term unexpired of a lease of such lands and such promise engagement or contract shall as between the parties in such action or suit have the same effect as if a lease from the Crown of such lands had been duly issued in pursuance of such promise engagement or contract to the party entitled thereunder to such lease. Right of lease may be given in evidence in actions.
- 15 27. 29. The Governor with the advice aforesaid may proclaim and set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other specified locality and may make and proclaim regulations for the management of such commonage. Commonage proclamation and regulations.
- 20 28. 30. The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for wharfs bridges punt houses ferries and for the erection of machinery for saw mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall seem fit Provided that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the Leases for wharfs bridges ferries and other objects.
- 30 29. 31. The Governor with the aforesaid advice may subject to any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice aforesaid may fix for such license shall be paid in advance. Licenses to cut timber and procure other materials.
- 40 30. 32. On information in writing preferred by any Commissioner of Crown Lands or other person duly authorized to any Justice of the Peace setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under colour of any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or at his usual or last place of abode or business shall hear and inquire into the subject matter of such information And on being satisfied of the truth thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or other

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other proper officer requiring him forthwith to dispossess and remove such person from such land and to take possession of the same on behalf of Her Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution.

5 ~~31.~~ **33.** Any person unless lawfully claiming under any subsisting lease or license or otherwise under the Orders in Council or under this Act or under the Act twentieth Victoria number twenty-nine who shall be found occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building
10 thereon or by clearing digging up enclosing or cultivating any part thereof or cutting timber other than firewood not for sale thereon shall be liable on conviction to a penalty not exceeding five pounds for the first offence and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence Provided that no
15 information shall be laid for any second or subsequent offence until thirty clear days shall have elapsed from the date of the previous conviction.

Penalties for trespassing.

~~32.~~ **34.** All actions or other proceedings against any Commissioner of Crown Lands or other officer acting under the provisions of this Act for anything wrongfully done under or against the provisions of this Act
20 shall be commenced within twelve months after the matter complained of was committed and not otherwise And notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the proceeding And in every such proceeding the defendant may plead the general issue and give this Act
25 and the special matter in evidence at any trial to be had thereupon And no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs
30 incurred up to that time And if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in
35 other cases.

Limitation of actions.

~~33.~~ **35.** Any lease or other instrument 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.

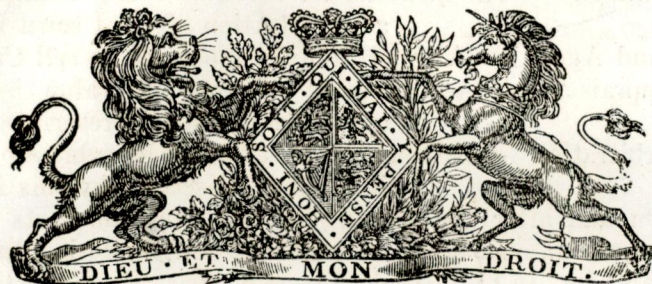
40 ~~34.~~ **36.** The Governor with the advice of the Executive Council may make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for And all such regulations
45 shall upon publication 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 then next ensuing Session.

Governor in Council to make and proclaim regulations.

50 ~~35.~~ **37.** This Act may be styled and cited as the “Crown Lands Occupation Act of 1861.”

Short Title.

New South Wales.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

No. II.

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

WHEREAS it is expedient to make better provision for the occupation of the 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 whenever used herein shall 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 to any person in fee simple.

“ First Class Settled Districts ”—The lands declared to be of the Settled class under the Orders in Council.

“ Second Class Settled Districts ”—The lands converted into the Settled class by the Act twenty-third Victoria number four or that may be hereafter so converted under this Act.

“ Unsettled Districts ”—All other Crown Lands.

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

“ Old

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“ Old Run ” — Any portion of Crown Lands within the Second Class Settled or the Unsettled Districts comprised in any unexpired lease or license granted or lawfully contracted to be granted before the twenty-second day of February one thousand eight hundred and fifty-eight.

“ Run ” — Any portion of Crown Lands comprised in any lease or license granted or lawfully contracted to be granted on or after the twenty-second day of February one thousand eight hundred and fifty-eight.

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

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

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

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

Partial Repeal of Acts Orders in Council and Regulations.

2. On and after the passing of this Act the Acts of Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and 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 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.

Extension of Second Class Settled Districts.

3. The Governor with the advice of the Executive Council may by proclamation in the *Gazette* declare any Unsettled District or portion of such district to be of the class of Second Class Settled Districts and such district or portion of district shall on such proclamation become and be of the Second Class Settled Districts under this Act Provided that such proclamation shall in no case affect existing leases.

Conversion of existing leases.

4. Existing leases of Crown Lands shall not be renewed except under the provisions of this Act.

Withdrawal of land from lease.

5. The Governor with the advice of the Executive Council may by notice in the *Gazette* withdraw from any old run or run any lands which may be required for the site of any city town or village or for any roadway for general traffic or for passage of stock or for access to back runs or for sale as containing improvements belonging to any person other than the lessee of such run or otherwise for sale or for temporary commonage for the use of any such city town or village or for the working of any Mines of Gold or other minerals or for any public purpose whatsoever.

Conflicting claims to leases.

6. In cases in which two or more persons entitled to leases under the Orders in Council or under this Act may claim the same land the lease shall be granted to the person whose right thereto may have been or may be established after due inquiry to the satisfaction of the Governor or the Minister and in any such case in which the right of either claimant to a lease of the land in dispute shall not have been so established it shall be lawful for the Minister to require such right to be inquired into and determined by arbitration and the lease may be granted in accordance with the award of such arbitration.

When valuations under Orders in Council neglected.

7. In any case in which the rent of an old run or any other matter required by the Orders in Council to be determined by valuers appointed in the manner therein prescribed shall not have been so determined it shall be lawful for the Minister to direct that such rent or other matter shall be determined by appraisement under the provisions of this Act and the valuation thus arrived at shall be as effectual as if made under the provisions of the Orders in Council.

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8. It shall not be lawful for any holder of any old run or run to obstruct any Government Surveyor or other authorized officer in entering on such run whenever such officer may require to do so nor to obstruct or prevent any person authorized by the Minister or by such Officer as he may empower in that behalf from entering upon such run searching for and removing gold and other minerals or cutting and removing therefrom indigenous timber or digging and removing gravel stone brick earth or other material.

Lessee not to obstruct authorized persons.

9. It shall be lawful for any Officer duly authorized by the Minister to mark on the ground the boundaries whether undisputed or determined after dispute by decision of the Governor or otherwise by competent authority of any old run or run of which no lease from the Crown shall be in force and the boundaries so marked shall be and be held to be the boundaries of such old run or run.

Marking of boundaries.

10. Any Crown Lands not being comprised within an old run may be demised or let upon lease under and subject to the provisions of this Act or under the provisions of the Gold Fields Act twentieth Victoria number twenty-nine or any other Act which may be passed for the management of the Gold Fields but not otherwise And the Governor with the advice of the Executive Council is hereby authorized in the name and on behalf of Her Majesty to demise or lease any such Crown Lands as hereinafter enacted.

Leasing of lands.

11. Crown Lands may be demised by lease for any terms not exceeding the following :—

Duration of leases.

For pastoral purposes in the First Class Settled Districts One year.

For pastoral purposes in the Second Class Settled Districts or the Unsettled Districts Five years.

For ferries bridges wharfs quarries and for the erection of machinery for saw mills brickmaking and other objects of a like nature Five years.

For mineral purposes other than gold mining Fourteen years.

Provided that lands 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 from the outside boundary of any town containing according to the then last Census five thousand inhabitants or two miles from the outside boundary of any town or village having according to the last Census for the time being one hundred inhabitants or lands set apart for sites of towns or villages or for sale for agricultural purposes or otherwise for the use or accommodation of the public shall not be open for lease for pastoral purposes.

Reservations from lease.

12. Leases of runs within the First Class Settled Districts may be granted subject to the next following conditions and to the general provisions of this Act :—

Leases of runs in First Class Settled Districts.

(1.) Lands shall not be let in portions of less than six hundred and forty acres or one square mile except in special cases hereinafter provided for.

Size of portions to be leased.

(2.) Every such lease shall be for the then current year and shall expire on the thirty-first day of December.

Period of leases.

(3.) Leases may be renewed annually by payment between the first and the thirtieth day of September to the Land Agent of the District or to the Colonial Treasurer of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may pay for the current year unless the lands be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims in right of new purchases and leases not so renewed may be brought to sale by public auction.

Renewal of leases.

(4.)

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Conversion of existing leases into leases under this Act.

(4.) Leases under the Regulations of twenty-ninth March one thousand eight hundred and forty-eight shall not be renewed under those regulations but may be converted into leases under this Act by payment to the Colonial Treasurer in Sydney or to the Land Agent of the District not later than two months from the publication in the *Gazette* of a notice to that effect of rent for the ensuing year at the rate of two pounds per square mile or such higher rate as the lessee may now pay unless the land be required for sale or for any public purpose or for the satisfaction of any pre-emptive lease claims which may arise under this Act.

Pre-emptive leases to holders of land in fee simple.

(5.) The holders in fee simple of any lands may be allowed leases of Crown Lands adjoining to their respective properties without competition at the rate of two pounds per section of six hundred and forty acres and to the extent of three times their own purchased or granted lands if there be so much vacant Crown Lands available. Provided that such Crown Lands shall be taken in a block of rectangular form in which the external lines shall be directed to the cardinal points and if the country has been divided into sections of square miles then according to the general sub-divisions of the land as delineated upon the public maps in the Surveyor General's Office and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands. Provided further that the rent to be charged for land so leased to parties not having the right to take six hundred and forty acres shall in no case be less than one pound.

Determination of conflicting claims by arbitration.

(6.) If there be two or more claimants under the last preceding condition of the same land the division of the land amongst them may be settled by arbitration. Provided that if such land be of less extent than six hundred and forty acres it may on an award being made be forthwith occupied in accordance therewith and without further formal apportionment. Provided also that if at the expiration of three months from the date of a notice in the *Gazette* announcing to the several claimants of portions not less than six hundred and forty acres the names of their competitors an award shall not have been arrived at and duly communicated to the proper officer the leases of the lands so circumstanced may be offered for sale by auction.

Notification of pre-emptive leases.

(7.) All leases granted under pre-emptive right shall be notified in the *Gazette* and if within two months from the date of such notification the rent for the same shall not have been paid to the Colonial Treasurer or to the Land Agent of the District leases of the land shall be submitted for sale by auction.

Leases at auction.

(8.) Crown Lands not previously under lease over which no pre-emptive right of lease shall have been exercised within one year from the passing of this Act may be put up to lease at auction at the Land Office of the District either on application or otherwise but no such sale of leases shall take place without one month's notice thereof having been given in the *Gazette*.

Upset price of lots.

(9.) The upset price of each lot shall be at the rate of one pound per section of six hundred and forty acres or of ten shillings if half of the current year shall have expired before the day of sale and the full price bid for each lot shall be paid at the time of sale.

(10.)

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- (10.) Any lease bid for but the price of which may not be forthwith paid shall thereupon be again offered for sale at auction. Leases bid for but not paid for.
- (11.) The lease of any land which may have been offered for sale at auction and not bid for may be obtained on payment of the upset price to the Land Agent of the District. Selection of leases not bid for.
- (12.) The sale conditional or otherwise of any portion of land under lease shall cancel so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto. Leases may also be cancelled by the Minister for other sufficient reason and the balance of rent from the date of such cancellation shall in either case be returned to the lessee. Provided that the lessee of the lands from which such sale shall be made shall be at liberty either to retain the remaining portion thereof paying however the same amount of rent as for the whole section or surrender the same. Cancellation of leases.
13. The Governor with the advice of the Executive Council may grant leases of Crown Lands in the Second Class Settled Districts or in the Unsettled Districts subject to the following conditions and to the general provisions of this Act:— Pastoral leases in the Second Class Settled or the Unsettled Districts.
- (1.) Leases of runs shall be converted into leases for five years under this Act by payment to the Colonial Treasurer not later than two months from the date of a notice in the *Gazette* to that effect of rent to be determined by appraisal of the fair annual value for pastoral purposes of the lands comprised in such runs. Provided that in estimating such value neither the construction of dams or reservoirs nor the laying down of grass nor the making of any other improvement by the occupier shall be taken into account. Provided also that the rent shall in no case be less than ten pounds per annum. Provided also that upon such conversion as aforesaid such runs shall cease to be liable to assessment under the Act twenty-second Victoria number seventeen. Conversion of leases of existing runs into leases under this Act.
- (2.) Leases of old runs may on their expiration be in like manner converted into leases for the term of five years under this Act. and of leases of old runs.
- (3.) The rent shall be payable to the Colonial Treasurer in Sydney for each year after the first year on or before the thirty-first day of December of the year preceding. Provided that a fine shall be payable for the whole time during which any rent due shall remain unpaid after that date at the rate of eight per centum on the amount if not more than three months in arrear—and of ten per centum if more than three months. And if the rent be not paid at or before the end of six months after such date together with such fine the lease shall then become forfeited. Commencement of rent addition of interest and forfeiture of lease.
- (4.) Leases shall not confer any right to purchase by pre-emption. No pre-emptive right of purchase.
- (5.) Crown Lands may be resumed from lease for the site of any city town or village or for commonage for the same or for any public purpose whatever and no compensation shall be payable to the holder of such lease for any such resumption excepting re-payment of rent to an extent proportionate to the area withdrawn and the period unexpired. Provided also that in any case of partial withdrawal the holder may if he think fit surrender his lease and have the full balance of rent refunded for the unexpired portion of the time for which it was paid. Resumption of lands leased.

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Proclamation of districts for the formation of runs.

14. The Governor with the advice of the Executive Council may proclaim Pastoral Districts in the Second Class Settled or Unsettled Districts to be open for the formation of runs and may from time to time alter the boundaries of such Pastoral Districts or of any such district now existing and leases of such runs may be granted subject to the next following conditions Provided that no district not so proclaimed shall be open for the formation of such runs :—

Area and capabilities of runs.

(1.) Runs shall in ordinary cases consist of not more than twenty-five square miles but should that area in the opinion of the proper officer of the Government be insufficient in average seasons for the pasturage of four thousand sheep or eight hundred head of cattle a run may be enlarged to whatever area not exceeding one hundred square miles may be necessary for that purpose.

Tenders for runs.

(2.) Tenders for runs may be deposited in a box to be kept for that purpose at the Office of the Minister which shall be opened periodically by a Board of Officers to be appointed for that purpose by the Governor with the advice aforesaid and the person making the earliest tender for any run shall be entitled to a lease thereof Provided that should two or more tenders for any run be opened at the same time the lease shall be granted to the person whose tender shall contain the offer of the highest premium Provided also that should two or more tenders embrace a portion of the same land the common boundary may be determined by arbitration Provided also that should such boundary not be so determined within three months of the date of a notice in the *Gazette* informing the parties of the conflict by their tenders the whole of the lands tendered for may be leased by auction sale Provided also that should a run not be occupied and stocked with not less than two hundred head of cattle or one thousand sheep within six months or in the event of its being necessary to provide water by artificial means within eighteen months of the notification of the acceptance of the tender the run shall be forfeited and may be leased by auction sale.

Direction of boundaries in tenders.

(3.) The Minister may cause to be modified the boundaries proposed in any tender so as to make the run a compact block of rectangular form in which the external lines shall run east and west and north and south subject however to such deviations as the general features of the country and the adoption of natural boundaries may require and subject also to the exclusion of water necessary to the beneficial occupation of adjoining lands.

Descriptions in tenders.

(4.) Tenders shall be in a form to be prescribed by the Governor with the advice of the Executive Council and shall contain clear descriptions of the boundaries of the runs applied for and the marks or natural features by which such boundaries are indicated and also estimates of the areas and pastoral capabilities of such runs.

Deposit on tenders.

(5.) Every tender must be accompanied by a receipt shewing that a sum of money equivalent to twenty-five per centum of the rent offered in such tender has been deposited in the Colonial Treasury and in the event of the ultimate acceptance of the tender the tenderer shall receive credit for the amount of the deposit in the first year's rent and in the event of the tender being rejected the amount shall be returned to the tenderer.

(6.)

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- (6.) Runs may be held from year to year subject to a rent of ten pounds per annum payable in accordance with condition number three under section thirteen of this Act and to assessment at the same rate and subject to the same conditions as the runs under the Act twenty-second Victoria number seventeen until an appraisalment shall be made of the fair annual value thereof for pastoral purposes whereupon the holdings shall be converted into leases under section thirteen of this Act and the runs shall cease to be liable to such assessment as aforesaid. Tenure of run at fixed rent and assessment pending appraisalment.
15. If in any case it shall appear that at the time of the appraisalment any run in its natural state was incapable of sustaining four thousand sheep or eight hundred head of cattle in all seasons of the year the lessee thereof may during the first quarter of the last year of his lease apply for a re-appraisalment thereof and if it shall then appear that such run has by the adoption of artificial means been rendered capable of permanently depasturing the said number of sheep or cattle or if it shall appear upon a like application in respect of any run of whatever capacity that such run has by adoption of artificial means been rendered capable of permanently depasturing an additional number by one half or more beyond the number of sheep or cattle which the run in its natural state was capable of depasturing the duration of the lease shall be extended to ten years at the same rent and on the same terms and conditions as the original lease. Extension of Lease on account of improvements.
16. The holders of land in fee simple within the Unsettled and Second Class Settled Districts shall be allowed pre-emptive leases of Crown Lands adjoining to their respective properties to the extent and in like manner and subject to the like conditions as hereinbefore provided in respect of holders of lands in fee simple in the First Class Settled Districts. Pre-emptive Leases to holders in fee simple.
17. Forfeited or vacated old runs or runs may be submitted to sale by auction in leases for the term of five years at the minimum upset rent of one pound per annum for every square mile of estimated area and the whole rental for the first year shall be paid in advance at the time of sale and any such run if unsold may be again put up for sale in like manner at a reduced upset rental not being less than ten pounds and any such run if still unsold may thereafter be leased at the upset rental last mentioned to any person who may apply for the same or may be again submitted to sale by auction. Sale at auction of leases of forfeited runs.
18. The sale conditional or otherwise of any land within any lease granted under this Act in the Second Class Settled Districts or in the Unsettled Districts for pastoral purposes shall cancel so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto which last mentioned area may be held by the new purchaser under pre-emptive lease to which all conditions and liabilities attached to pre-emptive leases in the First Class Settled Districts shall apply. Cancellation of leases of runs or portions thereof and pre-emptive lease to purchaser.
19. Any person driving horses cattle or sheep along any track used or required for the purpose of travelling may depasture the same on any Crown Lands within the distance of one half mile of such track notwithstanding any lease of any such lands for pastoral purposes Provided that unless prevented by rain or flood such horses or cattle shall be moved at least seven miles and such sheep at least four miles in one and the same direction within every successive period of twenty-four hours. Passage of stock.
20. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall be permitted to cut and use such timber and material for building and other purposes as may be required by them as tenants of their several lands. Use of timber or material by lessees.

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Removal of timber
and material by
others than lessees.

21. Lessees of Crown Lands for pastoral purposes either in the Settled Districts or in the Unsettled Districts shall not have power to restrict other persons duly authorized in that behalf either from cutting or removing timber or material for building or other purposes or from searching for any metal or mineral within the land leased.

Leases for mining
purposes other than
gold mining.

22. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council.

Authority to select
mineral lots.

(1.) Persons may on application to the Minister obtain authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any such lots and to make provision for reservation of water supply Provided that applications made prior to the passing of this Act may be accepted under it and shall take precedence in the order of their date.

Payment of rent.

(2.) The rent shall be five shillings per acre payable annually in advance at the Colonial Treasury the first payment to be made on application for authority to select 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 annual
expenditure.

(3.) Lessees shall expend at the rate of five pounds sterling per acre on their lots within the first three years of the lease.

Determination of
leases.

(4.) Lessees may determine their leases by giving to the Minister three months' notice of their desire to do so but no rent shall in any such case be refunded.

Renewal of leases.

(5.) Lessees may on application to the Minister in writing during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen years and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisement and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to renewal.

Removal of ma-
chinery.

(6.) If any lease be forfeited or not renewed the lessee shall be at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease.

Mode of appraise-
ment or arbitration.

23. Whenever it shall become necessary or desirable to fix or ascertain any rent price value or sum of money which by this Act it is provided may be fixed or ascertained by appraisement and 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

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interested in any dispute which by the provisions of this Act may be settled by 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 by whom the matter shall be determined. 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.

- (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 after any such dispute or matter shall have been referred to arbitration and a notice in writing shall have been given by one party who has himself duly appointed an appraiser or arbitrator to the other party stating the dispute or matter to be determined and accompanied by a copy of such appointment the party to whom notice is given fail to appoint an appraiser or arbitrator within the space of sixty days after such notice 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. And if for the space of three calendar months after a notice published in the *Gazette* by the Chief Commissioner of Crown Lands both parties shall fail or neglect to appoint arbitrators the Minister may appoint an arbitrator who shall in like manner 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 binding final and conclusive upon all parties to the appraisement or arbitration for all intents and purposes whatsoever. Award to be binding.
- (5.) If before the determination of any matter so referred any appraiser or arbitrator die or refuse 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 thirty 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. In case of death of or failure to act by 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 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 forth-
with Appointment of umpire.

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- with appoint another person in his stead and in case the appraisers or arbitrators neglect or refuse to appoint an umpire for thirty days after being requested so to do by any party to the appraisal 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 parties concerned for all intents and purposes 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 not exceeding thirty days if any 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 appraisal or award and with respect to extending the same in the case of a single arbitrator shall apply to any umpirage.
- Production of documents.
- (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.
- Determination of costs.
- (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.
- Arbitration subject to rule of Supreme Court.
- (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.
- Declaration by appraiser arbitrator or umpire.
- (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 same under the Crown Lands Occupation Act of 1861.
- (13.) And such declaration shall be annexed to the appraisal 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.) No appointment or award shall be set aside for irregularity or error in matter of form.
- (15.) Every appraisal or award shall be in writing and shall be transmitted by the appraiser arbitrator or umpire to the Chief Commissioner of Crown Lands and deposited in his office.
- Marking of boundaries by arbitrators or umpire.
24. It shall be lawful for arbitrators or the umpire who may determine under this Act the boundaries or any boundary of an old run or run to mark on the ground such boundary and such boundary so marked shall be held to be the boundary of such old run or run so long as no lease thereof from the Crown shall be in force.
- Attestation of maps and plans.
25. It shall be lawful for any authorized officer umpire or arbitrators who may have marked on the ground the boundaries or any boundary of any old run or run to certify by his or their signatures duly attached to any plan representing such boundary the accuracy of such representation and such plan shall thenceforth become and be legal evidence of such boundary or boundaries.

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26. If any person shall wilfully obliterate remove or deface any boundary mark which may have been made or erected by or under the direction of any authorized officer arbitrators or umpire as aforesaid he shall be guilty of a misdemeanor.

Obliteration of boundary marks a misdemeanor.

27. In any lease or other instrument granted under the Orders in Council or under the provisions of this Act it shall be sufficient if the land thereby conveyed be defined by a general description of such land and of the boundaries thereof and no such lease or other instrument shall be held to be void by reason of the imperfection of any such description so long as the land shall thereby be defined with reasonable certainty.

Descriptions of leased lands.

28. In any action or suit brought to recover possession or to recover damages for trespass upon or otherwise in relation to any Crown Lands of which no lease from the Crown shall be in force it shall be lawful for any party thereto to plead and put in evidence any promise engagement or contract from or with the Crown or its agents lawfully authorized for the granting under the Orders in Council or under this Act for any term unexpired of a lease of such lands and such promise engagement or contract shall as between the parties in such action or suit have the same effect as if a lease from the Crown of such lands had been duly issued in pursuance of such promise engagement or contract to the party entitled thereunder to such lease.

Right of lease may be given in evidence in actions.

29. The Governor with the advice aforesaid may proclaim and set apart temporarily any Crown Lands for commonage purposes for the use and benefit of the landholders in any city town or village or other specified locality and may make and proclaim regulations for the management of such commonage.

Commonage proclamation and regulations.

30. The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for wharfs bridges punt houses ferries and for the erection of machinery for saw mills brickmaking and other objects of a like nature and may determine the upset price thereof if to be let at auction or the fixed rent if to be let otherwise and may annex such conditions to the occupation thereof as shall seem fit Provided that an abstract of all such licenses or leases where not sold by auction shall be from time to time published in the *Gazette*.

Leases for wharfs bridges ferries and other objects.

31. The Governor with the aforesaid advice may subject to any regulations to be made as hereinafter enacted authorize the issue of licenses for any term not exceeding one year to enter any Crown Lands whether under lease or license or not and to cut and take therefrom any timber or to dig for and remove any gravel stone brick earth shells or other material Provided that the fee which the Governor with the advice aforesaid may fix for such license shall be paid in advance.

Licenses to cut timber and procure other materials.

32. On information in writing preferred by any Commissioner of Crown Lands or other person duly authorized to any Justice of the Peace setting forth that any person is in the unlawful occupation of any Crown Land or in the occupation of any Crown Land in virtue or under colour of any lease or license although such lease or license shall have been forfeited or although the conditions thereof shall have been broken or unfulfilled or although such lease or license shall have expired or although the term for which the same shall have been granted or made shall have come to an end such Justice shall issue his summons for the appearance before any two or more Justices of the Peace at a place and time therein specified of the person so informed against And at such time and place such Justices on the appearance of such person or on due proof of the service of such summons on him or at his usual or last place of abode or business shall hear and inquire into the subject matter of such information And on being satisfied of the truth thereof either by the admission of the person informed against or on other sufficient evidence such Justices shall issue their warrant addressed to the Commissioner of Crown Lands or to any Chief or District Constable or other

Removal of trespassers.

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other proper officer requiring him forthwith to dispossess and remove such person from such land and to take possession of the same on behalf of Her Majesty and the person to whom such warrant is addressed shall forthwith carry the same into execution.

Penalties for trespassing.

33. Any person unless lawfully claiming under any subsisting lease or license or otherwise under the Orders in Council or under this Act or under the Act twentieth Victoria number twenty-nine or any other Act which may be passed for the management of the Gold Fields who shall be found occupying any Crown Land or land granted reserved or dedicated for public purposes either by residing or by erecting any hut or building thereon or by clearing digging up enclosing or cultivating any part thereof or cutting timber other than firewood not for sale thereon shall be liable on conviction to a penalty not exceeding five pounds for the first offence and not exceeding ten pounds for the second offence and not exceeding twenty pounds for the third or any subsequent offence which penalties shall be recovered before any two or more Justices of the Peace upon the information or complaint on oath of any person authorized by the Minister in that behalf Provided that no information shall be laid for any second or subsequent offence until thirty clear days shall have elapsed from the date of the previous conviction.

Limitation of actions.

34. All actions or other proceedings against any Commissioner of Crown Lands or other officer acting under the provisions of this Act for anything wrongfully done under or against the provisions of this Act shall be commenced within twelve months after the matter complained of was committed and not otherwise And notice in writing of any such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the proceeding And in every such proceeding the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon And no plaintiff shall recover in any such proceeding if tender of sufficient amends shall have been made before the same was commenced or if a sufficient sum of money shall have been paid into Court after such commencement by or on behalf of the defendant together with costs incurred up to that time And if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue such proceeding or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client and have the like remedy for the same as any defendant has by law in other cases.

Instruments under Act to be evidence.

35. Any lease or other instrument 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.

36. The Governor with the advice of the Executive Council may make and proclaim regulations for carrying this Act into full effect so as to provide for all proceedings—forms of leases and other instruments—and all other matters and things arising under and consistent with the provisions of this Act and not herein expressly provided for And all such regulations shall upon publication 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 then next ensuing Session.

Short Title.

37. This Act may be styled and cited as the "Crown Lands Occupation Act of 1861."