

No. IX.

COURT OF CLAIMS.

An Act for appointing and empowering Commissioners to hear and determine upon Claims to Grants of Lands under the Great Seal of the Colony of New South Wales. [28th August, 1833.]

Preamble.

Governor empowered
to appoint Commis-
sioners their powers
and duties.

WHEREAS many persons have heretofore obtained the possession of lands in this Colony by the license and authority of the several Governors thereof under promise of grants to be to them duly made by the said Governors and upon the faith thereof large sums of money have been expended in improving and building upon the said lands but in many cases such grants have been unavoidably delayed and have not been made as aforesaid and the said lands and premises have come into the possession of other persons claiming to have and hold the same as their just and lawful right obtained by through or under the persons who originally obtained possession thereof as aforesaid And in many cases by reason of the death incapacity or absence of the said last mentioned persons and from other circumstances it hath become impossible to produce such legal titles as would be necessary to enable the Supreme Court of this Colony to take cognizance of and determine thereon and it is expedient and necessary that a remedy should be provided in such cases and that such grants should be made and delivered to and in the name of those persons who have now the just and lawful right thereto obtained as aforesaid Now therefore be it enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That it shall and may be lawful for the Governor of this Colony at any time during the space of two years from the passing of this Act to issue one or more Commission or Commissions under the Great Seal of this Colony as the same may become necessary and thereby to nominate and appoint three or more persons to be "*Commissioners for hearing and determining upon Claims to Grants of Lands within the Colony of New South Wales*" and one of the said persons shall be appointed by the Governor to be President of the said Commission and the said Commissioners or any two of them of whom the President shall be one shall have full power and authority to hear and determine upon all applications for grants under the Great Seal of this Colony that shall or may be made to them under and by virtue of the provisions of this Act by or on behalf of persons holding or claiming to hold lands and premises by through or under other persons who have originally obtained the possession thereof by the letter of possession license or authority of any Governor of this Colony

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Colony under promise of grants to be to them duly made as in the preamble to this Act is mentioned And the said Commissioners shall and may receive for their own use the sum of six pounds for each and every final report made by them as hereinafter mentioned which sum it shall and may be lawful for His Excellency the Governor to order and direct by warrant under his hand to be paid to the said Commissioners from and out of the Public Treasury of this Colony and the same shall be the whole remuneration of the said Commissioners and every of them for any thing done by them under and by virtue of this Act and no other fees salary or remuneration shall be paid to received or taken by such Commissioners or any of them for performing the duties of their said office And each of the said Commissioners shall before proceeding to act as such take and subscribe before one of the Judges of the Supreme Court the oath set forth in the Schedule hereunto annexed marked A and the Colonial Secretary shall cause the said oaths so subscribed to be recorded in his office.

2. And be it further enacted That some fit and proper person shall from time to time as the same may become necessary be appointed by the said Governor to perform the duties of Secretary to the said Commissioners and such Secretary shall and may receive for his services a yearly salary of one hundred and fifty pounds to be paid to him out of the Public Treasury of this Colony and no other remuneration shall be paid to received or taken by such Secretary for performing the duties of his said office and the said Secretary shall before exercising any of the duties of his office take and subscribe before one of the Judges of the Supreme Court the oath set forth in the Schedule hereunto annexed marked B and the Colonial Secretary shall cause the said oath so subscribed to be recorded in his office.

Governor to appoint
Secretary to Com-
missioners.

3. And be it enacted That there shall be paid to the Secretary of the said Commissioners by any person making application to the said Commissioners for a grant to be made under and by virtue of the provisions of this Act and by any person making opposition thereto as hereinafter mentioned the several fees specified in the Schedule hereunto annexed marked C and the said Secretary shall duly account for all fees so paid to him as aforesaid and shall pay the same into the hands of the Colonial Treasurer on the last day of every month to be appropriated to the public uses of the said Colony and in support of the Government thereof Provided always and be it enacted That it shall and may be lawful for the said Commissioners or any two of them of whom the President shall be one to admit any poor person to make application or opposition as aforesaid without the payment of any fees if it shall appear to the said Commissioners that such person is poor and not in a condition to pay the same.

Fees to be taken by
Secretary to Com-
missioners.

4. And be it further enacted That from and after the passing of this Act it shall and may be lawful for the Governor of this Colony to notify and require by Proclamation all persons holding or claiming to hold lands as in the preamble of this Act is mentioned whereof grants have been promised as aforesaid and claiming to have such grants made and delivered to them to present their claims thereto before the said Commissioners who shall have been so as aforesaid appointed by virtue of this Act within six months next after the date of such Proclamation at such place or places as may be in the said Proclamation specified to the end that such claims may be heard and determined of which Proclamation a printed copy shall immediately after the issuing thereof be transmitted to every Justice of the Peace and Police Magistrate who are hereby required and enjoined to publish or cause the same to be published in the most public places nearest to their residences or places of business respectively.

Governor to notify
and require by
Proclamation that
all persons present
their claims to the
Commissioners.

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Persons to bring their claims before the Commissioners and to produce their documents vouchers and evidences for the property they claim.

Commissioners to hear determine and report on such claims.

Persons holding lands from the Crown by virtue of title of possession &c. how to obtain a grant.

Commissioners to decide on all claims by the real justice and good conscience of the case.

Meetings of the Commissioners.

Power of Commissioners to summon witnesses.

5. And be it further enacted That it shall and may be lawful to and for all persons holding or claiming to hold lands and to have grants thereof as aforesaid to present their applications for the same to the said Commissioners within the time hereinbefore limited for such purpose and every such application shall be made by a memorial to be signed by the party presenting the same and filed with the said Commissioners by delivering the same to their Secretary and every such memorial shall set forth a true description of the party claiming and of the lands claimed and a true statement of all the circumstances under which such claim is made and there shall also be annexed thereto a list of the names and places of abode of all witnesses by whose evidence and of all documents vouchers and other evidences on which they severally found their said claims And the said Commissioners or any two of them of whom the President shall be one shall proceed to hear determine and report thereon in manner hereinafter mentioned.

6. Provided always and be it further enacted That in all cases wherein lands are held from the Crown by virtue of a title of possession or other license or authority from any of the Governors of the said Colony which letter of possession or other authority shall have been given to the person actually occupying the said lands or to his or her agent and that there shall be no other person claiming to have a grant of such lands under the Great Seal of the Colony then and in every such case the person so holding such lands may and shall apply to the Governor for a grant under the Great Seal of the Colony in such manner as was accustomed before the passing of this Act and shall not be obliged to present a memorial to the Commissioners appointed under this Act unless he shall be required by the Governor so to do.

7. And be it further enacted That in hearing and determining upon all claims to grants as aforesaid the said Commissioners shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities and shall direct themselves by the best evidence that they can procure or that is laid before them whether the same be such evidence as the law would require in other cases or not and in case they or any two of them shall be satisfied that the person or persons so holding or claiming to hold the said lands or any part thereof as aforesaid is or are entitled in equity and good conscience to hold the said lands and to have a grant thereof made and delivered to such person or persons under the Great Seal of the said Colony they the said Commissioners shall report the same to the Governor accordingly and shall set forth the situation measurement and boundaries by which the said lands shall be described in every such grant Provided however that nothing herein contained shall be held to oblige the Governor to make and deliver any such grant as aforesaid unless His Excellency shall deem proper so to do.

8. And be it further enacted That the meetings of the said Commissioners shall be holden at such place as the said Governor shall from time to time appoint and at such times as the said Commissioners shall find convenient and necessary for the despatch of business and that the determinations of the said Commissioners shall be pronounced and declared with open doors.

9. And be it further enacted That it shall and may be lawful for the said Commissioners to issue summonses requiring all such persons as shall therein be named to appear before the said Commissioners at a day and time to be therein appointed to give evidence as to all matters and things known to any such person respecting any claim as aforesaid and to produce in evidence all deeds instruments or writings in the possession or control of any such persons which they might

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might by law be required and compelled to give evidence of or to produce in evidence in any cause respecting the like matters depending in the Supreme Court of this Colony in so far as the evidence of such persons and the production of such deeds instruments and writings shall be necessary for the due investigation of any such claim as aforesaid depending before the said Commissioners and that all such evidence shall be taken down in writing in presence of the witnesses respectively giving the same and shall at the time be signed by them or in case of their refusing or being unable to sign by the Secretary to the said Commissioners and that all such evidence shall be given on oath which oath it shall and may be lawful for the said Commissioners to administer to every person appearing before them to give evidence and that any person taking a false oath in any case wherein an oath is required to be taken by this Act shall be deemed guilty of wilful and corrupt perjury and being thereof duly convicted shall be liable to such pains and penalties as by any laws now in force any persons convicted of wilful and corrupt perjury are subject and liable to.

10. And be it further enacted That whenever any person who being duly summoned to give evidence before the said Commissioners as aforesaid his or her reasonable expenses having been paid or tendered and not having any lawful impediment allowed by the said Commissioners shall fail to appear at the time and place specified in such summons or after appearing shall refuse to be sworn or to answer any lawful question or to produce any deed instrument or writing which he or she may lawfully be required to produce or without leave obtained from the said Commissioners shall wilfully withdraw from further examination then and in every such case the said Commissioners shall cause such default or refusal or wilful withdrawing to be certified in writing and thereupon it shall and may be lawful for the person at whose instance or on whose behalf such summons as aforesaid was issued to take out the process of the Supreme Court for summoning such last mentioned person to appear before the said Court at the time therein specified summarily to shew cause why he or she should not be attached fined or imprisoned for such default refusal or wilful withdrawing as aforesaid and if such person having such last mentioned summons duly served upon him or her shall at the time therein specified fail to shew cause for his or her said default refusal or withdrawing to the satisfaction of such Court it shall and may be lawful for such Court on proof by the return of the officers serving the same or by affidavit of the due service of the said summons to give evidence and of the said summons to shew cause and on production of a copy of the said certificate under the hand of the Secretary of the said Commissioners to grant a warrant to apprehend the person so failing to shew cause and to commit him or her to prison there to remain without bail until he or she shall submit to be sworn and to answer all such questions and to produce all such deeds instruments or writings as aforesaid in so far as shall lawfully be required of him or her and further to set such fine upon such person as the Court shall think meet and unless the same shall be forthwith paid to grant process for levying the amount thereof upon the property of such person and every such fine or the amount thereof which shall be levied shall forthwith be paid to the Chief Clerk of the said Court and the said Chief Clerk shall forthwith out of the amount of such fine pay to the person at whose instance the sentence imposing the fine was obtained the expenses incurred in summoning the person fined and in obtaining such sentence as taxed by the said Chief Clerk and shall account for and pay over the residue of such fine in like manner as he is by law required and directed to account for and pay over fees or fines received by him as Chief Clerk of such Court.

Witnesses not
appearing or refusing
to give evidence.

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Proceedings of Commissioners as to claims *prima facie* unfounded.

11. And be it further enacted That when after consideration of any such memorial as aforesaid and of the documents and statements annexed thereto the claim therein made shall appear to the said Commissioners to be unfounded and incapable of being established by the evidence proposed to be adduced in support thereof such claim shall forthwith without further proceeding thereon be rejected by the said Commissioners and the documents annexed to the memorial returned to the memorialist.

Proceedings of Commissioners as to claims *prima facie* well founded.

12. And be it further enacted That when any claim or claims are filed with the said Commissioners which shall appear to them to be well founded and capable of being established by the evidence proposed to be adduced in support thereof they shall cause public notice to be given by at least three advertisements in the space of two months in the *Government Gazette* that such claim or claims has or have been filed with a description of the land or lands claimed and the township parish reputed parish or place in which the same are situated and requiring all and every person or persons having any pretensions to the lands so advertised to present their claims or pretensions thereto within the period of three months from the date of such notice and that in default thereof all claims and pretensions to such land or lands will be barred and extinguished except the claims and pretensions then filed and if within three months after the date of such notice no other claim or pretension is filed before the said Commissioners in opposition to the claim so as aforesaid notified the same shall by the said Commissioners on receiving satisfactory proof of the possession and occupation of such land or lands so claimed as by this Act is provided be adjudged to be good and valid to all intents and purposes and the land or lands so as aforesaid claimed shall be held and considered the property of such claimant or claimants Provided always That the expense of such notification as aforesaid shall be paid in advance or a sum be deposited with the Secretary of the said Commissioners sufficient to defray the probable expense of such notification in the said *Gazette* and in case any opposition to such claim or claims shall be filed the said Commissioners shall as speedily as circumstances will permit receive and record all such written and verbal evidence as the parties are able to produce in support of their respective claims and shall decide and report in favour of the party whose claim or claims shall be found best supported by the evidence adduced Provided always and be it further enacted That ten years peaceable and uninterrupted possession and occupation of any land or lands in this Colony by any person or persons or any one on his her or their behalf with and under a written title from the person or persons who originally obtained possession of the same by the license and authority of any Governor of this Colony under promise of a grant to be thereof made as aforesaid or from his her or their heirs or assigns although the same may not have been made and executed in due and legal form and although such possession may have been disputed without any action or suit having been actually instituted and still pending to dispossess such possessor and occupier or twenty years peaceable and uninterrupted possession as aforesaid of such land or lands without any other title or titles whatsoever shall by the Commissioners who shall be appointed in virtue of this Act be taken and considered as sufficient to entitle all and every the possessors and occupiers of such land or lands as aforesaid respectively to have and receive a grant thereof under the Great Seal of this Colony and to have hold possess and enjoy the said land or lands as owners and proprietors thereof any law usage or custom in anywise to the contrary notwithstanding.

A legal title how acquired.

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13. And be it further enacted That when any person claiming land or lands or person opposing such claim or claims shall be desirous of being heard either in person or by counsel or attorney or agent by the said Commissioners with respect to such claim or claims or opposition thereto the said Commissioners shall fix a day for hearing the same and on the day appointed such parties shall be heard either in person or by counsel or attorney or agent by the said Commissioners provided that the party applying for such hearing shall have previously given due notice to the adverse party of the day and place when they are to be heard as aforesaid. Provided always and be it further enacted That it shall be the duty of the said Commissioners to cause a Register to be kept by their Secretary in the form of the Schedule hereunto annexed marked D to which register all and every person and persons shall at all reasonable times have access without paying any fee or reward whatever which register shall so soon as the duties of the said Commissioners in pursuance of this Act shall be terminated be deposited in the office of the Colonial Secretary.

As to hearing of parties their counsel attorneys or agents.

Register to be kept by the Secretary to the Commissioners.

14. And be it further enacted That all mortgages and judgments which would have bound the said lands or any part of them in case grants thereof had been given under the Great Seal of the Colony before such mortgages or judgments were made or given shall have the same force and effect with respect to such lands after grants thereof shall have been made and delivered in pursuance of the provisions of this Act as if the same had been made and delivered previous to the dates of such mortgages or judgments as aforesaid any law to the contrary in anywise notwithstanding.

Effect of mortgages and judgments prior to actual grant.

15. And be it further enacted That during the continuance of this Act the said Commissioners in the first week of January April July and October in every year shall make a report to the Governor containing an abstract of their proceedings during the foregoing quarter the names of the persons who shall have made claims the situation and extent of the lands claimed and the names of the persons in whose favour they shall have reported with what other remarks they may think proper.

Commissioners to report their progress to the Governor.

16. And be it further enacted That the powers given to the Commissioners who shall be named in virtue of this Act shall at the expiration of two years after the date of their nomination and appointment wholly cease and determine.

Duration of Act.

17. And be it further enacted by the authority aforesaid That nothing in this Act contained shall be construed in any manner or way to affect the rights of His Majesty His Heirs and Successors or of any person or persons such only excepted as are mentioned in this Act.

Saving of His Majesty's rights.

18. And be it further enacted That this Act shall be deemed and considered as a public Act and as such shall judicially be taken notice of by all Judges and others whom it may concern without being specially pleaded.

Public Act.

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SCHEDULES REFERRED TO.

A.

COMMISSIONER'S OATH.

I do solemnly swear that faithfully diligently and impartially to the best of my ability I will execute the duties of a Commissioner appointed under and by virtue of a certain Act of the Governor of New South Wales with the advice of the Legislative Council of the said Colony made and passed in the fourth year of the reign of His Majesty King William the Fourth entitled "*An Act for appointing and empowering Commissioners to hear and determine upon Claims to Grants of Lands under the Great Seal of the Colony of New South Wales*" and that I will not myself directly or indirectly take or receive or knowingly permit any other to take or receive any fee or reward for any thing done or performed under and by virtue of any of the provisions of the said Act other than and except such as is authorized by the said Act.

So help me God.

A. B.

Sworn before me this day of 183 .
Judge of the Supreme Court.

B.

SECRETARY'S OATH.

I do solemnly swear that faithfully diligently and impartially to the best of my ability I will execute the duties of Secretary to the Commissioners appointed under and by virtue of a certain Act of the Governor of New South Wales with the advice of the Legislative Council of the said Colony made and passed in the fourth year of the reign of His Majesty King William the Fourth entitled "*An Act for appointing and empowering Commissioners to hear and determine upon Claims to Grants of Lands under the Great Seal of the Colony of New South Wales*" and that I will not myself directly or indirectly take or receive or knowingly permit any other person to take or receive any fee or reward for any thing done or performed under and by virtue of any of the provisions of the said Act other than and except such as is authorized by the said Act. And that I will duly account for and pay over to the Colonial Treasurer on the last day of every month all fees previously received by me as in the said Act directed.

So help me God.

C. D.

Sworn before me this day of 183 .
Judge of the Supreme Court.

C.

Fees to be received by the Secretary to the Commissioners.

	£	s.	d.
For filing any Memorial or opposition thereto at the time of filing the same ...	1	0	0
For every summons for witnesses each summons containing four names by the party requiring the same ...	0	2	6
For every witness examined or document or voucher annexed to Memorial or produced in evidence by the party on whose behalf examined or produced	0	1	0
For taking down the examination of any witness ...	0	1	0
For every 100 words after the first 100 additional ...	0	1	0
For every certificate granted by Commissioners of default refusal to answer or wilfully withdrawing of any witness ...	1	0	0
For every notice of claim filed besides the expense of advertisement ...	0	2	6
For every hearing by Counsel Attorney or Agent by the party requiring the same... ..	1	0	0
For every final report to be paid by the party or parties in whose favour made	2	0	0

D.

Crown Lands Encroachment.

D.

REGISTER.

	Number.
	Claimant's name description and place of abode.
	Name of first possessor or un- der whom title is claimed.
	Date of letter of possession license or authority of Government.
	By whom letter of possession license or authority granted.
	Situation and description of lands whereof grant is claimed.
	Date of memorial of claim to grant.
	Dates of notification of claims filed in the Govern- ment Gazette.
	Opponent's name description and place of abode.
	Date of filing claim in op- position.
	Days and times of taking evidence and hearing parties.
	Date of determina- tion pronounced.
	Date of.
	To what effect.
	When transmitted to the Governor.