

No. XXI.

COURT OF CLAIMS. **An Act for appointing and empowering Commissioners to examine and report upon Claims to Grants of Lands under the Great Seal of the Colony of New South Wales. [2nd June, 1835.]**

Preamble.

Governor empowered to appoint Commissioners their powers and duties.

WHEREAS a certain Act was passed by His Excellency the Governor with the advice of the Legislative Council of New South Wales in the fourth year of the reign of His present Majesty intituled "*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*" which Act is no longer in full operation by reason of certain of the provisions thereof having been limited to a particular time and the said Act having been found highly beneficial in settling disputed claims to grants of land it is expedient to renew the same with certain alterations and amendments Be it therefore 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 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 examining and reporting upon Claims to Grants of Land 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 examine and report upon all applications for grants of land under the Great Seal of this Colony that shall or may be referred to them under and by virtue of the provisions of this Act 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.

Governor to appoint Secretary to Commissioners.

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 the said Secretary shall before exercising any

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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.

3. And be it further enacted That it shall be lawful for the Governor of the said Colony as often as to His Excellency shall seem fit to refer the claims of all persons to have grants of land in due form of law executed to them in virtue and in performance of the promise of any Governor for the time-being to the said Commissioners to the end that all such claims may be duly examined and reported upon for the information and guidance of the Governor And the said Commissioners or any two of them of whom the President shall be one shall proceed to hear examine and report thereon in manner hereinafter mentioned Provided always that nothing herein contained shall authorize the said Commissioners to receive or report upon any claims but such as shall be referred to them by the Governor as aforesaid.

Governor as often as he shall see fit to refer all claims to grants of land to Commissioners.

4. And be it further enacted That in hearing and examining 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 claiming such lands or any part thereof 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 and the grounds thereof to the Governor accordingly and shall set forth the situation measurement and boundaries by which the said lands shall and may 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.

Commissioners to be guided by the real justice and good conscience of the case.

5. 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 the said Commissioners shall proceed with all due despatch to investigate and report upon the claims referred.

Meetings of the Commissioners.

6. And be it further enacted That it shall and may be lawful for the said Commissioners upon receiving any such claim for report as aforesaid to appoint a day by notice in the *Government Gazette* for hearing such claim and to issue summonses requiring all such persons as shall therein be named to appear before the said Commissioners at the day and time 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 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 the 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

Power of Commissioners to summon witnesses.

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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 person convicted of wilful and corrupt perjury is subject and liable to.

Witnesses not
appearing or refusing
to give evidence.

7. 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 and 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.

Effect of mortgages
and judgments prior
to actual grant.

8. 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 any wise notwithstanding.

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9. And be it further enacted That the said Commissioners shall and may receive for their own use for every final report made by them in manner and form aforesaid upon any claim or claims to a grant of land the sum of three guineas and that the Secretary to the said Commissioners shall and may receive for his services for every case referred to such Commissioners the sum of one pound which said sums respectively it shall and may be lawful for His Excellency the Governor to order and direct by warrant under his hand to be paid from and out of the Public Treasury of the said Colony and the same shall be the whole of the remuneration of the said Commissioners and Secretary and every of them respectively for and in respect of their said offices.

The sum of three guineas to be paid for each report.

10. And be it further enacted That there shall be paid to the Secretary of the said Commissioners by every person making a claim to a grant of land which shall be referred by the Governor to the said Commissioners for examination as hereinbefore is provided the several fees specified in the Schedule hereunto annexed marked C and the said Secretary shall duly account for the 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 further 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 appear and prosecute his claim 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 Commissioners.

11. And be it further enacted That from and after the passing of this Act the said recited Act of the Governor and Council passed in the fourth year of the reign of his present Majesty shall be and the same is hereby repealed saving and excepting as to all matters and things actually commenced and still pending and undetermined all which said matters and things shall and may be done performed determined and completed under the said recited Act in like manner as if the same had continued in full force and operation.

Repeal of 4 Gul. IV. No. 9 except as to matters and things actually commenced.

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 fifth year of the reign of His Majesty King William the Fourth intituled "*An Act for appointing and empowering Commissioners to examine and report upon Claims to Grants of Land 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.

Justices Summary Jurisdiction.

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 fifth year of the reign of His Majesty King William the Fourth intituled "*An Act for appointing and empowering Commissioners to examine and report upon Claims to Grants of Land 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 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 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 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 one hundred words after the first hundred additional	0	1	0
For every certificate granted by Commissioners of default refusal to answer or wilful withdrawing of any witness... ..	1	0	0
For every final report to be paid by the party or parties in whose favour report made	2	0	0