

No. XIX.

An Act to continue and amend an Act intituled “*An Act to restrain the unauthorized occupation of Crown Lands.*” [2nd October, 1838.]

CROWN LANDS
UNAUTHORIZED
OCCUPATION.

WHEREAS the unauthorized occupation of the unalienated Lands Preamble. of New South Wales is derogatory to the rights of the Crown and conducive to many illegal and dishonest practices and whereas an Act was passed by the Governor and Council of New South Wales in the seventh year of the reign of His late Majesty King William the Fourth intituled “*An Act to restrain the unauthorized occupation of Crown Lands*” which Act will expire on the thirty-first day of December one thousand eight hundred and thirty-eight and whereas the said recited Act has been found beneficial in its operation and it is expedient to continue and amend the same in manner hereinafter provided Be it therefore enacted by His Excellency Penalties for un- the Governor of New South Wales with the advice of the Legislative authorized occupa- Council thereof That from and after the first day of January tion of Crown Lands one thousand eight hundred and thirty-nine any person who shall be found occupying any Crown Lands lying waste in New South Wales within the limits which have been or shall hereafter be allotted for location to settlers by any proclamation or order of the Governor published in that behalf either by residing or by erecting any hut or building thereon or by clearing enclosing or cultivating any part thereof and shall not hold a valid lease from the Government of New South Wales for the occupation of such lands shall on conviction thereof forfeit and pay the following penalties that is to say for the first offence any sum not exceeding ten pounds at the discretion of the Justice or Justices before whom the complaint shall be heard for the second offence twenty pounds and for the third and any subsequent offence fifty pounds to be recovered in a summary way before any one or more Justice or Justices of the Peace upon the information and complaint

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Proviso as to subsequent offences.

Penalty for occupying Crown Lands beyond the limits of location without a license.

As to cutting timber on Crown Lands.

Penalty for forging any lease or license to occupy Crown Lands.

A Justice may declare a lease or license void.

complaint on oath of any Justice of the Peace any Commissioner of Crown Lands any proprietor or lessee of lands or the chief constable of any district Provided always that no information shall lie for any second or subsequent offence until fourteen clear days after a conviction for the former offence.

2. And be it declared and enacted That from and after the said first day of January next ensuing it shall not be lawful for any person to occupy any Crown Lands in New South Wales beyond the limits allotted as aforesaid without having first obtained a lease or license for such purpose in conformity with the Government regulations in such case made and provided and that any person who shall be found occupying as aforesaid any Crown Land in New South Wales beyond the limits allotted as aforesaid and shall not hold a valid license from the Government of New South Wales for depasturing cattle and other animals beyond the limits as aforesaid every such person on conviction thereof shall forfeit and pay the penalties hereinbefore imposed in the case of persons unlawfully occupying waste lands of the Crown within the said limits of location to be recovered in a summary way before any one or more Justice or Justices of the Peace upon the information and complaint on oath of any Justice of the Peace or of any person holding any such license for the occupation of Crown Lands or the overseer or manager of any station belonging to any such licensed person or any constable duly appointed for any district beyond the limits as aforesaid.

3. And be it declared and enacted That it shall not be lawful for any person to cut saw split or remove any timber the produce of any Crown Land whether within or beyond the limits allotted as aforesaid upon or from the same without having first obtained a license for such purpose in conformity with the Government regulations in such case made and provided and that any person who shall cut saw split or remove any timber the produce of such Crown Land upon or from the same every person on conviction thereof shall forfeit and pay the penalties hereinbefore imposed in the case of persons unlawfully occupying waste lands of the Crown within the said limits of location Provided that nothing herein contained shall be construed to prevent any licensed occupier of land or his or her overseer or manager from cutting such timber as is ordinarily used and as may be necessary for the domestic uses of such station for fire-bote fencing stock-yards or other conveniences for the enjoyment of the same and which shall be actually used thereon.

4. And be it enacted That if any person shall forge counterfeit or alter or shall utter or make use of knowing the same to be forged counterfeited or altered any lease license or other document purporting to be an authority from the Government of New South Wales to occupy any Crown Lands within the same with intent to evade any of the provisions of this Act such person shall if free be guilty of a misdemeanor and being convicted thereof shall be liable to be transported for any term not exceeding seven years or to be imprisoned for any term not exceeding four years at the discretion of the Court and if such offender be a convict under sentence of transportation he shall be liable to be transported for any term not exceeding seven years or to be worked on the roads or public works for any term not exceeding four years.

5. And be it enacted That it shall be lawful for any Justice or Justices before whom any person holding a lease or license for any of the purposes aforesaid shall be convicted on the oath of any one or more credible witness or witnesses of any offence which in the opinion of such Justice or Justices shall render such person unfit to continue to hold such lease or license to declare the same to be null and

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and void and such lease or license shall thereupon become null and void accordingly and shall not be pleaded in justification of any offence committed against any of the provisions of this Act.

6. And be it enacted That in case any such person or persons after being served with notice of cancellation of his or her lease or license and shall refuse or neglect to deliver up and quit the possession of such lands for the space of ten days after service of such notice upon him her or them or upon his her or their agent or agents overseer or overseers it shall and may be lawful for any Justice of the Peace or any Commissioner of Crown Lands for the district in which such lands shall be situated to enter upon such lands with such assistance as may be necessary and to take possession of the same for and on behalf of the Crown together with any houses or other improvements that may have been made thereon and the same to deal with as he or they shall deem most expedient for the purpose of expelling such person or persons therefrom and also to drive off and impound any cattle that may be found thereon.

7. And be it enacted That no proceeding had or conviction obtained under this Act shall be held to determine the title to any lands or tenements.

8. And for the protection of persons acting in the execution of this Act be it enacted That all actions and prosecutions against any such person or persons under this Act shall be commenced within three calendar months after the fact was committed and not otherwise and notice in writing of such action and the cause thereof shall be given to the defendant one calendar month at the least before the commencement of the action and in such action 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 action if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into Court after such action brought 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 become nonsuit or discontinue any such action after issue joined 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 hath by law in other cases and though a verdict shall be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.

9. And be it enacted That no proceeding shall be had or conviction take place against any person for any offence committed against any of the provisions of this Act after the expiration of three months from the date on which the offence shall be alleged to have been committed.

10. And be it enacted That all fines recovered under this Act shall be levied in the manner provided by an Act of the said Governor and Council passed in the fifth year of the reign of His said late Majesty intituled "*An Act to regulate summary proceedings before Justices of the Peace*" and shall be paid to the use of Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof.

11. And be it further enacted That this Law or Ordinance shall commence and take effect from the first day of January one thousand eight hundred and thirty-nine next ensuing and shall be and continue in force until the thirty-first day of December in the year one thousand eight hundred and forty-one.