

No. LXI.

An Act for appointing Commissioners to examine and report upon disputes respecting boundaries of Runs between the Claimants of Leases under Her Majesty's Order in Council of the Ninth March One thousand eight hundred and forty-seven. [17th June, 1848.]

BOUNDARY
COMMISSIONERS.

WHEREAS by an Act of the Imperial Parliament of Great Britain and Ireland passed in the ninth and tenth year of the reign of Her present Majesty Queen Victoria intituled "*An Act to amend an Act for regulating the Sale of Waste Lands belonging to the Crown in the Australian Colonies and to make further provision for the management thereof*" it was amongst other things enacted that it should be lawful for Her Majesty by any Order in Council to make and establish all such rules and regulations as to Her Majesty should seem meet for the purposes therein recited and any such rules and regulations again to repeal renew alter and amend and that all such Orders in Council should have the force and effect of law in the Colonies aforesaid And whereas certain rules and regulations were accordingly made and established by Her Majesty by and with the advice of Her Privy Council on the ninth day of March in the year of our Lord one thousand eight hundred and forty-seven to be thenceforth observed and to have the force and effect of law And whereas the said rules and regulations were promulgated in the *New South Wales Government Gazette* on the seventh day of October one thousand eight hundred and forty-seven And whereas it is expedient and necessary for the information of the Governor for the time being to provide a mode of investigating and reporting on disputes respecting boundaries of Runs between the claimants of leases under the above recited Order in Council Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That it shall and may be lawful for the Governor of New South Wales to appoint from time to time any number of fit and proper persons (not being Commissioners of Crown Lands) to be Commissioners for investigating and reporting on such disputes as aforesaid and each such Commissioner shall have full power and authority to hear examine and report on all disputes between claimants of leases under Her Majesty's said Order in Council respecting boundaries of Runs beyond the Settled Districts of the Colony Provided always that it shall be lawful for the said Governor to remove any such Commissioner and to appoint another in his stead as to His Excellency may seem meet.

Preamble.

9 and 10 Vic.
cap. 104.

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

2. And be it enacted That every such Commissioner shall before proceeding to act as such take and subscribe before any Bench of Magistrates sitting in Petty Sessions the oath set forth in the Schedule to this Act annexed marked A which oath when so taken and subscribed shall be transmitted by the Clerk of such Petty Sessions to the office of the Colonial Secretary in Sydney or of the Superintendent at Melbourne as the case may be there to be filed and kept on record.

Oath to be taken by
Commissioners.

3. And be it enacted That it shall be lawful for the Governor of the said Colony as often as His Excellency shall see fit to refer any such disputed claims as aforesaid to any one of the said Commissioners to the end that all such claims may be duly examined and reported

Governor empowered
to refer all disputes
to Commissioners.

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on for the information and guidance of the Governor for the time being and the said Commissioner shall proceed to hear examine and report on such disputed claims in manner hereinafter mentioned Provided that nothing herein contained shall authorize any such Commissioner to receive or report on any such disputed claims but such as shall be referred to him by the Governor as aforesaid.

Reference to Commissioner to be notified in *Gazette*.

Claimants to lodge memorial with Commissioner setting forth their descriptions residences and the circumstances under which such claim is made.

Commissioner to fix time and place of hearing

and to give notice to the claimants.

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

Commissioner to be assisted by a Surveyor in marking boundaries &c.

Expense of survey to be paid by the party against whom

4. And be it enacted That whenever and so often as any disputed claim shall have been referred as aforesaid public notification thereof shall be made in the *New South Wales Government Gazette* or in the *Port Phillip Government Gazette* if the land in dispute be situated in the Port Phillip District and within sixty days from the date of such notification it shall be incumbent on the respective claimants to lodge with the Commissioner to whom such disputed claim has been so referred a memorial in writing signed by the party lodging the same which memorial shall set forth a true description of the party claiming and of his usual residence and of the land in respect of which a lease is claimed and a true statement of the circumstances under which such claim is made Provided always that such memorial may at any time thereafter be amended by leave of the said Commissioner.

5. And be it enacted That at any time after the expiration of the period for lodging the memorials as aforesaid it shall be lawful for the Commissioner to appoint the time and place at which he will proceed to hear the case so in dispute Provided always that the place of hearing shall be within the limits of the district where the land in dispute shall be situated and provided further that the said Commissioner shall cause a notice in writing to be left at or directed to the usual place of residence of each claimant who by his memorial shall have signified the same at least one calendar month previous to the day fixed for the hearing of the case apprising him or her of the time and place so fixed Provided also that the said Commissioner shall have power to enlarge the period so fixed and to adjourn any such hearing from time to time as the justice of the case may seem to him to require.

6. And be it enacted That in hearing and inquiring into all claims to leases of Runs or any part of a Run as aforesaid every such Commissioner shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities and shall direct himself by the best evidence that he can procure or that is laid before him whether the same be such evidence as the law would require in other cases or not and in case he shall be satisfied that the person or persons so claiming a lease of the land in dispute is or are entitled in equity and good conscience thereto or to any portion thereof he shall report the same to the Governor accordingly and shall set forth the boundaries by which the said lands may be described in every such lease Provided always that a view may be taken by the said Commissioner of the land in dispute at the instance of either party Provided also that nothing herein contained shall be held to oblige the Governor to make and deliver any such lease as aforesaid unless His Excellency shall deem it proper to do so.

7. And the better to enable the said Commissioners or any of them to set forth the boundaries of any lands so in dispute Be it enacted That it shall be lawful for every such Commissioner to call to his assistance any Surveyor duly appointed by His Excellency the Governor in that behalf and it shall be the duty of such Surveyor to survey mark and describe the boundaries of the said lands according to the direction of the said Commissioner Provided always that the expense of any such survey marking and description of such boundaries shall

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shall be paid by the party against whom the said Commissioner shall report and in default of such payment within twenty days from the date of an order to be made by the said Commissioner in that behalf the amount so directed to be paid shall be levied by warrant under the hand of the said Commissioner by distress and sale of so much of the goods and effects of the party so failing to pay as may be necessary to satisfy the same.

the Commissioner shall report.

8. And be it enacted That it shall and may be lawful for every such Commissioner to issue summonses requiring all such persons as shall therein be named to appear before him at a place 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 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 claims as aforesaid depending before the said Commissioner 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 some competent witness and that all such evidence shall be given on oath or affirmation which oath or affirmation it shall and may be lawful for every such Commissioner to administer to every person appearing before him to give evidence and that any person taking a false oath or making a false affirmation in any case wherein an oath or affirmation 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 or hereafter in force any person convicted of wilful and corrupt perjury are or shall be subject and liable to.

Power of Commissioners to summon witnesses.

Persons swearing or affirming falsely shall be deemed guilty of perjury.

9. And be it enacted That whenever any person who being duly summoned to give evidence before any such Commissioner as aforesaid his or her reasonable expenses having been paid or tendered and not having any lawful impediment allowed by the said Commissioner shall fail to appear at the time and place specified in such summons or after appearing shall refuse to be sworn or make affirmation as the law in each case may require and 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 Commissioner shall wilfully withdraw from further examination then and in every such case the said Commissioner shall certify in writing under his hand such default or refusal or wilful withdrawing 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 at Sydney or Melbourne as the case may be for summoning such last mentioned person to appear before the Court from which such process shall issue 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 officer serving the same or by affidavit of the due service of the said summons to give evidence and of the said summons to shew

Witnesses not appearing or refusing to give evidence.

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cause and on production of a copy of the said certificate under the hand of the said Commissioner 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 or to make affirmation as aforesaid 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 Prothonotary of the said Court at Sydney or Deputy Registrar of the Supreme Court at Port Phillip as the case may be and the said Prothonotary or Deputy Registrar 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 so fined as aforesaid and in obtaining such sentence as taxed by the said Prothonotary or Deputy Registrar 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 Prothonotary or Deputy Registrar of the said Courts respectively.

Fees to be paid by claimants to Commissioners before the case is heard.

Commissioners shall pay the same into the Colonial Treasury.

Remuneration to be received by Commissioners.

10. And be it enacted That there shall be paid to the Commissioners for and on behalf of Her Majesty Her Heirs and Successors by every claimant and opposing claimant as aforesaid before the case is heard the several fees specified in the Schedule hereunto annexed marked B and the said Commissioners shall duly account for all fees so paid to them as aforesaid and shall pay the same into the Colonial Treasury at Sydney or Melbourne as the case may be at such times and in such manner as the Governor may by any regulations in that behalf appoint and all such sums so received shall be applied as hereafter directed to the purposes of this Act and the overplus if any to the public uses of the said Colony and in support of the Government thereof as by any Act of the Governor and Legislative Council may be directed.

11. And be it enacted That each of the said Commissioners shall and may receive for his own use for every final report made by him in manner aforesaid upon a disputed claim to a lease the sum of fifteen pounds and it shall be lawful for His Excellency the Governor to order and direct by warrant under his hand that every such sum shall be paid from and out of the Public Treasury of the said Colony.

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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 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 eleventh year of the reign of Her Majesty Queen Victoria intituled "*An Act for appointing Commissioners to examine and report upon disputes respecting boundaries of Runs between the Claimants of Leases under Her Majesty's Order in Council of the ninth March one thousand eight hundred and forty-seven*" 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 anything 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 us this
day of

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J. P.

J. P.

B.

FEES TO BE PAID BY CLAIMANTS.

	£	s.	d.
Amount to be paid by each of the claimants before the case is heard	7	10	0
For every summons for witness each summons containing not more than 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	2	6
For taking down the examination of any witness...	0	2	6
For every 100 words after the first 100 additional	0	1	0
For every certificate granted by a Commissioner of default refusal to answer or wilful withdrawing of any witness	0	5	0