

No. II.

CROWN LANDS
OCCUPATION.

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

Preamble.

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:—

Interpretation.

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 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”

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“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.

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Council eleventh Victoria number sixty-one and sixteenth Victoria number twenty-nine and the Orders in Council shall be repealed.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.

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.

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

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.

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.

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. 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

Partial Repeal of
Acts Orders in
Council and Regula-
tions.

Extension of Second
Class Settled Dis-
tricts.

Conversion of exist-
ing leases.

Withdrawal of land
from lease.

When valuations
under Orders in
Council neglected.

Lessee not to
obstruct authorized
persons.

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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.

Marking of boundaries.

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.

Leasing of lands.

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.

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

For ferries bridges wharves 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 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.

Leases of runs in First Class Settled Districts.

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—

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.

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 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.

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

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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.

- (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 subdivisions 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.
- (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.
- (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.
- (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.
- (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.) 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.

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Selection of leases not bid for.

Cancellation of leases.

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.

(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.

(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.

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—

(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.

(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.

(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.

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

(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.

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.

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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—

- (1.) Runs shall in ordinary cases consist of not more than Area and capabilities of runs. 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.
- (2.) Tenders for runs may be deposited in a box to be kept for Tenders for runs. 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.
- (3.) The Minister may cause to be modified the boundaries Direction of boundaries in tenders. 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.
- (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.
- (5.) Every tender must be accompanied by a receipt shewing Deposit on tenders. 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.) Runs may be held from year to year subject to a rent of Tenure of run at fixed rent and assessment pending appraisalment. 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

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number seventeen until an appraisement 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.

Extension of lease on account of improvements.

15. If in any case it shall appear that at the time of the appraisement 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-appraisement 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.

Pre-emptive leases to holders in fee simple.

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.

Sale at auction of leases of forfeited runs.

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.

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

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.

Passage of stock.

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.

Use of timber or material by lessees.

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.

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.

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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—

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

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 herein-after 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 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

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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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.

Appointment not to be revoked.

Single appraiser or arbitrator to act in certain cases.

Award to be binding.

In case of death of or failure to act by appraiser or arbitrator.

In case of death or failure to act by a single appraiser or arbitrator.

Appointment of umpire.

- (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.
- (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.
- (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.
- (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.
- (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.
- (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

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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.

- (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 say— Declaration by appraiser arbitrator or umpire.
- 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 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.) 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.
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. Marking of boundaries by arbitrators or umpire.

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. Attestation of maps and plans.

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Obliteration of boundary marks a misdemeanor.

Descriptions of leased lands.

Right of lease may be given in evidence in actions.

Commonage proclamation and regulations.

Leases for wharves bridges ferries and other objects.

Licenses to cut timber and procure other materials.

Removal of trespassers.

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.

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.

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.

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.

30. The Governor with the advice aforesaid may grant by auction or otherwise leases of any portion of Crown Lands for wharves 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*.

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.

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

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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 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.

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.

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.

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.

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* Governor in Council to make and proclaim regulations.

Chinese Immigration.

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."
