

No. XXII.

An Act to authorize the reclaiming and improving of Land in Rushcutters Bay.
[20th May, 1878.]

WHIEREAS it is expedient to reclaim and resume certain areas of land in Rushcutters Bay for the purpose of dedicating the same as a park or place of public recreation 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:—

1. It shall be lawful for the Governor with the advice of the Executive Council to cause to be reclaimed from the waters of Port Jackson the portion of land lying below high-water-mark in Rushcutters Bay which is described in the Schedule A hereto.

2. The portions of land described in Schedule B hereto are hereby declared to be resumed by and to be vested in Her Majesty her heirs and successors for an estate of inheritance in fee simple in possession freed and discharged from all estates interests trusts incumbrances easements and rights whatsoever And the title of the Crown to the said lands shall be deemed to be perfected immediately upon this Act coming into force.

3. The owner of any land which shall be severed from immediate contact with the water in consequence of such reclamation shall be entitled to compensation for the damage if any sustained by him in consequence of such severance and such damage shall in every case be determined by appraisement in the manner hereinafter provided And in such appraisement regard shall be had to the value of any reclamation or improvements made by the owners of such land provided the same shall not have been alienated under section nine or section twelve of the "Crown Lands Alienation Act of 1861" And provided also that in assessing such compensation the appraisers shall take into consideration in reduction of such compensation if any so to be assessed the enhancement in value of any land belonging to such owner as aforesaid by reason of the reclamation under the authority of this Act.

4. Every person who but for this Act would have been able to establish his title as owner of any portion of the resumed lands described in Schedule B hereto shall be entitled to compensation for such portion so resumed And the amount of compensation shall be determined in every case by appraisement as hereinafter provided And such appraisement shall be made and the amounts of compensation shall be ascertained as nearly as possible at the same time and on the same principles as appraisements under the third section hereof.

5. The whole of the area to be reclaimed and the several portions resumed under the authority of this Act shall be and the same are hereby declared to be set apart and dedicated in perpetuity as a park or place of public recreation but so that the portion secondly described in Schedule B shall be set apart as a road of access to such park or place And this enactment shall be construed to extend all the provisions (so far as they can be applied) of the "Public Parks Act of 1854" to the areas so reclaimed and resumed respectively.

Rushcutters Bay.

Appraisement.

6. Every appraisement under this Act shall be conducted as follows :—

Appointment of appraisers.

(1.) The Minister for Lands or some person authorized in that behalf by him and the owner of the land may concur in the appointment of a single appraiser or in default of such concurrence each such party shall appoint an appraiser And every such appointment shall be made by the respective parties under their hands in writing and delivered to the appraiser or to the appraisers as the case may be and such written appointment shall be attached to the appraisement when made and shall be deemed a submission to appraisement by the parties making the same.

Appointment of umpire.

(2.) Where two appraisers shall have been appointed they shall before entering upon the appraisement appoint an umpire by writing under their hands.

Declaration.

(3.) Before any appraiser or umpire shall enter upon the consideration of any matter referred to him under this Act he shall subscribe a declaration in the form following before a Justice of the Peace :—

“ 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 matters referred to me under the ‘Rushcutters Bay Act of 1878.’ ”

And such declaration shall be annexed to the appraisement when made.

(4.) And with respect to all matters not otherwise provided for or regulated by this Act such appraisement shall be conducted in accordance with the provisions of the Act of Council thirty-one Victoria number fifteen as if such appraisement were an arbitration under the provisions of the said last-mentioned Act.

Costs.

7. All costs of and consequent upon every reference to appraisement under this Act shall be in the discretion of the appraiser or appraisers or umpire by whom the matter is determined.

Requisites of appraisement.

8. Every appraisement under this Act shall be in writing and shall be transmitted to the Minister for Lands and be deposited in his office.

Provisions as to claims in certain cases.

9. No person save in the consideration of payment for resumption of any portion included in Schedule B hereto shall be entitled to make any claim for compensation in respect of the severance of land from contact with the water if such land is situate within the area described in such Schedule but an owner part of whose land is situate in such Schedule and part in Schedule A may claim in respect of each such part in accordance with the provisions of this Act.

Apportionment of compensation in certain cases.

10. If at the time when any claim for compensation under this Act has been finally ascertained it shall appear that the land in respect of which such claim has been so ascertained is under lease to any person for any term the payment of compensation shall be in accordance with such agreement as the owner and lessee may have entered into for the purpose of fixing their respective proportions of the amount to be awarded but in the event of no such agreement having been made or of either party refusing to come to any agreement then the amount awarded shall be paid in such proportions as may be recommended by the Crown Solicitor or by the majority of any three persons to whom the Minister for Lands for the time being may refer the matter And such payment shall exonerate the Government from any liability in respect of such compensation.

Short title.

11. This Act may be cited as the “Rushcutters Bay Act of 1878.”

Export of Warlike Stores.

SCHEDULES.

SCHEDULE A.

(Reclamation.)

That part of Rushcutters Bay Commencing at a point on the west side of the bay being the junction of the south-east corner of J. F. Holle's leasehold with high-water-mark and bounded thence on the north and north-west by the line of proposed retaining wall to a point sixteen feet from the north-east end of boat-jetty on the south-east side of the bay thence still by the line of proposed wall bearing easterly one hundred and sixty-five feet to the original high-water-mark and thence on the east south and west by the original high-water-mark to the point of commencement.

SCHEDULE B.

(Resumption.)

(1.) Portions of W. Thomas's now Sarah Booth's forty-acre and Thomas West's now Obed West's seventy-one-acre grants being the land between the portion of Sarah Booth's forty acres now occupied by Mr. Thomas Thompson tenant of the "Old White Conduit House" on the east and that portion of Thomas West's now Obed West's seventy-one acres occupied by Mr. Dyer and Mr. Macdonald on the west and bounded on the north by the old high-water-mark and on the south by the New South Head Road.

(2.) Also for a road of access one chain wide a part of Thomas West's now Obed West's seventy-one-acre grant south-east of and adjoining portion of said grant in occupation of Mr. Lockyer and Mr. Hawley and leading from the New South Head Road to the original high-water-mark.
