

ANNO PRIMO & SECUNDO

VICTORIÆ REGINÆ.

****

CAP. LX.

An Act to amend an Act of the Fourth and Fifth Years of His late Majesty, empowering His Majesty to erect *South Australia* into a *British* Province or Provinces. [31st *July* 1838.]

WHEREAS by an Act passed in the Fourth and Fifth Years of the Reign of His late Majesty, intituled *An Act to empower His Majesty to erect* South Australia *into a* British *Province or Provinces, and to provide for the Colonization and Government thereof,* His Majesty was empowered, with the Advice of His Privy Council, to erect and establish within that Part of *Australia* which lies between the Meridians of the One hundred and thirty-second and One hundred and forty-first Degrees of East Longitude, and between the Southern Ocean and the Twenty-sixth Degree of South Latitude, together with the Islands adjacent thereto, and the Bays and Gulfs thereof, One or more Provinces, and to fix the respective Boundaries of such Provinces; and by the said Act it was enacted, that it should be lawful for His Majesty, by Warrant under the Sign Manual, countersigned by His Majesty's Principal Secretary of State for the Colonies, to appoint Three or more fit Persons to be Commissioners to carry certain Parts of the said Act into execution, such Commissioners to be styled "The Colonization Commis- 4 & 5 W. 4. c. 95.

Commissioners for *South Australia:*" And whereas by Warrant under the Sign Manual of His said Majesty, and countersigned by the Right Honourable *Charles* Baron *Glenelg*, one of His Majesty's Principal Secretaries of State having the Department of the Colonies, *Robert Torrens*, *William Alexander Mackinnon*, *William Hutt*, *John George Shaw Lefevre*, *George Palmer* the younger, *Jacob Montefiore*, *Samuel Mills*, *Edward Barnard*, *Josiah Roberts*, and *James Pennington*, Esquires, were duly appointed to be such Colonization Commissioners for *South Australia:* And whereas His said Majesty on or about the Nineteenth Day of *February* One thousand eight hundred and thirty-six, by Letters Patent under the Great Seal of *Great Britain*, with the Advice of His Privy Council, and in pursuance of the Powers in that Behalf vested in His said Majesty by the said recited Act of Parliament, did erect and establish One Province to be called "The Province of *South Australia*," and did thereby fix the Boundaries of the same Province in manner following; (that is to say,) on the North the Twenty-sixth Degree of South Latitude, on the South the Southern Ocean, on the West the One hundred and thirty-second Degree of East Longitude, and on the East the One hundred and forty-first Degree of East Longitude, including therein all and every the Bays and Gulfs thereof, together with the Island called *Kangaroo Island*, and all and every other Islands adjacent to the said last-mentioned Island, or any Part of the Main Land of the said Province; and it was thereby provided that nothing in the said Letters Patent contained should affect or be construed to affect the Rights of any aboriginal Natives of the said Province to the actual Occupation or Enjoyment in their own Persons, or in the Persons of their Descendants, of any Lands therein then actually occupied or enjoyed by such Natives: And whereas the Sum of Thirty-five thousand Pounds has been raised by the Sale of Lands in the said Province, and the Sum of Thirty-nine thousand Pounds has been raised by the Issue of *South Australia* Colonial Revenue Securities for the Purposes in the said Act mentioned; and the Sum of Twenty thousand Pounds, Part thereof, has been invested in Government Securities, in the Names of Trustees appointed by His Majesty, as a Guarantee or Security Fund, as required by the said Act: And whereas Doubts have arisen as to the Extent of the Powers vested in the said Colonization Commissioners for *South Australia* by the said Act, and it is expedient that such Powers should be more clearly defined, and that the Provisions of the said Act should be amended in manner herein-after mentioned: And whereas it is in and by the said Act provided, that it should be lawful for His Majesty, His Heirs and Successors, with the Advice of His or their Privy Council, to authorize and empower such Persons as therein mentioned to make, ordain, and establish Laws, Institutions, and Ordinances, and to constitute Courts, and to appoint Officers, Chaplains, and Clergymen, and to levy Rates, Duties, and Taxes as therein mentioned: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the aforesaid Powers and Authorities shall be and

the same are hereby repealed; and in lieu thereof it shall and may be lawful for Her Majesty, Her Heirs and Successors, by any Order or Orders to be by Her or them made, with the Advice of Her or their Privy Council, to make, ordain, and by Warrants under Her or their Sign Manual (subject to such Conditions and Restrictions as to Her or them shall seem meet) to authorize and empower any Three or more Persons resident and being within the said Province to make, ordain, and establish all such Laws, Institutions, or Ordinances, and to constitute such Courts, and to impose and levy such Rates, Duties, and Taxes as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others within the said Province; provided that all such Orders, and all Laws and Ordinances so to be made as aforesaid, shall be laid before the Queen in Council as soon as conveniently may be after the making and enacting thereof respectively, and that the same shall not in anywise be contrary or repugnant to any of the Provisions of the said recited Act or of this Act.

Powers under former Act repealed, and new Powers given to Her Majesty.

II. And be it enacted, That it shall and may be lawful to and for the Commissioners appointed or to be from Time to Time appointed under the said recited Act to raise all or any Part of the Sum of Fifty thousand Pounds in the said Act mentioned, and all or any Part of the Sum of One hundred and sixty-one thousand Pounds, Residue of the Sum of Two hundred thousand Pounds in the said Act mentioned, and also all other Monies which such Commissioners may from Time to Time be authorized to raise under the Powers of the said recited Act or of this Act, or any Part of the same respectively, by selling and granting perpetual Annuities or Annuities for any Life or Lives, or for any Term or Terms of Years absolute or determinable on any Life or Lives, on such Terms as to such Commmissioners shall appear reasonable; and all such Annuities shall be charged and chargeable upon and payable out of such Funds respectively as the Interest of the Monies authorized to be raised by the said recited Act are by the said recited Act or this Act charged or made payable out of; and the Grants of such Annuities shall be in such Form, and such Annuities shall be payable and assignable in such Manner, as such Commissioners shall think fit: Provided always, that in every Grant of any perpetual Annuity, or of any Annuity for any Term absolute exceeding Forty Years, or for more than One Life, or for any Term determinable on the Decease of more than One Person, under the Authority of this Act, shall be inserted an Agreement or Proviso that such Annuity shall be redeemable or repurchaseable by such Commissioners; and it shall and may be lawful for such Commissioners from Time to Time to repurchase and redeem all or any of the redeemable Annuities hereby authorized to be granted, with the Monies accruing from such Funds respectively, as shall be chargeable with such Annuities respectively, or (as often as it shall appear to them that the Charge created by such Annuities can be reduced) with Money borrowed and taken up by all or any of the Means by the said recited Act or this Act authorized; which Money such Commissioners are hereby authorized to borrow and take up accordingly.

Power to raise Money by way of Annuities.

III. And

Commissioners to apply Money raised from either Fund convertibly, keeping separate Accounts.

III. And be it enacted, That it shall be lawful for the said Commissioners, or for the Commissioners to be from Time to Time appointed under the said recited Act, to apply all or any of the Money which now is or shall from Time to Time be in the Hands of their Treasurers to the Payment of the Interest on the said *South Australia* Public Lands Securities, and on the said *South Australia* Colonial Revenue Securities respectively, and of the Annuities by this Act authorized to be granted, and to the paying or defraying any Expences incurred in carrying the said recited Act and this Act into execution, or in applying for and obtaining the said recited Act and this Act, although such Money should not form any Part of or have arisen from the Revenue or Fund charged primarily or exclusively with the Payment of the Interest or Expences to which it shall be so applied: Provided always, that in every Case in which any Money advanced out of the Monies borrowed on the said *South Australia* Colonial Revenue Securities, or derived from the Revenue of the said Province, shall be applied in aid of the Emigration Fund, the Money so advanced shall be a Debt due from the said Emigration Fund to the said Province; and in case any Part of the said Emigration Fund shall be applied in aid of the Revenues of the said Province, the Monies so advanced shall be a Colonial Debt, owing by the said Province to such Commissioners on account of the said Emigration Fund, and distinct Accounts of all such Advances shall be kept in the Books under the Direction of such Commissioners; and such Advances respectively shall be repaid or replaced as soon as conveniently may be (but without Interest thereon in the meantime), by such Commissioners, out of the Monies accruing to the Fund debited with such Advance;

Power to raise Money on the Security of the Revenue to pay Debts incurred to either Fund.

and when any Money advanced from either of the said Funds in aid of the other of them shall be required for the Purpose of the Fund from which the Advance shall be made, the said Commissioners shall and may borrow and take up at Interest, or raise in addition to the Monies which they are authorized to borrow by the said recited Act, Money for repaying such Advance by all or any of the Means by this Act or the said recited Act authorized; and the Securities on which such Monies shall be so raised shall bear such Names, and shall be charged upon and payable out of such Funds respectively, as the same would have been charged upon and payable out of if such Securities had been made under the Powers of the said recited Act or this Act, or for the Use of the Fund debited with the Advances so repaid: Provided always, that the Amount advanced from the said Emigration Fund in aid of the Revenues of the Colony, together with the Debt which may have been due to the said Emigration Fund at the Commencement of any Year shall not at the Close of any such Year exceed One Third of the Amount which may have accrued to the said Emigration Fund in the course of such Year.

Proviso.

Confirmation of Acts of Commissioners.

IV. And whereas Notice was published in the *London Gazette* in the Month of *May* One thousand eight hundred and thirty-five of the Appointment of Commissioners for carrying into effect certain Parts of the said recited Act, but such Appointment was not then signed by

by His Majesty, as required by the said Act: Be it enacted, That all Contracts, Obligations, Rules, Orders, and Regulations, Matters, and Things whatsoever entered into, executed, made, or done by the Commissioners so named, or any Two of them, or other the Commissioners for the Time being, acting under the Authority or supposed Authority of the said recited Act, or in the Execution or supposed Execution of the Powers vested in them by the said Act, and not inconsistent with the Provisions of the said recited Act as explained and extended by this Act, shall have the same Force and Validity as if the Commissioners had been duly appointed before the respective Periods at which such Contracts, Obligations, Rules, Orders, and Regulations, Matters, and Things were respectively entered into, executed, made, and done.

Commissioners may apply Proceeds of Sales of Public Lands in Payment of Revenue Securities.

V. And whereas it is in and by the said Act provided, that in case the Commissioners should be unable to raise by the Issue of Colonial Revenue Securities the whole of the Sum of Two hundred thousand Pounds therein mentioned, or that the ordinary Revenue of the said Province should be insufficient to discharge the Obligations of all or any of the said Securities, the Public Lands of the said Province then remaining unsold, and the Monies to be obtained by the Sale thereof, should be deemed a collateral Security for Payment of the Principal and Interest of the said Colonial Debt; but no Monies obtained by the Sales of Public Lands were to be employed in defraying the Principal or Interest of the said Colonial Debt so long as any Obligation created by the Public Land Securities in the said Act mentioned should remain undischarged: And whereas the Commissioners have raised the Sum of by Issue of Colonial Revenue Securities, but the said Commissioners have not issued any *South Australian* Public Land Securities: And whereas the ordinary Revenue of the said Colony hath been from the first Issue of the said Colonial Revenue Securities, and still is, insufficient to pay the Interest thereon or on any Part thereof; be it therefore enacted, That it shall and may be lawful for the said Commissioners, by any Order or Orders signed by them or any Two of them, to direct their Treasurer or Treasurers to apply so much of the Monies received or to be received as and for the Proceeds of the Sales of Public Lands in the said Province as may be necessary in Payment and Discharge of all or any Part of the Principal due and owing, and of the Interest accrued and to accrue, upon the Colonial Revenue Securities issued or to be issued by them, and so from Time to Time: Provided always, that in case the said Commissioners shall hereafter issue any of the *South Australian* Public Land Securities in the said Act mentioned, then and in such Case it shall not be lawful for the said Commissioners to issue any such Order as herein-before mentioned till such *South Australian* Public Land Securities have been paid off and discharged: Provided also, that the Sums so paid in pursuance of any such Order shall constitute a Colonial Debt owing by the said Province to the said Commissioners as in the said Act mentioned.

VI. And

Act may be altered.

VI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.

LONDON: Printed by GEORGE EYRE and ANDREW SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1838.