ANNO QUINTO & SEXTO

VICTORIÆ REGINÆ.

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C A P. XXXVI.

An Act for regulating the Sale of Waste Land belonging to the Crown in the *Australian* Colonies. [22d *June* 1842.]

WHEREAS it is expedient that an uniform System of disposing of the Waste Lands of the Crown in the *Australian* Colonies should be established: 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 within the *Australian* Colonies the Waste Lands of the Crown shall be disposed of in the Manner and according to the Regulations herein-after prescribed, and not otherwise.

Waste Lands of the Crown to be disposed of according to the Regulations contained in this Act.

II. And be it enacted, That the Waste Lands of the Crown in the *Australian* Colonies shall not, save as herein-after is excepted, be conveyed or alienated by Her Majesty, or by any Person or Persons acting on the Behalf or under the Authority of Her Majesty, either in Fee Simple or for any less Estate or Interest, unless such Conveyance or Alienation be made by way of Sale, nor unless such Sales be conducted in the Manner and according to the Regulations herein-after prescribed.

Not to be alienated except by Sale, in the Manner herein-after prescribed.

III. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to prevent Her Majesty,

Exception of Lands required for public Uses;

Majesty, or any Person or Persons acting on the Behalf or under the Authority of Her Majesty, from excepting from Sale, and either reserving to Her Majesty, Her Heirs and Successors, or disposing of in such other Manner as for the public Interests may seem best, such Lands as may be required for public Roads or other internal Communications, whether by Land or Water, or for the Use or Benefit of the aboriginal Inhabitants of the Country, or for Purposes of Military Defence, or as the Sites of Places of public Worship, Schools, or other public Buildings, or as Places for the Interment of the Dead, or Places for the Recreation and Amusement of the Inhabitants of any Town or Village, or as the Sites of public Quays or Landing Places on the Sea Coast or Shores of navigable Streams, or for any other Purpose of public Safety, Convenience, Health, or Enjoyment; and provided also, that nothing in this Act contained shall extend or be construed to extend to prevent Her Majesty, or any Person or Persons acting on Her Behalf or under the Authority of Her Majesty, from fulfilling any Promise or Engagement made or hereafter to be made by or on the Behalf of Her Majesty in favour of any Military or Naval Settlers in the said Colonies respectively, in pursuance of any Regulations made by Her Majesty's Authority in favour or for the Benefit of any such Settlers.

and with respect to Military or Naval Settlers.

Lands to be surveyed before sold.

IV. And be it enacted, That, save as herein-after is excepted in reference to Blocks of Twenty thousand Acres of Land or upwards, no Waste Lands of the Crown in any of the said Colonies shall be so conveyed or alienated as aforesaid until the same shall have been surveyed, and shall have been delineated in the public Charts of such Colony, in such Lots as shall be subsequently offered and put up for Sale, which Lots shall in no Case, save as aforesaid, contain an Area exceeding One superficial Square Mile.

Governor authorized to convey the Lands.

V. And be it enacted, That, under and subject to the various Provisions and Regulations herein-after contained, the Governor for the Time being of each of the said Colonies is hereby authorized and required, in the Name and on the Behalf of Her Majesty, to convey and alienate in Fee Simple, or for any less Estate or Interest, to the Purchaser or Purchasers thereof, any Waste Lands of the Crown in any such Colony, which Conveyances or Alienations shall be made in such Forms and with such Solemnities as shall from Time to Time be prescribed by Her Majesty, and being so made shall be valid and effectual in the Law to transfer to and to vest in possession in any such Purchaser or Purchasers any such Lands as aforesaid, for any such Estate or Interest as by any such Conveyance as aforesaid shall be granted to him, her, or them.

Quarterly Sales by Auction, and Notice thereof.

VI. And be it enacted, That once at the least in each of the Four usual Quarters of the Year, and on as many other Occasions as to the Governor for the Time being of any such Colony shall seem meet, there shall be holden One or more public Sales by Auction of the Waste Lands of the Crown within such Colony; and that every such Governor shall, by Proclamation or Proclamations, to be from Time to Time by him for that Purpose made in manner herein-after mentioned, declare with all practicable Precision the Times and the Places

at which such Auctions will be holden, and what are the Lands to be offered for Sale at each of such Auctions, and what are the upset Prices at which they will be offered for Sale; and it shall not be lawful for any such Governor to sell or to cause to be sold any such Lands, unless they shall have been specified as about to be offered for Sale by such Proclamation as aforesaid, issued at some Time within Three Calendar Months next preceding the actual Sale thereof.

The Lands offered for Sale to be distinguished into Classes and Lots.

VII. And be it enacted, That in every such Proclamation as aforesaid the Lands specified therein as about to be offered for Sale shall be distinguished into Three separate Classes, the First of which shall be described as Town Lots, the Second of which shall be described as Suburban Lots, and the Third of which shall be described as Country Lots; and within the First of the said Classes shall be comprised all Lands situate within the Limits of any existing Town to be in that Behalf especially named and described by the Governor, or within any Locality to be designated by the Governor as the Site of any Town to be thereon erected; and within the Second of the said Classes shall be comprised all Lands situate within the Distance of Five Miles from the nearest Point of any existing or contemplated Town, unless in any Case the Governor for the Time being of any such Colony shall see fit to exclude any such last-mentioned Lands from the said Class of Suburban Lots, on the Ground that they will not in his Judgment derive any increased Value from their Vicinity to any such Town; and within the Third of the said Classes shall be comprised all Lands not comprised within the said First and Second Classes: Provided nevertheless, that nothing herein contained shall extend or be construed to extend to prevent the putting up for Sale of Lands of any One or more of the said Classes apart from Lands of both or either of the other Classes.

Lowest upset Price.

VIII. And be it enacted, That none of the Waste Lands of the Crown shall be sold at any such Auction in any of the said Colonies unless the Sum of One Pound at the least for each Acre of such Land be then and there offered for the same, which Sum of One Pound *per* Acre shall be the lowest upset Price of any of the Waste Lands of the Crown in any of the said Colonies, but which lowest upset Price shall be liable to be from Time to Time raised in any such Colony in manner herein-after mentioned.

Manner of raising lowest upset Price.

IX. And be it enacted, That it shall be lawful for the Governor of any such Colony, at his Discretion, by any such Proclamation or Proclamations as aforesaid, to raise the lowest upset Price of the Waste Lands of the Crown in any such Colony; and it shall be lawful for Her Majesty, by any Instructions addressed to any such Governor, under Her Majesty's Signet and Sign Manual, with the Advice of Her Majesty's Privy Council, either to raise the lowest upset Price of the Waste Lands of the Crown in any such Colony, or to disallow and reduce back, either wholly or in part, any Increase of the said upset Price which, in exercise of the Authority hereby vested in him, any such Governor may, in manner aforesaid, have made of the said upset Price, by any such Proclamation or Proclamations as aforesaid; Provided

Provided always, that no such Instructions reducing the lowest upset Price of Land as raised by any such Proclamation or Proclamations shall be so issued as aforesaid by Her Majesty after the Lapse of Six Months from the Receipt by One of Her Majesty's Principal Secretaries of State from such Governor of a Transcript of any such Proclamation: Provided also, that if such upset Price be so reduced by Her Majesty as aforesaid, and if any Person shall in the meanwhile have purchased of the Crown any Lands not being Town or Suburban Lots or Special Lots, it shall be lawful for the Governor either to return to such Person the Difference between the lowest upset Price named by the Governor and the Amount to which such lowest upset Price shall have been reduced by Her Majesty, or to grant to such Person or Persons Lands equal in Value to the said Difference.

Except as before provided, Price not to be reduced.

X. And be it enacted, That it shall not be competent to the Governor of any such Colony, nor, save as aforesaid, to Her Majesty, to reduce the Amount to which, in manner aforesaid, the lowest upset Price of Lands within such Colony may at any Time have been so increased by such Governor or by Her Majesty.

The Governor may name a different upset Price for the Special Country Lots and Town and Suburban Lots.

XI. And be it enacted, That in respect of any Part not exceeding One Tenth of the whole of the Lands of the Third Class for the First Time offered for Sale at any such Auctions as aforesaid it shall be lawful for any such Governor, by any such Proclamation or Proclamations as aforesaid, to name an upset Price higher than the lowest upset Price of Waste Lands in the Colony, and such excepted Lands of the Third Class shall be designated as "Special Country Lots;" and that in respect of any Lot or Lots consisting of Lands either of the First or of the Second Classes, to be comprised in any such Sales, it shall be lawful for the Governor for the Time being to fix the upset Price of any such Lot or Lots at any Sum exceeding the lowest upset Price of Waste Lands within the Colony in which the same may be situated, and from Time to Time to raise or lower, as to him may seem requisite for the public Interests, the Price of such Lots consisting of Lands of the First or the Second Class, so always that such upset Price shall never be less than the lowest upset Price of Waste Lands within the said Colony.

What Lands may and may not be sold otherwise than by public Auction.

XII. And be it enacted, That no Land comprised in the said First or Second Classes shall be sold in any of the said Colonies otherwise than by public Auction; but that any Lands comprised in the Third of the said Classes shall and may be sold by the Governor for the Time being of the Colony within which the same are situate by private Contract, if the same shall first have been put up to public Auction in manner aforesaid, and shall not have been sold at such Auction; provided that no such Land shall be so sold by any such private Contract for less than the upset Price at which the same was last put up for Sale by Auction, or if any Bidding above that Price was made for the same at such last preceding Auction, then at less than the Amount of such Bidding, after deducting the Amount of any Deposit that may have been paid thereon: Provided also, that if between any Two successive Sales by Auction an Increase shall in manner aforesaid have been made of the upset Price of Lands, no Land

Land affected by such Increase shall subsequently be sold by private Contract until after the same shall again have been put up to Sale by Auction at such increased upset Price.

Purchase Money when to be paid.

XIII. And be it enacted, That no Waste Lands of the Crown shall be sold in any such Colony by any such private Contract as aforesaid except for ready Money, to be paid at the signing of such Contract; and that no Waste Lands of the Crown shall be sold at any such public Auction as aforesaid unless on Condition of paying at the Time of the Sale, in ready Money, a Deposit, the Amount of which shall be fixed by any such Proclamation or Proclamations as aforesaid, at not less than One Tenth of the whole Price, nor unless the Purchaser or Purchasers shall contract to pay the Residue of such Price within One Calendar Month next after the Time of such Sale by Auction, and shall further contract, that on Failure of such Payment the Deposits shall be forfeited, and that the Contract shall be thenceforward null and void.

Colony may be divided into distinct Divisions for the Sale of Lands.

XIV. And be it enacted, That by any Proclamation or Proclamations to be from Time to Time for that Purpose issued by the Governor of any such Colony, in the Manner herein-after mentioned, it shall be lawful for him to divide such Colony, for the Purposes herein-after mentioned, into any Number of Territorial Divisions not exceeding Four; and for the Purposes and within the Meaning of this present Act, but for no other Purpose, each of such Territorial Divisions shall be considered as a distinct and separate Colony, saving only that as regards the Appropriation herein-after directed of a certain Portion of the Proceeds of Sales of Land to the Introduction of Emigrants from the United Kingdom, it shall be sufficient that such Emigrants be introduced into any Part of the entire Colony, without reference to the Territorial Division in which such Proceeds of Sales may have accrued; and provided always, that it shall be lawful for Her Majesty, by any Instructions to be issued by Her Majesty in manner before mentioned, to disallow and annul any such Proclamation or Proclamations; provided that such Instructions be issued within Six Calendar Months next after the Receipt by One of Her Majesty's Principal Secretaries of State, from such Governor, of the Transcript of such Proclamation; provided also, that such Instructions shall take effect within the said Colony upon the Receipt thereof by the said Governor, and not before.

Conditions on which Blocks of Land comprising 20,000 Acres or more may be sold.

XV. And be it enacted, That if any Person or Persons shall offer to purchase from the Governor of any such Colony by private Contract any Block of unsurveyed Land comprising Twenty thousand Acres or more, and forming, as nearly as the natural Landmarks of the Country will admit, a Parallelogram, of which no one Side shall be more than twice the Length of any other Side, it shall be lawful for the Governor, by any such private Contract, to effect any such Sale, on such Terms and Conditions as to him shall seem meet, provided that such Lands be not sold for less than the lowest upset Price of Lands *per* Acre in the Colony in which the same may be situated, and provided that the Purchaser or Purchasers of any such Lands shall not be entitled to any Survey thereof, except so far as

may be necessary to ascertain the external Marks and Bounds thereof.

Payments in the United Kingdom for Land in the Colonies.

XVI. And whereas it may be convenient that Means should be provided for the Payment within the United Kingdom of the Purchase Money of Waste Lands of the Crown within the said Colonies: And whereas by a Warrant under Her Majesty's Sign Manual, bearing Date on the Tenth Day of *January* One thousand eight hundred and forty, Her Majesty was pleased to appoint certain Persons therein named to be, during Her Majesty's Pleasure, Commissioners, in the United Kingdom, for the Sale of the Waste Lands of the Crown in Her Majesty's Colonies, and for superintending the Emigration of Her Majesty's Subjects to such Colonies; be it therefore enacted, That if any Person or Persons shall pay, for the Purchase of Waste Lands of the Crown in any of Her Majesty's *Australian* Colonies, any Sum or Sums of Money to the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland*, or to any Person or Persons to be appointed by the said Commissioners of Her Majesty's Treasury, or any Three of them, to receive the same, the said Commissioners of Colonial Lands and Emigration for the Time being are hereby authorized and required, subject to such Rules as shall be prescribed for their Guidance in that respect by the Commissioners of Her Majesty's Treasury, to grant, under their Hands and Seal of Office, Certificates to any such Purchaser or Purchasers of the Amount of any such Payments, which Certificates shall, on Production thereof to the Governor for the Time being of any such Colony, be received by him as equivalent to the Amount of Money for which the same shall respectively be given, so far and only so far as the same may be tendered to such Governor in Payment for the Price of any Waste Lands of the Crown to be there purchased, either at public Auction or by private Contract, in the Manner and subject to the Regulations by this present Act prescribed in respect of such Purchasers.

Pasture and Timber Licences.

XVII. And be it enacted, That nothing herein contained shall extend or be construed to extend to prevent the Governor of any of the said Colonies from granting to any Person or Persons a Licence for the Occupation, for any Time not exceeding Twelve Calendar Months from the Date thereof, of any Waste Lands of the Crown in any such Colony, or a Licence for felling, removing, and selling the Timber growing on any such Lands; and that no such Lands shall be sold until after the Expiration of the Licence for the Occupation of the same.

Expences of Survey, Management, and Sale to be the primary Charge upon Land Revenues.

XVIII. And be it enacted, That all Charges which shall be incurred in any of the *Australian* Colonies for the Expence of the Survey and Management of the Waste Lands of the Crown therein, or for effecting such Sales by Auction or by private Contract, or otherwise in carrying into effect the Provisions of this present Act within any such Colony, shall in the first instance be chargeable upon and defrayed from the Proceeds of Sales of Waste Lands, unless Provision shall otherwise be made for defraying such Charges by any Law or Ordinance to be enacted by the local Legislature of any such Colony.

XIX. And

Gross Proceeds of Sales of Land to be applied to the public Service of the Colony, and One Half to be appropriated to the Purposes of Emigration.

XIX. And be it enacted, That, subject to the Charge above mentioned, the gross Proceeds of the Sales of the Waste Lands of the Crown in each of the said Colonies shall be appropriated and applied to the public Service of the said Colonies respectively, in such Manner as Her Majesty, or the Commissioners of Her Majesty's Treasury, or any Three of them, shall from Time to Time direct: Provided always, that One equal Half Part at least of such gross Proceeds shall be and the same is hereby appropriated towards defraying the Expence of the Removal from the United Kingdom to the Colony wherein such Revenue accrued of Emigrants not possessing the Means of defraying the Expence of their own Emigration thither, which Money shall be expended by the Commissioners of Her Majesty's Treasury, or by such Person or Persons as shall be authorized by them to expend the same, but subject to such Regulations regarding the Selection of Emigrants, the Means to be provided for their Conveyance, and their Superintendence during the Voyage to the Colony to which they are destined, and for their Reception and Settlement in that Colony, as shall from Time to Time be prescribed by Her Majesty in Her Privy Council, or through One of Her Majesty's Principal Secretaries of State, to the Governor of such respective Colonies, and to the Commissioners for the Time being of Colonial Lands and Emigration.

Rights under existing Contracts saved.

XX. Provided always, and be it enacted, That nothing herein contained shall affect or be construed to affect any Contract, or to prevent the Fulfilment of any Promise or Engagement, made by or on the Behalf of Her Majesty with respect to any Lands situate in any of the said Colonies in Cases where such Contracts, Promises, or Engagements shall have been lawfully made before the Time at which this Act shall take effect in any such Colony.

Commencement of the Operation of this Act.

XXI. And be it enacted, That this Act shall take effect and have the Force of Law in each of the *Australian* Colonies from the Day of the Receipt of a Copy thereof by the Governor of such Colony, which Day such Governor shall certify and make known to the Inhabitants of such Colony by a Proclamation, to be by him for that Purpose forthwith issued.

Definition of the Words "Australian Colonies," so far as regards this Act.

XXII. And be it enacted, That by the Words "*Australian* Colonies," as employed in this Act, are intended and described the Colonies of *New South Wales*, *Van Diemen's Land*, *South Australia*, and *Western Australia*, and *New Zealand*, with their respective Dependencies, as such Colonies are now or shall hereafter be defined and limited, and also any other Colonies which may hereafter be established within any of the existing Limits of the said Five Colonies, unless it shall in any Case seem fit to Her Majesty, by any Instrument under the Great Seal by which any such new Colony may be founded, to postpone, either for any Period to be therein limited, or indefinitely, as to Her Majesty shall seem meet, the Time at which this Act shall take effect within any such new Colony, in which Case this Act shall take effect therein from the Time to be so limited by such Commission, and not before.

Definition of the Terms "Governor,"

XXIII. And be it enacted, That by the Word "Governor," as employed in the present Act, is intended and described the Person who

"Proclamation," and "Waste Lands."

who for the Time being shall be lawfully administering the Government of any of the said Colonies respectively; and that the several Proclamations which the Governors of the said respective Colonies are hereby authorized to issue shall be so issued by him under the public Seal of the Colony, and shall be made public in the most authentic and formal Manner in use in any such Colony; and that by the Words "Waste Lands of the Crown," as used in the present Act, are intended and described any Lands situate therein, and which now are or shall hereafter be vested in Her Majesty, Her Heirs and Successors, and which have not been already granted or lawfully contracted to be granted to any Person or Persons in Fee Simple, or for an Estate of Freehold, or for a Term of Years, and which have not been dedicated and set apart for some public Use.

Act may be altered this Session.

XXIV. And be it enacted, That this Act may be altered or amended during the present Session of Parliament.

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