ANNO NONO & DECIMO

VICTORIÆ REGINÆ.

****

C A P. CIV.

An Act to amend an Act for regulating the Sale of Waste Land belonging to the Crown in the *Australian* Colonies, and to make further Provision for the Management thereof.

[28th *August* 1846.]

WHEREAS it is expedient to make further Regulations respecting the Occupation of the Waste Lands belonging to the Crown in the Colonies of *New South Wales*, *South Australia*, and *Western Australia*, and for that Purpose to repeal so much of an Act passed in the Session of Parliament holden in the Fifth and Sixth Year of Her Majesty's Reign, intituled *An Act for regulating the Sale of Waste Lands belonging to the Crown in the* Australian *Colonies*, as would prevent such Regulations from taking effect: Be it therefore 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 it shall and may be lawful for Her Majesty to demise for any Term of Years not exceeding Fourteen, to any Person or Persons, any Waste Lands of the Crown in the Colonies of *New South Wales*, *South Australia*, and *Western*

5 & 6 Vict. c. 36.

Her Majesty may demise for a Term of Years, or grant Licences for

12 F *Australia*,

Occupation of Waste Lands in New South Wales, &c.

Australia, or to grant to any Person or Persons a Licence for the Occupation for any Term of Years not exceeding Fourteen of any such Waste Lands, and to reserve upon such Demise or Licence any such Rent or pecuniary or other Service, and to insert therein such Conditions and Clauses of Forfeiture, as shall in manner herein-after mentioned be prescribed and authorized, any thing in the said recited Act to the contrary in anywise notwithstanding: Provided always, that every such Demise or Licence shall be made or granted subject to the Rules and Regulations herein-after provided for.

Appropriation of Proceeds.

II. And be it enacted, That the Rent or pecuniary Service so reserved on any such Demise or Licence as aforesaid shall be applicable to such and the same Purposes only, and shall be applied in such and the same Manner, as the Sums produced by the Sale of Lands effected under the Authority and in pursuance of the said recited Act.

Justices may dispossess Persons unlawfully occupying Waste Lands.

III. And whereas it may be necessary that effectual Provision should be made for protecting such Waste Lands as aforesaid from being occupied without Authority, and also for dispossessing any Person in the Occupation of any such Waste Lands as aforesaid, in case of the Forfeiture of any such Demise or Licence, or in case of the Breach or Nonperformance of the Conditions thereof, or in case of the holding over by any such Persons or Person after the Expiration of any such Demise or Licence, or after the End of the Term for which the same may have been granted or made; be it enacted, That on Information in Writing for that Purpose preferred by the Governor for the Time being of any such Colony as aforesaid, or by any Person authorized by any such Governor on that Behalf, to any Justice of the Peace acting in and for any of the Colonies aforesaid, or in and for any County or other District thereof, setting forth that any Person or Persons is or are in the unlawful Occupation of any of the Waste Lands of the Crown in any such Colony, or is or are in the Occupation of any such Lands in virtue or under colour of any such Demise or Licence as aforesaid, although such Demise or Licence had been forfeited, or although the Conditions thereof had been broken or unfulfilled, or although such Demise or Licence had expired, or although the Term for which the same had been granted or made had come to an end, it shall be the Duty of such Justice to issue his Summons for the Appearance before any Two Justices of the Peace, at a Place and a Time therein to be specified, of the Person or Persons against whom any such Complaint shall be so made, and at the Time and Place so to be specified such Two Justices (on the Appearance of the Person or Persons charged, or on due Proof of the Service on him, her, or them, or at his, her, or their usual Place of Abode, of any such Summons,) shall proceed to hear and inquire of the Truth of the Matter and Things which may be alleged in any such Information, and on being satisfied of the Truth thereof, either by the Admission of the Person or Persons charged, or on other good and sufficient Evidence, the said Justices shall issue under their Hand a Warrant addressed

addressed to the Sheriff or Deputy Sheriff, or Commissioner, or other Officer of the Colony or District acting for or on behalf of Her Majesty, commanding and requiring him forthwith to dispossess and remove any such Person or Persons from any such Waste Lands of the Crown as aforesaid, and to take possession of the same for and on behalf of Her Majesty; and it shall be the Duty of any such Sheriff, Deputy Sheriff, Commissioner, or other such Officer as aforesaid, to carry such Warrant forthwith into execution according to the Tenor and Exigency thereof: Provided always, that nothing herein-before contained shall extend to any Person having occupied Waste Lands within the Boundary of Location without Interruption for the Space of Twenty Years next before the passing of this Act.

Not to extend to Occupiers of a certain Time.

IV. And be it enacted, That from and after the Day when this Act shall come into effect in the Manner herein-after mentioned any Person, unless claiming under a Sale or Demise from Her Majesty, or from some Person acting in the Name and on behalf of Her Majesty, who shall be found occupying any Waste Lands of the Crown in any of the Colonies aforesaid, either by residing or by erecting any Hut or Building thereon, or by clearing, enclosing, or cultivating any Part thereof, or who shall depasture any Cattle thereon, and who shall not previously have obtained a Licence from the said Governor for the Occupation of such Lands, or who shall occupy or depasture as aforesaid after such Licence shall have been determined by Forfeiture or otherwise, shall be liable on Conviction thereof to the Penalties following; that is to say, for the First Offence a Sum not exceeding Ten Pounds, for the Second Offence a Sum not exceeding Twenty Pounds nor less than Ten Pounds, and for the Third or any subsequent Offence a Sum not exceeding Fifty Pounds nor less than Twenty Pounds: Provided always, that no Information shall be laid or brought for any Second or subsequent Offence until the Expiration of Fourteen clear Days from the Date of the previous Conviction.

Penalties for the unauthorized Occupation and Use of Crown Lands.

V. And be it enacted, That the Penalties herein-before imposed shall be recovered in a summary Way before any One or more Justice or Justices of the Peace, upon the Information or Complaint on Oath of the Governor for the Time being of any such Colony as aforesaid, or of any Person authorized by any such Governor on that Behalf.

Mode of recovering Penalties.

VI. And whereas it may be expedient that various Rules and Regulations should be made respecting the more effectually making Demises or Licences for the Term aforesaid of any such Waste Lands as aforesaid, and respecting the Reservation on such Demises or Licences of any such Rents or other pecuniary Services, and respecting the Insertion therein of such Conditions and Clauses of Forfeiture as aforesaid, and respecting the Division of the said Colonies

Her Majesty in Council may make Rules and Regulations respecting the Occupation of Waste Lands, or

preventing Abuses incident thereto.

Colonies into Districts, within which alone such Demises or Licences may be made to take effect, and respecting the Renewal of any such Demises or Licences, and respecting the conflicting Claims of different Persons to obtain any such Demise or Licence, and respecting any Right of Pre-emption which it may be proper to give to the Holders of any such Demise or Licence, and respecting the Forfeiture of any such Demises or Licences on the Conviction of any Holders thereof of certain Offences in any such Colony, and respecting any other Matters and Things which may be requisite, either for carrying into more complete Effect the Occupation in manner aforesaid of such Waste Lands as aforesaid, or for preventing the Abuses incident thereto; be it enacted, That it shall be lawful for Her Majesty, by any Order or Orders in Council, to make and establish all such Rules and Regulations as to Her Majesty shall seem meet for the Purposes aforesaid, or for any of them, and any such Rules and Regulations again to repeal, renew, alter, and amend, and that all such Orders in Council shall have the Force and Effect of Law in the Colonies aforesaid: Provided always, that nothing herein contained shall be construed to authorize the Sale of any Waste Lands in the said Colonies otherwise than in conformity with the Provisions of the said Act, except to Persons who shall be in actual Occupation thereof under such Demise or Licence as aforesaid, or to authorize the Sale of any such Lands for a lower Price than the minimum Price at that Time established therein by the Authority of the said recited Act: Provided also, that all such Orders in Council shall be laid before Parliament within One Month from the Day of the Date thereof respectively, if Parliament shall then be in Session, or if not, then within One Month next after the Commencement of the then next ensuing Session of Parliament, and that no such Order, repealing, renewing, altering, or amending any such former Order, shall be of any Force or Effect till the Lapse of Six Months next after such repealing, renewing, altering, or amending Order shall have been so laid before Parliament; and that all such Orders in Council shall be published forthwith in the *London Gazette*.

Protection of Persons acting in execution of the Act.

VII. And for the Protection of Persons acting in execution of this Act, be it enacted, That all Actions or other Proceedings for any thing done under this Act shall be commenced within Six Calendar Months after the Matter complained of was committed, and not otherwise; and Notice in Writing of such Action, and the Cause thereof, shall be given to the Defendant One Calendar Month at least before the Commencement of the Action; and in every such Action 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 Action if Tender of sufficient Amends shall have been made before such Action was brought, or if a sufficient Sum of Money shall have been paid into Court after such Action brought, 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 become nonsuited, or discontinue

continue such Action after Issue joined, 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 hath by Law in other Cases; and although a Verdict shall be given for the Plaintiff in such Action, such Plaintiff shall not have Costs against the Defendant, unless the Judge before whom the Trial shall be shall certify his Approbation of the Action, and of the Verdict obtained thereupon.

Proceedings not to be quashed or removed by Certiorari.

VIII. And be it enacted, That no Order, Judgment, or other Proceeding made touching or concerning the Matters aforesaid, or touching and concerning the Conviction of any Offender or Offenders against this Act, shall be quashed or vacated for Want of Form only, or be removed or removable by Certiorari, or any Writ or Process whatsoever, into any Superior Court of Jurisdiction in any such Colony.

Definition of the Words "Governor," and "Waste Lands."

IX. And be it enacted, That the Word "Governor," as employed in this Act, is intended to describe the Officer for the Time being administering the Government of any of the Colonies aforesaid; and the Words "Waste Lands of the Crown," as employed in this Act, are intended to describe any Lands in the said Colonies whether within or without the Limits allotted to Settlers for Location, and which now are or hereafter shall be vested in Her Majesty, Her Heirs and Successors, and which have not been already granted or lawfully contracted to be granted by Her Majesty, Her Heirs and Successors, to any other Person or Persons in Fee Simple, and which have not been dedicated or set apart for some public Use.

Her Majesty may by Order in Council delegate certain Powers to the Governor.

X. And be it enacted, That it shall and may be lawful for Her Majesty, by any such Order in Council as aforesaid, to delegate to the Governor of any of the Colonies aforesaid (on such Conditions as Her Majesty shall see fit to impose) all or any of the Powers hereby vested in Her Majesty, save only so far as respects the Powers so to be exercised by Her Majesty as aforesaid by and with the Advice of Her Privy Council.

Recited Act not to apply to Land situate in New Zealand.

XI. And be it enacted, That from and after the passing of this Act the said recited Act shall not apply to Land situate in the Colony of *New Zealand*: Provided nevertheless, that nothing herein contained shall extend to invalidate any Act done in the said Colony in pursuance of the said recited Act before or within One Month after the passing of this Act shall have been made known by Proclamation by the Governor of the said Colony to the Inhabitants thereof.

Recited Act repealed where repugnant to this Act.

XII. And be it enacted, That the said recited Act, so far as it is repugnant to this present Act, or would prevent the Execution thereof, shall be and the same is hereby repealed.

Commencement of Act.

XIII. And be it enacted, That this Act shall take effect and have the Force of Law in each of the said Colonies of *New South Wales*, *Southern Australia*, and *Western Australia*, from and after a Day to be specified by the Governor of each of such Colonies in some Proclamation to be issued by him for that Purpose.

LONDON: Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1846.