

No. 87.



SUPPLEMENT

TO THE

NEW SOUTH WALES

GOVERNMENT GAZETTE,

OF TUESDAY, OCTOBER 5, 1847.

Published by Authority.



THURSDAY, OCTOBER 7, 1847.

PROCLAMATION.

By His Excellency SIR CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, &c., &c.

I, SIR CHARLES AUGUSTUS FITZ ROY, the Governor aforesaid, do, by this my Proclamation, publicly notify and declare, that Her Most Gracious Majesty the Queen has been pleased, by the Order in Council hereto annexed, to make and establish the Rules and Regulations therein contained, for regulating the occupation of the Waste Lands of the Crown in the Colony of New South Wales; and I do hereby

notify and proclaim, that such Rules and Regulations shall and will come into effect within the said Colony, on and from the date of this my Proclamation thereof.

Given under my Hand and Seal, at Government House, Sydney, this seventh day of October, in the year of Our Lord One thousand eight hundred and forty-seven, and in the eleventh year of Her Majesty's reign.

(L. S.)

CH^S. A. FITZ ROY,

By His Excellency's Command,

E DEAS THOMSON.

GOD SAVE THE QUEEN!

At the Court at Osborne House, Isle of Wight, the 9th day of March, 1847.

Present:—

THE QUEEN'S MOST EXCELLENT MAJESTY,

HIS ROYAL HIGHNESS PRINCE ALBERT,

LORD PRESIDENT,
LORD PRIVY SEAL,
LORD CHAMBERLAIN,
EARL OF AUCKLAND,

VISCOUNT PALMERSTON,
BISHOP OF LONDON,
LORD CAMPBELL.

WHEREAS by an Act passed in the present year of Her Majesty, intituled, "*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*," after reciting that it might be expedient that various rules and regulations should be made, respecting the more effectually making demises or licenses for any term of years not exceeding fourteen, of any such waste lands as therein mentioned, and respecting the reservation on such demises or licenses, of any such rents or other pecuniary services, and respecting the insertion therein of such conditions and clauses of forfeiture as are therein mentioned, and respecting the division of the said Colonies into districts within which alone such demises or licenses might be made to take effect, and respecting the renewal of any such demises or licenses, and respecting the conflicting claims of different persons to obtain any such demise or license, and respecting any right of pre-emption which it might be proper to give to the holders of any such demise or license, and respecting the forfeiture of any such demises or licenses, on the conviction of any holders thereof, of certain offences in any such Colony, and respecting any other matters and things which might be requisite, either for carrying into more complete effect the occupation in manner therein mentioned, of such waste lands as aforesaid, or for preventing the abuses incident thereto; it was enacted, That it should be lawful for Her Majesty, by any Order in Council, to make and establish all such rules and regulations as to Her Majesty should 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 should have the force and effect of law in the Colonies aforesaid:

And whereas it is expedient that the rules and regulations herein-after contained, should now be made and established, for regulating the occupation of the waste lands of the Crown in the Colony of New South Wales, it is hereby Ordered by the Queen's most Excellent Majesty, by and with the advice of the Privy Council, that within the said Colony of New South Wales, the rules and regulations comprised in the following chapters, shall henceforth be observed, and have the force and effect of law.

CHAPTER I.

AS TO THE DIVISION OF THE LANDS IN NEW SOUTH WALES.

SECT. 1.—The lands in the Colony of New South Wales shall, for Classification of lands. the purposes of the present Order, be considered as divided into three classes and be dealt with accordingly, as they may be situated in Districts to be denominated respectively as the settled, the intermediate, and the unsettled districts.

SECT. 2.—The settled districts of the Colony shall comprehend:— Settled Districts.

First—The nineteen contiguous counties, the boundaries of which were settled and proclaimed before the 1st January, 1838.

Second—The counties or reputed counties of Macquarie and Stanley.

Third—The lands which may be within a distance of twenty-five miles, to be measured or reckoned from any point of the corporate limits of the town of Melbourne in the county of Bourke.

Fourth—The lands which may be within the distance of fifteen miles from any point of the outward limits of the town of Geelong, in the county of Grant.

Fifth—The lands which may lie within the distance of ten miles from any point of the outward limits of each of the following towns or townships, viz :—

Portland, in the county of Normanby. Alberton, in the district of Gipps Land. Eden, in the county of Auckland. Bathurst, in the county of Roxburgh. Wellington, in the county of the same name.

The town which has been established at the head of the navigation of the River Clarence.

The town of Macquarie in the county of Macquarie.

The town of Ipswich in the county of Stanley.

Sixth—The lands which may lie within the distance of three miles from any part of the sea, throughout the extent of the Colony, measured in a straight line.

Seventh—The lands which may lie within the distance of two miles from either of the two opposite banks of any of the following rivers, viz :—

The Glenelg from a point to be fixed by the Governor, not lower than where the Glenelg receives the waters of the Crawford, nor higher than where it receives the waters of the Wannon.

The Clarence from a point to be fixed by the Governor, at a distance not less than ten miles above the Government township, at the head of the navigation, and not less than fifty miles from the sea (measured in a straight line.)

The river now known by the name of the Richmond, from a point to be fixed by the Governor, at a distance not less than twenty miles from the sea, measured along the course of the river.

SECT. 3.—As to the intermediate districts.

Intermediate Districts.

The intermediate districts shall comprehend the lands lying within the counties or reputed counties of Bourke, Grant, and Normanby, in the district of Port Phillip, which are not hereinbefore directed to be included in the settled lands; also all the lands in the county or reputed county of Auckland, which are not included in the settled lands as hereinbefore mentioned; also the entire district of Gipps Land, except the parts included in the settled lands as hereinbefore mentioned; also the counties, either already formed or intended to be formed, between the county of Auckland and the county of St. Vincent; also any county or counties of which the boundaries may be fixed and proclaimed on or before the 31st December, 1848.

SECT. 4.—As to the unsettled districts.

The unsettled districts shall comprehend all the lands of New South Wales, excepting such lands as are now, or hereafter lawfully may be, comprehended within the limits of the settled and intermediate lands within the said Colony.

CHAPTER II.

RULES TO BE ENFORCED WITHIN THE UNSETTLED DISTRICTS.

Leases for fourteen years.

SECT. 1.—It shall be lawful for the Governor for the time being of the said Colony, or the officer for the time being administering the Government of the Colony, and he is hereby empowered to grant leases of runs of land within the unsettled districts, to such person or persons as he shall think fit, for any term or terms of years, not exceeding fourteen years in duration, for pastoral purposes, with permission, nevertheless, for the lessee to cultivate so much of the lands respectively comprised in the said runs as may be necessary to provide such grain, hay, vegetables, or fruit for the use and supply of the family and establishment of such lessee, but not for the purposes of sale or barter; and so, nevertheless, that such leases shall in no case prejudice, interrupt, or interfere with the right of the Governor or other officer for the time being administering the Government of the said Colony to enter upon any of the lands comprised in the said leases for any purpose of public defence, safety, improvement, convenience, utility, or enjoyment, agreeably to the provisions for those purposes contained in the 9th section of the second chapter of this Order in Council, or otherwise.

SECT.

SECT. 2.—The rent to be paid for each several run of land shall be proportioned to the number of sheep or equivalent number of cattle which the run shall be estimated as capable of carrying, according to a scale to be established for the purpose, by authority of the Governor. Each run shall be capable of carrying, at least, four thousand sheep, or equivalent number of cattle, according to the scale aforesaid, and not in any case be let at a lower rent than ten pounds per annum, to which two pounds ten shillings per annum shall be added for every additional thousand sheep, or equivalent number of cattle which the run shall be estimated as capable of carrying.

Amount of rent, how to be regulated.

SECT. 3.—In order to estimate the number of sheep or cattle which each run will carry, before the granting of the said lease as hereinbefore mentioned, the intended lessee or occupier shall name a valuer, and the Commissioner of Crown Lands shall either act as valuer, or name one to act for him; and these two valuers shall have power to choose, if necessary, an umpire; but if they cannot agree in the choice of an umpire, he shall be appointed by the Governor, or the officer for the time being administering the Government of the said Colony.

Mode of estimating number of sheep which a run will carry.

SECT. 4.—The rents to be paid according to the scale above mentioned, are to be reserved exclusively of any existing assessments of taxes or rates on sheep and cattle, and are to be paid without abatement on account of the existing or any future assessments of taxes or rates on sheep and cattle, and in no way to interfere with the right of the Colonial Legislature to impose from time to time such assessments as may be deemed advisable.

The rent of runs not to interfere with the assessment on sheep and cattle.

SECT. 5.—The rent for each run shall be payable yearly in advance, at such time and place as shall be respectively specified in the lease of the said run of land. In the event of default being made in payment of the rent, the lease shall be forfeited, but the lessee shall be permitted to defeat the forfeiture, and prevent its becoming absolute and indefeasible, by payment, within sixty days from the date of the original rent day, of the full annual rent, with the addition of a sum equal to one equal fourth part of the yearly rent so due from him, by way of penalty; but unless the whole of the said yearly rent, with such penalty as aforesaid, shall be duly paid within the term of sixty days, counting from the original rent day inclusive, the lease shall be absolutely and indefeasibly forfeited. And it shall be competent to any individual to demand of the Governor, or of the Officer for the time being administering the Government of the Colony, or of any Officer or Officers acting by his authority for the present purpose, that a fresh lease of the run so forfeited be offered to sale, under the general rule hereinafter provided for that purpose in section 12 of this chapter.

Rent when and where to be paid, and penalty for non-payment.

SECT. 6.—During the continuance of any lease of lands occupied as a run, the same shall not be open to purchase by any other person or persons except the lessee thereof. But it shall be lawful for the Governor or the officer for the time being administering the Government of the said Colony, to sell to such lessee any of the lands comprised in the lease granted to such lessee, provided that the quantity of the lands sold to such lessee shall not be less than one hundred and sixty acres, and that the price to be paid for the same shall not be below the general minimum price of one pound for each acre: Provided also, that if the portion or lot of any such run sold to such lessee be less in extent than three hundred and twenty acres, the expenses of the survey of the portion so sold shall be paid by the purchaser.

During the lease, the land saleable only to occupant.

SECT. 7.—Every lot to be sold under the provisions before mentioned shall be subject to the following conditions:—

Form and water frontage of any lots sold within runs.

First—Each lot must be rectangular, unless the features of the country, or the course of any river or stream, render a deviation from the rectangular form necessary; and in every case, two sides at least of the lot must be directed to the cardinal points of the compass.

Second—The two opposite sides of any stream or watercourse which, according to the practice of the department of the Surveyor General, ought to form a boundary between different sections or lots, shall in no case be included in the same lot.

Third—

Third—No single lot shall have more than four hundred and forty yards of water frontage for one hundred and sixty acres, or more than a like proportion of water frontage for any quantity greater than one hundred and sixty acres, but the water frontage shall be reckoned according to the distance from one extreme point thereof to the other in a right line, and not according to the bendings of the watercourse or river; and the Governor or Officer for the time being administering the Government of the said Colony, shall have the right of refusing to sell any lot or lots, in every case where it may appear to him that the sale of such lot or lots respectively, might give an undue command over water required for the beneficial occupation and cultivation of the lands adjoining either side of any stream or watercourse.

Reserves from sale and special prices.

SECT. 8.—It shall be lawful for the Governor or Officer for the time being administering the Government of the said Colony, to except, out of any such sale or sales as aforesaid, all such lands as it may appear to him expedient to reserve for any of the public uses for which it is enacted by the third clause of the Act passed in the fifth and sixth years of Her Majesty, chapter 36, intituled "*An Act for regulating the sale of waste lands belonging to the Crown in the Australian Colonies,*" that lands required for public uses may be excepted from sales authorised by that Act, and if there be reason to suppose that any of the lands applied for under the regulations hereby expressed possess peculiar advantages, whether of water frontage or otherwise, which would render it fit that a higher price should be paid for such lands, the Governor or the Officer for the time being administering the Government of the said Colony, or any Officer authorised by him for the purpose, may require the said lands to be assessed by valuers appointed, in manner provided in section 3 of the second chapter of this Order in Council, in order that the value, if estimated by them or their umpire at more than one pound per acre, the higher amount may be paid for such lands accordingly.

Grants for public purposes.

SECT. 9.—That nothing in these regulations, or in any lease to be granted under the powers hereby vested in the Governor, shall prevent the said Governor or Officer for the time being administering the Government of the said Colony, from making grants or sales of any lands within the limits of the run or lands comprised in such lease, for public purposes, or disposing of in such other manner as for the public interest may seem best, such lands as may be required for the sites of churches, schools, or parsonages, or for the construction of high roads or railways and railway stations, or other internal communications, whether by land or water, or for the use or benefit of the aboriginal inhabitants of the country, or for 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 the purpose of sinking shafts and digging for coals, iron, copper, lead, or other minerals, and effectually working coal, or iron, or copper, lead, or other minerals, or for any other purpose of public defence, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the Colony; but so that the quantity of land which may be granted or sold to any railway company shall not exceed in all the rate of one hundred acres for every mile thereof in length.

SECT. 10.—That if at any future period a railroad be made through or near to the districts comprising unsettled lands, all lands within the distance of two miles from that railroad shall, notwithstanding any lease of the run within which such lands shall be situated, be liable to be sold at the end of each successive year from the date of the said lease; provided that at least sixty days previous notice shall have been given to the lessee, and so that such lessee shall be entitled to all the same conditions reserving to the previous lessee the right of pre-emption and the value of improvements as are hereinafter mentioned, with reference to the case of a sale at the expiration of the full term of such lease.

SECT. 11.—All occupants of Crown Lands who shall have been in licensed occupation of the same for at least one year at the time when this Order in Council shall come into effect, are to be entitled to demand leases of their respective runs under the present regulations, within six months from the date of the publication of this Order in Council by the Governor or other officer administering the Government of the said Colony, but not afterwards; and all occupants who have been in licensed occupation of their lands for a shorter period than the term of one year, shall be entitled upon the expiration of the same term of one year, without having forfeited their respective licenses, to demand leases of their respective runs, under the regulations herein contained; provided such lease shall be lawfully demanded within six months after the expiration of the said term of one year, but not afterwards.

Mode of acquiring leases of existing runs.

SECT. 12.—When any run of lands, after being occupied, shall be forfeited, or become vacant without the previous occupant's having exercised his right of renewal hereinafter reserved, it shall be competent for any person desirous of acquiring a lease of such run of lands, to give notice to the Governor or Officer for the time being administering the Government of the said Colony, of his, her, or their desire to purchase anew the lease of such run of lands, and immediately after such notice the Governor or Officer administering the Government of the said Colony shall direct sealed tenders to be sent in at such time and place, and in such form as he shall think fit, by the person giving such notice as aforesaid; and also by such other person (if any) as may be disposed to enter into competition for the said lease; and every tender so to be made shall state the term of years for which it is proposed to take the said run, and whether in addition to the minimum rents required agreeably to the provisions contained in sections 2 and 3 of the second chapter of this Order in Council, it is proposed to offer any, and if any, what amount of premium for the lease; and the said tender or tenders shall be opened in the presence of two or more persons authorised by the Governor or Officer for the time being administering the Government of the said Colony for that purpose, and if there shall be more than one tender, the tenders shall be opened at the same time, and if there shall be only one tender the lease of the run shall be given to the person making such tender, provided the rent offered shall be admissable under the provisions contained in sections 2 and 3 of this chapter of the Order in Council; but if there shall be more competitors than one, the lease of the run shall be given to such person or persons as shall tender the highest amount of premium for the same; but if two or more tenders shall be made for the same run and no one of them be higher than all the rest, a future day shall be announced by the persons who open the tenders, on which day it shall again be competent to all persons to offer fresh tenders in the same manner as hereinbefore provided in regard to the first tenders.

Mode of acquiring leases of forfeited or vacant runs.

SECT. 13.—If any individual be desirous to acquire a new run of land which has never been occupied before, he shall be at liberty to send in a sealed tender, at such time and place, and in such form, as may be appointed by the Governor or Officer administering the Government of the said Colony for receiving tenders for new runs, and shall set forth in his tender a clear description of the run for which he applies and of the boundaries of the same, and shall state whether, beyond the amount of rent to be ascertained as hereinbefore provided, he is willing to offer any, and if any, what amount of premium for the lease, and such tenders shall be in all respects dealt with as hereinbefore provided in section twelve of this Order in Council for tenders for runs, which have been forfeited or fallen vacant, save and except that if it shall occur that two or more persons have thus applied for different runs, of which part of one run would include part or the whole of another run, the Governor or Officer for the time being administering the Government of the said Colony, or the person or persons authorised by him to act in this behalf, shall declare what shall be the several runs, for which it shall be competent to parties to tender, and another day shall then be named,

Mode of acquiring leases of new runs.

at which the previous applicants, and all other persons shall be at liberty to offer fresh tenders for the runs so delivered.

Mode by which a lease may be forfeited.

SECT. 14.—A lease shall be liable to forfeiture in three modes:—

First—It shall be forfeited for non-payment of rent as provided in section 5 of the 2nd chapter of this Order in Council.

Second—It shall be forfeited absolutely, immediately upon any conviction for felony against the lessee; and

Third—In the event of his conviction by a Justice of the District for any offence against the law, the case may be enquired into within three months after the conviction by two or more Justices, who if they think fit, may adjudge the lease to be forfeited with or without compensation for the value of the improvements, according to the nature of the offence: Provided always, that no such adjudication of forfeiture pronounced by the Justices, shall take effect until confirmed by the Governor or Officer administering the Government of the said Colony.

Conditions of sale after the expiration of a lease.

SECT. 15.—Upon the expiration of a lease, it shall be competent for the Governor or Officer administering the Government of the said Colony, to put up all or any part of the lands included in a run for sale, subject to the following conditions:—

First—The previous lessee shall have the option of purchasing the land for its fair value in an unimproved state, which shall never be estimated at less than £1 per acre.

Second—If declined by the previous lessee, the value of any improvements on the land offered for sale shall be ascertained by valuers appointed under the provisions contained in section 3 of the second chapter of this Order in Council: Provided nevertheless, that the sum so to be estimated and allowed for, is in no case to exceed the amount of the actual outlay made by the lessee.

Third—The upset price shall then consist of the joint value of the land and the improvements, and if the land be sold, the amount of the improvements shall be paid over to the previous lessee, and only the balance be retained by the Government.

Conditions of renewal.

SECT. 16.—If no part of the run be sold, the previous lessee shall be entitled to a renewal of the lease of the whole, or if any part of the run, not amounting in all to one equal fourth thereof, be sold, such lessee shall be entitled to a renewal of the lease for the remaining parts of the lands comprised in his run, subject to the reservation of an increased rent described in the next hereinafter following section of these rules and regulations; and provided, nevertheless, that the boundaries of the different classes of land in the Colony shall not in the mean while have been so far extended as to bring the said run within the class of settled lands; and provided also, that if brought within the class of intermediate lands, the lessee shall only obtain a renewed lease of the said run under the rules hereinafter laid down as applicable to that class of lands.

Amount of rent on all after the first lease of run.

SECT. 18.—The rent of every lease of a run of land, after the expiration of the first lease granted under this Order in Council, is to be paid by any new lessee on the number of sheep and cattle which the run shall be estimated to carry in its improved, instead of its unimproved state, in the same manner as provided for in sect. 3 of the second chapter of this Order in Council; but as an encouragement to improve, the lessee whose lease shall be renewed is to be exempt from paying any increase beyond fifty per cent. upon the amount of rent reserved under the expired lease.

CHAPTER III.

RULES APPLICABLE TO INTERMEDIATE LANDS.

Leases for eight years out with a liability to sales under certain restrictions at the end of every year.

SECT. 1.—Within lands coming under the description of intermediate lands the interest in runs shall be acquired, held, and determined upon the same terms and conditions as above laid down for unsettled lands, excepting that the leases shall not be made for more than eight years in duration, and that at the end of each successive year from the date of the lease, it shall be competent for the Governor or Officer for the time being administering

administering the Government of the said Colony, provided he shall have given sixty days previous notice, to offer for sale all or any part of the lands within any such run, subject to the same conditions in favor of the lessee as are above laid down in case of a sale at the expiration of the full term of a lease of unsettled lands.

CHAPTER IV.

RULES APPLICABLE TO SETTLED LANDS.

SECT. 1.—Within the boundaries of the settled lands, it shall be competent for the Governor or Officer for the time being administering the Government of the said Colony, to grant leases of lands exclusively for pastoral purposes, for terms not exceeding one year; and it shall further be competent for the Governor or Officer for the time being administering the Government of the said Colony, if he deem it expedient, to make general rules, under which the holders of purchased lands within such districts of settled lands may be permitted to depasture, free of charge, any adjacent Crown Lands: Provided that the depasturage of such unsettled lands free of charge shall in no way interfere with the right of the Government at any time to dispose of the same, either by sale or by lease for one year as above mentioned.

And the Right Honorable Earl Grey, one of Her Majesty's Principal Secretaries of State, shall give the necessary directions herein accordingly.

WM. L. BATHURST.

*Colonial Secretary's Office,
Sydney, 7th October, 1847.*

LEASES OF CROWN LANDS BEYOND THE SETTLED DISTRICTS.

1.—His Excellency the GOVERNOR, in reference to His Proclamation of this date, publishing Her Majesty's Order in Council, regulating the occupation of Waste Lands of the Crown within this Colony, deems it proper to caution the Licensed Occupants of Waste Lands of the Crown beyond the settled districts, that the rights conferred on them by the 11th section of chap. II of the Regulations, must be exercised within the periods in that section prescribed, by relation to the date of the Proclamation above referred to, publishing the said Order in Council.

2.—The applications must be lodged in the office of the Colonial Secretary, in Sydney, if the Lands for which the Lease is applied for be situated within the Sydney or Middle District; or of His Honor the Superintendent at Melbourne, if within the Southern or Port Phillip District; and in order to preserve uniformity, the applicants will be required to use the printed forms—copies of which may be obtained from the Commissioners of Crown Lands beyond the Settled Districts, as well as at the Office of the Superintendent at Melbourne, and at this Office.

3.—All such applications must set forth the names and clear descriptions of the runs applied for, and of the boundaries of the same, as prescribed with respect to new runs, by the 13th section of chap. II of the Order in Council. In such descriptions it will be necessary to refer to leading geographical features, and marked or determined boundary lines, as well as to the names of the occupants of adjacent Lands, and to give the length and general direction of the several boundary lines with reasonable certainty; and also to state the supposed extent of the runs, and the number of sheep, or equivalent number of cattle, which each run may be estimated as capable of carrying.

4.—An abstract of all applications received will, from time to time, be published in the *New South Wales Government Gazette*, or *Port Phillip Government Gazette*, for the information of all parties concerned.

5.—Persons who object to the claims of others, either wholly or in part, as comprising lands to the lease of which they may conceive themselves entitled, are recommended to lodge in the office of the Colonial Secretary, or Superintendent of Port Phillip, caveats referring to such claims, and specifying the lands to which their objections extend, and the grounds on which they prefer their claims to the same.

6.—It will be impossible that the issue of leases should take place immediately on demands being made for them. In many cases the Government may not be able until the end of the year 1848, to determine whether the particular runs applied for, will be included in the *intermediate* or *unsettled* districts, and in all cases it will be necessary to consider and decide on the claims of applicants—to verify the descriptions of the runs—and to estimate the number of sheep or cattle which each run will carry—and the rent accordingly to be paid. His Excellency however desires at the same time to intimate, that all practicable despatch will be used, for the purpose of putting the occupants of Crown Lands in possession of the leases, to which they may be entitled under Her Majesty's regulations.

By His Excellency's Command,
E. DEAS THOMSON.