



ANNO SEXTO

GULIELMI IV. REGIS.

No. 11.

By His Excellency Colonel GEORGE ARTHUR, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT for the Settlement of Claims to Grants of Land and for other Purposes relating thereto.

WHEREAS it is expedient that measures should be taken for the **PREAMBLE.** quieting of Titles to Land in this Colony by providing for the settlement of disputed and other claims to Grants and for those purposes it is expedient that Commissioners should be appointed with fuller powers than are possessed by the present Commissioners to examine into and report their opinion upon such claims and all matters relating thereto in the manner hereinafter mentioned—**BE IT THEREFORE ENACTED** by His Excellency Colonel GEORGE ARTHUR Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that it shall be lawful for the Lieutenant-Governor at any time or times after the passing of this Act to issue a Commission or Commissions under the Seal of the Colony thereby appointing any three persons as and to be Commissioners for examining into and reporting their opinion upon Claims and Applications for Grants of Land in this Island and its Dependencies of which said Commissioners one shall thereby be appointed Chairman.

Commissioners for claims to Grants to be appointed.

II. AND BE IT ENACTED that it shall also be lawful for the **Appointment of** Lieutenant-Governor from time to time to appoint a Clerk to the said **Clerks.**

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Commissioners and such other Ministerial Officers for making entries of the Proceedings and Reports of the Commissioners for preparing Grants and for otherwise assisting the Commissioners in the conduct of business under the direction of the Commissioners as to such Lieutenant-Governor shall seem requisite or proper—AND it shall be lawful for the Lieutenant-Governor to direct to be paid out of the Colonial Treasury to such Commissioners and to the said Clerk and other Officers as aforesaid such reasonable Salaries or other remuneration by Fees in respect of the issue of each Grant or otherwise or partly by a Salary and partly by Fees as such Lieutenant-Governor may think fit.

Commissioners' oath.

III. AND BE IT ENACTED that each of the said Commissioners shall before proceeding to execute the duties by this Act imposed upon him take and subscribe before one of the Judges of the Supreme Court the Oath the form whereof is contained in the Schedule to this Act marked A.

General authority of Commissioners.

IV. AND BE IT ENACTED that the Commissioners shall have power and authority to examine into and report their opinion upon all claims and applications for Grants of Land to be issued by or in the name of His Majesty His Heirs and Successors under the Public Seal of the Colony or to any particular estate or interest in or lien on such Land whether such claims or applications be made by persons claiming in their own right by Location Order or other Authority from any Governor of New South Wales or any Lieutenant-Governor of Van Diemen's Land or by or on behalf of persons claiming derivatively only through or under any other person originally claiming by any such Location Order or other such Authority as aforesaid and also according to the regulations which shall in each case appear to such Commissioners to be justly applicable thereto to report their opinion as to the reservations and conditions amount of Quit-rent and other terms (if any) to be contained or mentioned in such Grants respectively and also all other matters in anywise relating to the issue of such Grants including the amount of fine (if any) payable in respect thereof—AND every such Report shall be in writing under the hand or hands of the Commissioner or Commissioners and be addressed to the Lieutenant-Governor and in any case where either of the persons preferring or opposing the claim shall after due notice neglect to attend the Report may be made *ex parte*.

Principle of decisions.

V. AND BE IT ENACTED that in examining into and reporting upon all such applications and matters as aforesaid the said Commissioners shall be guided by equity and good conscience only and by the best evidence that can or may be procured although not such as would be required or be admissible in ordinary cases nor shall they be bound

by the strict rules of law or equity in any case or by any technicalities or legal forms whatever and it shall be lawful for the said Commissioners if they think proper to examine on oath the parties making or opposing any such application and their wives respectively or either of them and also all such witnesses for and against the parties respectively touching any of the matters in dispute as the Commissioners think will be able to give material testimony respecting the same—**PROVIDED ALWAYS** that in case any such party wife or witness shall be unable to travel by reason of age sickness or infirmity and also whenever the said Commissioners or any one of them shall be of opinion that the examination before them of any such party wife or witness as shall reside at a distance of more than twenty miles from Hobart Town or shall be about to depart from the Colony may be safely dispensed with it shall be lawful for such Commissioners or Commissioner to permit and order that every such party wife or witness be examined and if necessary cross-examined upon oath and (if they or he shall think fit so to order) upon written interrogatories before any Commissioner or person authorized to take Affidavits to be used in the Supreme Court or before any Justice of the Peace and in and by the same or any other order to impose such terms and conditions respecting such interrogatories and the taking and transmission to them of every examination and the use to be made thereof as such Commissioners or Commissioner shall think just—**AND** every Commissioner or person authorized to take such Affidavits as aforesaid and every Justice of the Peace is hereby authorized to administer to every person so ordered to be examined before him the Oath usually administered in similar cases and to examine every such person accordingly.

VI. AND BE IT ENACTED that for the purposes aforesaid it shall be lawful for the Commissioners or any one of them to issue Summons to witnesses. Summonses directing the attendance of any such party wife or witness at such time and place as shall be therein for that purpose appointed and by any such Summons to require the production then and there of all writings and documents touching the matter in dispute which shall be in the custody or power of the party summoned as to such Commissioners or Commissioner shall seem proper—**AND** the wilful disobedience of any such Summons shall be deemed a misdemeanor and any person guilty thereof being lawfully convicted of that offence shall be liable to such fine not exceeding one hundred pounds as the Court shall think fit to order together with Imprisonment until such time as he shall submit to be examined—**PROVIDED** that every person whose attendance shall be so required shall be entitled to the like conduct money and expenses as upon attendance at a trial in the Supreme Court and that no person shall be compelled to produce under any such Sum-

mons any writing or other document that he would not be compellable to produce at such trial.

Preparation of Grant.

VII. AND BE IT ENACTED that so soon as the Commissioners shall be of opinion that the person holding or claiming to hold the Land of which a Grant shall have been applied for as aforesaid is entitled in equity and good conscience to hold such Land and to have a Grant thereof under the Seal of the Colony made and delivered to him they shall report the same to the Lieutenant-Governor and shall cause a Grant thereof to be prepared setting forth therein the measurement situation and boundaries of the Land to be granted and the Quit-rent Reservations and Conditions (if any) to which the same is to be subject and shall transmit the Grant so prepared to such Lieutenant-Governor for the purpose of obtaining his signature and the Seal of the Colony thereto.

Proviso.

VIII. PROVIDED ALWAYS that nothing in this Act shall be construed prejudicially to affect the rights of His Majesty His Heirs or Successors in any such case or to compel the Lieutenant-Governor to make or deliver any such Grant in any case unless His Excellency shall deem proper so to do.

Re-hearing.

IX. AND BE IT ENACTED that it shall be lawful for the Lieutenant-Governor at any time before a Grant shall have been actually issued in pursuance of any such Report to direct by any writing under his hand that the case shall be re-heard or farther inquired into or that any particular point or matter relating to the claim of the proposed Grantee or (if there be two parties) the claim of either party shall be argued or inquired into before the Commissioners and specially reported on by them and for that purpose or for the purpose of protecting the rights of the Crown to direct one of the Law Officers to be made a party supporting or opposing such Grant or some particular Provision therein.

Where Commissioners not unanimous.

X. AND BE IT ENACTED that in every case where two Commissioners only shall agree as to the Report to be made either of the parties applying for or opposing the issue of a Grant may upon any point or points in dispute between them as to which there shall have been such difference of opinion the announcement of the opinion of the majority of such Commissioners within ten days next following enter in the Commissioners' Office an Appeal against the Report or intended Report of such majority to the Judges of the Supreme Court but if no such Appeal be entered then such last-mentioned Report shall be final.

Appeals.

XI. AND BE IT ENACTED that every such Appeal under this

Act shall be upon a special case and in no other mode unless the said Judges or one of them shall in any case otherwise direct and every special case shall be approved and certified under the hands of two of the said Commissioners whose determination as to the settlement of any such case shall be conclusive and every such Appeal shall be openly heard and determined in a summary way by the said Judges either in the Court House at Hobart Town or in such other convenient place as they may appoint—AND the question on every such Appeal shall be whether according to the true intent and meaning of this Act the Report of the Commissioners ought to stand or ought to be in any and what respect altered.

XII. PROVIDED ALWAYS AND BE IT ENACTED that it shall be lawful for the said Judges or either of them after any special case stated to them under this Act to remit such case to the said Commissioners for amendment or to direct any farther or other investigation into any matter or matters of fact (whether stated in such case or not) which they or he may think fit to be inquired into and to cause such investigation and inquiry to be either by the trial of a feigned issue between the parties or otherwise as to such Judges or Judge shall appear to be best calculated to attain the substantial ends of justice and to make such order or orders in the premises from time to time as to them or him shall seem meet. Trials before a Jury.

XIII. AND BE IT ENACTED that it shall be lawful for any one of the Commissioners from time to time upon any point or points of difficulty arising in any matter to state a case thereon for the opinion of the said Judges as to the law or equity thereof which said case shall be approved and certified in manner aforesaid—AND also any Commissioner shall have power and authority at any time [either in addition to or without any such case stated as aforesaid] to direct the trial of a feigned issue between the parties in the Supreme Court for the better inquiry into and determination of any fact or facts as to such Commissioner may seem to be expedient—AND on every such trial no other kind of evidence shall be necessary than is by this Act required or allowed before the Commissioners and each party at such trial may if he think fit (unless one of the Judges shall otherwise order) examine the adverse party the same as he could by law in any similar case examine any ordinary witness. The like in certain other cases.

XIV. AND BE IT ENACTED that in every case where any claim or application under this Act for the issue of a Grant of any Land shall have been advertised by the authority of the Chairman of such Commissioners in not less than three successive numbers of the Hobart Town Clear and undisputed cases to be decided by Chairman alone.

Gazette and no Caveat against the issue of such Grant nor any counter-claim to the same Land or any part thereof shall have been entered in the Office of such Commissioners within the space of two calendar months next after the first of such successive publications and such claim or application shall clearly appear to the said Chairman to be well founded it shall be lawful for such Chairman alone and without reference to any other of the Commissioners forthwith to report such claim with his opinion thereon to the Lieutenant-Governor and as soon as possible thereafter to cause a Grant to be prepared accordingly—PROVIDED that where any objection shall be made by the claimant in any such case to the opinion of such Chairman as to the amount of fine or Quit-rent or any condition or reservation in such Grant a hearing shall take place thereon if such claimant desire it before the three Commissioners.

Lands under mortgage &c.

XV. AND BE IT ENACTED that where any Land a Grant of which is applied for shall appear to be under mortgage or subject to any other charge or lien legal or equitable it shall be lawful for the Commissioners either to cause the Grant to be made out and delivered to some person or persons to be nominated by the parties interested respectively and which said person or persons shall hold the Land under such Grant as Trustee or Trustees for the said parties according to their respective rights and interests to or in the same Land or (in case the said parties shall when thereto required by the Commissioners refuse or neglect to concur in any such nomination) to cause the issue of any Grant of such Land to be suspended or (according to the nature of the case and so as to do substantial justice between the parties) to cause the Grant to be made out in the name of and be delivered to such one of the parties (to be holden nevertheless in trust for the several parties therein actually interested) as shall appear to such Commissioners to be under the circumstances best entitled to the same.

Fees and appropriation.

XVI. AND BE IT ENACTED that there shall be paid in to the Office of the Commissioners to the Chairman of such Commissioners (or their Clerk) by the person making application under this Act for a Grant and by the person entering any caveat or counter-claim thereto the several Fees specified in the Schedule to this Act marked B or such smaller sums as the Lieutenant-Governor shall from time to time appoint and the Chairman of such Commissioners shall duly account for all such Fees and all other sums received by him under this Act and shall pay the same to the Colonial Treasurer on some day in the first week of every month and all such Fees shall be appropriated towards defraying the salaries or remuneration of the Commissioners and other Officers so to be appointed as aforesaid and other the expenses occasioned by

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this Act—PROVIDED that it shall be lawful for such Chairman to admit any poor person to make any such application or opposition as aforesaid without the payment of any Fee such Chairman certifying that he believes such person to be poor and not in a condition to pay the same.

XVII. AND BE IT ENACTED that every person making any claim or application under this Act for a Grant of Land or entering any counter-claim thereto shall deposit in the hands of the Chairman of the Commissioners or their Clerk such sum as the said Chairman shall deem sufficient to defray the expense of all advertisements required to be made of such claim or application or counter-claim and shall also deposit in the hands of such Chairman a promissory note by such claimant payable on demand to such Chairman in his own name or to his order for the payment of a sum equal to the amount of the Fees Fines (if any) and Quit-rent which such Chairman shall then be of opinion will become payable on the issue of the Grant supposing the applicant to be entitled thereto—PROVIDED that every such promissory note shall be returned to the party if his claim be rejected and no such note shall be enforced until the Grant shall have been executed and shall be ready to be delivered to him and any surplus money due to the party in respect of a greater sum having been so paid or made payable than shall eventually appear to have been justly or rightly payable shall be returned or allowed to him.

Payment of fees and other sums for issue of Grant.

XVIII. AND BE IT ENACTED that it shall be lawful for the Lieutenant-Governor from time to time when and as often as it shall appear to him to be expedient by any writing or writings from time to time under his hand to appoint temporarily any other of the said Commissioners to act as Chairman and any other person during the same period to act as a Commissioner under this Act without prejudice to any then existing Commission issued under this Act—AND every Chairman and Commissioner so appointed temporarily shall have the same powers and authorities as if they had respectively been appointed by Commission for that purpose.

Appointment of Chairman or Commissioner pro tempore.

XIX. AND BE IT ENACTED that the term "Lieutenant-Governor" used in this Act shall be construed to intend and apply to the Governor Lieutenant-Governor or any other person for the time being lawfully administering the Government,

Term "Lieutenant-Governor."

XX. AND BE IT ENACTED that this Act shall be deemed a Public Act. Public Act and as such shall be judicially taken notice of in all cases without being specially pleaded.

Public Act.

Perjury.

XXI. AND BE IT ENACTED that if any person whatsoever shall upon any occasion wilfully forswear himself in any Oath taken under or by virtue of any Provision of this Act he shall be deemed guilty of wilful and corrupt perjury and suffer such punishment as by Law may be inflicted for that Offence.

Determination of
Commissioners'
authority.

XXII. AND BE IT ENACTED that every Commission issued under this Act and every power and authority granted by this Act to any Commissioner thereby appointed shall (excepting always as to claims or applications then already preferred and matters and things remaining to be done in respect thereof) cease determine and be void so soon as the Lieutenant-Governor shall think fit and shall by any Proclamation for that purpose determine and make void the same.

Proviso.

XXIII. PROVIDED ALWAYS AND BE IT ENACTED that no act matter or proceeding done commenced or had by or before the present Commissioners for inquiring into claims to Grants or by or before any Commissioners to be hereafter appointed shall become void or abate by the issue of any Commission under this Act but the Commissioners named in every such Commission shall or may proceed with every examination commenced by the present or any former Commissioners and report their opinion upon every claim not reported upon by such present or former Commissioners in the same manner as if such examination had been commenced by and such claim had been preferred before themselves.

Power to make
rules.

XXIV. AND BE IT ENACTED that it shall be lawful for the Lieutenant-Governor or for any two of the Commissioners (the Chairman to be one) from time to time to make and establish such Rules and Orders touching the manner of applying to and proceeding before the Commissioners under this Act and otherwise for facilitating the objects of this Act as to such Lieutenant-Governor or Commissioners shall seem expedient and any such Rules or Orders from time to time to revoke or alter as shall appear to be requisite and every Rule and Order so made and established shall be of the same force as if they had been inserted in this Act—AND in every case in which it shall appear to the Commissioners present at the final hearing or the then Judges in cases of Appeal that any claim or caveat or counter-claim under this Act has been preferred or prosecuted vexatiously or without reasonable or probable cause it shall be lawful for such Commissioners or Judges to award such reasonable sum as costs to be paid by the one party to the other as such Judges or Commissioners shall then or afterwards think fit to order—AND in case of non-payment the amount of such costs may be reco-

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vered by Action of Debt in the Supreme Court or (if under thirty pounds) by suit or plaint in the Court of Requests holden in and for the District of Hobart Town.

GEORGE ARTHUR.

Passed the Legislative Council this sixteenth day of October one thousand eight hundred and thirty-five.

ADAM TURNBULL, *Clerk of the Council.*

**SCHEDULE A.**

I *A. B.* do solemnly swear that I will faithfully impartially and to the best of my ability execute the duties which shall devolve on me as a Commissioner under the Act of this Island intituled *An Act for the Settlement of Claims to Grants of Land and for other purposes relating thereto.* I swear also that I will not directly or indirectly receive or knowingly permit any other person to receive any fee or reward for any thing done or to be done under the said Act excepting only such as the said Act appoints or authorizes—So help me God.

[Signature]

Sworn before me at

this

day of

183 .

[Signature of Judge.]

SCHEDULE B.

Fees.

	s.	d.
For every claim (by original locatee)	1	0
For every claim (not by original locatee) [exclusive in each case of expenses of advertising]	5	0
For every counter claim or caveat	20	0
For every report by Chairman only (in favour of original locatee)	2	6
For every report in favour of claimant not an original locatee but not being opposed	20	0
For every hearing before the three Commissioners	20	0
For ditto in contested cases (to be paid by claimant but repaid by opposing party if so ordered by Commissioners)	20	0
For every report in such cases (by same party)	40	0
For every summons containing not more than four names	2	6
For every witness sworn	1	0
For every affidavit or exhibit	0	6
For every order	5	0
For settling every special case (in appeals)	40	0
For stating a case for the opinion of the Judges or settling a feigned issue	20	0

N.B.—The sums in this Schedule are exclusive of the fees of 40s. and 5s. made payable by The King's Instructions on the issue of a Grant.