

No. XXIX.

An Act further to amend the Lands Acts of 1861 and the Act of 1875. [25th May, 1880.]

LANDS ACTS
FURTHER
AMENDMENT.

WHEREAS it is expedient to amend the "Crown Lands Alienation Act of 1861" the "Crown Lands Occupation Act of 1861" and the "Lands Acts Amendment Act 1875" Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. The fifteenth eighteenth thirty-first and fortieth sections of the "Lands Acts Amendment Act 1875" and the twenty-fifth section of the "Crown Lands Alienation Act of 1861" are hereby repealed Repeal of enactments. Provided that such repeal shall not prejudice or affect any rights of the Crown or of any person already lawfully acquired thereunder.

2. So much of sections one thirteen and eighteen of the "Crown Lands Alienation Act of 1861" and of section twenty-two of the "Lands Acts Amendment Act 1875" as may require that improvements upon land conditionally purchased should be of the value of one pound per acre is hereby repealed and it shall be sufficient for all the purposes of the said Acts or of this Act if such improvements upon land conditionally purchased shall be of the value of ten shillings per acre Reduction of value for improvements to ten shillings per acre. Provided that the reduction of the value of improvements shall not apply to conditional purchases which have been declared forfeited or otherwise finally dealt with except in cases where such forfeiture shall have been revoked by the authority of the Governor.

3. The holder of any conditional purchase who either by himself or those through whom he claims shall have resided upon his conditional purchase for three years and shall have made or shall hereafter make due declaration of such residence and pay or have paid the balance of his purchase money or interest or instalment thereof as by the said Acts required may make application to the Minister for an extension of the time for completion of his improvements to a further term of two years and if the Minister shall be satisfied that the several other conditions of such purchase have been duly performed and that improvements of a fixed and durable character of a value not less than six shillings per acre have been already made he shall grant such extension and on completion of the improvements to the total value of ten shillings per acre such holder shall become entitled to a grant as provided by the said Acts Extension of time for improvements. Provided that during such extended term the conditional purchase shall continue to be the residence *bonâ fide* of such holder and shall be liable to forfeiture for non-residence as during the original term of three years.

4. When any land shall be purchased within any pastoral leasehold by any person other than the leaseholder the land agent shall within one week of the date of such purchase notify the same through the post to the pastoral tenant within whose leasehold such purchase shall have been made Notification to pastoral tenants. And no person making such purchase shall acquire any rights of impoundage as regards the stock (unless herded) the property of or depastured by the pastoral tenant upon such leasehold until fourteen days after the date of such purchase.

5. In respect of any land conditionally purchased after the passing of this Act the term of five years shall be substituted for that of three years prescribed by the eighteenth section of the "Crown Lands

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Lands Alienation Act of 1861" and the twenty-second section of the "Lands Acts Amendment Act 1875" for the residence of the conditional purchaser upon such land and the improvement thereof as by the said Acts and this Act required. Provided that every conditional purchaser shall at the expiration of three years from the date of his conditional purchase or within three months thereafter make due declaration under the first-mentioned section that such land has been his *boná fide* residence continuously from within three months of such purchase and that fixed and durable improvements of a value not less than six shillings per acre have been made thereon and shall duly pay and thereafter continue to pay the instalments of the balance of purchase money inclusive of interest required by the eighth section of the Act secondly hereinbefore mentioned. Provided also that any such land which shall at any time within five years from the purchase thereof cease to be the *boná fide* residence of the lawful holder thereof for the time-being otherwise than by reason of his decease or insolvency as hereinafter provided or which shall not have been duly improved to the value of six shillings per acre within three years and of ten shillings per acre within five years after such purchase or in respect of which the payments for instalment of the purchase money and interest as hereinbefore recited shall not have been duly made shall be liable to forfeiture as in the said Acts respectively provided.

The like as to mining conditional purchases.

6. The Minister may extend to five years the term within which the expenditure of two pounds per acre on mining operations other than gold-mining shall be completed upon any conditional purchase under the nineteenth section of the "Crown Lands Alienation Act of 1861" on being satisfied that at the end of three years from the date of the purchase not less than twenty-four shillings per acre has been expended thereon in mining operations other than for gold.

Limitation of transfers.

7. Except as hereinafter provided no conditional purchase made after the passing of this Act shall be transferable until the conditional purchaser shall have resided thereon for five years from the date of such purchase but if an additional conditional purchase the same may be transferred in conjunction with the original purchase after the expiration of the said five years from the date of such original purchase. Provided that nothing contained in this section shall apply to mineral conditional purchases.

Modification of boundaries &c.

8. Whenever it shall appear to the Minister desirable portions of Crown Lands may be measured across any frontage road or intended frontage road and may be so applied for by any conditional purchaser and notwithstanding anything in the thirteenth section of the "Lands Acts Amendment Act 1875" the Minister if it shall appear desirable may extend the length or breadth of the boundaries of any rectangular block beyond eighty chains and necessary roadways and sites for and sources of water supply and for stations for trigonometrical survey may be excluded from any measurement.

Road of access through leased land.

9. Every purchaser of Crown Lands and every holder of a lease or license shall be entitled to a road of access and also to free ingress and egress thereby to and from the lands held by him through and over any Crown Lands whether under lease or not if no access to the lands held by him by means of a reserved or proclaimed road or track shall be provided. Provided that such road shall not interfere with any buildings garden stock or drafting yards belonging to such lessee and shall in every case follow such a direction and be so marked as to occasion as little damage or inconvenience to the lessee as may be possible. Provided that the Minister shall have power to close roads provided for in this clause upon giving three months notice to that effect in the *Gazette*.

No waiver by acceptance of interest purchase money or rent.

10. The acceptance by or on behalf of the Crown of any purchase money or part thereof in respect of any conditional purchase or of interest money on any balance thereof or of rent or other payment under

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under any lease or license shall not be held to have operated or to operate hereafter as a waiver by the Crown of any forfeiture accruing by reason of the breach of any condition precedent or subsequent annexed by law to the estate or interest of a conditional purchaser lessee or licensee. But nothing herein contained shall affect any proceedings instituted in any Court before the commencement of this Act or any case where it shall be proved that the Crown through the Minister or any authorized officer has had full knowledge by notice or otherwise of the breach of any such condition before the acceptance of such money interest rent or other payment. Proviso.

11. Crown Land which after having been conditionally purchased may have reverted to Her Majesty or may have been forfeited shall not be open to be again purchased conditionally or otherwise until after the expiration of thirty days after such reversion or forfeiture shall have been duly notified in the *Gazette*. And no improvements effected during the said thirty days on such reverted or forfeited lands shall constitute a title to purchase the same as improved lands. Provided that no such land shall revert to the run until after the expiration of thirty days anything in law to the contrary notwithstanding. Forfeited selections.

12. Whenever the temporary reservation of any lands shall be revoked by the Governor the land upon which any improvements not less than twenty shillings per acre in value are made may notwithstanding their existence be conditionally purchased. And should an application be made to conditionally purchase such land so improved the applicant must state in his application that he is willing to purchase the improvements and pay for them the amount fixed by appraisalment and shall at the time of making the application pay a deposit of ten per cent. upon the supposed value of such improvements and shall pay the balance within three months of the notification in the *Gazette* of the amount fixed in such appraisalment or forfeit his conditional purchase and such improvements shall be held to be part of the improvements required to be made in conformity with the provisions of the second section of this Act or may be sold by public auction and the estimated value of such improvements shall in that case be added to the upset price and be paid into the Consolidated Revenue or the land may be retained for public purposes. Provided that nothing in this clause shall prevent the Governor from selling by appraisalment any improved reserved land the improvements upon which were made before the reservation thereof or before the first day of July one thousand eight hundred and seventy-six. Provided also that no temporary reservation of any such lands shall be revoked until after survey by way of subdivision thereof. Improvements upon reserves declared to be of no effect.

13. After the passing of this Act no land shall be sold to any pastoral lessee under the second clause of the "Lands Acts Amendment Act 1875" in virtue of improvements upon his run unless the Minister shall be satisfied that such improvements are of a fixed and durable character erected constructed or effected *bonâ fide* for the working and beneficial occupation of the run for pastoral purposes and that the alienation of such lands is not likely to prejudice or affect injuriously the value of adjacent Crown Land. And the Minister may in any case fix a higher minimum price than that provided by the said clause and the land may be sold at such price without appraisalment unless the Minister shall deem an appraisalment advisable. And the total area to be sold in any run in virtue of improvements hereafter applied for shall not exceed one twenty-fifth part of the total area of such run on the first January one thousand eight hundred and seventy-eight or the commencement thereafter of the term of lease unless in the case of any run out of which purchases in virtue of improvements have not already been made to the extent of double the Limitation as to improvements.

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one twenty-fifth part aforesaid and in such cases up to double such twenty-fifth part in all of the area of the run Provided that the area to be sold in virtue of improvements as aforesaid shall be taken up in blocks not exceeding four in number Provided that land purchased in virtue of improvements having a frontage shall be measured in a rectangular form with a depth of not less than sixty chains.

Pre-emptive leases.

14. Notwithstanding anything to the contrary contained in the thirty-fifth section of the "Lands Acts Amendment Act of 1875" whenever a conditional purchaser of Crown Lands situated within a pastoral lease shall apply for a pre-emptive lease in virtue of his conditional purchase and it shall appear that there is not sufficient adjoining land within such pastoral lease to admit of the cancellation therefrom of the area mentioned in the said section it shall be lawful for the Minister to approve of the withdrawal for the purpose of pre-emptive lease of any adjoining land out of any adjoining pastoral lease but not until all the available adjoining land within the original pastoral lease shall have first been exhausted.

Pastoral tenant may remove improvements from land selected or pre-emptively leased.

15. In the event of the sale conditional or otherwise of any portion of land held under lease or promise of lease from the Crown for pastoral purposes or in the event of the conferring of any pre-emptive right of lease over land so held the lessee holding under such first-mentioned lease or promise of lease may separate remove and carry away from the land so sold or leased or under pre-emptive right any fencing or other improvements which may be upon or may adjoin the lands so sold or leased (and which shall be capable of being separated removed and carried away from the said land) and for this purpose he may either for himself personally or for his agents and servants have such right of entry on and over the lands so sold or leased as may be reasonable and required for the purpose of such removal Provided that all such improvements may be removed within three months after notice in writing has been given to such lessee of the cancellation of the pastoral tenure either by sale or otherwise Provided also that no improvement on the said land which shall not be or which is not capable of being so separated removed and carried away shall be destroyed damaged or disturbed by the holder of such lease or promise of lease but he shall be entitled to be paid and recover in the nearest Court of Petty Sessions from the person purchasing or obtaining a pre-emptive lease of the said land compensation for such improvement in respect of such conditional purchase and pre-emptive lease respectively such compensation to be assessed according to the value of the same to a conditional purchaser.

Appointment of appraisers.

16. Whenever it shall become necessary or desirable that any price rent value or sum of money should be fixed or ascertained by appraisement under the hereinbefore recited Acts or this Act such appraisement shall be made by one or more appraisers appointed by the Minister charged with such appraisement anything in the said Acts to the contrary notwithstanding and every appraisement so made shall unless altered or vetoed by such Minister after the receipt of a report and recommendation from three such appraisers be binding final and conclusive as if made by appraisers or an umpire appointed in the manner in the said Acts provided and all the provisions of the said Acts as to an appraisement by a single appraiser shall apply to such appraisement and every appraiser so appointed shall have the like powers except as to awarding costs.

Minimum rent of runs.

17. No appraisement made for the purpose of determining the rent upon renewal of any existing lease of Crown Lands shall be at a lower rate than one pound per section of six hundred and forty acres but in the case of any appraisement of a run made for the first and second leases thereof the appraisement may be at a rate lower than one pound but not lower than ten shillings per section.

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18. When any portion of Crown lands not being forfeited or vacated runs shall have become vacant or abandoned or shall have been withdrawn from the pastoral lease for the site of a town or village or for any other purpose it shall be lawful for the Minister to let such land by public auction on an annual license at a minimum upset price of not less than one pound per section.

Lands may be let by public auction in certain cases.

19. For the purpose of the thirty-eighth section of the "Lands Acts Amendment Act of 1875" relative to the leasing of Crown lands for the erection of wharfs or jetties Crown lands shall mean any land under the sea or land under the waters of any harbour bay lake river creek or navigable stream Provided always that no such lease shall be made of land adjoining the frontage of any proprietor who is within the meaning of the ninth section of the "Crown Lands Alienation Act of 1861" except to or with the consent of such proprietor Provided also that no such lease shall be made which shall be calculated in any way to interrupt or interfere with the right of navigation or with the rights or interests of proprietors of land having frontages adjoining to the land so proposed to be leased And provided also that the intention to grant a lease of such land shall have been previously announced in the *Gazette* for four consecutive weeks before such lease is granted.

Leasing of lands for erection of wharfs and jetties.

20. The words contained in section thirteen of the "Crown Lands Alienation Act of 1861" "the then last census" shall mean the then last census published by the authority of the Government.

Meaning of words "the then last census."

21. Crown lands temporarily reserved from sale under the provisions of the "Crown Lands Alienation Act of 1861" shall not be sold or otherwise disposed of before the expiration of thirty days after such reservation shall be revoked by the Governor by a notice published in the *Gazette*.

No sale of land reserved until reservation revoked.

22. It shall be lawful for the Governor to correct or alter the design or plan of any town or village and the limits of any suburban lands attached thereto in any case where the site of such town or village has been notified under the "Crown Lands Alienation Act of 1861" or shall be notified under this Act Provided that notice of the intention so to correct or alter such design plan or limits shall be published in the *Gazette* and in a local newspaper (if any) and that no such correction or alteration shall be carried into effect until the expiration of three months from such notification And provided further that every such correction or alteration shall be notified in the *Gazette* and that an abstract thereof shall be laid before Parliament within thirty days after such notification if Parliament be then in session and if not then within thirty days after the commencement of the then next session.

Alteration of plan of town or village.

23. If any conditional purchaser of Crown land shall die before the fulfilment of all the conditions hereinbefore prescribed his conditional purchase shall be held by his devisee executors or administrators or his or their assigns as the case may be subject to the fulfilment by them of all unfulfilled conditions except the condition of residence but in trust for and for the benefit of the persons rightfully entitled And any sale transfer or other disposition whatsoever of the estate right title or interest of any such conditional purchaser by an official assignee or other lawful authority upon the insolvency of such purchaser or by a Sheriff or Registrar of a District Court or any other person by virtue or under the authority of any writ of execution or other process of any Court or by the trustees of any deed of assignment for the benefit of creditors or by any person under any decree or order of any Court shall pass to a purchaser or to any other person only such estate right title or interest as the conditional purchaser himself was entitled to at the date of sequestration writ process decree order or assignment respectively and subject to all conditions of a conditional purchaser remaining unfulfilled at such date.

Devolution of conditional purchase.

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Restriction upon second conditional purchases.

24. Except under the nineteenth twenty-first and twenty-second sections of the "Crown Lands Alienation Act of 1861" no person who after the passing of this Act has made a conditional purchase shall be capable of making another within five years of the date of such purchase.

Lands put up and not sold.

25. Any Crown lands put up for sale by public auction and not sold may be again put up in like manner. Provided that all lands other than town or suburban so put up and not sold shall be open for sale at the upset price or in case the land so put up is sold at the upset price or a higher price and the purchaser fails to comply with the provisions of the twenty-sixth section of the "Crown Lands Alienation Act of 1861" the Governor in Council may declare such sale and contract void and upon a notification to that effect in the *Gazette* the land so sold shall be open for sale at the price for which it was purchased. Provided also that the Minister or an officer authorized by him may withdraw any such lands from selection and may again submit them to public auction.

Where new road opened old to be taken as compensation.

26. In any case where the opening of a new road or the diversion of an existing road through alienated land shall have rendered unnecessary any existing road through the same land such existing road or any part thereof may with his consent be granted in full or part satisfaction to the owner of the land or if the road so rendered unnecessary be a boundary road it may be granted in like manner in lieu of the new or diverted road.

Resumption for road.

27. If at any time it shall be deemed expedient to open a road through any land conditionally purchased it shall be lawful for the Governor in Council by notice in the *Gazette* to resume so much of the land as may be required for the purpose as such road. Provided that the several provisions of the Act Fourth William Fourth number eleven shall apply to any land so resumed as in the case of ordinary freehold land.

Improvement purchases on Gold Fields.

28. Notwithstanding anything contained in section two of the "Lands Acts Amendment Act of 1875" in reference to sales in consideration of improvements of lands on proclaimed gold fields within areas reserved from conditional sale no person shall be entitled to make more than one of such purchases unless the second or any subsequent purchase shall be distant more than three miles from each other.

Crown land within proclaimed gold field.

29. Any Crown land within a proclaimed gold field which may after the passing of this Act be sold by auction or in virtue of improvements or otherwise shall be subject to the following provisions— Any person specially authorized by the Minister in that behalf shall be at liberty to dig and search for gold within such land and should the same be found to contain auriferous deposits it shall be in the power of the Governor in Council to annul the sale and thereupon the purchaser or his alienee shall be entitled to compensation for the value other than auriferous of the land and improvements such value to be determined by appraisalment.

Governor in Council may make Regulations.

30. The Governor in Council may make and proclaim regulations not inconsistent with the provisions of this Act for carrying this Act into full effect so as to provide for all proceedings matters and things arising under this Act and not herein expressly provided for. And all such regulations shall upon publication in the *Gazette* be valid in law. Provided that a copy of every such regulation shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the then next ensuing Session.

Short title.

31. This Act may be cited for all purposes as the "Lands Acts further Amendment Act 1880" and shall be read with and as forming part of the said firstly hereinbefore cited Acts.