

T A S M A N I A.



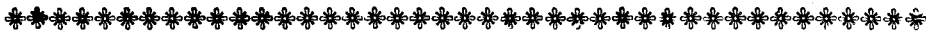
1858.

*Vide 6. Will: 4. 70. 11.  
3 Vic: 70. 6.*

ANNO VICESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 10.



AN ACT for transferring to the Supreme Court the Jurisdiction heretofore exercised by the Commissioners for examining into Claims for Grants of Land. [22 October, 1858.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1** Subject to the provisions of this Act, the powers and jurisdiction vested by the Acts of Council relating to the Settlement of Claims to Grants of Land (6th *William* 4th, No. 11, and 3rd *Victoria*, No. 6) in the Commissioners appointed under the authority of those Acts, are hereby transferred to and vested in the Supreme Court of *Tasmania*. Jurisdiction of Commissioners of Caveat Board transferred to Supreme Court.

**2** The Supreme Court, in the exercise of the jurisdiction conferred by this Act, shall have the same power and authority as the said Court has in its Common Law jurisdiction, in compelling the attendance of witnesses and the production of documents, in dealing with contempts, and in all other respects as a Court of Record; and each of the Judges shall have the power which is vested in the Commissioners by Section 5 of the said Act of 3rd *Victoria*, No. 6. Supreme Court and Judges in exercising jurisdiction under this Act to have the same powers as in their ordinary jurisdiction.

**3** If after hearing any Claim the Court should think such a course best calculated to attain substantial justice, it shall be lawful for the Court to direct any Question of Fact in dispute between the parties to be Court may direct Questions of Fact to be tried by a Jury.

tried by a Jury ; and such Question of Fact may be stated for trial in an Issue in the form in the Schedule ; and such Issue may be entered for trial, and tried accordingly, in the same manner as any Issue joined in an ordinary Action, excepting that the same kind of evidence shall be admissible on the trial of such Issue which would be admissible in the hearing of Claims before the Court ; and the proceedings in such Issue shall be under and subject to the ordinary control and jurisdiction of the Court.

Claims may be reheard by order of Court.

**4** Upon the application of any party interested, the Court may direct any Claim to be reheard upon such cause being shown, and within such time after the first hearing, and upon such terms and conditions as to costs and otherwise, as the Court thinks proper.

Decision of Court conclusive. Governor to issue Grant in accordance with Report.

**5** Subject to such rehearing, if allowed, the Decision and Report under this Act of the Court upon any Claim shall be binding, final, and conclusive between the parties concerned ; and in every case in which the Court certifies by its Report that a Grant ought to issue, the Governor shall cause to be issued a Grant in the name of Her Majesty, under the Public Seal of the Colony, in accordance with such Report.

Claims to be sent to, and Advertisements published by, the Clerk of the Court.

**6** All Claims for Grants of Land, or any interest therein, and all counter Claims or Caveats against the issue of Grants under the said Acts, shall be filed with the Clerk of the Supreme Court, at his Office ; and all Advertisements required to be made of any such Claims or otherwise, under the said Acts, shall be published by and in the name of the said Clerk.

Undisputed Claims may be decided by Clerk of Supreme Court.

**7** So far as respects undisputed Claims, the Clerk of the Supreme Court shall, in the cases specified in Section 2 of the said Act of 3rd *Victoria*, No. 6, have the same power to examine and report as is by that Section vested in One Commissioner ; and he shall also have the power which by Section 3 of the same Act is vested in One Commissioner.

Principle of decisions.

**8** In examining into and reporting upon all such applications and matters as aforesaid, the said Court and Clerk of the Court 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 the said Court or Clerk of the Court be bound by the strict rules of Law or Equity in any case, or by any technicalities or legal forms whatever.

Grants to be prepared in Office of Surveyor-General under direction of Court or Clerk of Court.

**9** All Grants issued under the authority of the said Acts shall be prepared in the Office of the Surveyor-General, subject to the direction of the Court or Clerk of the Court, as the case may be, deciding or reporting that such Grant should issue ; and the Surveyor-General shall cause all such Grants to be prepared in his Office, in accordance with the directions of such Court or Clerk.

Clerk of Court to keep books and documents in his Office.

**10** The Clerk of the Supreme Court shall be the Registrar of the Court in respect of the matters to which this Act relates, and as such Registrar shall keep and preserve in his Office such books as the Court directs, and such papers and documents relating to such matters as are filed with him, and such other documents as the Court from time to time directs ; and all books, papers, and documents now in the Office of the said Commissioners shall, within One month after this Act takes

Transfers custody of Caveat Board books and papers.

effect, be delivered to the said Clerk, and shall be kept by him in his Office as such Registrar.

**11** All Fees and Moneys payable under the first named of the said Acts to or at the Office of the Commissioners, or either of them, shall be paid to the Clerk of the Supreme Court, and by him accounted for to the Colonial Treasurer, as provided by Section 16 of the said Act in the case of the Chairman of the Commissioners, and shall form part of the General Revenue; and the deposit of money mentioned in Section 17 of the said Act shall be made with the said Clerk, who is hereby invested with the powers and discretion vested in the Chairman by the said Sections 16 and 17 of the said Act, but no promissory note shall be required as specified in the said Section 17.

Payment and appropriation of Fees.

**12** The Judges of the Supreme Court are hereby empowered, from time to time, to make General Rules for facilitating the objects and carrying into effect the purposes of this Act and the said Acts, and for regulating the times and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act and the said Acts relate; and such Rules may from time to time be rescinded or altered by the like authority, and shall take effect as General Rules of the Court: Provided, that, until rescinded or altered by the Court, the Rules now in force made under the authority of the said Acts, and the practice hitherto adopted, shall continue in force so far as applicable under this Act.

Power to Judges to make General Rules for regulating proceedings, &c.

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**13** So much of the said Acts of the 6th *William* 4th, No. 11, and the 3rd *Victoria*, No. 6, as authorises the appointment of Commissioners for the purposes therein mentioned, and so much of the same Acts as is inconsistent with this Act, is hereby repealed; and the now existing Commission issued under the authority of the first-named Act is hereby annulled; and all Claims pending before, and all business whatsoever undisposed of in the Office of, the said Commissioners, are hereby transferred to the Supreme Court or the Clerk of the Court, as the case may require, and such pending Claims or business undisposed of shall be proceeded and dealt with under this Act in the same manner as if the same had been commenced under this Act; and the Judges of the said Court are hereby authorised to make such Orders and adopt such measures as may appear to be necessary or just for effectuating such transfer, and for further proceeding in such Claims or business.

So much of 6 W. 4, No. 11, and 3 Vict. No. 6, as relates to appointment of Commissioners, &c. repealed.

**14** In any case in which at the time when this Act takes effect a right of Appeal to the Judges of the Supreme Court against any decision of the said Commissioners exists, such right may be exercised as if this Act had not been passed.

Saves existing rights of Appeal.

**15** This Act and the said recited Acts shall, except in so far as the said Acts are repealed or altered by this Act, be read and construed together as one Act.

This Act and 6 W. 4, No. 11, and 3 Vict. No. 6, to be read as one Act.

**16** In referring to the said Act of the 6th *William* 4th, No. 11, it shall be sufficient to use the expression *The Claims to Grants of Land Act, No. 1*; and in referring to the said Act of the 3rd *Victoria*, No. 6, it shall be sufficient to use the expression *The Claims to Grants of Land Act, No. 2*; and in referring to this Act it shall be sufficient to use the expression *The Claims to Grants of Land Act, No. 3*.

Short Title.

## SCHEDULE.

## FORM OF ISSUE.

In the Supreme Court of *Tasmania*.

The

day of

1858.

TASMANIA }  
TO WIT. }

WHEREAS *A.B.* affirms, and *C.D.* denies, that [*here state the Question or Questions of Fact to be tried*] And it has been ordered by this Honourable Court, in pursuance of *The Claims to Grants of Land Act, No. 3*, that the said Question shall be tried by a Jury: Therefore let the same be tried accordingly.