ANNO DECIMO TERTIO

VICTORIÆ REGINÆ.

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Session X. No. I.

CROWN LANDS.

AN ORDINANCE to regulate the Occupation of Waste Lands of the Crown in the Province of New Ulster. [23*rd August*, 1849.]

Preamble.

WHEREAS it is expedient to make provision for the management of the waste lands of the Crown in the Province of New Ulster:

BE IT THEREFORE ENACTED by the Governor-in-Chief of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

I.—COMMISSIONERS OF CROWN LANDS, THEIR APPOINTMENTS AND POWERS.

Commissioners of Crown Lands.

1. For the purposes hereinafter mentioned there shall be appointed a fit number of persons, being Justices of the Peace, who shall be and be called Commissioners of Crown Lands.

Appointment and tenure of office.

2. Every such Commissioner shall be appointed by Her Majesty, her heirs and successors, and shall hold his office during Her Majesty's pleasure: Provided that it shall be lawful for the Governor to appoint any such Commissioner provisionally until Her Majesty's pleasure shall be known.

Rules for their guidance.

3. It shall be lawful for the Governor from time to time to make and issue such rules and regulations as to him may seem meet for the management of the waste lands of the Crown, and for the guidance of such Commissioners in their office, and such rules and regulations to make and alter as occasion may require: Provided always that the rules and regulations so to be made as aforesaid shall not come into operation until the expiration of fourteen days after a copy of the same shall have been published in the New Zealand Government *Gazette*.

Powers to Commissioners to hear and determine disputes &c.

4. It shall be lawful for every such Commissioner to hear and inquire into all disputes and differences between the occupiers of Crown lands, respecting encroachments and trespasses on Crown lands occupied by them, and to limit and define the boundaries of all cattle runs as occasion may require, to take evidence on oath touching any such matter of complaint, and to determine the same in a summary way.

And to award damages not exceeding £20.

5. In case compensation shall be claimed in respect of any such encroachment or trespass, it shall be lawful for any such Commissioner to order the aggressor to pay to the party aggrieved such sum by way of damages as to such Commissioner may appear reasonable, to be recovered in a summary way: Provided that the amount to be awarded

awarded as aforesaid shall in no case exceed the sum of twenty pounds.

6. In case any person shall unlawfully intrude upon occupy or take possession of any Crown land, and shall refuse or neglect to deliver up and quit the possession of the same for the space of ten days after personal service upon him or his agent or overseer of a notice to quit the same, signed by any such Commissioner, it shall be lawful for such Commissioner to enter upon the said lands with such assistance as may be necessary, and to take possession of the same on behalf of the Crown, together with any houses or other improvements which may have been made thereon, and the same to deal with as he shall deem most expedient for the purpose of expelling such persons therefrom, and also to expel and remove all persons found trespassing thereon. And to expel trespassers.

7. It shall be lawful for any such Commissioner to give any notice, make any claim or demand, and to make any entry or to authorize any person to make any entry, which may be requisite or expedient to be given or made by or on behalf of Her Majesty, her heirs or successors, for the purpose of compelling any occupier of any part of the Crown land to quit or deliver up the possession thereof, or to compel the performance of any contract in relation thereto, or to recover possession on non-performance of any contract, or to compel the payment of any sum of money which ought to be paid in respect thereof, and to do any other matter or thing which may be expedient on behalf of Her Majesty, her heirs and successors, touching any of the lands of the Crown; and every act matter or thing done or authorized to be done by any such Commissioner shall be deemed and taken to be done on behalf of Her Majesty, her heirs and successors, any law custom or usage to the contrary notwithstanding. And to recover possession.

8. It shall also be lawful for any such Commissioner, by himself or any person whom he shall for that purpose depute, to make distress for any rent which shall be due in arrear or unpaid from any lessee tenant or occupier of any Crown land, and the goods chattels and effects so distrained to impound sell and dispose of as in ordinary cases of rent in arrear. And to distrain for rent.

9. It shall be lawful for such Commissioner at his discretion to charge and receive for the decision of any disputed question which he is authorized to determine by the provisions of this Ordinance, a fee of five pounds, to be paid by the party against whom his decision shall be made, to be recovered in a summary way. And to charge a fee for his decision.

10. All fees and sums of money except as hereinafter provided received by such Commissioner under the provisions of this Ordinance shall be accounted for and paid over quarterly to the Colonial Treasurer, to the use of Her Majesty, her heirs and successors, for the public use of the Province and the support of the Government thereof. To be paid into the Treasury.

II.—ASSESSMENT ON STOCK DEPASTURED ON CROWN LANDS NOT BEING WITHIN THE LIMITS OF A HUNDRED.

11. No person shall depasture cattle on or otherwise occupy any waste lands of the Crown without a license for that purpose in such form and subject to such conditions as the Governor for the time being shall from time to time prescribe by notice in the New Zealand Government *Gazette*. License to be granted.

12. Any person depasturing cattle on any waste lands of the Crown not being within the limits of a hundred, shall make or cause to be made to and deposited with a Commissioner of Crown Lands, in the month of September in every year, commencing in September, Return of stock to be made by owner.

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one thousand eight hundred and forty-nine, a return according to the form contained in the Schedule hereunto annexed marked A, of all such cattle in his possession on the first day of the same month of September; and if any such person shall fail to make or cause to be made such return at the time so appointed, or shall omit to deposit the same with a Commissioner in manner hereby required, he shall forfeit and pay for every such offence any sum not less than forty shillings nor more than twenty pounds, to be recovered in a summary way; and if any person shall knowingly make any false statements in any such return, he shall forfeit and pay for every such offence any sum not less than fifty pounds nor more than one hundred pounds, to be recovered by action in the Supreme Court at the suit of any such Commissioner as aforesaid.

Assessment to be levied on stock.

13. There shall be levied and paid in advance in each and every year for and in respect of all cattle depastured or kept upon any such waste lands of the Crown the assessment following, that is to say,—For every head of great cattle, sixpence; for every head of small cattle, one penny; which assessment shall be paid by the person depasturing such cattle into the Colonial Treasury on or before the first day of December in every year, the first payment thereof to be made upon the first day of December, one thousand eight hundred and forty-nine.

According to returns.

14. Every such Commissioner shall, on the first day of October in every year, commencing on the first day of October next, make an assessment of the cattle depastured as aforesaid, and shall make a yearly report thereof to the Colonial Treasurer or to such other person as may be appointed in that behalf, in the form and containing the several particulars set forth in the Schedule to this Ordinance annexed marked B, according to which report such yearly assessment as aforesaid shall be paid at the time and in manner aforesaid.

Notice to be given to parties liable to assessment.

15. On or before the first day of November in every year a Commissioner shall cause a notice in writing to be served upon the person liable for the payment of the same, or left at his usual place of abode or with the superintendent or person having the charge of the said cattle, requiring payment of such assessment as aforesaid.

Appeal allowed.

16. In case the sum mentioned in such notice shall appear to the person required to pay the same to be an overcharge, it shall be lawful for such person to appeal against such assessment to the nearest Resident Magistrate or to any two Justices of the Peace: Provided that notice in writing of appeal and the grounds thereof shall be given to the said Commissioner by the person appealing within ten days after notice of such assessment shall have been so served as aforesaid, and that a recognizance shall be entered into before the said Commissioner by the person appealing in double the amount of such assessment conditional personally to appear and try the said appeal, and to abide the judgment of such Magistrate or Justices, and to pay such costs and expenses as may be awarded in that behalf. The Magistrates or Justices to whom such appeal shall be made are hereby authorized and required to hear and determine the matter of such appeal and to make such order therein as may seem meet; and in case of the dismissal of the appeal or of the affirmance of the assessment, shall order the person who shall have made such appeal to pay the amount of such assessment, together with the costs, into the Colonial Treasury within ten days from the making of such order; such costs, if not paid as aforesaid, to be recovered in a summary way.

Amount due recoverable by distress.

17. In case any person liable for the payment of such assessment, of which due notice shall have been served as aforesaid, shall refuse or neglect to pay the amount due within the time prescribed by this Ordinance, it shall be lawful for a Commissioner to issue a warrant under

under his hand and seal directed to some constable to levy the amount so due, with interest at the rate of eight pounds per every one hundred pounds per annum, by distress and sale of a sufficient part of the cattle or other goods and chattels of the party liable, in like manner as in case of rent in arrear between landlord and tenant.

18. If at any time the amount payable by any party for any such assessment shall be in arrear and unpaid for three calendar months after the same shall become due, it shall be lawful for a Commissioner to declare by notice, to be published in the Government *Gazette*, that such person has forfeited his license, and such person shall thereupon be liable to be proceeded against under the provisions of this Ordinance as an unlicensed person: Provided that such notice may at any time be revoked by the authority of the Governor, and thereupon such license shall be deemed to be again in full force; such revocation to take effect from such time as the Governor shall in that behalf provide in a notice to be published in the New Zealand Government *Gazette*.

In case of nonpayment license may be cancelled.

III.—MANAGEMENT OF CROWN LANDS WITHIN THE LIMITS OF A HUNDRED.

19. Whenever the Governor shall by proclamation have divided any county or settled portion of the Province into hundreds, the right of pasturage on waste lands of the Crown in any such hundred, and the apportionment of the same, shall be exercised and enjoyed exclusively by the persons who shall take out a depasturing license as hereinafter provided, being occupants of land held under grants from the Crown, pensioners enrolled for service in New Zealand, or persons of the Native race or half-castes respectively occupying land within the hundred with the permission of the Government.

Right of pasturage to be limited to persons holding a license.

20. A depasturing license shall be granted to every such occupant who shall apply for the same to the Commissioner of Crown Lands on or before the first day of January in each year, provided he shall have deposited with such Commissioner a return in the form in Schedule C hereunto annexed of the number of acres occupied by him under a grant from the Crown, or in the case of the pensioners enrolled for service in New Zealand, persons of the Native race, and half-castes, occupied by permission of the Crown, within such hundred.

License to be granted to any occupant.

21. Every such license shall commence and take effect on the first day of January, and shall continue in force for one year.

License to be in force for one year.

22. For every such license there shall be paid to the Commissioner of Crown Lands, previous to its issue, the sum of ten shillings and sixpence.

Fee to be paid for license.

23. As soon as conveniently may be after the first day of January in each year, the Commissioner of Crown Lands shall publish in the Government *Gazette* a list of the persons to whom and the names of the hundreds in respect of which such licenses shall have been granted.

List of licensed persons to be published in Government *Gazette*.

24. The persons whose names shall be comprised in such list shall have the exclusive right of pasturage on the waste lands of the Crown within the hundred in respect of which they shall hold such license.

Persons comprised in such list to have exclusive right of pasturage.

25. As soon as conveniently may be after the publication of such list, the Commissioner shall in each hundred call a meeting of such persons for the purpose of electing from among themselves, by a majority of votes, three persons to be called Wardens, who shall have the regulation and apportionment for the current year of the right of pasturage within the hundred as hereinafter provided.

And to have power to elect Wardens.

26. At every such meeting the Commissioner shall preside.

Commissioner to preside at elections.

And to have a casting vote.

27. No person entitled to vote at any such election shall have more than one vote, but in case of an equality of votes the Commissioner shall have a casting vote.

Vacancies how supplied.

28. In the event of the death resignation or refusal to act of any of the persons so elected as aforesaid, the vacancy shall be filled up by an election to be conducted in manner hereinbefore provided.

Wardens to have power to apportion &c. cattle to be depastured.

29. It shall be lawful for the Wardens, at any time within two calendar months after their election, to compute the quantity of cattle capable of being depastured on the waste lands of the Crown within the hundred, to determine the description of cattle to be depastured thereon, and to apportion the number of great cattle and small cattle which may be depastured for the then current year by each person holding such license as aforesaid, regard being had to the quantity of land occupied by each such person, or to the price or sum per acre which may have been paid into the Public Treasury, or to such other general rule as the Wardens may deem better suited to the condition of the hundred: Provided always that it shall be lawful for such Wardens to allow to unlicensed owners of land within any such hundred the right of depasturing cattle on such waste lands in proportion to the quantity of unenclosed land within the hundred belonging to such unlicensed person.

Regulations made by Wardens to be published.

30. The regulations so to be made shall be agreed to by two at least of the Wardens, and a copy of the same under their hands shall, as soon as conveniently may be, be furnished to the Commissioner for publication in the Government *Gazette*.

Failing an apportionment by Wardens, Commissioner to have power.

31. In case the Wardens shall neglect to make such regulations within the period aforesaid, all the powers hereinbefore given to such Wardens shall be held and exercised by the Commissioner of Crown Lands.

Power to Wardens to make by-laws.

32. For the purpose of providing for the safety of the cattle to be depastured within any hundred, for improving the run, for preventing the intrusion of cattle therein, and the depasturing of a greater number of cattle than may be duly apportioned under the authority of this Ordinance, it shall be lawful for the Wardens or any two of them from time to time to make such by-laws (not being repugnant hereto) as to them may seem meet, and by such by-laws to impose any fine not exceeding five pounds, to be recovered in a summary way, upon any person offending against the same: Provided always that no such by-law shall come into operation until it shall have received the assent of the Governor, and until the expiration of one calendar month after a copy of such by-law shall have been published in the Government *Gazette*.

And to levy an assessment.

33. For the purpose of providing the means for carrying into effect all or any of the powers hereby given to the Warden of any such hundred, and defraying the expenses incident thereto in the erection and maintenance of pounds, the appointment of Rangers or other officers or otherwise, it shall be lawful for such Wardens, if they shall deem it expedient so to do, to levy and raise for the then current year, for and in respect of all cattle depastured on the waste land of the Crown within the hundred, an assessment not exceeding for every head of great cattle five shillings, for every head of small cattle one shilling, to be paid by the person depasturing such cattle at the time and in manner to be appointed by the Wardens imposing any such assessment.

And to distrain for same.

34. In case any person liable for the payment of any such assessment shall neglect or refuse to pay the amount due in respect thereof, it shall be lawful for the Wardens or any two of them to issue a warrant under their hands, directed to some constable, to levy the amount so due by distress and sale of a sufficient part of the cattle and other

other goods and chattels of the party liable, in like manner as in case of rent in arrear between landlord and tenant.

35. Within one calendar month after the election of the Wardens for any hundred, the Commissioner of Crown Lands shall pay over to any person such Wardens or any two of them may appoint for the purpose, all moneys that he may have received for licenses in such hundred, which sums shall be applicable under the direction of the Wardens to all such purposes as the assessment they are authorized to levy may be applied.

Amount of license fee to be paid over to Wardens.

36. The Wardens shall, in a book to be kept by them for that purpose, enter true accounts of all sums of money by them received and paid under the authority of this Ordinance; and at the close of the year for which they shall have been elected, the said Wardens shall furnish a copy of such book to the Commissioner of Crown Lands for publication in the Government *Gazette*, and shall pay over to the Wardens for the ensuing year the balance of such moneys (if any) remaining in their hands, and shall conform to and observe all such rules and regulations as may from time to time be made by the Governor for securing the due application of the moneys to be raised under the authority hereof.

Accounts to be kept by Wardens.

37. If any person shall depasture any cattle on the common waste land within any hundred, not being so licensed as aforesaid, or being so licensed shall depasture on such waste lands as aforesaid a greater number of cattle than shall have been apportioned to him, every such person shall be liable to the same penalties and proceedings as are herein provided for the unlawful occupation of Crown lands.

Penalty on unlicensed persons depasturing cattle &c.

38. If any cattle shall be found unlawfully trespassing upon any lands or public roads within the limits of a hundred, whether such land shall be fenced or not, it shall be lawful for any of the Wardens of such hundred, or for any person authorized by them, to impound the cattle so trespassing in any public pound, to be dealt with according to law.

Power to Wardens to impound cattle trespassing.

IV.—UNLAWFUL OCCUPATION OF CROWN LANDS.

39. If any person shall occupy any waste lands of the Crown either by residing or by erecting any hut or building thereon, or by clearing enclosing or cultivating any part thereof, or shall fell remove or sell the timber growing or being on any such land, without in either case having a lease or license for such purpose respectively, every such person shall on conviction, for any of the offences hereinbefore mentioned, forfeit and pay any sum not exceeding fifty pounds, to be recovered in a summary way: Provided that no person shall be convicted of any of the offences aforesaid except on the information or complaint of a Commissioner of Crown Lands, or of some other person duly authorized in that behalf by His Excellency the Governor or by such Commissioner.

Persons occupying Crown lands without license liable to penalty.

40. If any person so convicted as aforesaid shall for the space of one calendar month continue in possession or occupation of such land, or otherwise persist in the unlawful act for which he shall have been so convicted, every such person shall upon conviction of any such further offence, upon such information or complaint as aforesaid, forfeit and pay any sum not less than five pounds nor more than fifty pounds, to be recovered in a summary way.

Penalty for second offence.

41. Nothing herein contained shall be construed to prevent any licensed occupier of Crown land or his agent or servant from cutting for his own use such timber on the land so occupied by him as is ordinarily used and as may be necessary for domestic purposes for firebote fencing stockyards or other conveniences for the enjoyment of

Exception.

of the said land, unless such timber be reserved by the Government for public purposes, and the licensed occupier shall have been warned of such reservation.

Rights of Crown saved.

42. No possession or occupation of any Crown land had or taken by virtue of any such license as aforesaid, or by depasturing under the provisions of this Ordinance or otherwise, shall be construed to give any title whatever against the Crown, or to alter or affect in any respect the rights of Her Majesty, her heirs and successors, in respect of any such land.

Cattle trespassing may be impounded.

43. If any cattle shall be found unlawfully trespassing upon any Crown lands, whether the same shall be fenced or not, it shall be lawful for any such Commissioner or for any person authorized by him in that behalf, either generally or in the particular case, to impound the cattle so trespassing in any public pound, to be dealt with according to law: Provided that no Commissioner nor any person acting under his authority shall be authorized or required to impound cattle trespassing upon lands forming any part of any defined run, unless such cattle shall be found trespassing in defiance of an adjudication made by the Commissioner with respect to such land.

Onus probandi.

44. In any action suit or proceeding against any person for or in respect of any alleged unlawful occupation trespass or use of or upon any Crown lands, the proof that the occupation or use in question was authorized by the provisions of this Ordinance or of any order or regulation made in pursuance thereof shall lie on the defendant; and the averment that any lands in question are Crown lands shall be sufficient without proof of such fact unless the defendant prove the contrary. And all maps plans licenses certificates and office copies certified as true under the hand of the Surveyor-General, or of the proper officer of his department, or of any Commissioner of Crown Lands, shall in all matters relating to the said respective offices be sufficient evidence of their contents without production of original records and without the personal attendance of such officers or proof of their signatures.

Costs of suit.

45. It shall be lawful for the Governor to pay or cause to be paid out of the Public Treasury the costs or charges of any suit action or other proceeding which shall be brought by or against any Commissioner, Warden, Justice of the Peace, Constable, or other person acting under the authority and in the execution of this Ordinance.

Interpretation.

46. In the construction of this Ordinance the word "Governor" shall be taken to include the Lieutenant-Governor or the Officer Administering the Government of the Province; and the words "Great Cattle" shall be construed to mean horned cattle horses mules and asses, male and female, with their offspring above six months of age; and the words "Small Cattle" shall be construed to mean sheep goats and swine, male and female, with their weaned offspring; and the word "Cattle" shall be construed to mean the whole of the aforesaid animals.

Commencement of Ordinance.

47. This Ordinance shall come into operation on the first day of September next.

SCHEDULES.

SCHEDULES.

SCHEDULE A.

RETURN OF STOCK DEPASTURED ON CROWN LANDS ON THE , 18 .

Names of Holders of Stock herein returned.	Name of Superintendent of Stock.	CATTLE.							
		Great Cattle.				Small Cattle.			Brands or Marks.
		Horned Cattle.	Horses.	Mules.	Asses.	Sheep.	Goats.	Swine.	

I hereby certify that the above is a true and correct return.
To , Esq., Commissioner of Crown Lands.

SCHEDULE B.

YEARLY REPORT OF THE PERSONS LIABLE TO PAY ASSESSMENT.

(*Rendered in conformity with the Provisions of the Ordinance, No.* .)

First day of October, One thousand eight hundred and

No.	Station or Run.	Names of Holders.	Cattle Assessed.		Assessments due.	REMARKS.
			Great Cattle at Sixpence per head.	Small Cattle at One Penny per head.		

To , Esq., Colonial Treasurer.

Commissioner of Crown Lands.

SCHEDULE C.

I HEREBY declare that I occupy acres under Grant from the Crown in Hundred [*or* a Pensioner enrolled for service in New Zealand, or Native, or Half-Caste, *as the case may be*].

(Signature.)

To the Commissioner of Crown Lands.

Commissioner of Crown Lands' Office.

THE amount for which you are assessed for the year from the first January to the thirty-first December, one thousand eight hundred and , under the provisions of the Ordinance, on the undermentioned cattle depastured by you on waste lands of the Crown in the Province of New Ulster, is as follows, viz.:—

Head of great cattle, at 6d. per head ... ... £
Head of small cattle, at 1d. per head ... ...

£

which said sum of pounds shillings and pence you are hereby required to pay into the Colonial Treasury on or before the first day of December next.

As witness my hand, at , this day of , one thousand eight hundred and .

To

Commissioner of Crown Lands.

declares that he served the above notice on the above-named by delivering a true copy thereof to him, [*or* by leaving the same at his usual place of residence] on the day of , one thousand eight hundred and .