

(No. 59.)



1877.

SESSION IV.

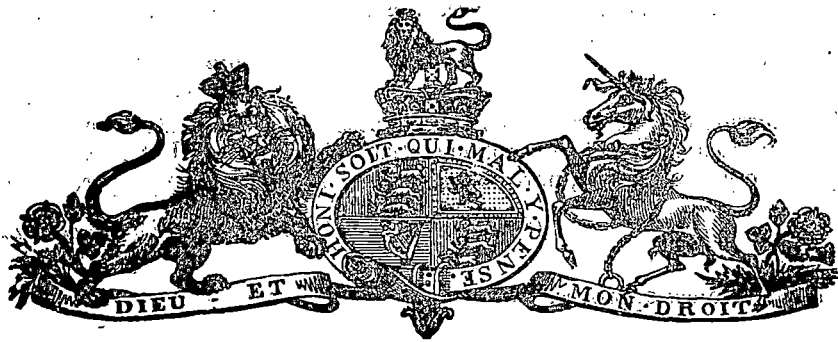
TASMANIA.

HOUSE OF ASSEMBLY.

MESSRS. PILLINGERS' LAND.

PAPERS.

Laid upon the Table by the Minister of Lands and Works, and ordered by the House to be printed, November 30, 1877.



Antill Ponds, 26th April, 1876.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land, under the 24th Section of "The Waste Lands Act, 1870:"—

County of Somerset, Parish of Anstey, 320 Acres. Adjoining lands purchased by Pillinger and Sons and George Carr Clarke, and being portion of 1000 acres leased to R. Q. Kermode.

I am,

Sir,

Your obedient Servant,

The Commissioner of Crown Lands.

JAMES PILLINGER.

Antill Ponds, 26th April, 1876.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land, under the 24th Section of "The Waste Lands Act, 1870:"—

County of Somerset, Parish of Anstey, 320 Acres. Adjoining and to the south of land applied for by A. T. Pillinger, and being portion of 1000 acres leased to R. Q. Kermode.

I am,

Sir,

Your obedient Servant,

The Commissioner of Crown Lands.

JAMES PILLINGER,

For J. R. PILLINGER.

Antill Ponds, 26th April, 1876.

SIR,

I BEG to make application to purchase on credit the following Lot of Crown Land, under the 24th Section of "The Waste Lands Act, 1870:"—

County of Somerset, Parish of Anstey, 320 Acres. Adjoining and to the south of land applied for by James Pillinger, and being portion of 1000 acres leased to R. Q. Kermode.

I am,

Sir,

Your obedient Servant,

The Commissioner of Crown Lands.

JAMES PILLINGER,

For A. T. PILLINGER.

Antill Ponds, 11th February, 1876.

SIR,

I BEG to make application to purchase the following Lot of Crown Land, under the 24th Section of "The Waste Lands Act, 1870:"—

County of Somerset, Parish of Milton, 50 Acres. Fronting on the Great Lake Road, and known as the Bowling Green Marsh.

I am,

Sir,

Your obedient Servant,

The Commissioner of Crown Lands.

JAMES PILLINGER,

For JOHN PILLINGER.

MINUTE PAPER FOR THE EXECUTIVE COUNCIL.

SUBMITTED—

*Lands and Works Office, Hobart Town,
12th February, 1877.*

THAT the Commissioner of Crown Lands be authorised to give the Representatives of the late R. Q. Kermode six months' notice of resumption of Lot 27 and part of Lot 109,—1000 acres in the Parish of Anstey, County of Somerset, now under lease to them,—for the purpose of sale.

(Signed) C. O'REILLY, *Minister of Lands & Works.*

THE Governor in Council approves.

The Hon. the Minister of Lands & Works.(Signed) E. C. NOWELL.
12. 2. 77.*Lands & Works Office, 14th February, 1877.*

GENTLEMEN,

I HAVE the honor to acquaint you that the Governor in Council has authorised me to give you six months' notice of the intention of the Government to resume Lot 27 and part of Lot 109,—1000 acres in the Parish of Anstey, County of Somerset, now under licence to you,—for the purpose of sale.

You will, therefore, take notice that you will be required to relinquish possession of the land in question within six months from this date.

I have, &c.

(Signed) H. J. HULL, *Deputy Commissioner of
Crown Lands.**The Representatives of the late R. Q. KERMODE,
Mona Vale, Ross.**Lands and Works Office, Hobart Town,
10th July, 1877.*

MEMO.

WILL Mr. Wedge be good enough to report to me on the character of the land he has recently surveyed for the Messrs. Pillinger out of land leased to R. Q. Kermode in the County of Somerset, whether fit for agricultural purposes or only for pasture?

The land has been selected under the 24th Section of "The Waste Lands Act," and it is essential to ascertain whether the land comes under the operation of that section.

H. J. HULL.

THOS. WEDGE, *Esq., Eastern Marshes.*

MEMO. IN REPLY.

I VALUED the Lot of 1000 acres, leased to Mr. Kermode, at 30s. per acre. A very considerable extent could be brought under cultivation, but I doubt much whether the climate is at all suitable to agricultural purposes.

The "Bowling Green" Marsh by itself I consider worth 30s., but that portion marked off to the west for the purpose of connecting the Lots applied for is not worth, at the outside, above 5s., and not that unless for the purpose required by the Messrs. Pillinger.

I am of opinion these Lots should go to auction.

THOMAS WEDGE, *District Surveyor.*
15. 7. 77.

As Mr. Wedge has reported that the selections made are agricultural land, I cannot deny the right of Messrs. Pillinger to avail themselves of the 24th Section "Waste Lands Act" in selecting three allotments of 320 acres each.

C. O'REILLY.
2. 8. 77.

Hobart Town, 26th July, 1877.

SIR,

WE have the honor to enquire whether Mr. Surveyor Wedge has yet sent in his Report upon Lots 27 and 109, Parish of Anstey, which you kindly promised to call for some time since; and, if such Report be obtained, we have to ask, on behalf of the Representatives of the late Mr. Kermode, that you will be pleased to permit us to inspect and take a copy of it.

We have the honor to be,

Sir,

Your obedient Servants,

ALLPORT, ROBERTS, & ALLPORT.

The Honorable the Minister of Lands & Works.

Millbrook, Antill Ponds, 14th August, 1877.

DEAR SIR,

I UNDERSTOOD from you that to-day, the 14th, my father, brother, and myself would be placed in possession of land selected by us under "The Waste Lands Act," which had been surveyed by Mr. Wedge, will you please to advise me as to our position: if we are to take possession, or if anything further requires to be done?

Yours very truly,

ALFRED PILLINGER.

Deputy Commissioner of Crown Lands.

Lands and Works Office, Hobart Town,
22nd August, 1877.

MEMO.

WILL the Honorable the Attorney-General kindly favour me with his opinion as to whether I have power under the 34 Vict., No. 10, to refuse to enter into contract with the Messrs. Pillinger for the sale of the land referred to in the enclosed papers, bearing in mind the report of the District Surveyor as to the unsuitableness of the climate for agricultural purposes. The land has been selected for purchase privately under the 24th Section of "The Waste Lands Act."

From my knowledge of the land referred to, I think the Surveyor's report as to its unsuitableness for agriculture is correct, and there is no doubt in my mind that it is not intended to be used for agricultural purposes.

NICHOLAS J. BROWN, *Minister of Lands and Works.*

The Honorable the Attorney-General.

THE power of selection under Section 24 of "The Waste Lands Act" extends only to agricultural land, and the term "agricultural" is defined by Section 20 as being land within the area of any proclaimed agricultural division or land which, after having been surveyed, has been described in any notice by the Commissioner of "sale of lands by auction" as agricultural land. I assume that the land in question does not come under these provisions. In all other cases Section 20 gives to the Commissioner a wide discretion as to whether he should entertain applications for the purchase of lands. This section speaks of "all lands . . . which the Commissioner, upon his own examination, or that of some person deputed by him for the purpose, or upon the report of a surveyor, deems suitable for cultivation." It will be seen, therefore, that in the cases not expressly provided for by the Act, the question as to what land is agricultural appears practically to be left to the judgment and opinion of the Commissioner.

In the present case Mr. Wedge has reported that a very considerable extent of the land could be brought under cultivation, but on the other hand he doubts much whether the climate is at all suitable to agriculture.

If the Commissioner, from his own examination of the land or from the report of a Surveyor, does not deem the land suitable for cultivation (and this is a question of fact as to which it is not my province to advise), then I am clearly of opinion that the Commissioner has power to refuse to enter into the contract with the Messrs. Pillinger referred to in the enclosed papers.

ALFRED DOBSON.
24th August, 1877.

Lands and Works Office, 25th August, 1877.

MY DEAR SIR,

ALL the papers connected with your selections are with the Honorable the Attorney-General. Of course the matter will not be dealt with without giving you an opportunity of being heard.

I am, my dear Sir,

Yours very truly,

(Signed) H. J. HULL.

A. T. PILLINGER, *Esq., Antill Ponds.*

Lands and Works Office, 8th September, 1877.

MY DEAR SIR,

THE matter of your selections in the County of Somerset out of Mr. Kermode's land is now under the consideration of the Executive, and will be dealt with in a day or two.

Yours very faithfully,

(Signed) H. J. HULL.

A. T. PILLINGER, *Esq., Antill Ponds.*

Lands and Works Office, Hobart Town, 12th September, 1877.

MEMO.

WILL the Honorable the Attorney-General be good enough to advise me further as to the applications of Messrs. Pillinger and others to select land under the 24th Sect. 34 Vict., No. 10?

1st. Does the Memorandum endorsed by the late Minister of Lands on the Report of Mr. Surveyor Wedge fetter the action of his successor in dealing with Messrs. Pillinger's application?

2nd. With regard to the general question of Applications for Land held under Pastoral Licence, does or does not the Form of Lease itself (forwarded herewith) preclude any land so held from being considered Agricultural Land, independent of the several definitions of Agricultural Lands as set forth in 20th Sect. 34 Vict., No. 10?

Being fully impressed with the importance of encouraging *bond fide* agricultural settlement, I shall be obliged for suggestions on any other points of importance in explanation of the law with respect to selections for agricultural purposes which the Hon. the Attorney-General may favour me with for guidance in the cases under consideration, and any cases that may occur in the future.

NICHOLAS J. BROWN, *Minister of Lands and Works.*

The Hon. the Attorney-General.

Lands and Works Office, Hobart Town, 14th September, 1877.

Re KERMODE'S LEASE.

Lots 27 and 109, leased to G. C. Clarke, 1844 and 1847. Transferred to Kermode, 22nd January, 1863, who paid rent to 1st August, 1871, and then accepted new Lease, under "Waste Lands Act" (*vide* Sect. 63), to date, from 1st October, 1871.

N. J. B.

The Hon. the Attorney-General.

Attorney-General's Office, 20th September, 1877.

MEMO.

PILLINGER'S APPLICATION.

My attention is now called to the fact that the land applied for by the Messieurs Pillinger is under Lease to the executors of the late R. Q. Kermode. The Lease, or rather the Licence, granted to the executors is issued under "The Waste Lands Act, 1870," and contains the following condition:—"This Licence shall not be deemed to prevent the said run, or any part thereof, from being sold, leased, or licensed under 'The Waste Lands Act, 1870,' or occupied by virtue of any Miner's Right or Business Licence, or from being alienated or dealt with under the authority of this or any other Act now or hereafter to be in force." The above condition is properly inserted in the Licence in accordance with the powers given by various sections of the Act (see Sections 54, 56, and 63). The Act, however, nowhere expressly provides that the right of selection and purchase, given under Section 24, shall extend to land which is already licensed; nor is such a right given by implication. On the contrary, it is provided by Section 79 that "every Licence shall . . . be determinable if the lot or parcel of land so licensed is required for sale, or for any public purpose, at any time

during the term thereby granted, upon six months' previous notice for that purpose being given to the licensee . . . by the Commissioner, and upon the expiration of such notice the Licence shall cease and be void; provided that no such notice shall be given for the determination of any Licence under this Act unless with the consent of the Governor in Council." The section further provides for compensation to be given to the Lessee for improvements, &c.

It does not appear that any notice has been given to Kermode's executors in pursuance of the above-quoted section, and I am therefore of opinion that the land in question is not available for selection, and that the proceedings in Messieurs Pillinger's case have been taken under a misapprehension. Under these circumstances it becomes unnecessary to consider the first question put to me by the Commissioner. The fact of the land in question having been leased for *pastoral* purposes seems to show that it can hardly be regarded under the Act as *agricultural* land. The Commissioner will doubtless be aware whether any land in the Lake Country (where the land in question is situated) is taken up for agricultural purposes, or whether that land is suitable for such purposes. Having been requested to make suggestions upon the matter generally, I may say that the question as to whether the Governor in Council should, upon the application of the Messieurs Pillinger, give notice to Kermode's executors to determine the Licence, in order that Messieurs Pillinger may purchase part of the land under licence to the executors, appears to me to be entirely one of policy. It does not seem desirable that a Lessee who, for instance, may have taken up and paid rent for land which would otherwise have been unproductive, should be turned out of possession at the will of any selector under the 24th section, unless such a course would be beneficial to the revenue or the public generally. In the first place, such Lessee would have to be compensated for any improvements made in the way of fencing and draining (section 79), and also for the diminished value of his land occasioned by severance (section 78); and secondly, the Lessee might feel compelled to forfeit his lease altogether by ceasing to pay rent, especially if his run were cut up and the best portions of it sold. The Crown might thus be losers by the transaction. While the Commissioner is fully impressed "with the importance of encouraging *bonâ fide* agricultural settlement," he will probably be very unwilling to disturb the possession of licensees, and thereby perhaps diminish the value of certain lands for pastoral purposes, unless he is fully persuaded that such a course would have the desired effect of promoting settlement or would directly or indirectly benefit the revenue.

ALFRED DOBSON.

Re PILLINGER *and* KERMODE.

Lands and Works Office, Hobart Town, 21st September, 1877.

THE Honorable the Minister of Lands and Works has requested me to return these papers to the Honorable the Attorney-General, with a copy of Executive Minute, authorising the Commissioner of Crown Lands to give notice to the late Mr. Kermode's representatives of the resumption of the land referred to in the papers.

I regret this document did not accompany the papers in the first instance, as it appears to have led the Attorney-General astray in giving his opinion as to the right of the Messrs. Pillinger to select the land in question.

H. J. HULL.

The Hon. the Attorney-General.

SINCE writing my opinion of the 20th instant, I learn that a six months notice to deliver up possession of the land in question was, with the consent of the Governor in Council, given to Kermode's executors. The Messrs. Pillinger made their application before the notice to quit was even given, and they were not at that time in a position to select the land under the 24th Section. Apart, however, from the question of notice, the Commissioner may, in my opinion, refuse the application if he thinks that the land is not suitable for agricultural purposes.

ALFRED DOBSON.

25th September, 1877.

MESSRS. Pillinger to be informed that the land in question will be sold by auction in December next.

N. J. B.
28.9 77.

BEING advised by the Hon. the Attorney-General that at the time Messrs. Pillinger applied to purchase these lots the leased land of which they form a part was not open to selection, notice to

lessee not having been then given, the application of Messrs. Pillinger cannot be granted. They are refused also on the ground that the land cannot be, in my opinion, considered agricultural land within the meaning of the term as used in "Waste Lands Act," 34 Vict. No. 10.

NICHOLAS J. BROWN.
28. 9. 77.

(Copy.)

Lands and Works Office, 28th September, 1877.

SIR,

REFERRING to applications made by yourself and Messrs. James and J. R. Pillinger to select 320 acres of land each in the Parish of Anstey, under the 24th Section of "The Waste Lands Act," I am now desired by the Hon. the Minister of Lands and Works to acquaint you that the Hon. the Attorney-General having given an opinion that at the time you applied to purchase these lots the leased lands of which they form a part were not open to selection, no notice to the lessee having been then given, the applications cannot be granted.

They are refused also on the ground that the land cannot, in the Commissioner of Crown Lands' opinion, be considered agricultural land, within the meaning of the term as used in "The Waste Lands Act," 34 Vict. No. 10.

I am further to inform you that the lands in question will be sold by auction in December next, at Hobart Town.

I have, &c.

(Signed) H. J. HULL, *Deputy Commissioner of Crown Lands.*

A. T. PILLINGER, *Esq., Antill Ponds.*

Hobart Town, 29th September, 1877.

SIR,

MR. A. T. Pillinger has handed us your letter to him of yesterday's date with regard to the selections made by him and Messrs. James and J. R. Pillinger at Lakes Crescent & Sorell.

We have to request that you will be good enough to forward us copies of all the correspondence that has taken place in this matter.

We have, &c.

(Signed) BUTLER, M'INTYRE, & BUTLER.

The Honorable the Minister of Lands and Works, Hobart Town.

IF Messrs. Butler and M'Intyre require copies of letters forwarded to the Department by Messrs. Pillinger, they will be furnished to them; also if Messrs. Pillinger have mislaid any of the replies to these letters, copies of any required will be furnished on dates of the letters to which the missing letters are replies being forwarded to the Deputy Commissioner.

N. J. B.
1. 10. 77.