



AgEcon SEARCH
RESEARCH IN AGRICULTURAL & APPLIED ECONOMICS

The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search
<http://ageconsearch.umn.edu>
aesearch@umn.edu

*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

3. RESPONSIBLE GOVERNMENT, 1856

PREAMBLE—UNITED STATES LAND POLICIES, 1785-1862: SELF-GOVERNMENT: SIR JOHN ROBERTSON AND THE 1861 LAND ACTS: FREE SELECTION BEFORE SURVEY: TORRENS REAL PROPERTY ACT, 1862.

PREAMBLE

United States Land Policies, 1785-1862

"I have not entered the arena as a public lecturer; I leave that to other hands; but I am influenced . . . in stating, as I shall state, the principles upon which the land system of the United States is constituted. One of these considerations . . . is a desire to set some facts before you with regard to a particular question, which has agitated this Colony for some considerable length of time—the land question. I do not intend, knowingly, to say any one word that could be considered as having any political bearing at all, and I shall say nothing, I hope, that will be unwarrantable on my part. My only wish and desire is to vindicate the history and facts, so far as the United States is concerned, in reference to the settlement of this paramount question—this question of questions—the right and just settlement of which is paramount to all other questions—I mean the land question . . .

" . . . Government and Congress never wanted to restrain the people from settling on the land; but did want and intend that: the people should have the land as free as the air . . . Now I say and maintain the wealth and the all-powerful source of national greatness is natural manual labour . . . I mean agricultural labour, which is of paramount importance as compared with all other labour . . . There is no foundation in the natural law why a certain set of words on parchment should confer an inalienable right to a piece of land. We do not get our title from human or profane laws—we get it from a divine law: we get it from the Old Testament. The earth, therefore, and all things contained therein, are the general property of all mankind . . . I say the title of every man to the soil is an admitted undeniable fact . . .

" . . . In the States no squatter can occupy more than 80, or, at all events, 160 acres at the outside. The Government have always protected that man to the full extent of 160 acres; they say to them, 'You can occupy to the full extent of 160 acres, and you shall have it anyhow, no matter who stands by'.

" . . . At any rate, the territory of the States extends from the Atlantic to the Pacific, and way down from a little east of Sunrise to the Rio Grande . . . From 1833 to 1856, upwards of one hundred and ten million acres have been sold . . . A man may enter at once upon forty acres or the sixteenth of a section. I say this system of dividing and subdividing the land enables every man to sit down under his own vine and fig-tree and worship God to the dictates of his own conscience.

" . . . In 1832 the most important law was passed that ever the United States or any other country has passed . . . Any man might enter upon any of these quantities (half, quarter, half quarter and quarter quarter sections)⁴³ . . . This is a most important law for the poor man, and enables every man in the States to obtain a homestead for himself . . . This shuts out the speculators . . . and thus the States protect the weak, and let the strong take care of themselves . . . The States deserve to have their lands settled—they give every facility

⁴³ Township (U.S. and Canada) Division of County—with some corporate powers; district 6 miles square; or 36 sections, 640 acres each. Sections are further divided into 40 acre portions, so that one-sixteenth of a section is the same as 40 acres.

to settlers You see, therefore, that the land laws are progressive, and that for the settler *it makes not a show of difference whether the lands are surveyed or not. Whether they are surveyed or not, the people have a right to the lands*

" . . . I now come to Oregon, where so far from looking for a survey, they made an out and out gift of the lands When this law was passed, Oregon was a territory; it was a waste and wilderness in 1852; in 1855 it was a populous and rich country such is the American system. There is there not a particle of restraint upon the settler who seeks to form a home. On the contrary every facility is thrown in his way. And some of the lands may even be bought at 12½ cents an acre

" . . . Let us now glance at the workings of this system. It has raised the population of the United States from 3,000,000 to 30,000,000. It has given here more tonnage of turnabout shipping than any other country in the world In 1828 we had but three (3) miles of railway, and now we have more than the whole balance of the world put together; we have 28,000 miles of railway, and 12,000 under contract, of which 6,000 is that gigantic scheme that is to connect two oceans. We have built 36,000 churches And for common schools, there is not a town or a hamlet in the country in which there is not a school There have certainly been many causes at work to produce these results. There were great inland seas and noble rivers, and the other causes which I need not now mention. But the great, the principal cause was the land system which placed the people on the lands of the country"

(J. M. Tarleton, 1860.)⁴⁴

The Public Domain

The land development of that portion of the United States which originally comprised the Crown Colonies of the British Empire was greatly restricted during the colonial period owing to the practice of the English Crown of disposing of its land to large estate proprietors and companies. Following the American War of Independence (1775-1783), which immediately preceded the founding of the New South Wales colony in 1788, steps were taken by the newly organized state governments to break up the land monopoly. At first, also, controversy developed between the new national government and certain of the older colonies in regard to ownership and jurisdiction over the land west of the Alleghenies. Seven only of the original thirteen states had laid claim to western lands (New York, Virginia, Massachusetts, Connecticut, North Carolina, South Carolina and Georgia) but beginning with New York, 1781, and ending with Georgia, 1802, they ceded their claims in order to form the Confederation, on the understanding that, subject to certain reservations, the territory would be divided into States and admitted into the Union when it was settled. The public domain so acquired by the United States embraced all land available for sale or other transfer of ownership under the laws of the Federal Government.

In 1803 by the purchase of Louisiana (827,987 square miles) from France, almost a third of the present area of the U.S.A. was added to the public domain. By the additional purchase of Florida (172,101 square miles) in 1819, the public domain was still further increased, at

⁴⁴ *The Southern Cross*, 7th January, 1860, pp. 10, 11. (Report of a lecture by J. M. Tarleton, American Consul, to a public audience in Melbourne, Victoria [given "to benefit the finances of the Ladies' Benevolent Society"]—Mitchell Library.)

the same time a south-western boundary being fixed between the United States and the Spanish possessions in Mexico. The Republic of Texas was admitted to the United States in 1845, but only the land lying outside the State as now constituted became a part of the *public domain*. This area was subsequently purchased from the State of Texas in 1850 and comprised 123,270 square miles—including what is now the south-western portion of Kansas, south-eastern Colorado, the eastern portion of New Mexico, a portion of Wyoming and central Colorado, and the panhandle of Oklahoma. By a settlement with England, in 1846, Oregon—embracing the present states of Oregon, Washington and Idaho, the south-western corner of Montana, and the south-western portion of Wyoming—was acquired, adding 286,541 square miles to the *national domain*, and the greater share of this also became part of the *public domain*. War between the United States and Mexico was terminated by treaty in 1848, by which the present south-western boundary of the U.S.A. was established (with the exception of the Gadsden Purchase) thus adding 529,189 square miles to the national domain. The whole of this area, with the exception of private claims, became a part of the public domain, and includes what are now the States of California, Nevada, Utah, Arizona (except Gadsden Purchase), and parts of New Mexico, Colorado and Wyoming. Finally, by the 1853 Treaty negotiated with Mexico by James Gadsden, American Minister, the territory now constituting the southern part of New Mexico and embracing 29,670 square miles, was added to United States territory.

By these acquisitions the United States acquired a huge area of Continental North America. From the gross amount of land ceded to, or purchased by the United States, should be subtracted 34,000,000 acres of private claims. The total extent of public domain acquired by the government was approximately 1,400,000,000 acres of land (2,187,500 square miles). The cost in money payment, including interest was 59,758,000 dollars, or about 4½ cents an acre. The geographical area of the United States is 3.02 million square miles, inclusive of the public domain thus acquired and the residual areas which were held by the individual States.

1785-1789.—In the first years of the Confederacy Congress was tentatively feeling its way but even so early the pattern of later development was being debated and policies roughly fashioned. Washington's views were that:—

“(Settlement) ought not (to) be too diffusive. Compact and progressive settling will give strength to the union, admit law and good government and federal aids at an early period. Sparse settlement in the several new states . . . will have direct contrary effects; and whilst it opens a large field to land jobbers and speculators who are prowling about like wolves in many shapes, will injure the real occupiers and useful citizens and consequently the public interest.”

(Washington to Hugh Williamson, 15th March, 1785.)

So also, Thomas Jefferson assisted to lay down a policy upon which later development would be based:—

“Whenever there are in any country uncultivated lands and unemployed people, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labour and live on. If for the encouragement of industry we allow it to be appropriated, we must take care that other employment be provided to those excluded from the appropriation. If we do not, the fundamental right to

labour the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of the State."

(Writings of Thomas Jefferson.)

There is a similarity and consistency in thought between these views of Jefferson in the early years of the Union, and the attitudes which many years later were to find expression in the "Homestead Act" of 1862:

"Tenantry is unfavourable to freedom. It lays the foundation for separate orders in society and annihilates the love of country and weakens the spirit of independence. The tenant has in fact no country, no hearth, no domestic altar, no household god. The freeholder, on the contrary, is the national supporter of a free government, and it should be the policy of republics to multiply their freeholders as it is the policy of monarchs to multiply tenants. We are a republic and we wish to continue so; then multiply the class of freeholders, pass the public lands cheaply and easily into the hands of the people, sell for a reasonable price to those who are able to pay; and give without price to those who are not. I say, give without price to those who are not able to pay; and that which is so given I consider as sold for the best of prices; for a price above gold and silver; a price which cannot be carried away by delinquent officers, nor lost in failing banks nor stolen by thieves, nor squandered by an improvident and extravagant administration. It brings a price above rubies—a race of virtuous and independent farmers, the true supporters of their country and the stock from which its best defenders must be drawn."

(Senator Barton, Cong. Deb., 119 Cong., 1 Sess.)

Congress, from the first, was not free to devise a land policy in "a quiet philosophical manner". On the contrary, it had been necessary to make promises in advance involving the disposition of land in satisfaction for services. Moreover, there was an acute shortage of finance which it was hoped by some might be corrected by the sale of land. Finally, the hold of the newly created Republic on the territory and settlers of the west was insecure. All these factors influenced the action of Congress in its plans for disposing of the newly acquired domain.

Two main systems had been in vogue in the colonies, the "New England" and the "Southern." The New England system required compact settlement in towns under the direction of the parent colony (*survey before selection*). In the South, the individual was allowed the utmost freedom in selecting land, with no reference to the establishment of a compact settlement (*selection before survey*).

The ordinances of 1784 and 1785 embodied features from both the "New England" and the "Southern" systems. The land was to be purchased from the Indians, surveyed by being divided into hundreds of ten geographical units square, and the hundreds into square mile lots, all lines to run due north and south, east and west. Surveyors and registrars were to be appointed by Congress. The ordinances deviated from the New England plan in not insisting upon township settlement with the usual conditions as to settlers, clearing, and building of houses. However, as the scheme developed, surveys always preceded sales, as in the New England plan, but they need not precede settlement, as came to be the practice.

After experience in the selling of large blocks to companies for subdivision and sale to individual settlers, it was recognised that company settlement could not succeed alongside the "Daniel Boone manner—shotgun settlement on an enormous scale".

Early Plans for Land Disposal

1789-1820.—Discussions on land policy in Congress lasted through several years, the main points at issue being the size of tracts; the settlement requirements, if any; whether cash or credit was to be the basis of sale; and the place of sale, whether at the capital or in western land offices. The question of speculation received attention, and arguments against settling in large tracts were presented.

In 1789, a land act was passed. This act provided for the rectangular survey, the division of half of the townships into sections of 640 acres each, to be sold at local land offices, the other half of the townships to be sold in quarters at the seat of government. In all cases four sections of land at the centre of the township were to be reserved. One-twentieth of the price, two dollars per acre, was to be paid in cash, and credit of varying lengths of time allowed on the balance, the final payment to be made in one year. The plan met with little success.

In 1800, another land bill which permitted sales at local land offices at a minimum price of two dollars an acre, also proved unsatisfactory.

The credit system was in operation from 1796 to 1820. Very little land was sold before 1800. From that time on, a few hundred thousand acres were sold each year, reaching the highest figure before the war of 1812-1814 (between Great Britain and the United States) of 619,000 acres in 1805. Not much was sold during the early part of the war. In 1814, over a million acres were sold, after which date not less than that amount was disposed of annually until the end of the period. The record sale was made the last year of the credit system, 1819, when over 500,000,000 acres were sold. Nearly half of the sales under the credit system were made in Ohio, the next largest in Alabama. During the period of the credit system, a total of 19,399,158 acres were sold, but, due to reversions, only 13,649,641 acres had passed from the hands of the government. Starting with a debt due from purchasers of over 21 million dollars in 1820, it took twelve years, and eleven separate relief laws, to bring the matter to a conclusion. Land speculation reached its height in Alabama and Mississippi, and within these states one-half the debt was due.

The credit system in action proved a failure. It had not been a source of great revenue to the treasury, it had not prompted the interests of the settlers, and it had not prevented speculation. It had created a large class of land holders so hopelessly in debt to the government that it took the government twelve full years to clear away the wreckage of the credit system.

The Cash Sales System after 1820

1820-1841.—The change from the credit to the cash sales system introduced in the 1820 Act was a radical move in the way of policy. There was a reduction in price, so that for 100 dollars, a piece of land,

80 acres in size, and large enough for a farm, could be purchased. For nearly a decade sales were very limited in amount. Not only was the payment of cash a deterrent, but a reaction from the boom following the war of 1812 was inevitable. The speculators were already loaded with land for an advance of settlement. By 1834 another feverish period of speculation was begun, which carried the sales in 1836 beyond the 29,000,000 mark in acres sold within a year. The price of land was barely above the minimum.

Until the first temporary Pre-emption Act of 1830, the dominant policy was "By auction sale to the highest bidder". In the early years, land was sold in large tracts to land companies, which in turn sold it to settlers or held it for speculation. The Government's most immediate interest was to get money for the public treasury. The credit system did not help the settlers, but was used for large-scale acquisition by speculators. Even though abandoned in 1820 and the minimum price for land reduced to 1.25 dollars per acre, still individual settlers could not compete against investors. It was under these circumstances that squatters became so common—so common, in fact, that the Pre-emption Act of 1830 and various subsequent acts legalised a squatter's possession up to 160 acres by giving him the right to buy the land. The "squatters", far from being regarded as law-breakers, were looked upon as a "very respectable class of citizens", "a sturdy class of pioneers". T. H. Benton, a fighter for the settlers' cause, viewed pre-emption simply as a means that "exempts the settler from the competition of speculators", and won with the Pre-emption Act of 1841, passed as a permanent policy.

The Pre-emption Act

1841.—By 1841 there was a sparse population scattered over a vast stretch of country. The demand for national aid in the building of highways, canals and railroads was irresistible. The West was producing crops, but had no market. How to get a market was uppermost in the minds of the whole population of the frontiers. The farmers were, as a class, in debt, and prices were so low as hardly to be expressed in positive terms. The year 1839 is thus significant in that it marks the beginning of the national collection of agricultural statistics in the United States. Commerce and industry had been developing rapidly after the completion of the Erie Canal and the beginnings of the construction of the Chesapeake and Ohio Canal and other water routes and turnpikes, and the beginnings of railroad building. With the development of transportation and growth of markets, farmers were depending less and less upon the older idea of the self-sufficing economy and were giving increasing attention to producing for the market. With commerce and trade came an interest in market prices.

For a half century or more following 1841, the policy of using the public domain in the promotion of settlement, "the very basis of national strength and security, of civilisation itself", was accepted and furthered in the disposition of the western lands. Thus debts were to be forgiven, pre-emption was to be granted, land was to be made easy of access and of acquisition, indeed free as soon as the East could be converted to the view.

Every new Territory and State wanted people to take up and use the vacant lands. Immigration agents were employed by the State and advertising undertaken by the railroads. The private land agent became an institution.

Under the *Pre-emption Act*, 1841, selectors were given, in a general way, the right to settle on and improve unappropriated public lands and later buy them at the minimum price without competition. But long before such privileges were officially obtained the practice of settling on public lands without permission, or "*squatting*" had been quite common. In the Act of 1841—the "Log Cabin Act"—the right of pre-emption was open to American citizens and those declaring their intention to become such, provided that the applicant did not already own 320 acres. The Act gave the right to settle on a piece of land 160 acres in extent, and at a subsequent date to buy the same free from competitive bids, at the minimum government price. The *Pre-emption Act* established four important Federal policies upon which further land settlement was based: (1) that the settlement of the public domain was more important than the revenue to be obtained from it; (2) that the land should not be opened to those who already had sufficient land; (3) that the public domain should be settled in small farms to permit the greatest possible development; and (4) that settlers on the public domain should have a fair chance to gather sufficient funds to buy their lands. The Pre-emption Act became law in time to apply to the huge new lands acquired in the Far Western States following the treaty with Mexico in 1848.

While the Pre-emption Act marked a great step forward in the land policy of the United States, it did not entirely dispose of the troublesome problems involved in the settlement of the public domain. From the beginning there had been some disagreement in official circles as to the propriety of allowing settlers to take possession of land in advance of the survey—such "presumption" as it was called. There was still difficulty with speculators taking up land or purchasing it and holding it for subsequent disposal at an increased price. The true settler, again, often had difficulty in finding a satisfactory tract of land and being able to hold it long enough to meet the government payments. Other settlers were forced to pay large sums to speculators for the more desirable tracts of land. Agitation continued for a law which would permit the assignment of specially set aside, cheap or free land to genuine settlers who would qualify and live on the land. The would-be small settlers and homesteaders could point to the fact that land was being sold in large tracts to investors and that in addition land grants were being made to states and directly or indirectly to companies for "internal improvements", such as waggon-roads, canals, river improvements, swamp drainage, and railroads—the last getting the major share of these grants, over 129 million acres. The speculators did not improve the land and often land would be held off the market for years, while towns, roads and railroads were developed. Land-hungry settlers "squatted" on the land, cleared timber, broke the soil, built houses, and after a few years were evicted without any compensation for the improvements they had made. Legally they were trespassers and had no rights to compensation. On the other hand, the speculators were able with impunity to

undertake fraudulent promotion schemes, recklessly fleece gullible immigrant and Eastern settlers, and earn extravagant profits whilst doing so. To the settlers struggling on the frontiers, risking the loss of their crops, livestock and human lives from pests, weather hazards and Indian attacks, the inconsistencies of this alienation were so altogether obvious as to merit strong action. "For many years the dividends of the struggling settlers were frustratingly meagre, while large companies and bonanza farmers with Eastern capital made fortunes overnight."

1852-1860.—The agitation for Federal assistance to the bona fide small settler began well before the Civil War. Homestead bills were introduced in Congress beginning in 1852 and one was passed by both Houses of Congress in 1860. It was vetoed by President Buchanan on the grounds that the bill would permit the "pernicious social theories that have proved so disastrous in other countries". However, by the time the Civil War began (1861-65), the "homestead" idea had so far progressed as to be practically assured. It logically followed the period of appropriation of great tracts of land toward the promotion of roads, canals and railways. At no time had it been forgotten that the ultimate use to be made of the land was primarily agricultural and that the small holding was the most desirable.

Homestead Act

1862.—In 1862 Congress again passed a homestead bill and on 20th May, 1862, it was signed by President Lincoln who had himself grown up in the frontier atmosphere of Kentucky and Illinois and knew what the settlers most needed, namely, free access to land in family-sized units. Lincoln has expressed himself prior to his inauguration as being in favour of "settling the wild lands into small parcels so that every poor man may have a home". The Homestead Act permitted any single person over 20 years of age or any person who was the head of a family to select 160 acres in the public domain and to acquire title to it, free of all charges except a minor fee to be paid when filing the claim, provided the settler farmed, built a homestead, and lived on it for five years. (This was later amended to require fourteen months of residence and to prohibit entry by anyone who owned 160 acres of other lands.) *All told from the passage of the Homestead Act in 1862 to 30th June, 1923, claims totalling 1,346,163 were made for land comprising 213,867,000 acres.*

The privilege of *commuting*, that is, of converting the homestead right into a freehold and paying the regular price of 1.25 or 2.50 dollars for it, was allowed in the Act and was much used after 1880. (One of the most striking instances of this was in North Dakota during the period 1900-1910 where 5,781,000 acres were commuted against 5,614,000 acres homesteaded, the reason being the spread of wheat and flax cultivation over lands which were rapidly increasing in value and which thus allowed quick capital gains.) There can be no doubt that the commutation privilege resulted in bringing millions of acres of prairie lands into farms more rapidly than would otherwise have been done. Nevertheless the great lasting weakness of the Homestead Act remained in the fact

that it was not adapted to other parts of the country for which it was not designed. Congress had based the homestead principle on the experience of the settlers on the rich lands of the Missouri River frontier and between Ohio and the Missouri, and these principles were inoperative in the drier and poorer lands farther west. The results were abandoned farms. In the operation of the commutation clauses of the 1862 Act, it was said that "A homesteader may wish to commute because of sickness, crop failure, loss of property, inability to make a living on the land, want of school facilities, refusal of wife to live on the homestead, lack of equipment, or death of entryman and inability of his widow to carry on homestead work". But on the other hand, the land office reported "Commutation is the clause of the Homestead law which citizens who are not farmers or ranchers, and who have no intention of ever becoming such enter agricultural or valuable timber lands Actual inspection of hundreds of commuted homesteads shows that not one in a hundred is even occupied as a house after commutation. They become part of some rich timber holding or a parcel of a cattle or sheep ranch They (the commuters) are usually merchants, professional people, school teachers, clerks, journeymen working at trades, cow punchers or sheep herders. Generally these lands are sold after final proof."

The objective of the Homestead Act of 1862 was to grant free land to settlers. This was expected to hasten the settlement of the west and increase the national wealth. Opportunities for people to settle on the land were to be equalised so that the land would be occupied by large numbers of independent owner-operator family farms. It was part of this policy that settlers were to be given access to family-sized farming units according to their needs and willingness to farm, rather than ability to pay. Their efforts and the cost of clearing, breaking and improving the land were held a fair compensation to society in lieu of cash payments for the land.

Postscript

The Homestead Act (1862), however, is extraordinary in its restrictions. No alteration of the maximum 160 acres for a homestead was made until 1904, when the Kinkaid Act increased the size of homesteads in western Nebraska to 640 acres. The Desert Land Act of 1877 which permitted entries in the eleven Far Western States of 640 acres (on the assumption that each settler would provide his own water supply requiring expensive construction) ; the Carey Act of 1894, making grants to the States to encourage irrigation ; the Reclamation Act 1902 which provided for money obtained on the sale of land to be put aside in a fund to finance irrigation projects ; the 1909 Enlarged Homestead Act, making it possible to take up 320 acres in nine different states and territories ; the Stock Raising Homestead Act of 1916 which provided an upper limit of 640 acres (one section) per homestead of land ; are other principal acts of importance in regard to subsequent American settlement developments, which fall outside the scope of this present study.

There is no doubt that American social theory and land practice strongly influenced the Australian land reformers, but there are no exact parallels.^{44A}

SELF-GOVERNMENT

In 1851 the Australian Colonies Government Act of the Imperial Parliament gave authority to the existing Legislative Council to prepare a democratic Constitution for the colonies, and provision was made simultaneously for the establishment of Port Phillip District (Victoria) as a separate colony. In 1853 a select committee of the Council, which then numbered fifty-four (thirty-six elective and eighteen nominee members) adopted a draft Constitution, providing for a Legislature of two Houses. This Constitution, with minor amendments, was accepted by the Imperial Parliament in 1855. The New South Wales Constitution Act, 1855, proclaimed in Sydney on 24th November, 1855, conferred on the people of New South Wales a fully responsible system of government, including entire control of Crown lands, and power, subject to certain limitations, to make laws amending the Constitution.

The first Parliamentary elections held in New South Wales under the Constitution Act of 1855 began on 10th March and were completed on 19th April, 1856. In the absence of any live question upon which political parties could stand opposed, and with every man "fighting for his own hand", the issues were mainly personal. There were not the bitter faction fights which had distinguished the return of members to the first representative Legislative Council in 1843, since the candidates were mostly men of high capacity and pronounced individuality. One candidate, however, Mr. (later Sir) John Robertson, issued a "brave, manly manifesto" on his own behalf, pledging himself to support "Manhood Suffrage, Vote by Ballot, Abolition of State Aid to Religion, National Education and Free Selection over the Public Lands of the Colony."⁴⁵ In a long political lifetime extending from 1856 to his retirement from politics in 1886 and his death in 1891, Robertson saw all of these objectives fulfilled. For the greater part of his life he remained, by virtue of position or authority and always enthusiasm, the senior statesman on land affairs.

The first Parliament assembled on Thursday, 22nd May, 1856, in the building erected for the Legislative Council in 1843 and was formally opened the following day by Governor Denison.⁴⁶ It comprised one House entirely elected, the Legislative Assembly, and a separate

^{44A} The principal reference for this summary is B. H. Hibbard, *A History of the Public Land Policies* (New York, The Macmillan Coy., 1924). This is an authoritative text. Copies of this work are in the Australian National University Library, Canberra, and the Melbourne University Library. No copy is available in Sydney.

See also: Rainer Schickele, *Agricultural Policy* (New York: McGraw-Hill Book Co. Inc., 1954); H. C. and A. D. Taylor, *The Story of Agricultural Economics in the United States, 1840-1932* (Ames, Iowa: The Iowa State College Press, 1952).

⁴⁵ MacAlister, *op. cit.*

⁴⁶ *Opening of Parliament, 23rd May, 1856.* There is this engaging description of the opening ceremonies: "As the ceremonial hour approached Macquarie Street became thronged and its balconies crowded with spectators. The Council

nominee Chamber, the Legislative Council (members of which under the Constitution Act were initially to hold their seats for five years, but this quinquennial limit was to be altered in 1861 to a life holding). Controversy and instability were present from the beginning in the new Parliament and a journalistic critic of the first day's proceedings endowed perhaps with prophetic instinct wrote in the *Sydney Morning Herald* of the following day this classic description of the debates:

"The gentlemen who spoke for the first time, on the whole, were not inferior to the more experienced debaters. We look forward, however, with some terror to the oratory of the House. The idea seems to prevail that every member ought to say something—to offer reasons for every vote, then to explain his reasons, and then throw light on his explanation. This would be of no great consequence if it happened once a year, but it becomes an intolerable imposition when the pastime of every day."

(*Sydney Morning Herald*, 23rd May, 1856.)

The discovery of gold near Bathurst by Edward Hargraves in 1851 exercised a momentous effect on the destinies of the colony. Gold had been discovered in California in 1847-48 and the tide of emigration was away from Australia and towards the new world. Economic conditions were, in consequence, at the time depressed; landed property was valueless; stock cheap, and "no matter what a man possessed he could not raise money on it."⁴⁷ To counter this depression the Government had offered £20,000 to the finder of a payable goldfield, and it was the colony's good fortune that a field was so quickly found. The rush began in "full force" about the beginning of 1851 and by August, 1852, it is said, the population in and about the Turon field and the township

Chamber, too, presented a much gayer appearance than it could boast of on the previous day. Lady Denison and family arrived shortly before 11 o'clock and took their seats near the chair occupied by the President, Sir Alfred Stephen. The back benches on either side of the Chamber were set aside for the fair friends and relatives of the legislators, the front seats only being reserved for the members of the Council, most of whom were present. His Excellency, who was anxious to open the proceedings with as elaborate a ceremonial as possible, was put about no little in endeavouring to attain his ends. The distance (the writer was an eye-witness) from Government House to Parliament House was only a short walk, and some suggested it should be got over on foot. But Sir William wished to show the highest respect to the new order of things, and insisted on surrounding the inauguration with pomp and ceremony. But materials for display were meagre. There was a State carriage to begin with, but only two reliable horses. After much casting about the additional horses were procured. There was an every-day carriage for Lady Denison, but only one horse, and that a saddle one, slightly used to harness. There were, of course, other horses to the fore, but the difficulty was to find such as would stand a crowd and keep their heads when salutes were fired. There was only one State livery for the coachman, and as the regular coachman could not drive four horses, he had to give up his livery to a competent driver for the occasion. Government House domestics were next mustered. Two were selected as footmen to walk at the horses' heads, two were to stand up behind, and one was to go with Lady Denison. Every man who wore a livery of any kind was put into the procession, and only the butler was left behind at Government House to act as hall porter. On the arrival, without disaster, of the Governor-General and suite at the Council, he was cheered, and entering the Chamber and taking his seat, a messenger was sent to the Assembly, the members of which, headed by Mr. Speaker, were promptly in attendance." (*Sydney Morning Herald*, 24th May, 1856.)

See also: *Cyclopedia of New South Wales*, *op. cit.*, p. 57; "Who's Who in the First Elective Parliament of New South Wales," *Journ. and Proc., R.A.H.S.*, Vol. 13, p. 172; J. M. Main, "Making Constitutions in New South Wales and Victoria, 1853-1854," *Historical Studies of Australia and New Zealand*, Vol. 7, No. 28 (May, 1957).

⁴⁷ James T. Ryan, *Reminiscences of Australia* (Sydney, 1894), pp. 141-152.

of Sofala alone was not less than one hundred and twenty thousand.⁴⁸ Professional men, tradesmen, farm and station workers and labourers of all classes dropped their tools and flocked to the diggings, whilst at the same time a constant stream of ships arrived at Sydney laden with adventurers from all parts of the world, in many cases even the crews deserting and joining in the race to the fields. In New South Wales, however, the position was not comparable to the later onrush of population into Victoria. When every allowance is made, states Coghlan, it is clear that the field discoveries did not directly stimulate immigration into New South Wales in a very powerful way. The rival attractions of Victoria were too great and the majority of those who came to Australia to dig for gold went to Victoria. Nevertheless, there was a great deal of shifting of population between one colony and another, and New South Wales did benefit substantially in later years.⁴⁹

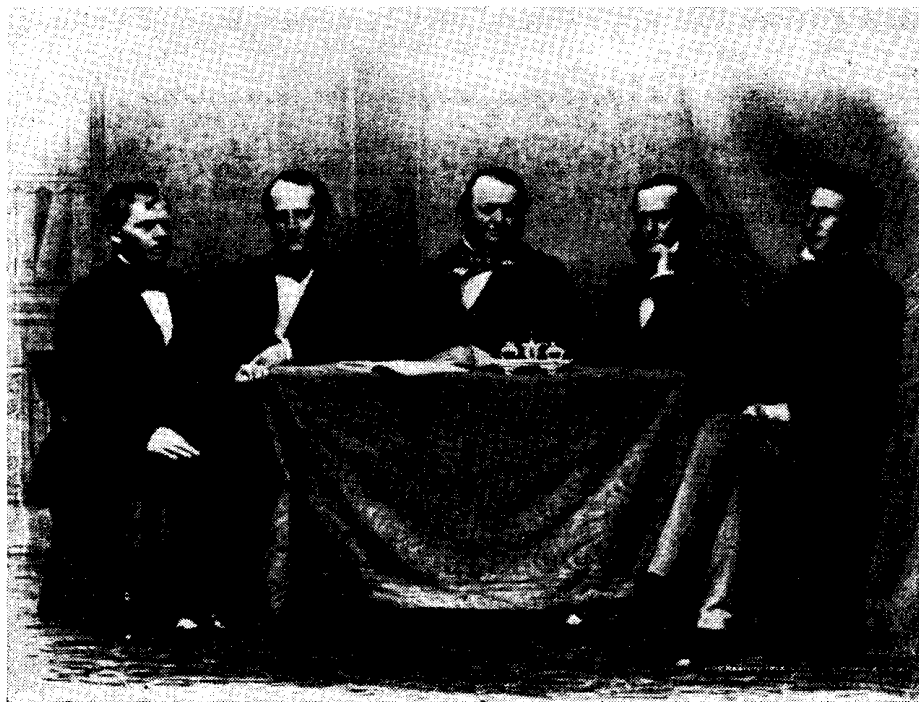
In these hectic years of the 1850's, also, numerous banks and financial institutions were established, and by advancing money to squatters to finance purchases and extend their operations, rapidly acquired a hold on landed property. In these operations the advantage being with the lender, many inevitably failed, the result being that by merger, bankruptcy, and surrender "immense areas came under the control of absentee proprietors" and "the real holders or lessees of the soil became the depositors or shareholders in monetary institutions." The country itself could support no increase in its extremely small population, since on even a large run, the only labour required comprised a manager-overseer and a few boundary riders, whilst nothing like the industrial development which occurred in Victoria followed in New South Wales to take care of the unemployed in the cities.

Such a condition of affairs inevitably became a major political problem. As early as Eureka and the Ballarat (Victoria) riots of 1854, the land laws had become a burning question and "unlock the lands" as popular a catchcry as "abolish the licence fee."⁵⁰ Many of the probable 200,000 miners then on the Victorian gold-fields—"All young men in the prime of life, and most adventurous and some with the brightest intellects in the world"—who had made money on the diggings and wanted to take up land "could not buy an acre, while millions of acres were lying waste". So also in New South Wales very few could become squatters, and opportunity did not exist for those who wanted to take up farming to acquire land. The self-interest of the squatters being to hold on to all or as much as possible of the lands which they held under the 1847 Orders-in-Council, the counter-reaction was the development of a violent antagonism to the squatters as "great landed proprietors". Politicians favouring the landless majority denounced the squatters and their "principalities" and in a few years there was within the new Legislative Assembly a strong party "pledged to secure for the people once more the birthright which had been surrendered in the leases and freeholds too readily provided for the squatters just a few years before." Henceforth, there was no moderation on either side—"the squatters held on with tenacity to what they legally possessed, and the other side, in a perfect political frenzy, sought their total spoliation".

⁴⁸ *Ibid.*

⁴⁹ Sir T. A. Coghlan, *Labour and Industry in Australia*, Vol II, p. 601, *et seq.*

⁵⁰ John Bostin, "Eureka, an Eye-witness Account," *The Australian Quarterly*, Vol. XXVIII, No. 4 (December, 1956), pp. 76-83.



First Responsible Government in New South Wales—1856.

FIRST MINISTRY UNDER RESPONSIBLE GOVERNMENT, 1856.

From left—(1) Thomas Holt—Colonial Treasurer. (2) Sir Wm. Manning—Attorney-General. (3) Sir Stuart A. Donaldson—Premier and Chief Secretary. (4) John Bayley Darvall—Solicitor-General. (5) George R. Nicholls—Auditor-General.

At the outset (1788), the new colony in New South Wales was administered as a Crown Colony of the Military type. The King's Vice-Regent was absolute in the three departments of government—he was in effect, the Legislature, the Cabinet and the High Court, combined.

In 1823 a Legislative Council was created for the first time. Members were nominated by the Governor, who presided over the Council while retaining the right to issue decrees overriding its decisions.

In 1842, a Council partially representative of the inhabitants was allowed to the colony; of 36 members, 24 were to be chosen by an enfranchised section of the people. This meant that Representative, but not Responsible government had been established, since the councillors had as yet no control over the administrative officers.

Earl Grey, Minister of State for the Colonies in 1847, proposed to set up a new constitution without having previously consulted the wishes of the colonists. This was too much for the growing number of independent spirits like William Charles Wentworth and Stuart Donaldson; numerous protest meetings were held, and the *Sydney Herald* thundered "Britons in New South Wales, as well as Britons in the United Kingdom, never shall be slaves."

Nevertheless, an Imperial Act for the better government of the Australian Colonies was passed in 1850, which among other things constituted Port Phillip a separate colony, while extending the franchise and the powers of the Legislature within the parent colony, but little satisfaction was felt in New South Wales.

A new and more sympathetic Minister for the Colonies, Sir John Pakington, in 1852 gave new hope to the colonists when he admitted the urgent necessity of "placing full powers of self-government in the hands of a people thus advanced in wealth and prosperity". With this *carte blanche*, the struggle between an ambitious and virile young Colony and the Mother Country virtually terminated, and the former became free, with few limitations, to shape her own destinies. The scene of conflict now became transferred to the attempts of the Council to produce a satisfactory Constitution. Three years elapsed before a compromise satisfactory to all parties was hammered out and the new Constitution giving Responsible Government to the colonies came into force in 1856.

A few biographical details of the members of the first Cabinet may be of interest.

Thomas Holt (1811-1888), arrived in Australia in 1842 and represented Brisbane and Ipswich in the first State Parliament. In 1866 he settled on Cook's River and took a prominent part in the development of the Port Hacking-Sutherland area. He is said besides to have possessed the rather dubious honour of having introduced the first rabbits of the common grey variety into Australia.

Sir William Manning (1811-1895), arrived in Australia in 1837, was elevated to a Supreme Court Judgeship in 1876, and was Chancellor of the University of Sydney from 1878 to 1895.

Sir Stuart Donaldson (1812-1867), took a prominent part in activities which led to the establishment of Responsible Government, but another claim to fame lies in his duel, in September, 1851, with Sir Thomas Mitchell who was then Surveyor-General of New South Wales. This duel, the last fought in Australia, was brought about because Mitchell took exception to an erroneous statement about his Department which Donaldson had made in an electioneering speech. Not satisfied with Donaldson's subsequent retraction, Mitchell called him out, and they met near what is now Centennial Park. Three shots were exchanged, one ball passing through Donaldson's hat, and another close to Mitchell's throat. The seconds then stopped the combat and the contestants left the field unreconciled.

Sir John Bayley Darvall arrived in Australia in 1839. He represented the Bathurst district in the old Council and Cumberland in the new Parliament, returning to England in 1867.

George R. Nichols (1809-1857), was born in Sydney, New South Wales, on 27th September, 1809, his father, Isaac Nichols, being the first postmaster of the Colony. He was educated in England, but returned in 1832, having qualified as a solicitor. In 1848 he was elected to the old Legislative Council for the Northumberland boroughs and continued to represent this area upon the advent of responsible government. When it was determined to divide the Bar, Nichols was given the privilege of practising both branches of the legal profession, being the only one so allowed. He died on September 12, 1857.

(cf. "*A Struggle for a Constitution—N.S.W. 1848-1853*"—K. R. Cramp in *R.A.H.S.* (1913); "*Port Hacking, Cronulla and Sutherland Shire*"—F. Cridland in *R.A.H.S.* (1933); "*Australian Club Centenary*" (1938); *Newspaper Cuttings Vol. 116* (Mitchell Library).)

The political catchcry in these years was "Free Selection over the Public Lands of the Colony" and the apostle of the new creed was Sir John Robertson, himself a squatter, who became Minister for Lands in 1858, in the second Parliament.

In the first six years of responsible government, to the end of 1861, there had been substantial progress. The population had increased to 358,278. There were 788 factories of various kinds, and 297,575 acres of land were under crop. The stock had increased to 233,220 horses, 2,271,923 "horned cattle", but there had been a slight falling off of sheep numbers to 5,615, 054. The revenue was estimated at £1,448,610, but on the other hand, the expenditure had risen to £1,540,005, creating a small deficit.

Responsible government was granted in 1856, and the first Lands Act passed in 1861. Taking stock as at the end of 1861, and prior to the Robertson Land Acts taking effect, the Crown had already disposed of over 7,000,000 acres of land by way of grants and sales.

*Disposal of Crown Lands, 1788-1861**

	Area acres
1. By grants, and sales by private tender to the close of 1831	3,906,327
2. By grants in virtue of promises of early Governors made prior to 1831, from 1832-40, inclusive ..	171,071
3. By sales at auction, at 5s., 7s. 6d. and 10s. per acre, from 1832-38, inclusive	1,450,508
4. By sales at auction, at 12s. and upwards per acre, at Governor's discretion, from 1839-41, inclusive	371,447
5. By sales at auction, at 20s. per acre, from 1842-46 inclusive	20,250
6. By sales at auction and in respect of pre-emptive rights, from 1847-61, inclusive	1,219,375
7. By grants for public purposes, grants in virtue of promises of Governors made prior to the year 1831, and grants in exchange for lands resumed from 1841-61, inclusive	7,601
Total area absolutely alienated as at 31st December, 1861	7,146,579

* Unpublished data—by courtesy of Department of Lands.

Nevertheless, farming as such remained in a pitifully weak condition and perhaps no better description is available than is given in this extract from a contemporary newspaper of the period:

"Cultivation is mainly carried on in patches, near the alluvial banks of rivers, and in other parts of the territory where the soil manifests a remarkable fertility, or where there are the means of access to a market. The Valley of the Hunter, Bathurst and Goulburn Plains, the Illawarra and Shoalhaven districts, seem almost to comprise the agricultural districts of the colony, except Cumberland, which, if not showing an equal degree of fertility with the others, has the advantage of position with reference to the Sydney market. The land within the Settled Districts to the South and West is as much pasture as it is agricultural, and the farming in Illawarra is mainly dairy farming. The system of farming generally pursued does not indicate the possession of great resources by the cultivators, as it is mostly what is designated in the old country 'flogging the land'; and the inevitable result follows, that when the land is exhausted, either it is thrown out of cultivation, or recourse is had to a species of colonial fallow, which may be very good, but is hardly so well calculated to recruit the exhausted powers of nature as the good old English practice of manuring. In no other country, moreover, should we see what we see on many of our colonial farms—the stumps left in the ground, probably for fear of the soil continuing too luxuriant, and because a little additional exercise in ploughing is good for the settler's health.

"The wretched system of cultivation prevailing in this colony may be accounted for by the fact which the 'poor man's' friend is too apt to ignore—that farming, like every other business, requires capital, and that when the settler has paid the price of his land, the cost of clearing and fencing, and maintenance of himself, and the wages of his labourers, until he can sell his crop, his capital is exhausted; he has no reserve for manure and other necessary contingencies of a farm: he cannot afford to try the effect of rotation of crops, but must work the land to the uttermost, and get all out

of it that he can. The bad farming of this colony is thus easily accounted for; and I am sorry to say, moreover, that our colonial farmers are not eminently distinguished by the good old Anglo-Saxon virtues of industry and perseverance. Among the best farms which I have seen in this colony are those on the Camden estate of Messrs. Macarthur, and these are mostly carried on by tenant farmers. I am disposed to think that the condition of the tenant farmer is the most favourable in the colony where the terms of the tenancy are easy and liberal to the tenant, because he is relieved from the payment of the purchase money of his land, which effectually cripples the small settler in starting . . .

"An objection which I have heard urged to small farms in the more distant parts of the bush, is that it affords too great facilities for the surreptitious appropriation of stock. A small farmer cannot get his living by growing wheat alone, but must eke out the profits of his cultivation paddocks by doing a little business in stock, and it is alleged that the small settlers are not very observant of the laws of meum and tuum. This however ought to be no argument against small farms, as it is obvious that the evil only arises from the too great isolation of the settlers, and that it can only be cured effectually by encouraging settlement as much as possible, and thereby of promoting better and more civilized habits . . .

"The greater difficulty which occurs to me in the way of the small settlers is the want of markets. There is scarcely half a dozen towns in the colony where there is a possibility of establishing a market for the regulation of the prices of agricultural produce, and though these prices are adjusted by some means or other, it is not difficult to imagine that the agriculturist generally comes off the worst in his bargains with the miller and the storekeeper. I cannot see how this difficulty is to be overcome. The formation of railways it is urged will tend to the better distribution of population, and at the same time will afford a ready means of transporting agricultural produce to market. It occurs to me however that in curing one end it will let in another. The large stockowners in the interior only grow their own wheat or buy from the small settlers on account of the cost of bringing flour from Sydney. They can buy imported flour much cheaper than they can the produce of the colony, and the opening of railways will give them the facility which they at present want, of getting their supplies direct from Sydney. It is obvious that the agriculturist will not be immediately benefited by railways, but it is not difficult to see that they may remotely benefit him, in encouraging the efflux of population to the more distant positions of the colony. It is true that agriculture does not at present afford much inducement to settlers in the bush, but it is not improbable that a better class of settler will in course of time be encouraged, and that better and more economical modes of husbandry will follow. At present there is no connecting link between farming and grazing, such as exists in older countries—the feeding of stock upon land. The objection to it here is that it does not pay; but when the principle is known to be right, it is a bad style of argument to suggest difficulties. The difficulties must be overcome. . . . The formation of agricultural societies in some of the country districts is a good feature in our social progress, and if they are steadily persevered with, I can see more good likely to ensue from them to agriculture than all the preaching in the universe . . .

"A few facts are better than the best theory and the combination of a few suggestive minds will the most effectually promote the common interest."

(W. G. Pennington, *Southern Cross*, 26th May, 1860 [Mitchell Library].)

SIR JOHN ROBERTSON AND THE 1861 LAND ACTS⁵¹

The political importance of Sir John Robertson is almost entirely associated with the series of Land Laws, commencing with the two Acts of 1861, which played so large a part in opening up New South

⁵¹Robertson had been prominent in the first Parliament with his caustic criticisms of a Land Bill introduced by Charles Cowper and in consequence was an unpopular choice as Minister for Lands. Immediately upon his first accession to office in 1858, Robertson issued a regulation to the effect that all pastoral

Wales for settlement. Entering politics at the age of 40 in 1856, Robertson had already something of a reputation for his ideas (expressed in articles to the *People's Advocate*) on the extermination of the dingo and on the more humane treatment of the aborigines. Robertson's father, the Government clockmaker, had acquired soon after his arrival in the colony a land grant in the Hunter Valley, under the terms of the current land policy of the early 1820's that permitted men of capital (not less than £2,000) to select at their option a 2,650-acre grant—the general land policy of the Colonial Office at that time being to open up the country through large estates in the hands of the settlers. About the year 1825 the family moved to the Hunter Valley and in the years to follow acquired extensive pastoral interests spread over a wide region on the Hunter and Liverpool Plains. John Robertson thus early gained an insight into the conditions of land settlement which became the main feature of his legislative efforts in later life. At the age of 16 he had worked his way around the world and by a curious chance had made Lord Palmerston's acquaintance while in London. Returning to Australia after an absence of two years he engaged in managing stations or squatting and farming on his own account, and it was whilst he was thus employed that he acted as deputy for the squatters to Governor Gipps, to place before him some of the difficulties under which cattle stations were worked—advice which was well accepted.

In 1855, at the suggestion of Henry Parkes, a select committee had been appointed to inquire into the state of agriculture in New South Wales, and Robertson was the most important witness before it.

It is surprising, therefore, that with this background of privilege, education and experience, Robertson should have steadfastly supported such "strong radical ideas" in the 1850's as the "secret ballots" and

leases should be subject to such conditions as Parliament might impose, but shortly afterwards the Cowper party was out of office. His successor, John Black, in the short-lived Forster administration, prepared a bill giving a limited right of selection over proclaimed agricultural areas, but unfortunately for the State's future, this measure did not receive Parliamentary sanction. On 9th March, 1860, John Robertson became Premier, retaining to himself also the Lands portfolio until 9th January, 1861, when another political crisis occurred, and Robertson's administration was merged into the Cowper Ministry No. 3. A Constitutional crisis was associated with the introduction of Robertson's Acts. On 3rd July, 1860, Robertson's two bills were laid on the table of the House, and were formally introduced on 27th September, 1860. The second reading of the Crown Lands Alienation Bill was carried without a division on 11th October, 1860, but in committee on 26th October an amendment by Mr. Hay, requiring "survey before selection", was carried by 33 to 28. As a result of this, which the Government regarded as defeating the main principles of the bill, a dissolution followed. In the fourth Parliament, which met on 10th January, 1861, Mr. Cowper was Premier, and John Robertson, Minister for Lands. Robertson then introduced his Land Bills for the second time, embodying the principle of free selection, which was very distasteful to the squatting interests in the Upper House. Accepted by the Lower House, the measures were rejected by the Legislative Council, and the Governor, Sir John Young, thereupon granted a dissolution of Parliament, and a general election was held. At this election the policy of the Government was emphatically endorsed and, the Council still proving obdurate, sufficient new members were created to swamp the opposition and carry through the proposed legislation. When the new Councillors appeared in the Chamber, the old members left in a body, and as the newcomers could not be sworn in, the Council ceased to exist. A fresh body of Councillors was therefore appointed, and the Crown Lands Alienation Bill and the Crown Lands Occupation Bill became law in 1861.

"manhood suffrage" at a time when such views were often regarded as subversive and socially dangerous, and when his interests might otherwise have been expected to lie in the maintenance of an existing order which had made it possible for him at small cost to become a landowner.

Contemporary newspapers and letters give examples of his capacity for friendship and loyalty to those who were his political and personal friends and colleagues, one example of his loyalty being his unique friendship with Dr. John Dunmore Lang. He was exceptional, also, in that unlike so many around him he was never one to worry about his own personal fortune, and although his family was one of the first to take up land in the Upper Hunter Valley and Liverpool Plains, he acquired only moderate means. During the latter part of his life he took a less active part in the conduct of his own personal properties than he did in Parliamentary affairs, especially the land laws.

But Robertson had also another side to his character for he had the reputation of being extremely stubborn and somewhat surprisingly parochial. His patriotism was intense but of a local kind, his dismissal of Victoria as "the cabbage garden" being typical of this attitude. He was jealous for New South Wales, its government and its constitutions, and fought against any measure which would have necessitated or increased co-operation with any one of the other Australian States. He opposed "Protection", for example, and was always a staunch "Free-trader". He was one of the few eminent men of his time who were "Separationists". He was never interested in the idea of Federation but when this movement could not be baulked he still publicly condemned it as a "fad of Parkes".

Twice nominated to the Upper House, Robertson was Premier on three occasions, Minister for Lands in a number of Ministries stretching from 1858 to 1882, whilst as he himself repeatedly stated, he had held office as a Minister more frequently than any other man in the country.

In the 1870's and 1880's Sir Henry Parkes and Sir John Robertson, two men of unusual vision, intense patriotism and driving executive talent, dominated the political scene in New South Wales. Yet by upbringing, background, personality and convictions, they were quite different. When in after years, for example, Parkes was being compared to Gladstone as a statesman, Parkes then an old man and looking back over his early years drew this distinction: "When Mr. Gladstone was at Eton preparing for Oxford . . . I was working at a rope works at 4d. a day, and suffered such cruel treatment that I was knocked down with a crowbar and did not recover my senses for half an hour." Later, as a labourer in a brickyard, "I was again brutally treated"; and "when Mr. Gladstone was at Oxford, I was breaking stones on the Queen's highway with hardly enough clothing to protect me from the cold."⁵²

The surprising thing about Robertson is that "he could never see imperfections" in his Land Bill of 1861 and no one, not even Parkes, could successfully oppose him in this, his special field. He was thus able to resist all suggestions for alteration and reform which might

⁵²Cramp, *op. cit.*, Part II.

have done something to close loopholes, remove inconsistencies and prevent the outrageous open flouting of the law in dummying and free trafficking in licences. If in framing the 1861 Acts, Robertson could have confined the application of his Acts to a smaller area, and as that area became absorbed, gradually worked out to more distant parts of the country, settlement might well have been promoted. But as it was, his Acts, whilst permitting "free selection", carried Government laissez-faire otherwise to the point where by the early 1880's the failure of effective land settlement had become obvious to nearly all.

As a contemporary put the position in 1883, it was "most extraordinary that after the experience of twenty-one years, the absolute folly of the Land Law of 1861 is not apparent to everyone, including the author".

After the defeat of the Parkes-Robertson Ministry in 1882 on the question of proposed amendments to the existing land laws, the *Express*, a weekly newspaper opposed to Parkes, had these interesting comments and comparisons between Parkes and Robertson to offer in an editorial headed, "Our Political Corruption":—

"When Robertson used the argument that but for the land sales the railways could not have been made, he unconsciously exposed the profound system of corruption upon which the policy of the Parkes-Robertson Ministry was based . . . the land sales have filled the Treasury and the full Treasury has enabled nearly every electorate and every representative to be bought by a lavish local expenditure . . . This is why the Parkes-Robertson Ministry deliberately promoted auction sales and clung to them so tenaciously . . . But even this—a policy based upon systematic and widespread bribery of the constituencies—is not the worst form of political corruption which this election evidences . . . Though the Minister who has been the immediate cause of the destruction of the Ministry has been Sir John Robertson . . . (his obstinate refusal to amend the land laws has drawn down the most emphatic condemnation from the electors) . . . it is Sir Henry Parkes whose popularity has suffered, not Sir John . . . (Sir John's) affection for his own Lands Acts, his desperate struggle to save them, his manly facing of the real issue, have shown people . . . that he is not a mere power seeker, that there is something in politics which he prefers even to office, and that he is ready to imperil his seat . . . to save a measure . . . Even an excessive and absurd attachment to a worn-out and mischievous system is better than an exclusive and selfish attachment to the sweets of office . . . The foolish, fond old man has been a more grateful sight than the heartless, base old man . . . On the other hand, Parkes is a political adventurer pure and simple . . . He was once a Denominationalist; he is now a Secularist. He was once a Protectionist; he is now a Free-trader. He once voted to admit the Chinese; he has lately legislated to exclude them. He once spoke in favour of revision of interest rates; he now says it is as bad as burglary. He was once for land reform; he now says those who demand it are idiots . . ."

(*The Express*, 16th December, 1882.)

In the later Parliamentary debates of 1883 upon the Stuart bill, Sir Patrick Jennings was caustic on Robertson. He said: "The Land Bill of 1861 was passed under a gust of passion without thought or reflection and the results were deplorable. The Bill carried its own death in its face, and everything that it presaged has been fully borne out . . ." (*The Express*, 1st December, 1883.) The attacks had been general, but even so, Robertson remained apparently unmoved. A commentary on

Robertson's speech on the second reading of Mr. Farnell's proposed bill in 1883 is of further interest in this regard:

"In the speech of Sir John Robertson, in reply to Mr. Farnell . . . Sir John was as usual self-assertive, and held to his panacea of 1861 as a sovereign agrarian remedy. Is it mere bravado on his part—or overweening self-confidence—not to see the facts of the case as others see them? Can he not learn, as thousands have done, the extent to which public opinion has turned against his once popular nostrum. His happy—or unhappy—knack of distorting the arguments and opinions of his opponents often seems to give him temporary advantage, but very little study is required to show that he is rather a dexterous parliamentary athlete than a self-contained and consistent statesman . . . Excessive land speculation has been the bane of the colony during the last decade of years especially; and we can hardly believe that Sir John Robertson is ignorant of the fact . . ."

(*The Express*, 17th November, 1883.)

Yet the Robertson Land Laws of 1861 hold a pre-eminent place in the history of land settlement in New South Wales. By these Acts all previous legislation was superseded, and for a period of 23 years thereafter, the Acts of 1861 were to all intents and purposes the land law of the country.

The 1861 Crown Lands Alienation Act (25 Vic. No. 1) and the Crown Lands Occupation Act (25 Vic. No. 2) of Sir John Robertson mark the beginning of Crown land legislation in New South Wales under responsible government. In them was introduced for the first time the principle of "Conditional Purchase" which has since become an important element in the land legislation of practically all the Australian States, and the further principle of "free selection before survey".^{52A}

^{52A} *Conditional Purchases and Conditional Leases.*—The oldest and most familiar of all tenures is the *Conditional Purchase*. It dates back to the Act of 1861 and as at 30th June, 1955, 34,564,241 acres have actually been alienated by the Crown in this way, while another 11,833,954 acres are in course of alienation. The aggregate number of Conditional Purchases held, 36,467, far exceeds any other class of holding. In the course of its ninety-odd years of existence the Conditional Purchase tenure has undergone a number of changes—the terms of payment have, for instance, been modified from time to time, and the term of residence has been altered—but its essential features remain the same. It is actually a purchase on terms and subject to conditions as to residence and fencing or improvement. A deposit is paid with the application and the balance of purchase money is payable by annual instalments. After fulfilment of all the conditions and payment of all moneys owing to the Crown in respect of the purchase, the holder is entitled to receive a grant in fee simple. The Act makes provision for a "non-residential" Conditional Purchase, but there is a restriction on the area which can be obtained, and the price to be paid for the land is double that for ordinary Conditional Purchase.

Usually associated with the Conditional Purchase is the *Conditional Lease*. The holder of a Conditional Purchase may—subject to certain restrictions—take up further lands as Additional Conditional Purchase and/or Conditional Lease, the whole being known as a "series", each of the purchases and leases being "a member of the series", and the original purchase being the "basal" of the series. Conditional Purchases and Conditional Leases are subject to the like conditions of residence and fencing or improvement, but a person residing upon any purchase or lease of a series is taken to be residing upon every member of the series. In fact, all Conditional Purchases and Conditional Leases of the same series are deemed to be one holding for all purposes of residence, fencing or improvement. The holder pays an instalment on his purchase, but an annual rent in respect of his lease. The term of Conditional Leases has been the subject of a good deal of legislation throughout the years, always with the object, however, of giving the holder a longer lease. The high water mark of this legislation was the Crown Lands (Amendment) Act, 1932, which provided that the title conferred by a

Under the *Crown Lands Alienation Act*, the right was given to any person to select from 40 to 320 acres of any Crown lands (excepting town, suburban, and reserved lands) at a fixed price of £1 per acre, of which 25 per cent. was to be paid as a deposit on application, three years being allowed in which to pay the balance without interest. Alternatively, payment could be deferred for all time by an annual interest payment of 5 per cent. (reduced to $2\frac{1}{2}$ per cent. per annum by the Act No. 69 of 1932). A condition of residence for three years was imposed, and improvements of £1 per acre had to be effected. There were a few reserves for townships, and religious and other purposes, but practically the whole of the unalienated surface of the colony, irrespective of its value or situation, was thrown open for selection.

The *Crown Lands Occupation Act*, which was to regulate the use of land for pastoral purposes, divided the country into: (a) First Class Settled Districts (previously Settled Districts); (b) Second Class Settled Districts (previously Intermediate Districts); and (c) Unsettled Districts (unchanged). The terms of existing leases in the previously proclaimed Intermediate and Settled District were reduced from 14 years to five years. The runs in the first class settled districts were to continue to be available only on annual lease obtainable at auction at a fixed rent of £2 per square mile, or three-farthings per

Conditional Lease commencing after the commencement of that Act (30 December, 1932) would—with certain stated exceptions—be a lease in perpetuity. Provision was also made at the same time whereby leases in existence at that date might be extended to leases in perpetuity. A Conditional Lease may be converted into an Additional Conditional Purchase, and thus ultimately into freehold.

In 1884, immediately prior to the introduction of the 1884 Act, the existing departmental arrangements were that the administration of the public lands was divided between the Secretary of Lands on the one hand, and the Secretary for Mines on the other, the former dealing with all forms of alienation, and the latter with the "occupation business". The character of the administration was essentially centralised or bureaucratic.

In 1901 the law specified even in respect of western lands no special provisions for larger than normal-sized holdings. Its provisions remained that in respect of conditional purchases and conditional leases:—

- "(1) Any person above the age of 16 years may, upon any Crown lands not specially exempted, select an area of 40 to 2,560 acres, together with a lease of contiguous land not exceeding thrice the area of the conditional purchase. The combined area of purchase and lease must not, however, exceed 2,560 acres. The price demanded is £1 per acre, of which 2s. must be deposited when application is made, and the balance, together with interest at the rate of 4 per cent., paid by instalments of 1s. per acre per annum. Payment of instalments commences at the end of the third year, and after the expiry of the period of enforced residence the balance may be paid in one sum at any time.
- "(2) The selector must reside on his selection for a period of ten years, and within three years erect a substantial fence around the land; in some cases, however, other permanent improvements are allowed in lieu of fencing. He is restricted to one selection during his lifetime; but after the expiry of the residential period he may purchase additional areas contiguous to his original purchase up to the maximum area, or he may purchase his conditional leasehold.
- "(3) A conditional leasehold, in conjunction with a selection, may be held for twenty-eight years. The rental is fixed by the Land Board. The leasehold must be enclosed within three years; one fence, however, may enclose both the conditional purchase and the lease. A lease may at any time be converted into a purchase. The term of residence on the conditional purchase and leasehold must aggregate ten years from the date of application."

(Quoted from Western Division—Royal Commission of Inquiry [1901].)

acre and renewable until otherwise required. In the second class settled and unsettled districts, runs ranged in area from 25 to 100 square miles, according to the quality of the country, and the five year leases similarly renewable were to be opened to competition by private tender, the rents being fixed by appraisement in open court, and being subject to reappraisement every five years. Improvements made entitled the leaseholder to a pre-emptive right over the area in which they were to be found, in the proportion of four acres for every pound spent, this provision being added to encourage permanent improvements by pastoralists. Of very great importance, also, having in view the later events, owners of purchased land were allowed to lease adjoining land to the extent of three times their freehold, at a rental of £2 per square mile per annum.

FREE SELECTION BEFORE SURVEY

In any assessment of the 1861 Robertson legislation, the conclusion must be reached that it was ill-conceived and most carelessly administered, particularly in the latter period. If the main purposes of the Acts were to encourage easy access to the land for the small man, to promote agricultural settlement and to stabilise the position of the pastoralist, the presumption thus raised of their efficiency is rebutted by the actual facts. Enormous areas of country were sold but the actual increase in acreage cropped was pathetically small, so that the Acts did not succeed in furthering small farmer settlement. Considered again from the point of view of the run holders, the effects also were unsatisfactory. In the first ten years or so, financial depression, credit difficulties and an alert administration slowed down land purchases and dealings. From 1870 onwards, however, the Acts were openly used both by so-called "selectors" to victimize landholders and by run holders to dummy "principalities" for themselves out of the wilderness. The worst features of the measures by the early 1870's had by then been flagrantly exposed.

It is difficult at this distance to discover the premises upon which Robertson based his Land bills. He could not fail however to have been influenced by the parallel developments then taking place in the United States and culminating in the Homestead Acts of 1862. In the protracted proceedings through Parliament a contemporary records that:—

"Robertson knew full well the requirements of the people. When he took up the land question in 1859 he was defeated, and appealed to the Country, to which appeal it nobly responded . . . on the free selection before survey, the squatters and monetary men were antagonistic to the measure, and fought in every way to defeat the bill, believing or thinking it was an infringement on their rights, though they had the lands locked up under long leases and little rent to pay (about £10 per annum for 30,000 acres of the best land in the country) they fought inch by inch, but Robertson carried too many guns, and got the bill through . . . The bill was very popular, and with all its faults . . . settled more people on the lands proportionally than any that has superseded it . . ."⁵³ (i.e. up to 1894).

⁵³ Ryan, *op cit.*, pp. 389-414.

There is this interesting criticism, however, in a contemporary (1860) record which puts forward another view:—

“The great battleground now is agriculture against the pastoral, that is, whether the Australian continent has greater capabilities for agricultural than for pastoral occupation . . .

“New South Wales . . . (upwards of 70 years in existence as a Colonial Community) . . . has developed a commercial produce of which it bids fair to become the purveyor of this civilised world . . . It might have become a great grain producing country . . . It might have reared a stalwart race of yeomen like the American backwoodsmen or the Cape boers, not that there is any fault to find with the bushmen whom it has actually reared. Mr. Robertson may declaim against squatters, Mr. Parkes may speculate upon the social advantages of agricultural communities, Mr. White and the orators of the Land League may urge until Doomsday the grievances of the ‘poor man’ but all their declarations and all their speculations are of no avail for want of a basis. The basis required is the practicability of the country for agricultural occupation. It is useless to tell me that the lands have been locked up . . . for Mr. Robertson to delude himself ‘that there are thousands of people only awaiting the proclamation of lands for purchase to come in and buy, and thus supplement the much deplored hiatus in the revenue’ . . .

“Land has only been cultivated to this day (1860) in the rudest and most imperfect manner. If agriculture has been as profitable as the gentlemen of the League would have us believe, how do they explain that up the valley of the Hunter there is at this day large tracts of the finest land in the world in a state of nature . . . Proprietors have not found it worth their while to clear the land themselves, and have not been able to offer tenures to tenants sufficiently tempting to induce them to take it upon clearing leases . . . Agriculture only manifests itself (on the Hunter) in an eruption of feeble blotches, showing that there is vigour and vitality in the subject and that the remedy to be applied is what the political economists designate a few more doses of capital. I would not willingly believe the disease to be chronic, but I am afraid it will prove a long and tedious one, and that we have not the means of applying the remedy with sufficient potency to make it immediately effective . . .

“The Land Question has been distorted too much by party prejudices, and the difficulties of agricultural settlement have been enshrouded in a cloud of claptrap . . .

“I think our policy should not be to give any undue stimulus to agricultural settlement, but rather to let it grow up, as it is sure to grow up spontaneously. There has been far too much vague declamation about ‘unlocking the lands’, but the ‘poor man’ upon whom the key has been turned really makes no complaint. It would be a delightful prospect to see the country overspread with smiling homesteads, but it is not clear that this will ever be achieved by Act of Parliament.”

(W. G. Pennington, *Southern Cross*, 28th April-5th May, 1860.)

In the “Report of Inquiry into the State of Public Lands” printed in 1883 there are full descriptions of the “roguery” and “dummying” which followed the Robertson Acts⁵⁴. Ryan records that “dummying” first became perceptible about 1868⁵⁵:—

“ . . . When a Mr. Barton of Wallarawang had placed some selectors or dummies in ‘Walgett’ in the district of Hartley, which once belonged to James Walker of that place . . . Mr. Walker was a man of probity and honour, not so with many who practised these nefarious purposes, which were carried on everywhere to a great extent to strangle the laws of the Country . . . Had Robertson allowed the bill to be amended, it was capable of being made a splendid measure. The defects chiefly arose from the requirements of the people, the areas being found too small for large families, and so requiring amending, but Sir John, whose heart and soul were in the bill, would not allow it to be touched, and so it remained for fourteen years . . .”

⁵⁴ *Journal of the Legislative Council of New South Wales Session 1883*, Vol. XXXIV, Part I.

⁵⁵ Ryan, *op. cit.*, p. 390.

There were in the class of "selectors" many who had a genuine desire to take up land for farming purposes, but these were in the minority. For the most part, "selecting" became a business of buying land on the easy terms offered by the government, and selling at a profit to the pastoral lessees, who completed the purchase, "dummies" also being used by the lessees to hasten these purchases of the choicest parts of their runs. Concurrently, the facilities offered by the Act for the black-mailing of the squatters were at once utilised, the aggressiveness of the selectors provoking the squatters in self-defence to purchase as much land as they could. This process of "dummying" was carried out extensively by the pastoralists, and by these means, large areas of the best country, purchased as cheap freehold, were alienated. In this way also was developed the process of "peacocking", by which the leaseholders, assisted by the free use of Volunteer Land Orders,⁵⁰ "dummied" the most strategic positions of a property, for example, those providing access to water, so preventing selectors from taking up land. Auction sales of land under special survey and land purchases, ostensibly for mining purposes, were other means employed of securing to the leaseholders particular areas of strategic advantage.

In the "*First Class Settled Districts*" the results were not unsatisfactory. Here the squatter generally had the freehold already; and if not, the selector had nothing to gain from selecting more land than he could legitimately use. The "*Unsettled Districts*", again, offered little inducement to the would-be farmer, although even here speculative selectors harassed the squatter by selecting his water courses with the object of being bought out. The principal conflicts between selectors and squatters occurred in the "*Second Class Settled*" (*Intermediate*) *Districts*, comprising over 86,000,000 acres of the best country, and which was almost completely held under leasehold by the squatters. Much of this was excellent farm land, and here the more bitter battles occurred between bona fide and speculator selectors, on the one hand, and leaseholders, on the other, virtually imperilling the safety of the pastoral industry.

In the ensuing conflict the squatter used every artifice, legal or illegal, to secure his position, since unscrupulous persons were flagrantly carrying on the business of selection for the sole purpose of blackmail. Legally, the squatter had the same privileges as the small selector. He also had pre-emptive rights by virtue of his improvements, so that with these he was able to adeptly "peacock" his run by purchasing river and creek frontages, water holes and other vantage points which rendered the remaining parts useless to any but himself. Fraudulent declarations concerning improvements were unchecked. A squatter could by the purchase, in forty-acre blocks, of a relatively small area (for example, a tenth or less of a run), make a large run safe from intruders. Or again, he might apply for mining leases, giving him undisputed possession for five years of the area embraced in the lease without the necessity for completing the purchase. So in the Riverina, the most fertile of

⁵⁰ Each member of the Defence Force was entitled, after five years service, to an order enabling him to take up 50 acres of Crown lands in any position he chose, without conditions or regulations as to residence or improvement, and he could sell or assign these orders at any time. The orders proved most valuable to the lessees in harassing or hemming in the selectors, and were a marketable commodity, no well-equipped squatter being without a supply.

the farming districts and where "no minerals, not even pebbles the size of a hen's egg, were ever found", twenty-seven strategically placed mineral leases served to protect a large run. But the usual method was the illegal employment of "dummies", who dishonestly imposed upon the Lands Department, selected land, fulfilled and evaded the residential and improvement conditions, according to the vigour or laxity of official inspectors, and then made their selections over to the squatter. In these dealings, the pastoralists finally won because they were financially backed by the banks. By such means the huge freehold pastoral estates of the later years of between 40,000 and 300,000 acres were built up—much, however, of these gains being lost in the drought years of the 1880's, and later.

The perjury, false swearing, blackmail and intimidations that occurred have been thus described:—

"False declarations were made daily alike by squatters and selectors. Fraud, perjury, subornation and bribery were universal. Any man who refused to do as his neighbours did, or to lend a hand when wanted, incurred the certainty of social enmity. Truth and honour ceased to be considered virtues in dealings connected with the public lands. Those who practised those antiquated rules of life were ignored and tacitly condemned by all men possessing sound practical opinions concerning pounds, shillings and pence . . . The reckless waste of the territory was not less pronounced than the moral deterioration. In place of the orderly survey being kept ahead of settlement as of old, a wolfish mangling of the country is displayed everywhere. This disgraceful spoliation went on with the full approval of the department and Parliament. Office records state that there are fifty millions of Crown lands open to "settlement" but no published maps can show where these lands are. If such a map were compiled, the fifty millions of acres would appear in the form of countless shreds, remnants and strips of soil, here, there, and everywhere; a chaos of waste, and a record of pilfering that must disgrace every Parliament between 1861 and 1882."⁵⁷

By all these means, "it is now a well established fact that of the free selections taken up since 1861 (and up to 1883) more than one-half have fallen into the hands of squatters and capitalists."

This dummying went on openly until 1875, and beyond 1875 by subterfuge, notwithstanding that dummying and illegal contracts were made criminal offences. Under the 1861 Act, for example, applications could be lodged by agents for Original Conditional Purchase (O.C.P.s) in the names of non-existent persons. (When later the law was amended, the applicant for an O.C.P. was required to sign an application and declaration, and to appear before a Land Board to establish his bona fides and for confirmation of the application.) Dummying (collusive selection) was made easy also because bogus selections could be taken up on behalf of children. (In 1861 an infant of any age could select land, but in 1875, by amending law, the minimum age was fixed at 16 years.) Again, under the 1861 Act, land was not available for selection if there were any improvements on it. The runholder had only to improve his run to a very small amount and this run was protected from selection. (To overcome this, the later Act of 1875 provided that improvements must be to the value of £1 per acre, or at least £40, before the land was exempt from selection.) Then, also, another method by which large areas were acquired was by what was known

⁵⁷ Ranken, *op. cit.*, Ch. XI.

as *Improvement Purchase*. If lands were improved to the value of £1 per acre, the runholder was entitled to purchase 640 acres at a time at £1 per acre. Improvements of the required value would be effected, the land purchased, and such of the improvements as were moveable shifted to another area. With the required expenditure to bring them up to the prescribed value, the same improvements could be thus used over and over again. Finally, declarations only were required as to residence and improvements—a difficulty which came to be early overcome by false swearing.

All this dummyming and illegal trafficking becomes understandable by noting the overwhelming administrative difficulties involved in these early formative years, and the innumerable loopholes which were open to the dealer in land. There was, for example, an immense amount of detailed and accurate work required in the survey of land, the supervision of conditions, and the actual registration, including the grant of title. Even in the prosaic and carefully worded first printed report of the Department of Lands there is a quite obvious note of complaint:—

“ . . . The Land Agent of the district is held responsible that the land is sufficiently indicated on the applications . . . (and that) the land has not been previously sold or reserved (a duty of some responsibility, as this being the foundation of the purchaser's title, any defect may expose the holder of the selection to litigation and loss at a later period) . . . It is inevitable under the system of free selection before survey that in the majority of cases there should be a considerable interval occupied by the survey and subsequent examination and charting of the plans . . . during which interval of course the applications remain with this office not definitely accepted, although the purchaser is in resident possession and carrying on improvements. The periods covered by survey and examination have been until recently on the average of considerable duration. They are now diminished . . . With such a multitude of transactions, unless record were made of each step in their progress to completion, utter confusion would inevitably result . . . There are at present in use 217 general registers of Conditional Purchases recording the transactions since 1862, all of which it is necessary to keep open, as in the great majority of cases the purchases have not been completed by payment of the balance, but are held by the annual payment of interest . . .

“ . . . The inspection of the fulfilment of conditions having been in the first instance left to the Inspectors of C.Ps., who were neither sufficiently numerous for the enormous extent of the duty thus thrown upon them, nor invested with the requisite powers to investigate the numerous cases, in which, after the completion of the term of compulsory residence, applicants had ceased to reside, or the improvements had been removed, a great accumulation of cases, awaiting final acceptance of the declaration, had taken place during the years immediately preceding that now closed, representing a large proportion of the conditional purchases of the years 1873 and 1874, and the whole of the years 1875, 1876 and 1877—periods of unexampled activity in the conditional purchase of land.

“ . . . In the years 1878, 1879 and 1880 respectively, there were referred to Inspectors 2,032 in 1878, 2,370 in 1879, and in 1880, 2,321 cases, in which the residence of selectors had been questioned by surveyors or otherwise; and 6,460 in 1878, 13,069 in 1879, and in 1880, 9,575 cases, in which final declarations as to residence, &c., had been received. There were also in their hands large numbers of cases referred during previous years, but remaining undisposed of. The Inspector's reports received during 1878 amounted to 8,869; and during 1879 to 10,519—in all, 19,388; as a result of which 1,045 cases were referred to Commissioners for further inquiry, with a view to forfeiture, in 1878, and 7,596 cases in 1879.

" . . . The number of certificates of approval issued during the year 1879 amounted to over 13,000, chiefly under Inspectors' reports.

" . . . All selections made prior to the passing of the last Act (1880) are transferable after twelve months residence during the first three years, and thereafter, at any time . . .

Return 'A', showing the number and area of Conditional Purchases made from the years 1862 to 1879 inclusive.⁵⁸

Year.	Sold Conditionally.		
	No. of Selections	Area	
		ac.	r. p.
1862 to 1869	27,994	2,161,390	2 2
1870	4,471	329,318	1 2
1871	4,751	358,682	2 8
1872	8,281	749,586	3 0
1873	13,417	1,391,719	0 0
1874	14,510	1,586,282	0 0
1875	14,517	1,756,678	0 0
1876	12,654	1,984,212	0 0
1877	12,009	1,699,816	0 0
1878	12,602	1,588,247	3 18
1879	7,540	924,136	1 0
	132,746	14,530,069	0 30 "

Yet notwithstanding all these deficiencies and so obvious imperfections, it was to take fourteen years for amending legislation to be introduced to remedy some of the more obvious loopholes.⁵⁹

TORRENS REAL PROPERTY ACT, 1862

During 1862 the Torrens Real Property Bill became law in New South Wales, doing away with the necessity of putting in a deed of transfer the entire abstract of title; and the law of primogeniture hitherto in force in the colony was abolished.

⁵⁸ Annual Report of the Department of Lands, 1880.

⁵⁹ Prior to the Act of 1861, which made statutory provision for the reservation and dedication of Crown lands and the setting apart of sites for cities, towns and villages, numerous areas had been "appropriated" (or set aside) under authority for special purposes. Details of these "appropriations" are contained in the "Half Monthly Returns" (H.M.R.) of those times, which are still available for reference in the records of the Department of Lands. To protect from selection lands bordering on centres of population, Section 13 of the 1861 Act provided that land was not open for selection which was within areas "bounded by lines bearing north, east and west" and distant 10 miles from any city or town with 10,000 population, or 5 miles from any town containing 1,000 inhabitants, or 2 miles from any town or village containing 100 people. This simple principle was carried into the 1884 Act, and from there to the 1913 Act. The present definition of "Population Areas" is much the same as that contained in the 1884 Act.

The purpose of the Real Property Act was to cure the main procedural disadvantages of the old system of title by deed, in which a deed is necessary in the transfer of the ownership of land, or in any dealing with the land by way of mortgage or lease. All such deeds form an essential part of the chain of title, which may have to be traced back to the original grant from the Crown in important cases. Any flaw at any point in the chain of title in these cumbersome procedures may be very serious, and impossible or very difficult and expensive to remedy.

The system invented by Torrens possessed the advantages of simplicity, cheapness and certainty. Its principal feature was the introduction of the *Certificate of Title*, a document issued by the Land Titles Office of the Department of the Registrar General, which simply gives the name of the owner of a certain piece of land and is officially signed and sealed. This single document replaces the large bundle of title deeds which characterise the *Old System* title procedure, and makes lengthy retrospective examination of title unnecessary. This relative simplicity is also the means of introducing the advantage of cheapness in dealing with land. The third main advantage is certainty. The final Certificate of Title makes title certain because it is a certification by the State of the title of the person named in the certificate.

The Act has been modified from time to time, but the two principles embodied in it remain; these are, the transferring of real property by registration instead of by deed, and the securing of the absolute indefeasibility of title.

⁹⁰ *Torrens Real Property Act*.—Robert Richard Torrens was a young Cambridge graduate—"brilliant as a rocket"—who on arrival in South Australia in 1841 was appointed Collector of Customs. While acting in this capacity, he became so impressed with the simplicity and directness of the shipping register by which the transfer of shipping was recorded that he conceived the idea of applying the same principles to the transfer of land. At the first election under Responsible Government in South Australia, Torrens was returned to Parliament as a member for Adelaide, for the express purpose of carrying through the Assembly a bill embodying his ideas. After forming a ministry which "was born dead, and buried within a week", he devoted himself to the task of putting his Real Property Act on the Statute Book. The legal members were strenuous in their opposition, but the friends of Torrens were many, and the bill was forced through the House by "the brute force of a tyrannical majority". The bill became law in South Australia on 27th January, 1858, and through the strenuous efforts of its author, was put into operation on 2nd July, 1858.

Having achieved his purpose in South Australia, Torrens canvassed the neighbouring States, and in each of these his system was eventually adopted. In 1863 he returned to England, sat in the House of Commons as a member for the Borough of Cambridge, and was knighted. He died in 1884 at the age of 70.

In various forms, the Torrens system was applied in Queensland (1861); Tasmania, Victoria and New South Wales (1862); New Zealand (1870), and Western Australia (1874). The Torrens System has been called "Australia's most important contribution in land matters to the world in general". It has been now widely adopted in some form or other throughout the world, including Canada, Great Britain and its protectorates and colonies, and U.S.A.

(Roberts, *op. cit.*, pp. 218-221; Biographical sketch in Colwell, *op. cit.*, Vol. 6, pp. 347-349.)