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2. SQUATTING AND THE 1847 ORDERS-IN-COUNCIL[35]

THE BREAK-THROUGH: THE 1847 ORDERS-IN-COUNCIL: THE VICTORY OF THE SQUATTERS.

THE BREAK-THROUGH

Until about 1830 the system that had been applied by Macquarie of issuing temporary grazing licences for lands which had not been nor were likely to be immediately required for settlement was extended by Brisbane and Darling, so that there would be breathing space to determine what should finally be done. Survey before settlement was clearly impossible outside the Nineteen Counties, for even within the "Limits of Settlement" surveys were rough and incomplete, and there were long delays. Until 1830 the Crown kept up the appearance of maintaining its legal rights, and the grazing of stock was carried on upon lands which were for the most part leased, purchased or occupied under the authority of the Government.

But from about 1831 a significant change took place:

> "A state of affairs arose which was unprecedented, unrecognised by authority, and was totally unintelligible according to all official and business authority. Some hundreds of young fellows formed a Bedouin Commonwealth in the inland grass country. There was no scheme or intent to do anything of the kind. It arose instinctively and spontaneously . . . The population was expanding, and the sheep and cattle were increasing still faster . . . . Impelled by a common impulse, the pioneers headed for the boundary (The Nineteen Counties 'Limits of Location') . . . . Shortly they were pouring across the frontiers in scores, north, south and west . . . . In the course of a couple of years, hundreds of adventurous young pioneers had crossed the boundary. The Governor could not have prevented this, because all the police and military in Australia could not have guarded an open frontier 500 miles in length . . . . The trespassers had now found a name for themselves; they had developed a strong esprit de corps, and their confidence and courage were unbounded. The inland frontiers of the United States were then infested by outlaws and vagrants who called themselves 'squatters', and this name was also adopted by the Australian adventurers who had fluttered the dovecotes of the Colonial Office about the year 1835".[36]

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[35] There is a comprehensive literature on the squatting period. The chief references that have been used for this brief sketch are:

- S. H. Roberts, *The Squatting Age in Australia* (Melbourne, Oxford University Press, 1935);
- J. F. Campbell, "Squatting on Crown Lands in New South Wales," *Journ. and Proc., R.A.H.S.*, Vol. XV, Part 2, 1929; Vol. XVII, Part 1, 1931;
- K. Buckley, "Gipps and the Graziers of New South Wales, 1841-6," *Historical Studies, Australia and New Zealand*, Vol. 6, No. 24 (May, 1955); Vol. 7, No. 26 (May, 1956);
- G. E. Ranken, *Our Wasted Heritage* (1893);
- S. K. Bender, "The Governorship of Sir George Gipps," *Journ. and Proc., R.A.H.S.*, Vol. XVI, Parts III and IV;
- F. A. Bland in *The Story of Australia Past and Present*, ed. James Colwell (Sydney, S. F. Clarke Publishing Company, 1925), Vol. IV.

[36] G. E. Ranken, *op. cit.*, Chap. VI.

In the middle thirties this term "squatter" was invariably used as one of opprobrium. The report of a select Committee of the Legislative Council issued in 1835 stated: "The nefarious practices of these men are greatly facilitated by the system of taking unauthorised occupation of Crown Lands, or squatting, which now prevails. It appears that many convicts who become free of

By 1836 stockmen, some of them unknowingly about to found squatting dynasties were on the move and had reached Guyra to the north, and the Murrumbidgee and district in a line just below Wagga to Tarcutta, to the south. Nevertheless, the expedition of Mitchell, the Surveyor-General, of March-October, 1836, marks the turning point of pastoral occupation. By the end of 1836, when news of Mitchell's discoveries became widely known, "flocks were mustering on a thousand tracks for the Major's line", or the route which Mitchell had followed and which was so easily accessible for wheeled traffic, to the beautiful well watered plains of the south. Henceforth, "Mitchell's deeply furrowed tracks constituted the basis of squatting occupation", lesser roads radiating from it and runs being defined by their position to it.

"To all intents and purposes," writes Roberts, "pastoral Australia, in 1840, meant a patch around Adelaide up to Pekina (which was stocked in that year), and then one continuous belt from the Victorian border, sweeping up between the Lachlan and the sea to the edge of the Darling Downs". There was never again to be anything like the invasion which had swept over the interior in the 'thirties and had converted the *Nineteen Counties* into four large colonies, the next ten years being principally concerned with consolidation, involving a further advance over most of the habitable parts of the continent. Those who had been first in the field were established on their runs and half a continent preempted.

The successive Government attempts to control this invasion of the Crown lands were a failure, since the concentrated strength of a whole community and its commercial and economic interests were solidly ranged against them.

1833.—In 1833, Governor Bourke, recognising very early that a "New Tenure" was in effect being created by the squatting system, introduced a local Act of Council ("An Act for protecting the Crown

servitude, or who hold the indulgence of ticket-of-leave take possession of Crown Lands, in remote districts, and screened from general observation, erect huts for their temporary purposes, and become what is generally termed 'squatters' ". There were thousands thus living precarious lives in the bush on land to which they had no title. Gangs could loot the respectable establishments, or harry the stock; individuals could erect shanties to serve as grog shops; so-called settlers could live off their neighbours and cover their bushranging and stealing activities with a mask of legitimate stock raising; vagabonds could "do a thousand and one things that sufficed to carry on their brutish existence". A squatter was understood generally prior to 1835 as a person who illicitly occupied Crown Land in the vicinity of alienated estates and plundered the flocks and herds or acquired a living by similar dubious means—"bushrangers with a base". The term "settler" on the other hand, was a mark of honesty, whether a man had a large or a small holding, whether it was occupied without any legal grant or was freehold. However, from about 1836, a rapid change occurred in the usage of the word. Though the first meaning lingered for a time the term "squatter" gradually came to include persons of standing, wealth and respectability. With a somewhat startling rapidity the word, from symbolizing the dregs of the populace, came to denote those enterprising men who had extended their activities across the boundaries to the occupied Crown Lands of the interior. It was said, "The principal settlers are also the principal squatters; settlers as to their own lands, squatters as to the Crown Lands they occupy." The term came to Australia from America where it had been sanctioned by forty years of usage. Always in America the word squatter had been concerned with unauthorised occupation *on a small scale*, whereas in Australia the use of the word squatter has usually signified a man of vast holdings and wealth.

Lands of the Colony from Encroachment, Intrusion and Trespass"), the purpose of which was to "prevent the unauthorised occupation thereof (Crown lands) being considered as giving a legal title thereto". The Act authorised the appointment of Commissioners in matters relating to property or land, who were to be armed with the necessary authority to warn off all trespassers from the outlying country and to act generally on behalf of the Crown in all matters relating to the land. The task was already quite hopeless and the squatters in ever-increasing numbers continued to cross the boundaries. "Not all the armies of England," wrote a contemporary observer, "not a hundred thousand soldiers scattered through the bush, could drive back our herds within the limits of our Nineteen Counties."

In July, 1834, Bourke reported:

> "I would observe that it is not beyond the southern boundary alone that flocks and herds of the colonists have wandered for suitable pastures. They are numerous to the south-west along the bank of the Murrumbidgee, and to the north they have crossed the mountain range into Liverpool Plains. Here, indeed, and still more northerly on the banks of Peel's River, five hundred thousand acres of land have been granted to the A.A. Company. In every direction, the desire of procuring good pastures for sheep has led the colonists far beyond the limits of location. These unauthorised occupations must not, however, be permitted to continue so long as to create any title to the land in the occupier. Under the provisions of an Act of Council passed last year (1833), measures may be taken to prevent such a fraud on the Crown."

Bourke had stated previously, in connection with the 1833 Act: "I do not propose, however, nor could I recommend it as a measure of sound policy, to seclude settlers from the temporary occupation, without payment, of those tracts of country in the remote interior, which are already occupied as stock stations."

Again, on 18th December, 1835, the Governor described a position in which:

> ". . . The persons . . . familiarly called squatters are the object of great animosity on the part of the wealthier settlers. As regards, however, the unauthorised occupation of waste lands, it must be confessed that these squatters are only following in the steps of all the most influential and exceptionable colonists, whose cattle and sheep stations are everywhere to be found side by side with those of the obnoxious squatter, and held by no better title."

1836.—The first attempt made to regulate squatting beyond the boundaries—in fact to recognise the state of affairs that had arisen beyond the boundaries—was made in 1836 when by Act of Council it was decided to admit the right of the squatters to graze their stock but imposing annual licences of £10 each. In its framing Bourke saw an opportunity "for obtaining such recognition of the title of the Crown from all occupiers of waste lands as will prevent any difficulty in the future resumption by ordinary legal process".[37] No attempt was to be made to disturb any honest occupier within the limits of location, unless

[37] The Squatting Act of 1836 was due to expire on 30th June, 1846. It provided a legal basis for the removal of squatters from Crown lands. When later Gipps on his land policies faced a hostile Council, he sought to have included in the Imperial Act of 1842 some provisions from this 1836 Act so as to preserve these rights of the Crown.

to make room for a purchaser. Penalties enforced by this Act of 1st October, 1836, in connection with unauthorised occupation of Crown lands, included fines of £10 for the first offence, to £20 for the second offence, and £50 for any subsequent offence.

Hitherto, in the settled districts, squatters had been charged an annual licence fee of 20s. for every 100 acres occupied. However, this was obviously unsuited to the lands "beyond the limits of settlement", and by 1836, the futility of the trespassing laws had been recognised. Licences to continue trespassing were in fact now to be issued at the rate of £10 p.a., irrespective of the area or flock. Squatting districts were proclaimed, and subsequently Commissioners of Crown Lands appointed to safeguard government interests in each. (The names of the Commissioners together with a general description of the district allotted to each were published on 9th May, 1837.)

It was said of this 1836 Act, that it had been "primarily designed by large squatters to check the activities of small squatters".

But the charging of a licence fee still left the basic problem of land tenure unsolved, because the licence had to be renewed annually, the licensee made any improvements at his own risk, and he was left to bargain with his neighbours about the boundaries of his run, since there were no Crown surveys. In effect, land administration stopped at the limit of settlement. The licences were simply the assertion of the title of the Crown to the land, not a certificate of its obligations to the holder. In such circumstances the pastoralists hesitated to develop their holdings. Runs were unfenced, buildings were of bark, the making of drains for stock watering was avoided. Yet the wool industry was booming, and its very importance impelled some early determination of the squatters' legal position.

1839.—The Act of Council, 22nd March, 1839 ("An Act further to restrain the authorised occupation of Crown lands, and to provide the means of defraying the expense of a Border police") was the first active attempt by Gipps, who had succeeded Bourke, to carry out the instructions of the new Home Government, but his attempt was to be likewise unavailing.

Nothing could stem the flow of settlement to the south after Mitchell's report of his 1836 exploration became known. Already by 1839 there were "almost as many stock as could be found in the whole of the Old Settled Districts". From the Darling Downs in the north, to Port Phillip in the south, there were 1,200 miles of defined roads, over which wool was brought from the stations to Sydney.

By this Act returns of stock were made compulsory, while an annual assessment (payable half-yearly) of one penny per sheep, threepence for every head of "horned cattle", and sixpence for every horse depastured beyond the boundaries, was to be paid. It was intended that the levies so collected—anticipated to yield £7,000 per annum from the stock levies and £5,000 to £6,000 per annum from the taxes—would defray in part the expenses incurred in the maintenance of a border police. The number of instances of "depredations" by the natives and "atrocities" committed by the wandering shepherds and stockmen were

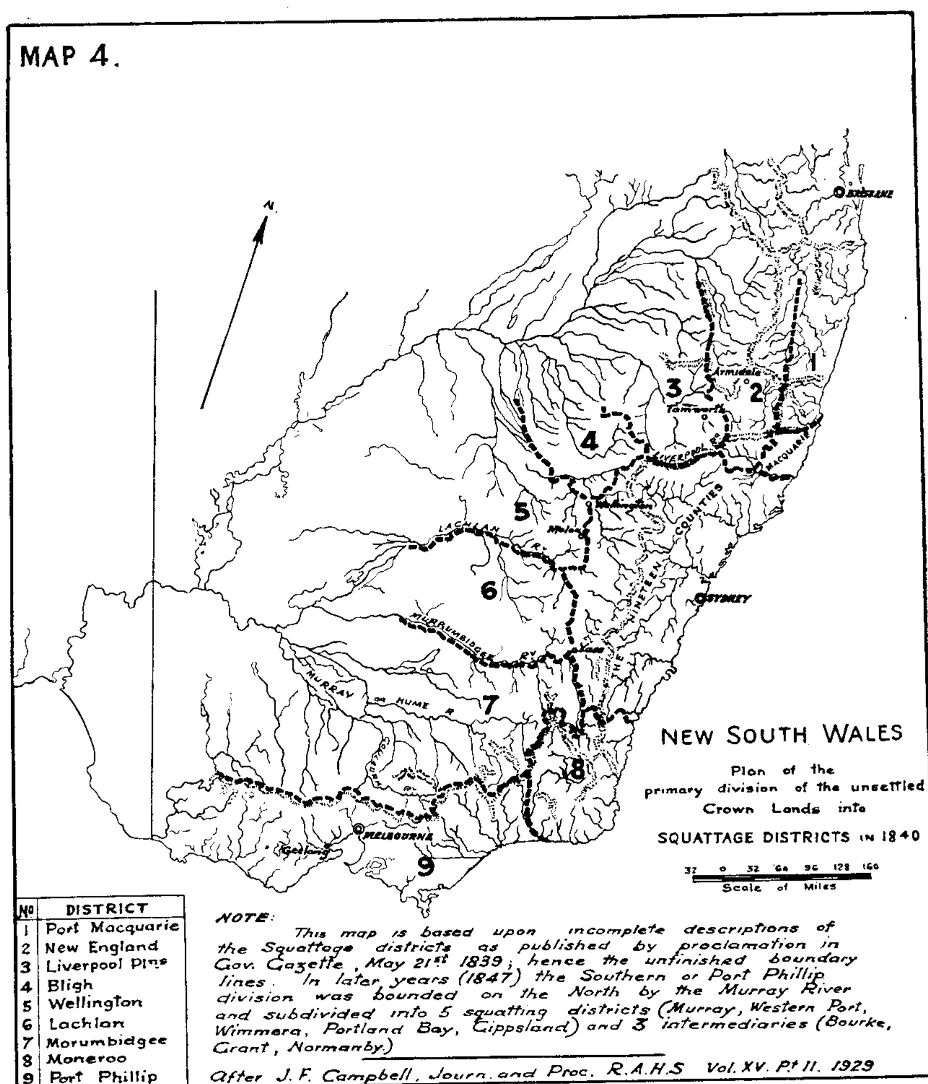

Fig. 4.—Plan of the Primary Division of the Unsettled Crown Lands of New South Wales into Squattage Districts in 1840.

increasing so that some urgent police measures had become necessary to try and maintain law and order. Already by 1840 there were 718 stations carrying 1,500,000 sheep within the proclaimed squatting districts. By further proclamation of 21st May, 1839, it was announced that the Crown lands of the Colony, beyond the limits of location, were to be divided into nine districts, for each of which there was to be a Commissioner of Crown lands. The Commissioners appointed and their headquarters were named:

No. 1—Port Macquarie District, Henry Oakes (Port Macquarie).
No. 2—New England District, George James Macdonald (Page's River).
No. 3—Liverpool Plains District, Edward Mayne (Page's River).
No. 4—Bligh District, Graham Hunter (Cassilis).
No. 5—Wellington District, Laurence Vance Dulhunty (Wellington).
No. 6—Lachlan District, Henry Coster (Yass).
No. 7—Murrumbidgee District, Henry Bingham (Yass).

No. 8—Monaro District, John Lambie (Queanbeyan).

No. 9—Port Phillip District, Henry Fysche Gisbourne (Melbourne).

The chief duties of these Commissioners, as stated by Governor Gipps in a despatch of 14th September, 1841, were "to exercise a control over the very numerous grazing establishments which have been formed in those districts under licence from the Government, and to prevent collision between the men in charge of such establishments and the aborigines of the country." The Commissioners were also to collect the fees payable on the Government licences as well as the assessment on cattle and sheep, and to aid them in these duties, each Commissioner was provided with "a small force of mounted constables who in order that they may be distinguished from the more regular mounted police of the colony are called by the name of the Border police . . ."

About three years after the date of the above proclamation, the northerly advance of the squatters and the opening of Moreton Bay to settlement necessitated a further division of the country into districts, and new divisions were announced:

Moreton Bay District, Stephen Simpson, M.D.

Darling Downs and part Moreton Bay, Christopher Rolleston.

Clarence River, Oliver Fry.

Port Macquarie, Robert Massil.

The appointment of the last (it was stated) "is new . . . . as the Clarence River and Moreton Bay formed, until recently, but one district, under the late Mr. Henry Oakes . . . ."

In 1839 "the quantity of stock on which assessment was paid for the latter half of the year was 7,088 horses, 371,699 horned cattle, and 1,334,593 sheep, and the number of licensed stations was 691."

By 1842, with the spread of settlement continuing, no less than about forty-five "squatting stations" ("sheep and cattle stations") had been formed behind and beyond Moreton Bay, but none had been allowed to be formed within fifty miles of the town of Brisbane.

1842.—The Australian Lands Act of 1842 (5 and 6 Vict., C.36) passed by the Imperial Parliament, finally terminated the policy of free grants and prescribed auction from a minimum upset price of £1 per acre as the sole means of selling Crown lands. It made no allowance for pre-emption or other rights. Under its provisions, at least one-half of the proceeds of land sales was to be devoted to the assistance of immigration. (In the Australian Lands Act of 1846, similarly, statutory provision was made for the appropriation of revenue from "Quit Rents, Leases of Crown Lands and Licences to Depasture Stock on the same," towards immigration purposes.)

THE 1847 ORDERS-IN-COUNCIL

1840.—In a despatch dated 28th September, 1840, the Governor (Sir George Gipps) advised the Secretary for the Colonies that twenty (20) counties had been laid out, but that these served no other purpose than that of indicating certain tracts of country, as they were not co-terminous with any jurisdiction, either civil or ecclesiastical. The despatch went on to state that beyond the boundaries of location the country was roughly divided into districts, and that within the limits of location, land was sold or let on lease; but beyond the limits, it was neither sold nor let, but licences were granted for occupation. (Fig. 4.)

As later described by Gipps in 1844, the position stood thus:

"Beyond the boundaries, the country never having been surveyed, there is no division either real or pretended, into allotments or sections of square miles. The quantity of land, therefore, occupied by any squatter, under the denomination of a station or run is altogether indefinite; and the price of a licence is equally £10 for everybody, whatever may be the extent of his run or the number of sheep or cattle depastured on it. Parties originally, in taking up their runs, were limited only by their own moderation, or by the pressure of other squatters on them, and it was the pressure of one squatter on another that the disagreements which arose therefrom, added to contests with the aborigines, which led, in the year 1837, to the first appointment of Crown Land Commissioners. . . . The extent of country occupied by squatters is divided into fifteen districts . . . . This wide extent of country occupied by squatters has been overrun in the course of about fourteen or fifteen years . . . . The occupiers of this vast wilderness, not having a property of any sort in the soil they occupy, have no inducement to make permanent improvements on it. Some land indeed has been brought into cultivation in order to diminish the very heavy expense of obtaining supplies from the settled parts of the colony, and here and there a building has been erected which may deserve the name of a cottage, but the squatters in general live in huts made of the bark of trees, and a garden, at least anything worthy of the name, is a mark of civilisation rarely to be seen."

(Gipps to Stanley, 3rd April, 1844.)

Gipps was the first and last Governor to make a determined effort to collect quit rents. He had inherited in 1836 an extraordinarily confused system. On country lands, four different rates were charged: 2s. and 15s. per 100 acres, 1½d. and 2d. per acre. On granted land in towns the rate was higher. The A.A. Company and some of the larger landholders had redeemed their quit rents by the employment of convict labour. But these were the minority; most owners of granted land still owed quit rents. The earlier Governors had made little or no attempt to collect the rents due, so that heavy arrears had accumulated. And when land charged with quit rent changed hands, the new owner bought with little or no reference to such charges or arrears, since it was generally considered that the government had no intention of collecting.[38]

In evidence given before the Committee on Crown land grievances in 1844, it was shown that as at 31st December, 1843: on 1,795,000 acres of country land, the annual amount due was £10,000, but arrears were £55,000; on 571 acres of Crown land, the annual amount due was £2,0000, but arrears were £11,000. Before 1841, the amount received

[38] The type of problem which emerged when Gipps tried to enforce payment may be illustrated by a specific example. In 1825, Alexander Riley was promised a grant of 5,000 acres on condition of fulfilment of the usual stipulations concerning cultivation, etc., in respect of the first grant. These lands were to be charged with a quit rent of 2d. per acre. Riley's agent selected about 1,000 acres on the Murrumbidgee (actually beyond the boundaries of location, but no objection was made by the government) and quit rent became due from 1831, the year when Riley's family took possession of the area. It was not until nine years later that an official survey of the holding was made, and Gipps then issued a deed of grant for 5,000 acres; he rejected a claim for the further 5,000 acres, on the grounds that the conditions stipulated had not been fulfilled. At the same time, the Colonial Treasurer claimed arrears of quit rent; these, by 31st December, 1843, amounted to £500 for the 5,000 acre grant. S. A. Donaldson, as guardian of Riley's grandchildren, petitioned Lord Stanley for remission of arrears of quit rent, asserting that £500 was more than the estate would realize if sold.

(*cf.* Buckley *op cit.*, *Historical Studies*, May, 1955, pp. 399-403.)

from quit rents, including arrears, was never more than £6,000 per year, and usually much less, but at Gipps' insistence and repeated demands, the amounts received were £10,000 in 1841, £21,000 in 1842, and £16,000 in 1843. The Port Phillip district was quite unaffected, as there were no quit rents payable. On land left unused, the quit rents fell most heavily.

In April, 1844, all quit rents were remitted in Van Diemen's Land, and to Gipps' successor, Governor FitzRoy, was given a wide discretion to remit arrears of quit rents in whole or in part. In 1846 Gipps wrote:

> "My main objection to Leases rested on the extreme difficulty of collecting Rent in New South Wales . . . . I did not then, nor do I now, doubt so much the power of the Law to enforce the payment of rent, as I doubt the constancy of any Colonial Authority in disregarding the clamor which the rigid collection of Rents will raise up against it."

Gipps felt the force of securing the pastoral licensee his improvements, but he was determined to remedy inequalities and root out abuses. The former were manifested by the fact that in 1844 in fourteen squatting districts, four of the largest squatters occupied 7,750,640 acres, for which they paid £560 in licence fees. Their stock totalled 1,216,659. Fifty-six of the smaller squatters in these districts, paying the same fees, depastured 68,003 sheep on 433,460 acres. But not only were there such enormous differences in the size and value of runs, though each was charged the same licence fee, but there was widespread under-occupation and blatant land-grabbing. Most squatters were absentees, and this was probably responsible for a large part of the economic difficulties of squatters in the early 1840's. Yet security of tenure only would not prevent absenteeism, "since those who have large stations within the boundaries, and merely out-stations without them, cannot be expected to take up their residence at their most distant properties". Nevertheless to allow these conditions to continue would have meant the gradual extinction of the small man, for the competition was too unequal. Speculation in runs and sub-leasing were also common, and the tendency was growing for the squatters to regard the runs as their property, although they were merely occupiers under a licence.

1844.—In an attempt at a solution, and after consulting his Lands Commissioners in the various districts, Gipps published two famous documents in 1844 designed to remodel the squatting system—the "*Occupation Regulations*" and the "*Proposed Purchase Regulations*". The Occupation Regulations (2nd April, 1844) defined a station or run as an area of not more than 20 square miles and capable of carrying not more than 4,000 sheep or 500 head of cattle.[39] As from July, 1845, or fifteen months hence, a separate annual £10 licence was to be taken out for each station as so defined. Additional licences might be acquired subject to the agreement of a Commissioner of Crown Lands taking into account the number of stock owned, the "accommodation required by other parties, and the general interests of the public". The Proposed

[39] Where a Commissioner of Crown Leases certified that more than 20 square miles was necessary to depasture that number of stock, a correspondingly larger station would be included within the definition. On the other hand, no existing station was to be reduced to less than 20 square miles merely because it was capable of carrying more than 4,000 sheep; in such cases, as explained later in a clause of the Proposed Purchase Regulations, a squatter was to be charged £1 extra for every 1,000 sheep pastured over and above 4,000. Thus a squatter having 5,000 sheep on a run of 20 square miles would pay £11 in licence fees. (N.S.W. V. and P., 1884, Vol. ii, pp. 6, 24.)

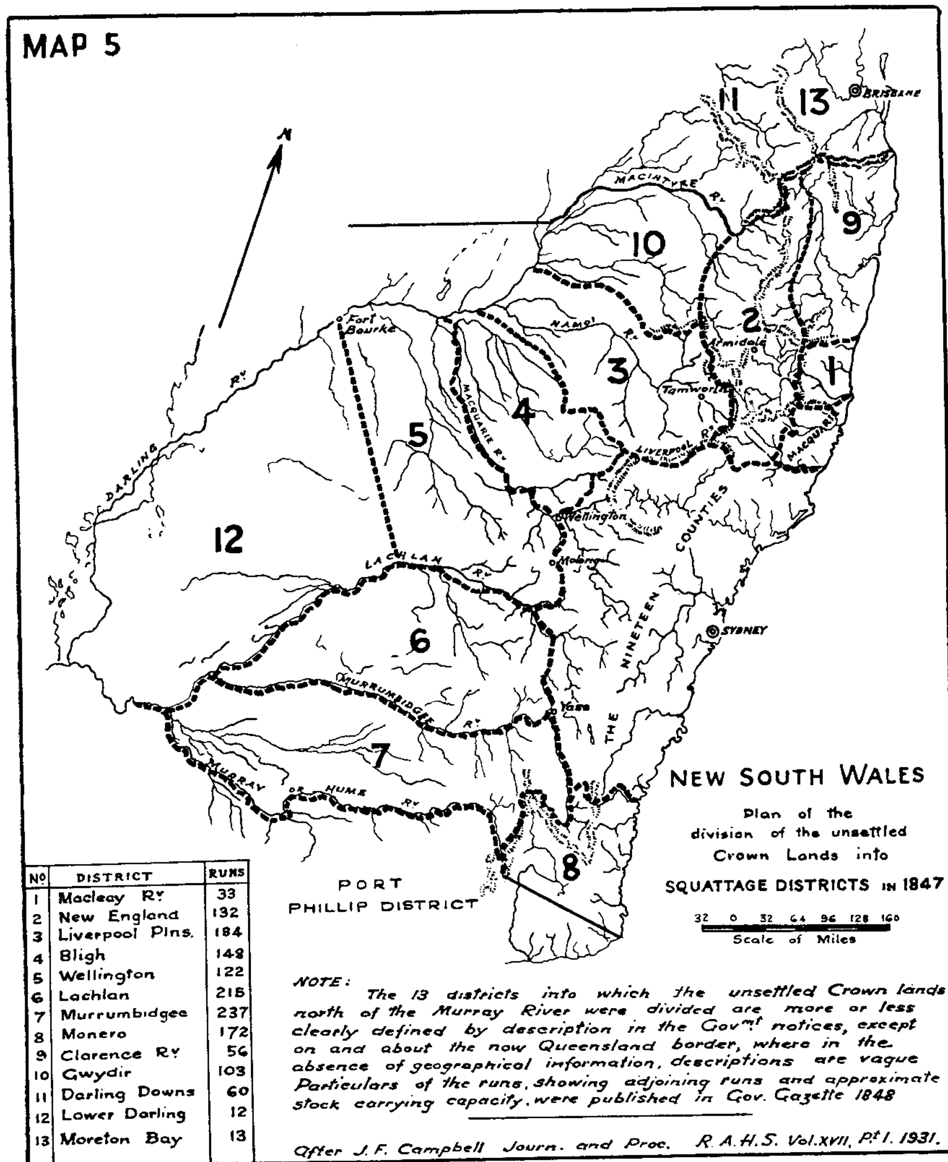

Fig. 5.—Plan of the Division of the Unsettled Crown Lands of New South Wales into Squattage Districts in 1847.

Purchase Regulations (published unofficially on 13th May, 1844) were not to take effect until approved in London. In brief, every licensed squatter under Gipps' proposed plan, after an occupation of five years, was to be given the opportunity of buying not less than 320 acres of his run as a homestead, at the minimum price of 20s. per acre, his improvements being taken into account. This would provide security of tenure. Such a purchase secured him an eight years' undisputed possession of his run, after which he might purchase another 320 acres for the privilege of another eight years' possession. In the event of a squatter not wishing to buy, another might do so, the former being compensated for his improvements.

In effect, under these proposals, the squatters were being offered fixity of tenure of a run for the annual payment of a fee of £40. In addition to security of tenure, provision was also being made for compensation for improvements and pre-emption for the first right to purchase. In the early forties these had been the chief tenets in the squatters' demands. To allow the squatters to use the Crown lands was obviously wise. The squatters could obtain the use of huge areas of land at ridiculously low rentals, but what right to permanent ownership could they show?

A calculated and passionate public opposition to Gipps and his land policies as a whole arose almost spontaneously. The talk was of "Ruin or Rebellion". Within a matter of days a Pastoral Association was founded (9th April, 1844) for the defence of squatters' rights, and landowners with separate grievances of their own and the Sydney merchant class joined forces with the squatters. Beginning with a furious Press campaign and excited public meetings in Sydney and other centres in April, 1844, the campaign was taken to the Legislative Council, very skilful play being made also with the Constitutional issue, namely, the government's right to raise taxation without the agreement of Council. But the most successful work done for the squatters' cause was by Boyd Bros. & Co. and a "pressure group in London consisting of firms engaged in wool-importing, exporting, shipping, banking, and woollens manufacture, together with such colonial graziers or their friends as happened to be there". The emphasis in the arguments put forward by the squatters was that to pay more for their runs would entail "the tying up of capital which could be more productively employed". The social connections of this group and those of the squatters, together with their financial and political standing, both in London and in the Colony, provided a commanding platform for the squatters to press their case for leaseholds.

The struggle was won when in December, 1845, the Ministry which had supported Gipps was replaced by a new Ministry wedded to the idea of granting a fixity of tenures.

In the Imperial "Waste Lands Occupation Act" of 1846, brought into operation by the famous Orders-in-Council of 9th March, 1847, the essential point was that established squatters were to be granted without competition eight or fourteen-year leases of their runs, paying a rent of £10 per annum for a carrying capacity of 4,000 sheep, plus proportionate payments for a carrying capacity in excess of that number.[40] These embodied Gipps' concessions whilst thrusting aside all the safeguards that he had intended.

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[40] The Imperial Act of 1846 (9 and 10 Vict. c. 104), entitled "An Act for Regulating the sale of Waste Lands belonging to the Crown in the Australian Colonies" (assented to 28th August, 1846, and taking effect from 1st May, 1847), authorised the making of *Orders in Council* providing for the alienation and leasing of lands in the Colony. By Order in Council of 9th March, 1847, the Colony was divided into three areas or districts, for administrative purposes, which were named (*a*) the Settled Districts; (*b*) Intermediate Districts; and (*c*) the Unsettled Districts. The establishment of these districts did not interfere with the "Pastoral" districts already set up, and power was reserved to the Governor to create further pastoral districts by subdivision of the districts already proclaimed. The Act maintained the principle of sale of land by

auction or by private contract, but for the first time introduced a system by which leases could be granted for various terms for pastoral purposes only. (Fig. 5.)

These leaseholds defined by the Orders in Council were intended to apply only to the *intermediate* and *unsettled* districts.

In the intermediate districts, 16,000 acres (or 25 square miles) could be leased with the right to purchase 640 acres (or 1 square mile) at 20s. per acre. In the unsettled districts, the area which could be leased was 32,000 acres. The right to purchase was in each case limited to the holder of the run. The leases were to be put up to tender, and tenders were not limited to the old run-holders.

Quoting from the Order-in-Council of 9th March, 1847, announcing the rules and regulations of the New Land Act, reference need only be made to the more important sections of Chapter II, which regulated the occupation of Crown lands in what is styled "the Unsettled Districts".

> "Section (1): (The Governor) is hereby empowered to grant leases of runs of land . . . to such person or persons as he shall think fit for any term or terms of years not exceeding fourteen years . . . for pastoral purposes, with permission . . . for the lessees to cultivate so much of the lands comprised in the said runs as may be necessary to provide such grain, hay, vegetables and fruit for the use and supply of the family and establishment of such lessees, but not for the purpose of sale or barter.
>
> "Section (2): The rent to be paid . . . shall be proportioned to the number of sheep or cattle . . . estimated as capable of being carried. Each run to carry at least 4,000 sheep, or equivalent in cattle . . . and not in any case to let at a lower rental than £10 per annum, to which £2 10s. for each additional 1,000 sheep to be added."
>
> Section (3): (Deals with the mode of estimating the number of sheep which a run will carry.)
>
> Section (6): (Land not saleable, only to occupant, during the continuance of the lease.)
>
> Section (7): (Regulates forms of leaseholds and extent of water frontages, as stated in the following subsections):
>
> "(1) Each lot must be rectangular, unless the features of the country, or the course of any river or stream, render a deviation from the rectangular form necessary . . .
>
> (2) Two opposite sides of any stream or watercourse which according to the practice of the Department of the Surveyor-General, ought to form a boundary between different sections or lots, shall in no case be included in the same lot.
>
> (3) No single lot shall have more than 440 yards (direct) of water frontage for 160 acres, or more than a like proportion of water frontage for any quantity greater than 160 acres . . . in every case where it may appear . . . that the sale of such lots respectively might give an undue command over water required for the beneficial occupation and cultivation of the land adjoining either side of any stream or watercourse."

The chief feature of this important "Squatters' Act", as it came to be called, was the fixity of tenure. It came into force by proclamation on 1st May, 1847, and its contingent rules and regulations were announced on 7th October, 1847, together with a notice that applications received for leases of runs would, from time to time, be published in the *Gazette* for the information of the public.

By the end of the following year (1848), 1,745 runs had been applied for in New South Wales, of which 424 were from the Port Phillip division of the Colony.

These Orders in Council remained unchanged until 1859, when the Colonial Act was passed (Act 23, Vict., No. 4), which provided for the reclassification of the intermediate districts as settled districts. Otherwise the Act of 1846 remained in force until 1861, when the Crown Lands Alienation Act and the Crown Lands Occupation Act of that year became law. Section 1 of the Alienation Act defined "First Class Settled Districts" as the lands declared to be of the settled class by the Act of 1859. The Occupation Act of 1861 (Section 1) also similarly defined those districts, and defined unsettled districts as "all other Crown lands".

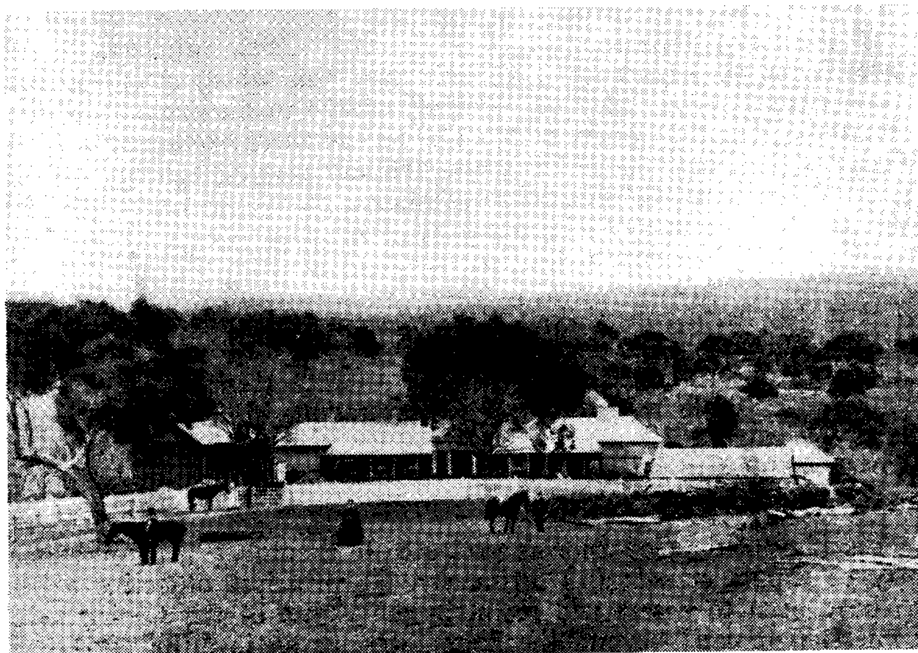
By these enactments, New South Wales was divided into three districts: the settled, intermediate and unsettled districts. The *settled districts* included the former Nineteen Counties, the nearer districts surrounding Brisbane (Queensland) and Port Phillip (Victoria), prescribed areas round certain towns such as Portland Bay and Twofold Bay, land within 3 miles of the sea, and along the banks of certain rivers, for example, the Glenelg (West Australia), the Clarence and Richmond Rivers (New South Wales). The *intermediate districts* comprised parts of certain counties in the settled districts, which were not actually settled, and thirty-one new counties stretching from Brisbane to Portland Bay. The *unsettled districts* comprised the country beyond, with undefined boundaries.

In the *settled districts,* leases continued for one year, the commons being used for additional pasturage. In the *intermediate districts* the leases were for not more than eight years, and on sixty days' notice being given, the Crown might offer any part of the lease for sale at the end of every year, the lessee having a pre-emptive right, or compensation for his improvements if he did not exercise his first right to buy. In the *unsettled districts,* the term of the lease was for not more than fourteen years. The runs were rented as formerly at the rate of £10 p.a. for not more than 4,000 sheep, with an extra £2 10s. for every additional 1,000 sheep they could carry. The carrying capacity and value of the run were appraised by three commissioners, one representing the Crown, one the lessee, with a third mutually agreed upon.

The lessee had a pre-emptive right during the currency of the lease, and he could purchase portions of not less than 160 acres, i.e., his homestead, at the minimum price of £1 per acre. At the termination of the lease, if the run were sold, the lessee received compensation for his improvements.

The Orders-in-Council were not accepted without protest, and Robert Lowe, previously on the side of the squatters in opposition to Gipps, voiced the popular feeling against them. What had in fact been granted to the squatters was a virtual perpetuity of occupation at a cheap rental with immunity from competition because of the high upset price of £1 per acre and the recognition of the cost of improvements.

In *Port Phillip,* Governor Latrobe deftly delayed putting the Orders into operation, saved much land from coming under the pre-emptive clauses, and reserved many portions for townships and agricultural purposes which the gold discoveries fully utilised. In *South Australia,* suitable regulations were adopted, for the smaller pastoral areas did not permit of the same lavish concessions which might be justified in the eastern half of Australia. (Annual leases were given in areas known as "hundreds" with no rights. Outside these areas, leases might run for not more than fourteen years, but they were liable to withdrawal on six months' notice, and automatically terminated if a hundred were proclaimed in the holding. No pre-emptive rights were recognised, nor compensation for improvements given.) In *West Australia,* the squatters had not made the same headway as in the east, owing to the domination of other landed interests opposed to the pastoralists. (With the Act of 1846, security was afforded by granting yearly leases near settled districts, and eight-yearly leases in other parts. The position of the pastoralists at once improved, and the discovery of fresh pasture land in the north gave a desired impetus to the industry.)



Cooma Cottage—Yass—showing Hamilton Hume and Mrs. Hume in the foreground.

This homestead is situated on the Hume Highway a short distance from Yass and is a landmark that recalls the exploring days of Hamilton Hume, who is shown in the foreground with Mrs. Hume. It was erected on the site where the explorer originally camped when passing through Yass in 1824 on his epic journey to Port Phillip.

The home, although more than a century old, is well preserved, and more particularly so are the massive stables that stand out prominently to the left of the main building. Hume received several land grants for his exploration work, including 1,200 acres in the Crookhaven River District, 1,280 acres and 1,920 acres in the Yass district. Towards the close of the 1830's, he bought land at Yass and built "Cooma Cottage".

Hamilton Hume was born at Parramatta on 18th June, 1797, and received most of his education from his mother. When only seventeen, he began exploring the country beyond Sydney as far to the South-West as Berrima. He soon developed into a good bushman, and subsequently was described as "an excellent explorer, a first-rate bush man, never lacking in courage and resource. whose work was not adequately appreciated or rewarded by the Government of the time." He had a good knowledge of the blacks and was able to avoid conflict with them, and he appears, also, to have learnt something of their speech. Hume spent the remainder of his retirement at "Cooma" where he died in 1873 at the age of 76 years. He left a widow but no children.

Hamilton Hume made a number of early exploratory journeys and subsequently to the Berrima investigations, had discovered, by 1821, the Yass Plains. He is best known, however, for his epic journey in 1824, in association with Hovell, when he journeyed overland from Lake George (between Goulburn and Canberra) to Port Phillip, crossing the rivers and at least six large creeks. The rivers included the Hume (now known as the Murray) and the Murrumbidgee. The Hume and Hovell expedition commenced on 2nd October, 1824, from Hume's farm at Appin, where a monument is now erected. Two years later, Hume was associated with another famous Australian explorer, Charles Sturt, in his journey along the Macquarie River and subsequently to the Darling, in an endeavour to solve the then mystery of the destination of the many rivers flowing inland.

(Mitchell Library.)

THE VICTORY OF THE SQUATTERS

In the lusty, boisterous years of the 1840's, few problems in Australia could have been more difficult than that which faced Governor Gipps (5th October, 1837 to 11th July, 1846) in his dealings with the squatters. The community over which he had charge was "restive in the birth pangs of nationhood" and concurrently passing through a period of acute economic distress. Representative government and local government were attained during his term, not of their own accord but as a result of the "development of a considerable body of public opinion which was lively, active, well-informed, assertive and hostile to the rule of 'Mr. Mother Country' ". There was avarice, materialism, bigotry, bitter sectarianism, intolerance, and few forms of vice which were unknown. "I have been disappointed", wrote Henry Parkes shortly after his arrival in 1839, "in all my expectations of Australia except as to its wickedness, for it is far more wicked than I had ever conceived it possible for any place to be, or than it is possible for me to describe to you in England".[41]

The aims of the Governor as explained in a number of his despatches may be simply stated: (1) Primarily, his principal objective appears to have been to assert and maintain the rights of the Crown to the ownership of land beyond the boundaries, as against the prescriptive right on the part of the squatters through long occupation. (2) A second objective was to provide the squatters with some encouragement to build homes for themselves and to improve their social and moral circumstances. This he believed could be done by giving them a more permanent interest in parts of their holdings—hence the proposals concerning the purchase of homesteads. (3) Thirdly, Gipps was determined to see justice done as between small and large squatters and therefore since "some individuals held eleven hundred times as much land as others for the same money . . . some owners (feeding) 180 sheep on Crown lands for one shilling a year, whilst others paid nearly one shilling for (each) sheep . . . some (paying) one halfpenny a year for a cow, others seven shillings", he proposed to make the squatters pay in proportion to the value of their holdings. This would obviate the anomalous position of huge holdings greatly understocked and under-capitalized, side by side with much smaller holdings and both being charged the same licence fee. But in addition, as shown by Buckley, there was a still further important objective which has not been sufficiently stressed. (4) In order to provide money for immigration purposes in substitution for the income from land sales which had almost dried up as a result of the depression of the 1840's, Gipps proposed a considerable increase in Crown revenues from licence fees and from sale of homestead allotments. The squatters were to provide the alternative source of revenue.[42]

These were mild aims, thoroughly understandable in all the circumstances, yet Gipps and his land policies were to encounter the almost universal hostility of the community, an hostility fanned to breaking point by the agitations of Wentworth and Robert Lowe, the spokesmen

[41] K. R. Cramp, "Some Aspects of the Life and Character of Sir Henry Parkes", *Journ. & Proc. R.A.H.S.*, Vol. XXIII, Part III (1937), pp. 205-228.

[42] K. Buckley, *op. cit.*

for the squatters. Gipps deliberately chose the path of duty which he knew would ostracize him from practically all those members of the community—the influential squattocracy and capitalists—who by reason of their wealth and culture had it in their power to make his social life in the colony pleasant or otherwise. In the end the "wolves" and "jackals", to use Bourke's phrase, and the "land sharks", to use Gipps' own, all too anxious to feed unmolested on the "waste lands" of the colony, were to cause his defeat.

Side by side can be placed the two views, the first in statements by Gipps and the second in a speech by Wentworth:—

> "The lands are the unquestionable property of the Crown and they are held in trust by the Government for the benefit of the people of the whole British Empire. The Crown has not simply the right of a Landlord over them, but it exercises that right under the obligation of a Trustee."
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> (Gipps, H.R.A., Series I, Vol. XXII, p. 667.)

The squatters' view was expressed by Wentworth in a speech before the meeting of protest against the "Squatting Regulations of 2nd April, 1844":—

> "It was true, no doubt, in point of law, that these spacious domains, which formed the squatting stations of the country, did vest in the Crown by virtue of its prerogatives; but the Crown was but the trustee for the public. It was evident that all the value of this country, whether of the city or of its remotest acres, has been imparted to it by its population; and consequently the country itself is our rightful and first inheritance; . . . these wilds belong to us, and not to the British Government . . ."

Hardly ever again in the political life of the State was there to be such rhetoric, such a ceaseless flow of words and concoction of principles, such concern over constitutional rights, such passion for self-government, as in the controversies and debates of those times, when the future Viscount Sherbrooke (Robert Lowe) and William Charles Wentworth, the tribune of the people, were locked in the struggle with Gipps.

But in the outcome three of the principal members of the Pastoralists' Association were able to retain their collective 306,000 acres. Wentworth kept his fifteen stations, of which he was the absentee proprietor, and Benjamin Boyd was not dispossessed of the fourteen stations he held on the "Maneroo" (on which in 1844 he paid licence fees for only four), or the other four stations in the district of Port Phillip (on which he paid a licence fee for only two). The squatters were spread widely from the Darling Downs on the north to Port Phillip on the south and the flocks and herds were increasing. In 1843, Gipps had struck out of Wentworth's Lien on Wool Bill a clause which would have enabled squatters to mortgage their stations, but soon this was made possible by the leaseholds given, so that by 1848 there were the registered stations on the Macleay, the historic runs of the New England (Glen Innes, Kentucky, Newstead, Abington, Bonshaw, Inverell, Gostwyck, Tenterfield, Tilbuster, Saumerez, Yarrowitch, Strathbogie, Walcha, Guyra Wallamumby and the rest), and immense stations elsewhere on the rivers, the tablelands and the plains.

The economics of the situation were clear enough. It was obviously sheep and cattle and wool which would provide the capital to develop the country. Who were better fitted to produce them than the pioneers who had blazed the trail? Why should the squatters have to pay "Mr.

Mother Country" for the waste lands to support an immigration project which should rightly be England's own responsibility, since the lands had no value except what was given them by the squatters' efforts and the investment of their own capital. Give the squatters self-government and the right to dispose of the Crown lands, and the colony would go ahead and become prosperous; loyalty would be increased; discontents removed, and England's material wants would be abundantly supplied. Let posterity take care of itself, since the country was not ready for small settler enterprise. And so in fact was the issue decided and the irrevocable decisions made.

Thus, at the commencement of 1850 the pastoralists held undisputed sway. Pastoral estates stretched across the occupied portions of the continent, broken here and there by embryo townships and cities, with farming altogether an insignificant occupation on the mainland. By the 1847 Orders-in-Council, and even so early, practically the whole of the inland was absorbed in runs and tied up in pastoral leases. The runholders used "bribery, corruption, and all forms of roguery" in their anxiety to secure their leases and to forestall those only too anxious to take their place. Everywhere the right to purchase one square mile in every twenty-five was freely used, the runholder usually choosing the choicest picked spots, valuable for their pastoral and agricultural possibilities, or perhaps for strategically controlling the surrounding country.

It had been hoped by those who framed them that the 1842 and 1846 Imperial Land Acts would set the seal upon Australian land legislation, but events in the next few years were to destroy such hopes. In the early 1850's came the gold rushes, followed by self-government. The influx of miners from all parts of the world, especially those who had participated in the stormy English and European happenings of the late forties, brought a new influence in politics. Accustomed to the mining laws which enabled them to peg their leases where they wished, the miners wanted the same prerogative in regard to the land when they turned to farming for a living. For the next thirty years the land problem in all the States was similar: how to encourage settlement and at the same time lessen the influence of and dependence upon the pastoralists[42A].

42A. Bearing upon Wentworth's arguments in the controversies of this time, all lands within the territory of New South Wales, in the strictly legal sense, originally became vested in the British crown. There is this excerpt from a long judgment of the Chief Justice of the Supreme Court of New South Wales (Sir Alfred Stephen) in January, 1847 (*Attorney General* v. *Brown*, 2 S.C.R., Appendix, p. 30):

> ". . . The territory of New South Wales and eventually the whole of the vast inland of which it forms a part, has been taken possession of by British subjects in the name of their sovereign. They belong, therefore, to the British crown . . . The right of the people of England to their property does not in fact depend on any royal grant, and the principle that all lands are holden mediately or immediately of the crown flows from the adoption of the feudal system merely. That principle, however, is universal in the law of England, and we can see no reason why it should be said not to be equally in operation here. The sovereign by that law is . . . universal occupant. All property is supposed to have been originally in him. Though this may be generally a fiction, it is 'one adopted by the Constitution to ensure the needs of government for the good of the people'. But in a newly discovered country settled by British subjects, the occupancy of the crown with respect to the waste lands of that country is no fiction . . . At the moment of its settlement, the colonists brought the common law of England with them . . ."