Chapter 3—*Australia's Ever-changing Forests VI:* Proceedings of the Eighth National Conference on Australian Forest History. Brett J. Stubbs et al. (ed.).
© 2012, ISBN 978-0-9757906-2-5

Exploiting the land laws—it wasn't only the squatters

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Introduction: the ascendancy of the squatters in New South Wales.

In the colony of New South Wales by 1850 'the pastoralist held undisputed sway…practically the whole of the inland was absorbed in runs and tied up in pastoral leases' (King 1957). Graziers had disregarded the Limits of Location of settlement as adopted by Governor Darling in 1829 (Figure 1; Jeans 1967, 1972; Campbell 1931, 1968) and without authority occupied 'unsettled' Crown lands beyond, finding extensive areas of better pastoral land than remained in most of the unoccupied areas within the settled districts. In doing this, these pioneer 'squatters' were encouraged by the success of Australian wool in the world market, and gained added impetus from Surveyor Mitchell's reports of good grazing land discovered during his journeys of 1835–36 into western New South Wales, squatters quite literally following in his footsteps into the unsettled districts (Mitchell 1839). It is essentially with these areas, well beyond Sydney, that what follows in concerned.

An Act of Council in 1836 admitted the right of 'reputable' squatters to graze stock under annual licences of ten pounds each, with no guarantee of longer tenure and with fines for unauthorised occupation (Campbell 1922, 1968; King 1957). From 1839, levies were charged on

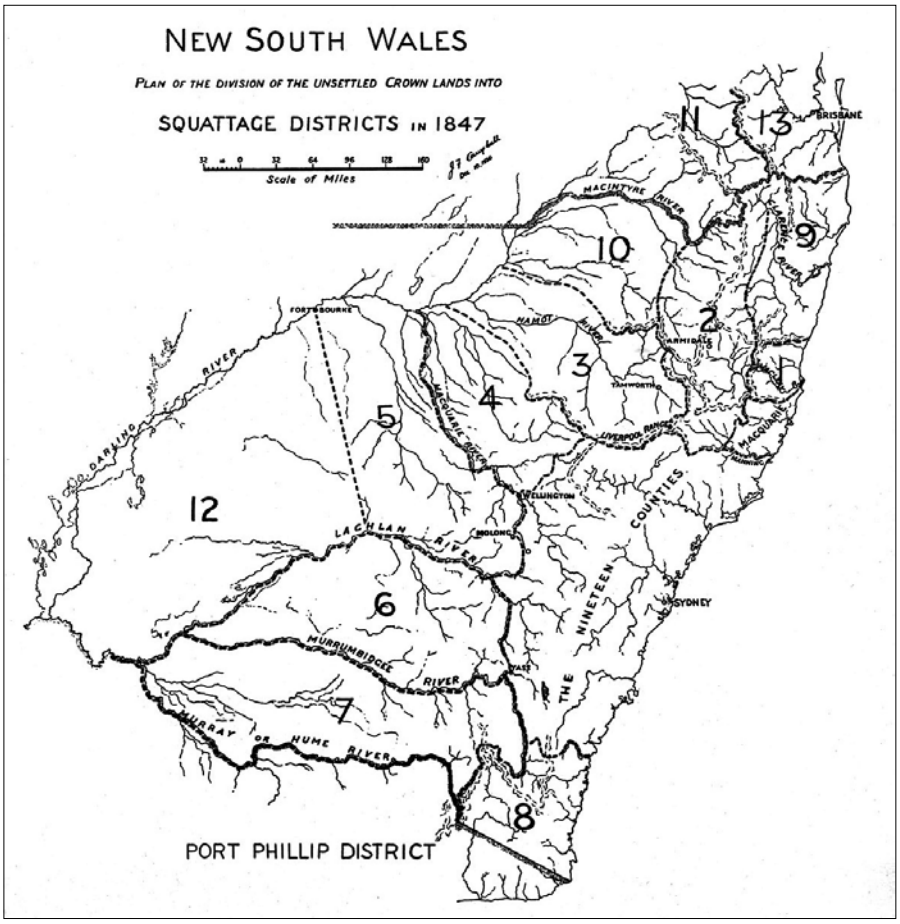

Figure 1: The Limits of Location (the nineteen counties) of 1829, and subsequent squattage districts (1–13) as established by 1847. (*Source:* Campbell 1931)

all stock—in accordance with graziers' returns—depastured outside the settled districts, further establishing the legal position of the squatters.

Some squatters occupied vast areas of Crown land, being 'limited only by their own moderation…' (Governor Gipps' despatch of 3 April 1844, quoted in Campbell 1922, 1968; King 1957). Edward Ogilvie claimed 'a minor kingdom of several hundred square miles', with some 56 miles[1] of upper Clarence River frontage (Farwell 1973).

In an attempt to remove some iniquities apparent in the existing system, and to have squatters establish permanent homesteads, Gipps in 1844 proposed regulations to restrict the area of individual runs and to make extension of leases conditional on periodic purchases of land within them.

The economy was depressed; squatters with big runs wanted much more than Gipps offered and were vehement in their opposition. With significant financial and political standing the pastoral interests prevailed. By Orders-in-Council of 9 March 1847, squatters ('such persons as the Governor shall think fit') in the unsettled districts were to be granted, without competition, 14-year leases of their runs for pastoral purposes at a rate of ten pounds per year, plus proportionate extra payment for carrying capacity in excess of 4,000 sheep. With each lease came a pre-emptive right to purchase 1 square mile in every 25 of the run.

Squatters were quick to apply for the new leases. Security of tenure encouraged them to make improvements, building homesteads with a range of outbuildings, constructing dams or tanks, and investing in equipment to improve the efficiency of their operations.

Challenges to the squatters and the Crown Lands Acts of 1861

The 1850s were years of gold rushes and rapid population increase. Transport and communications improved; the need for food increased, and with it a demand for agricultural land to be made available. This demand came especially from tenant-farmers seeking freehold and from former gold miners with some money to buy land; but no land was available. There was agitation, too, from city politicians for unlocking of the land from the stranglehold of the pastoralists, their political rivals (Jeans 1972; Stone and Garden 1984).

Although many squatters considered that they were adequately protected, at least for 14 years, by the guarantee of tenure (Buxton 1967), others took stock of the political climate of the 1850s and availed themselves of their right to purchase one square mile in twenty-five, choosing not only homestead blocks, but also lands most valuable for agriculture or grazing (such as accessible river frontages), or for strategic control of surrounding country. This active 'peacocking', under their pre-emptive right of 1847, was to be one of the principal ways used by squatters to protect their lands, even if they became indebted to banks in the process (King 1957). In 1858 Charles Tindal of Ramornie Station on the Clarence River notes with alarm that there is talk of the Government throwing open land for sale and adding a right to grazing over unsold adjoining land. He writes:

> I have now bought 160 acres at one pound an acre under my pre-emption right. This includes the house, men's huts and the cultivation paddocks, and as Ramornie possesses very little land fit for the plough, and is rather difficult of access, I consider myself tolerably safe (Farwell 1973).

As the term of earlier leases issued under the 1847 Orders-in-Council neared completion, major changes were introduced with the passage of two Acts of 1861 for regulating the alienation and occupation of Crown lands, with the aims of encouraging agricultural settlement and of providing greater access to land for the small farmer.

Under the *Crown Lands Alienation Act* the right was given to any person to select, prior to survey, from 40 to 320 acres of any Crown lands (other than town or other reserved lands), whether vacant or under pastoral lease, at a price of one pound per acre, one quarter to be paid as deposit on application, with three years interest-free in which to pay the balance. Alternatively, payment could be indefinitely deferred by payment of an annual interest of 5 per cent. Selectors were required to reside on the land for three years, and improvements to the value of one pound per acre were to be made. With the purchase came the right to a lease of adjoining land for grazing equal to three times the area of the freehold. Such pre-leases, though, were open to selection, liable to auction, or to the operation of a Volunteer Land Order as well as to other forms of occupation.

Under the *Crown Lands Occupation Act* the term of existing pastoral leases was to be reduced and made subject to re-appraisal every five years. Land with 'improvements' on it (to a minimum value of one pound per acre or at least forty pounds, by amending legislation of 1875) could not be selected.

Defending their runs

Having fought for and ultimately gained a hold on their runs, with reasonable security of tenure, the squatters were rarely going to willingly relinquish land to the selectors. But in fact the 1861 legislation (and its consequent administration) was flawed. While it threatened the pastoral lessee on the one hand, it also '…by its own provisions, supplemented by subsequent legislation, provided the means of defence against and retaliation upon the selectors who ventured to exercise their legitimate rights…' (Report of Inquiry 1883).

The squatters' first such defence of their own interests was to select and purchase up to 320 acres of the most desirable lands on their own holdings. To allow for large numbers of such selections, squatters not only made them in the names of family members, including, quite legitimately (until 1875), infants and young children, but also engaged 'dummies' (the pastoralist providing the deposit) to take up strategic selections which would subsequently after three years be transferred back to the run holder. The 1883 Report of Inquiry into the State of the Public Lands and the Operation of the Land Laws[2] contains plenty of evidence of squatters using scores of dummies to secure lands by selecting on pre-leases to surround *bona fide* selectors who, hemmed in and with an area too small to be profitable without additional pasturage, would be forced to sell out to the squatter. It was reported that in many districts at least two-thirds of the nominal selectors were in fact dummies. The practice was described as 'an institution', habitual among both squatters and selectors, but much more so among the former (Report of Inquiry 1883; Buxton 1967) and in these dealings the pastoralists nearly always prevailed because they were financially supported by the banks. Many of the squatters were in fact wealthy and influential, especially in government circles; the majority of selectors had relatively little money and even less influence.

Conditions pertaining to selection were rarely complied with by the squatters or their dummies. Sleeping once or twice on the land was considered residence and erection of a temporary hut sufficient improvement for the purpose of necessary declaration. According to the 1883 Report 'as soon as this [declaration] was made the improvements were all removed to be used again in a like manner, thus doing duty for a number of selections' (Report of Inquiry 1883). Though dummying was made an offence under an amending Act of 1875, this appears to have had only limited effect in practice.

The legislation provided the opportunity for squatters to have surveyed 40-acre lots within their runs offered for auction at an upset price of one pound per acre. On the upper Clarence River, Edward Ogilvie:

> …by the purchase of 27,000 acres nearly altogether at auction completely commands his run of 258,000 acres and can defy selectors. 40 acre lots purchased at auction are scattered broadcast over the run and it is impossible not to admire the skill displayed in letting them fall exactly where they are wanted (Report of Inquiry 1883).

On lands with improvements to the value of one pound per acre the squatter was entitled to an Improvement Purchase of up to 640 acres at one pound per acre. Reports were common of improvements being made, land purchased, and then, as with the freehold selections, such improvements as were moveable then being shifted to another area of the run to acquire more lands. Only a declaration by the run holder was required as to improvements, and false statements were not uncommon (King 1957; Buxton 1967).

Also permitted under the 1861 Acts were Volunteer Land Orders, which were issued to men who had served in the colony's defence force for five years and entitled them to an unconditional grant of 50 acres of land. By regulation, they were transferable, and squatters would purchase these rights and use the volunteers' names to acquire small areas to block or harass other selectors or speculators (Buxton 1967).

Some squatters resorted to taking up Mining Conditional Purchases over unalienated lands where there was no indication at all of commercial minerals, simply as another means of thwarting selectors. These provided up to five years of undisputed possession before purchase needed to be completed, during which time the lessee could arrange for the lands to be surveyed for auction (Report of Inquiry 1883).

According to the Report of 1883, purchases by squatters of the Crown lands were made '… just to the full extent that every section of the Act could be strained for the purpose, and as far as they could obtain money to effect their object', with revenue from auctions, Improvement Purchases, Volunteer Land Orders and Mining Conditional Purchases being 'the principal item of Treasury receipts for the past 7 years' (Report of Inquiry 1883).

The 1861 Acts also provided for lands to be reserved from sale for a number of purposes. Such reserves provided run holders with a means of preventing selection, though not acquiring freehold title, at very little cost. Reserves could be recommended by anyone including a squatter or his agent, to the Minister for Lands. Most commonly sought were Water Reserves which had up to one mile of river or creek frontage and extended directly back for an unlimited distance, enabling legal access to water for stock on remote parts of the run, though still a part of the squatter's lease. Though sought by squatters to prevent selection, such reserves did also have some benefit to the Crown in the event of a run being forfeited or the back part put to auction.

Specific provision for notification of Forest Reserves was made in the amending Act of 1875. They were usually recommended by surveyors, but occasionally they were proposed by pastoral lessees. Some of these are said to have had practically no trees on them, being sought to defend the runs, but others were to form the genesis of a number of dedicated State Forests of the twentieth century, particularly, though not exclusively, in localities adjacent to watercourses (Buxton 1967; Allen 1998).

In 1884, all previous Land Acts were repealed, and under a new *Crown Lands Act* runs, or combinations of several adjacent runs in the one ownership, were to be divided into two equal parts. The 'leasehold area' allowed the run holder a guaranteed term of tenure without alienation other than by the holder, while the 'resumed area' could be retained under annual Occupation Licences, but was available for any type of alienation without objection from the run holder. This effectively brought to an end the years of the squatters' exploitation of the land laws.

Timber cutters too

It was not only the squatter, though, or others with a direct interest in acquiring or protecting land, who found ways to use provisions of the 1861 land legislation to advantage. This is illustrated by the example of several small selections, relatively near each other, on the eastern escarpment of the Northern Tablelands of New South Wales (Figure 2).

A close look at County (Drake) and particularly the Parish (Richmond, Albert) or current topographical (Coombadjha and Cangai 1:25,000) maps calls attention to three small surveyed Portions. One (Portion 10, Parish of Richmond) is now well within Gibraltar Range National Park—previously Dandahra Creek State Forest and originally part of Newbold Grange pastoral run—and the other two (Portions 11 and 13, Parish of Albert) in the south-eastern corner of Washpool National Park, formerly Washpool State Forest and originally part of the huge Yulgilbar pastoral run.

All are in extremely steep, remote and virtually inaccessible country (Figure 2). If it was the intention of the Crown Lands Acts of 1861 to encourage selection for agriculture, these blocks seem particularly unpromising.

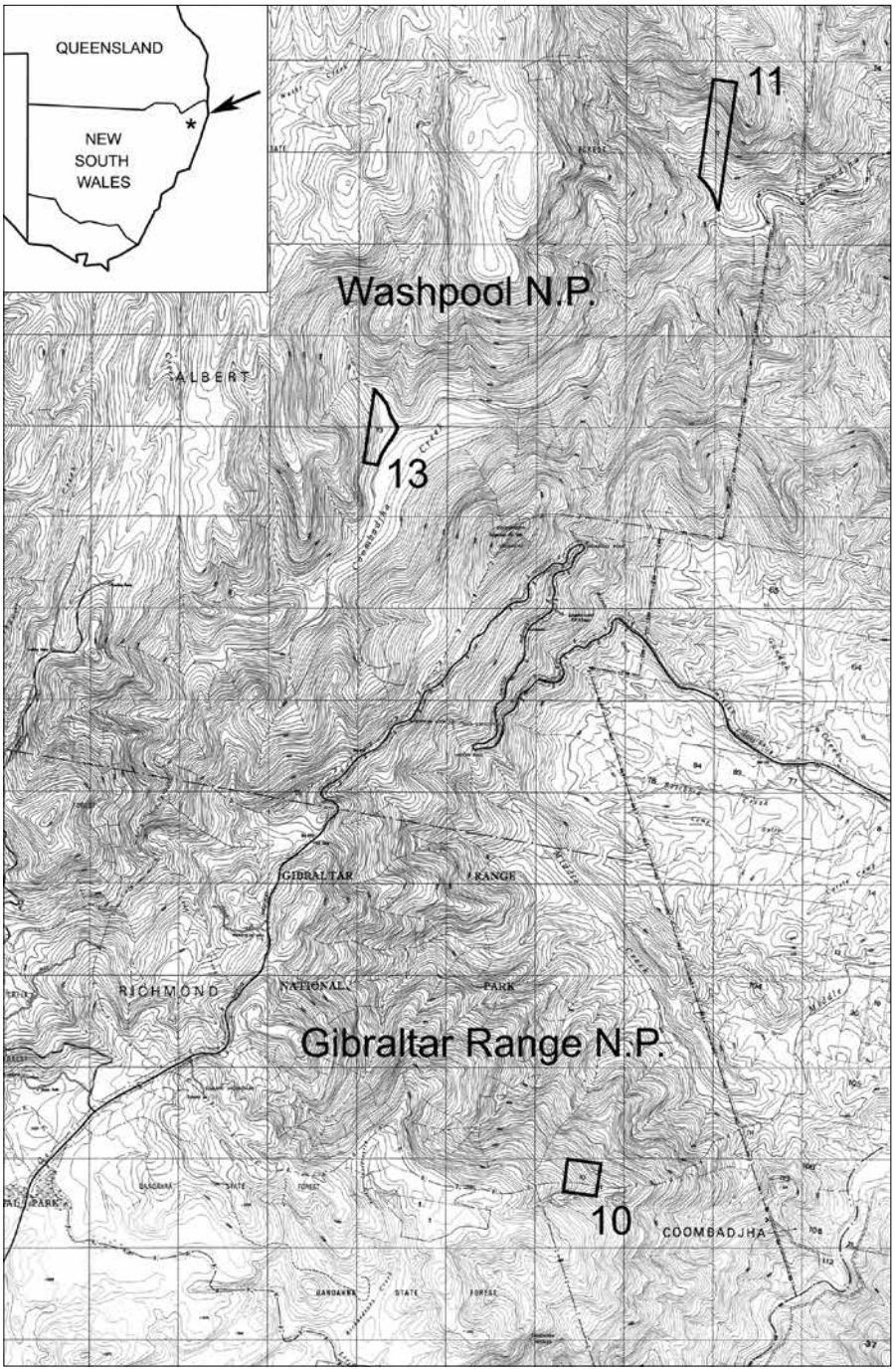

Figure 2: Location of three small nineteenth century selections in very steep country in north-eastern New South Wales. Based on Coombadjha and Cangai 1:25,000 scale topographic maps. Grid division 1 km; contour interval 10 m.

As a means of piecing together the story of the three portions, reference was made first to Portion Plans. These are not only valuable primary sources of historical information in their own right, but also provide leads as to the whereabouts of relevant documents within the former Lands Department files. Copies of each of these Portion Plans are shown in Figures 3–5. Not all the originals are now, 130 years on, in good condition, but most details are discernible. Each plan shows not only boundary survey measurements, details of corner reference trees and connection surveys, but generally also some detail of terrain and vegetation, names of original owners or lessees, departmental file numbers, further notes relating to subsequent tenures, and information about improvements already made at the time of survey.

It takes time, patience and a degree of luck to track down specific nineteenth century archival files of the New South Wales Lands Department; but, remarkably, at least partial records for all three holdings still exist. Each was selected for Conditional Purchase in 1883 or early 1884, before the new *Crown Lands Act* of 1884, and before any Forest Reserves were notified, which would bar purchase.

All are described as mostly 'excessively rough', with surrounding country being 'almost inaccessible'. Surveyor North did not even attempt to mark out the northern boundary of Portion 11, Parish of Albert, atop a 'precipitous rocky spur'.

At the time of survey in 1884, only Portion 10, Parish of Richmond, was shown as having any 'improvements', specifically a 'hut' (value three pounds) and a 'cutting' (10 shillings), but the surveyor did report too that the applicant was 'resident at date of survey'. Further inspection of Portion 10 in 1887 records improvements as 'clearing' of value six pounds and the 'remains of a hut', but 'the selector [F. F. Archibald] not resident on his selection' (NSW State Records 10/17492, file 87.58234).

No improvements are noted on the plans of either of Portions 11 or 13, Parish of Albert, though files suggest that small huts were erected on both and, according to his own deposition to the Lands Department, the owner of Portion 13, A. W. Archibald, did personally reside there.

The real purpose of selection of all of these blocks was timber getting. Selection was used by the applicants as a means of temporarily securing fine patches of red cedar while they proceeded to cut it down without having to pay the licence fees or royalty that would have been due if it was Crown land.

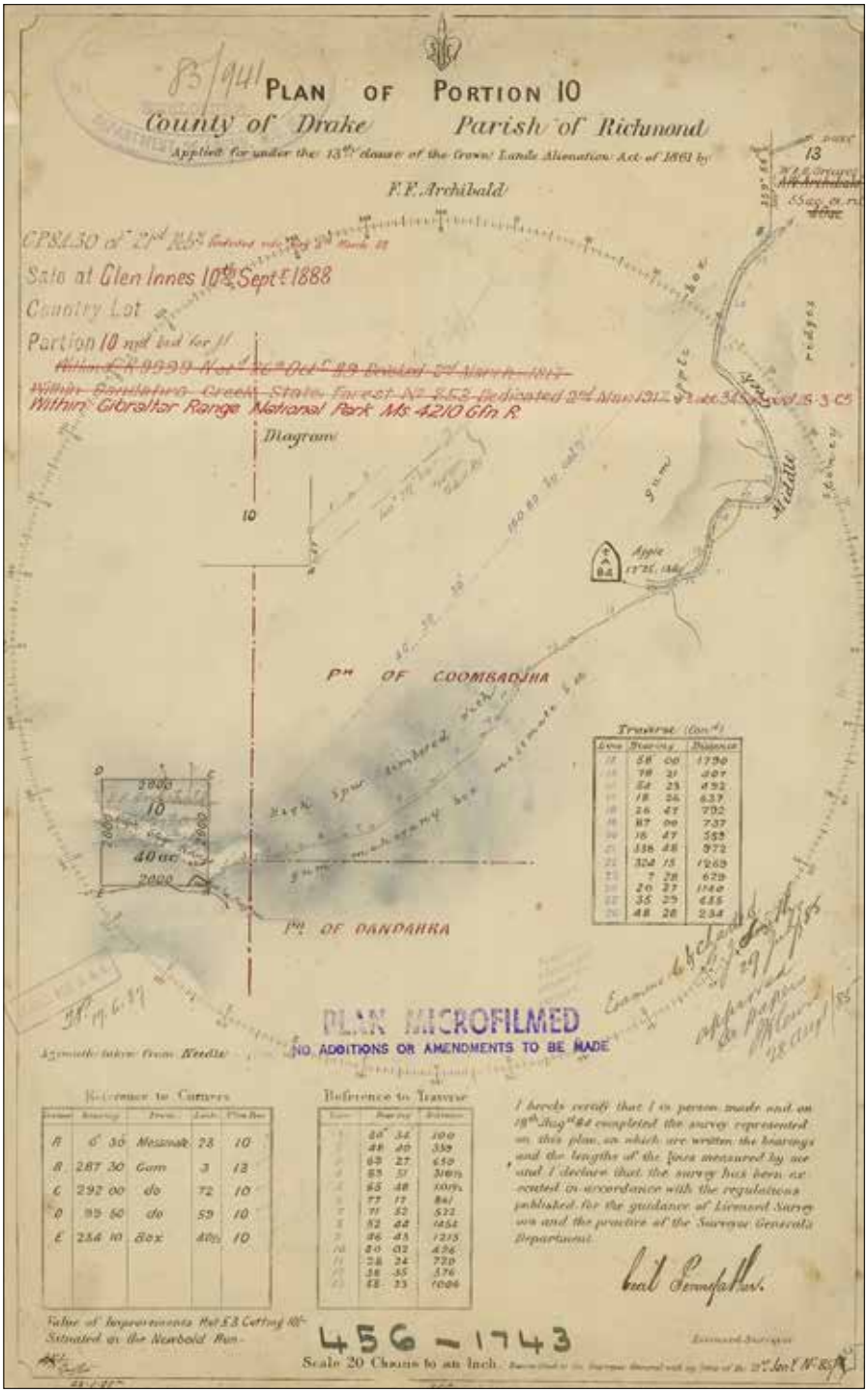

Figure 3: Plan of Portion 10, Parish of Richmond, County of Drake.

The vegetation of Portion 13 is shown in the plan as 'dense brush', and described by the surveyor in correspondence as 'all heavy Cedar brush'. In fact, the selector described himself as a cedar cutter, and even claimed to have had plans to erect a sawmill there.

The plan of Portion 11 shows 'dense cedar brush' (Figure 6), and in his original application for Conditional Purchase Josiah Everingham wrote that 'Said land is described to include all the cedar timber felled by me' (NSW State Records 10/17492, file 87.58423). By 1886 he had applied to abandon his selection, saying that 'having a large family they would have to remain uneducated the place being so much isolated'. In October 1887, the inspector records that the place had apparently been abandoned, adding that he was sure the selector had no intention of returning, though he also knew that 'the selector was residing on the land for some time cedar getting'. In December 1887, the Land Board at Glen Innes recommended forfeiture as the condition pertaining to continuous *bona fide* residence had not been fulfilled.

Further south, on Portion 10, Parish of Richmond, although there is no vegetation shown on the portion itself, it is recorded in Lands Department correspondence of 17 September 1885 that the cutting had been 'effected by the applicant and used by him for drawing cedar' (NSW State Records 10/17492, file 87.58234). In September 1887 an Inspector of Conditional Purchases found the place 'apparently abandoned', though noted that 'I know from my own personal knowledge that the man did reside there for a time cedar getting'.

As described previously, selectors applying to purchase land were required to pay a deposit (not more than five shillings per acre), to carry out certain improvements, to reside on the selection for a minimum period each year and to pay off the balance of money owing after three years. In the cases described here, at best only one of the selectors appears to have fulfilled anything like the required residence condition, and none carried out improvements to the required value. All had cut out the cedar and forfeited their Conditional Purchases in less than three years.

Portion 10, Parish of Richmond was subsequently put up for auction in 1888; there were no bidders. By the end of 1889, all three portions had been reserved from sale as Forest Reserves.

This particular exploitation of a weakness in the land laws was apparently a not uncommon practice, which was remarked upon

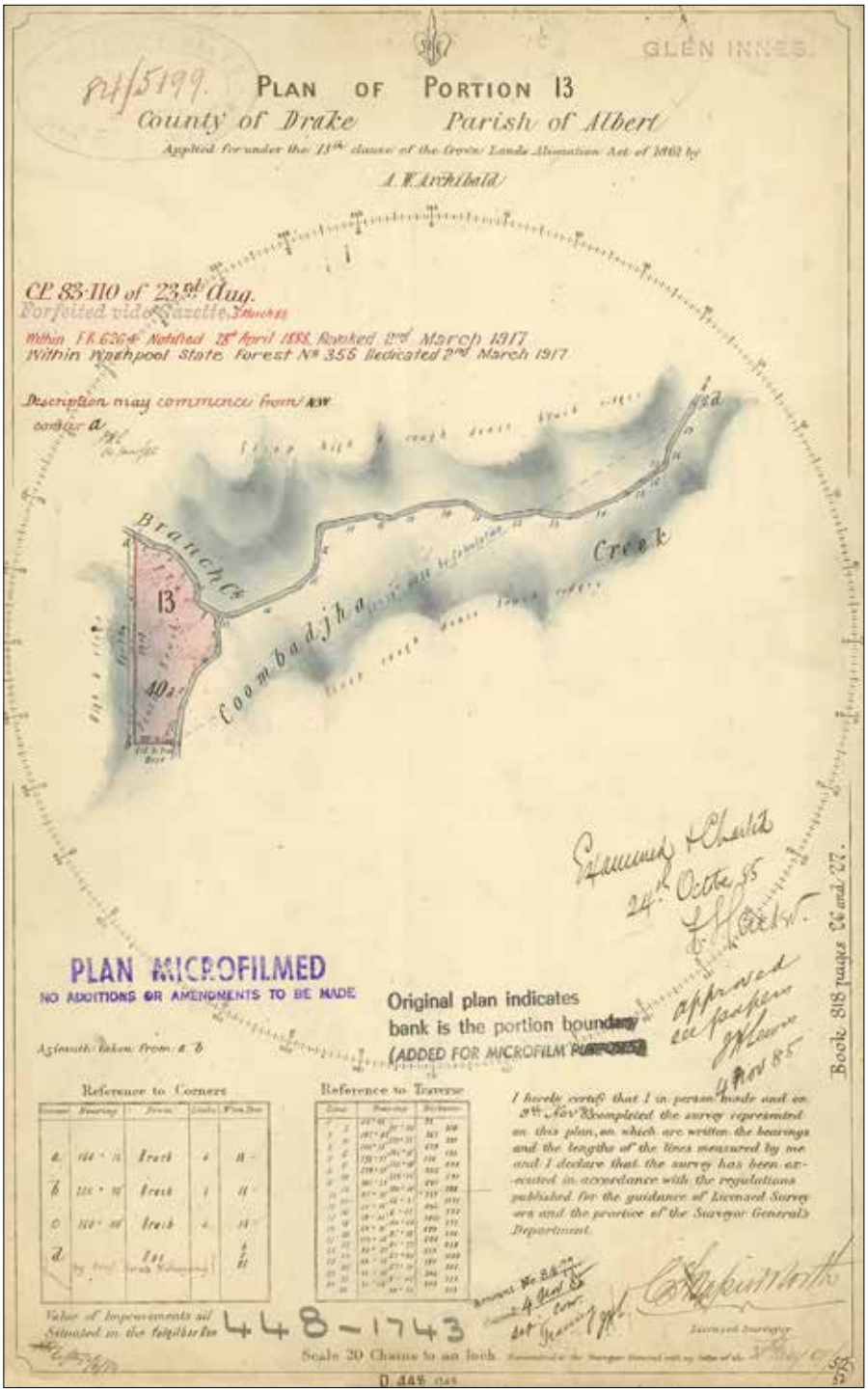

Figure 4: Plan of Portion 13, Parish of Albert, County of Drake.

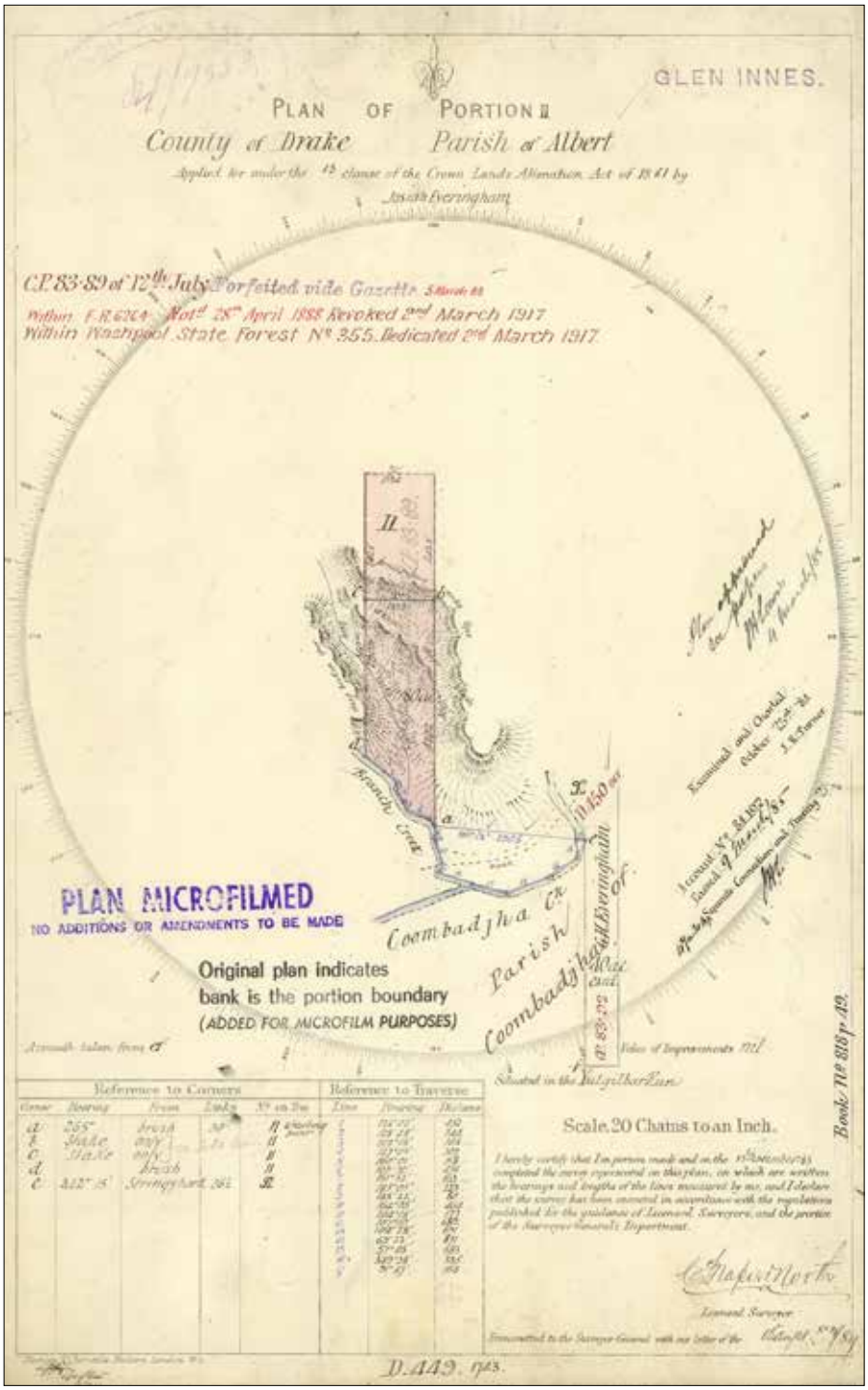

Figure 5: Plan of Portion 11, Parish of Albert, County of Drake.

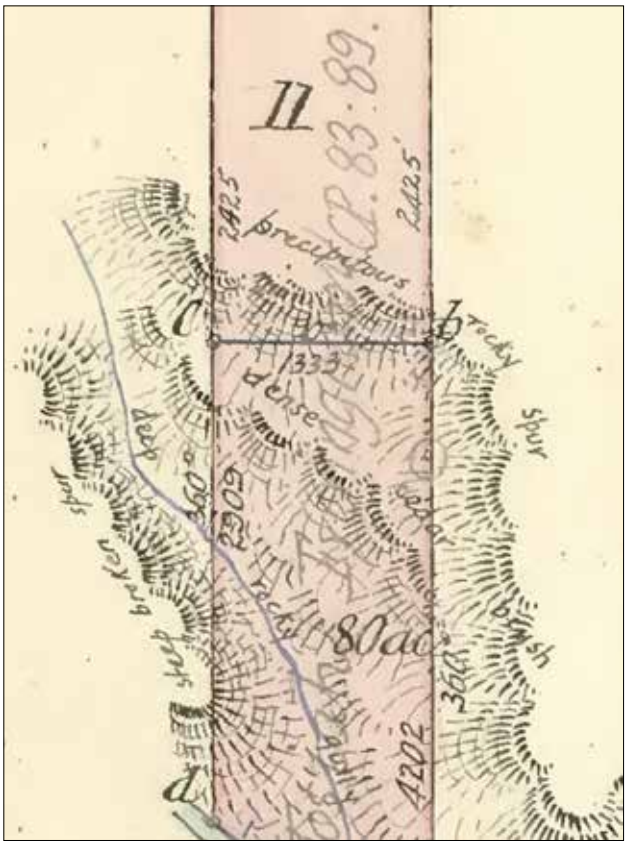

Figure 6: Enlargement of part of the plan of Portion 11, Parish of Albert, clearly shows the surveyor's annotation 'dense cedar brush'.

with concern years later in 1907 by several witnesses to the Royal Commission on Forestry, including District Forester Wilshire of Grafton and Assistant Forester Boyce of Maclean, who described instances of selections elsewhere in the wider region that were 'taken up for the timber', for 'it is a good deal cheaper to select…than pay royalty on the timber' (Royal Commission 1908, paragraphs 15916–15918, 17629). In the cases described in this paper the cedar cutters avoided paying any more that the deposits on their selections.

In the south, too, referring to the Murray River region, the *Pastoral Times* newspaper of 18 November 1876 condemned 'The practice of allowing persons to take up selections on the frontages, for the purpose of felling trees, then sawing them into sleepers for exportation to India… By this free and easy way of securing prime gum trees…Government has lost a good deal of money' (quoted by Donovan 1997).

One can only speculate as to why this practice was not outlawed. To an obviously overworked Lands Department it was quite possibly of relatively minor importance at the time in the overall administration of the Crown lands of New South Wales. The system was tangled enough anyway, and new land laws were to be put into effect in 1884. Perhaps it was felt that in the spirit of the 1861 Acts, small selectors anywhere should be allowed the chance to prove whether they were indeed able to make a go of agricultural production on their lands.

From its beginning in the mid-1870s until the creation of a Forestry Department under the first *Forestry Act* of 1909, forest administration was essentially an appendage to one or other of the already established Government Departments (summarised by Grant 1988). It may at first have been regarded as a poor relation, with opinions only occasionally sought on matters of Crown land alienation or protection.

Conclusion

Passage of the 1861 Crown Lands Acts resulted in landed squatters in New South Wales taking any opportunity they could to protect their runs from selection—wherever it was seen as a threat—and at the same time acquire significant freehold estate. This they did by turning provisions of the Acts to their own advantage, though occasionally bending the truth a bit at the same time. Timber getters in the north of the colony were rather less subtle but just as successful in their rorting of the Acts; but they didn't want land, just the cedar on it.

Notes

1 Imperial land measurements are used throughout in this paper. 1 mile = approx. 1.6 km; 1 acre = approx. 0.4 ha; 1 square mile = approx. 2.6 ha.

2 Although the report of this Inquiry has shortcomings and may exaggerate some aspects, it nevertheless provides a good overview of the state of New South Wales land laws by the early 1880s.

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Other source material

Relevant maps, plans and New South Wales Lands Department archival files are all detailed or illustrated in the text.