

No. VIII.

GOLD FIELDS. An Act to amend the Laws relating to the
Gold Fields. [27th September, 1866.]

Preamble.

WHEREAS it is expedient to amend the Laws relating to the Gold Fields Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Repeal of 25 Vict.
No. 4 and 20 Vict.
No. 29.

1. The Act of twenty-fifth Victoria number four and also the Act twentieth Victoria number twenty-nine are hereby repealed except in so far as the same relates to or affects persons who shall mine or employ any person to mine for gold in any land belonging to a private individual without the consent of the owner thereof or his duly authorized agent Provided that any Regulations duly made and published under the said first recited Act and not inconsistent with this Act shall remain in force until altered or repealed by Regulations under this Act.

Proviso

Interpretation.

2. For the purposes of this Act the following terms in inverted commas shall unless the context otherwise indicate bear the meanings set against them respectively—

“To mine”—Any mode or method of working whatsoever whereby the soil or earth or any rock or stone may be disturbed removed carted carried washed sifted smelted refined crushed or otherwise dealt with for the purpose of obtaining gold whether the same may have been previously disturbed or not as well as the appropriation of such gold by the finder thereof to his own use.

“Mining partnership”—All partnerships and co-adventures entered into by two or more persons for gold mining.

“Crown Lands”—All lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted in fee simple or which are not under lease for other than pastoral purposes.

“Gold”—As well any gold as any earth clay quartz stone mineral or other substance containing gold or having gold mixed therein or set apart for extracting gold therefrom.

“Gold Fields”—Such Crown Lands as may be proclaimed Gold Fields in the *Gazette*.

“Claim”—The portion of land which each person or company shall be entitled to occupy or to mine in by virtue of any miner's right license or lease issued under this Act and every holding whatsoever occupied by virtue of this Act.

“Business”—Any profession trade calling or occupation except mining and any vending or disposing of any goods wares merchandise or chattels whether by hawking or in any other manner except the hawking of milk butter vegetables or other farm or garden produce.

“Trespass”—Unlawful interference in any way whatever with any water right or other right or easement lawfully enjoyed under this Act.

Gold Fields.

3. The Governor may with the advice of the Executive Council declare by proclamation in the *Gazette* any Crown Lands to be a Gold Field within the meaning and for the purposes of this Act and in like manner alter or amend the boundaries thereof.

Proclamation of
Gold Fields.

4. The Governor with the advice aforesaid shall subject to the provisions of this Act and the Regulations to be made hereunder cause a "miner's right" to be granted to any person applying for the same between the first of January and the thirtieth of June upon payment of a fee of ten shillings and after the last-mentioned day in any year upon payment of a fee of five shillings.

Miner's right.

5. Every such miner's right shall be in force from the date thereof to the thirty-first day of December then next and shall during the said period authorize the holder to mine upon any Crown Lands and to occupy (except as against Her Majesty) for the purpose of residence in connection with the object of mining so much land as may be prescribed under the Regulations aforesaid and every such holder shall during the continuance of such miner's right be deemed in law to be the owner of the claim occupied by virtue of such miner's right and during such continuance as aforesaid all gold then being in and upon the said claim shall be deemed in law to be the absolute personal property of such holder.

Duration and effect
of miner's right.

6. The Governor with the advice aforesaid may subject to the provisions of this Act and the Regulations aforesaid cause a business license to be granted to any person applying for the same between the two first-mentioned days aforesaid on payment of a fee of one pound and after the last-mentioned day on payment of a fee of ten shillings which license shall be in force till the then next thirty-first day of December and shall authorize the holder to occupy lands for the purpose of carrying on business upon any Gold Field during such period.

Business licenses.

7. The Governor with the advice aforesaid may subject to and in accordance with the laws in force for the time being respecting Crown Lands of the Colony and the provisions of this Act and the Regulations aforesaid grant leases for mining of portions of auriferous lands and fix the amount to be paid by way of rent whether as a royalty or otherwise.

Leases of auriferous
lands.

8. Any person who shall mine on any Crown Lands without a miner's right as aforesaid shall incur a penalty not exceeding two pounds for the first offence and not exceeding five nor less than two pounds for the second and subsequent offences one half to go to informer and failing payment of the same any person so convicted may be imprisoned for any period not exceeding fourteen days And any claim or lease holder who shall knowingly employ on such claim or lease any person not holding a miner's right shall incur a like penalty.

Unauthorized per-
son liable to penalty.

9. Any person not holding a business license who shall occupy any Crown Land on any Gold Field for the purposes of business or shall carry on business thereon and any person whether lawfully so occupying or not who shall employ an unauthorized person in such business shall incur a penalty not exceeding two pounds for the first offence and not exceeding five pounds nor less than two pounds for the second or any subsequent offence one half to go to the informer and failing payment of the same any person so convicted may be imprisoned for any period not exceeding fourteen days.

Penalty for carrying
on business without
license &c.

10. When any Gold Field shall have been proclaimed upon any Crown Lands then under lease or license for pastoral purposes the Governor with the advice aforesaid may suspend such lease or license so far as may be necessary for the accommodation of the horses cattle and sheep required for the subsistence and convenience of any persons holding miners' rights or licenses and for the

Partial suspension
of pastoral leases
extending over Gold
Fields.

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supply of water and otherwise for effectually working the said Gold Field and shall thereupon return or remit to the lessee such portion of the rent of such lands as may be reasonable and just.

Passage of water
through freehold
property.

11. The Governor with the advice aforesaid may authorize any person holding a miner's right to dig a race for the passage of any water for gold mining purposes through any freehold lands and also for the passage of any water or liquid discharge from gold mining operations through any such lands. Provided that the owner or occupier of such lands shall be entitled to full compensation for any loss thereby sustained by him from the person or persons digging such race such compensation to be determined by arbitration in the usual manner the amount awarded under such arbitration to be paid by such person or persons before the cutting of such race.

Commissioners to be
appointed.

12. The Governor with the advice aforesaid may appoint Commissioners and other officers who shall have power and authority subject to the provisions of this Act and to the Regulations made thereunder to do all matters and things required of them by this Act or by the Regulations aforesaid.

Regulations may be
made.

13. The Governor with the advice aforesaid may from time to time make such Regulations not being contrary to the provisions of this Act as shall appear necessary for determining the extent and position of the claim to which each person or company is entitled under any miner's right lease or license issued under this Act or the Acts hereby repealed or any of them—for regulating the form of miner's rights leases and licenses to be issued under this Act—the mode times dates and places of the issues thereof—the conditions on which the same shall be issued—the mode of transferring or assigning the same and of prohibiting any such transfer or assignment—the mode of conducting arbitration under this Act—and generally for the purpose of carrying the provisions of this Act into execution. And may by such Regulations repeal or alter any existing Rules or Regulations in Gold Fields as aforesaid. And any person guilty of a breach of any such Regulation shall incur for the first offence a penalty not exceeding five pounds and for the second and subsequent offences not exceeding ten pounds and failing payment of such penalty shall be liable to be imprisoned for any period not exceeding fourteen days. And any such penalty shall be irrespective of any forfeiture of claim as may be therein provided. And all such Regulations when published in the *Gazette* shall have the force of law. Provided that all Rules and Regulations heretofore lawfully made and subsisting at the commencement of this Act and not inconsistent herewith shall have the force of law until repealed altered or superseded by any Regulations made and published as aforesaid. Provided also that all Regulations to be so made shall be laid before both Houses of Parliament within fourteen days after their publication if Parliament be in Session and if otherwise within a like period after the opening of the then next Session.

Remedy for en-
croachment before
Justice.

14. Any Justice of the Peace upon complaint made by any person holding a miner's right or license under this Act that any other person has encroached or trespassed upon his claim may investigate the matter of such complaint or otherwise inquire into the case and may on his own view or the oath of any witness determine the same in a summary way. And if it shall appear to such Justice that the person complained against has so encroached or trespassed by occupying mining or undermining such claim or in any other way whatsoever or that the person complaining has so encroached or trespassed upon the claim of the person complained against such Justice may cause the person so found to have encroached his servants implements goods and chattels to be removed from the claim so encroached upon or direct

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direct the discontinuance of such trespass or may if he shall see fit at any time after the complaint has been made prohibit the working of such claim by any or either party until the dispute shall be finally decided. And any such Justice shall have like power to summon and compel the attendance of witnesses for the hearing of any such complaint as is exercised by a Justice according to the Act eleventh and twelfth Victoria chapter forty-three.

15. Such Justice previous to the hearing of any such complaint And assessors. at the request of either party shall summon four persons holding a miner's right or a lease under this Act and shall select by ballot two from amongst those who may attend at the time appointed and shall administer to such persons as may be selected an oath to the effect that such persons severally will well and truly inquire into the matter of the complaint then submitted and a true finding and decision give according to the evidence and such persons so sworn shall be and act as assessors and such Justice and assessors shall hear and determine such complaint of encroachment or trespass and shall also find whether any and what gold has been unlawfully or improperly removed from such claim and whether any and what damage has been sustained by such encroachment or trespass and the decision of the majority shall be binding.

16. Such Justice and assessors upon the hearing of any complaint as aforesaid and upon proof of any gold having been removed as aforesaid (of which any finding as aforesaid shall be sufficient evidence) may cause any such gold taken or removed from such claim to be summarily seized and delivered to the person encroached upon and may also cause the whole or any part of the damages ascertained as aforesaid to an amount not exceeding one hundred pounds to be paid by the person so having encroached or trespassed to be recovered by distress and sale of the goods and chattels of such person in manner prescribed by law for the recovery of any sum adjudged by Justices as a pecuniary penalty or compensation. Compensation for encroachments or trespass. Provided that no person shall be imprisoned for default in payment of such damages for a longer period than three months. Provided also that nothing herein contained shall prejudice the right of any person to resort to any other or further remedy which he may have at law or in equity.

17. In the event of the non-attendance of the requisite number of assessors at the appointed time the Justice present shall if required by either party adjourn the hearing of the complaint. If assessors do not attend Justice may adjourn or proceed alone. And if at the time to which the same shall have been adjourned there shall not be a sufficient number of assessors in attendance after due summons such Justice may proceed to hear and decide with one such assessor if one shall be in attendance or without any assessor if none be present and the acts and decision of such Justice and assessor or of such Justice alone if no assessor be in attendance shall be as valid and effectual as if the regular number had been in attendance and had acted with such Justice.

18. Previously to the hearing of any complaint as aforesaid if assessors be required the Justice shall demand and receive from the complainant the fee of twenty shillings to be paid to the two assessors and may refuse to attend to any such complaint until such fee shall have been paid. Fees may be demanded. Provided that if the decision shall be against the person complained against such person may be ordered to repay such fee to the complainant and the determination by whom the fee is to be paid shall in every case form part of the decision of such Justice and assessors and such fee may be recovered in manner herein directed in regard to any compensation awarded to any complainant.

19. If any person holding a miner's right or a lease issued under the provisions of this Act having been duly summoned as an assessor shall disobey such summons and fail to attend at such time Penalty for non-attendance &c. as assessor. and

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and place as may be named therein or refuse to be sworn as aforesaid such Justice upon proof that such person was duly summoned or having been summoned that he refused to be sworn may unless some reasonable cause for non-attendance or refusal of such person be made to appear to such Justice impose a fine not exceeding two pounds And every person who shall attend in obedience to any such summons and be sworn to act as assessor shall be entitled to demand and receive the sum of ten shillings for the hearing of such complaint out of the fee to be paid by section eighteen of this Act.

Penalty for resisting officers &c. and renewed encroachment.

20. Every person who shall assault or resist any Commissioner or Justice or any assessor or any person duly authorized whilst in the execution of any duty under this Act or who after the hearing and determining of any complaint as aforesaid shall again encroach or trespass as aforesaid or who shall work or attempt to work any claim or ground or pursue any operation the working or pursuit of which shall have been duly forbidden or suspended under this Act shall upon conviction before any two Justices incur a penalty not exceeding twenty pounds or at the discretion of the adjudicating Justices be imprisoned with or without hard labor for any period not exceeding two months.

Petty Sessions to be Court of Appeal.

21. It shall be lawful for two or more Justices in any Court of Petty Sessions assembled on the application of any person holding a miner's right lease or license on payment of a fee of three pounds to entertain any appeal against any decision made by any Justice or any Justice and assessors relating to any encroachment or trespass under this Act and to reverse the same and to make order to the contrary if it should see fit and on written notice of such appeal the operation of any such decision or order by such Justice shall be suspended And no such proceeding shall be quashed for want of form nor be removed into the Supreme Court by *certiorari* or otherwise And such Petty Sessions shall have power to award reasonable costs to any party in any matter lawfully brought before it.

Justice may entertain partnership questions.

22. Any Justice of the Peace upon complaint made by the holder of any miner's right lease or license under this Act who is or has been while such holder engaged in a mining partnership touching any dispute or question regarding such partnership where the amount claimed shall not exceed one hundred pounds may issue process to procure or compel the appearance before the nearest Court of Petty Sessions of the members of such partnership as shall appear necessary and upon such appearance or in default thereof after due service of such process or in the absence of such members as shall not appear to be necessary parties to such case such Court may inquire into and hear such complaint or application and may make such order in the premises as to them shall seem meet.

Assessors may also be summoned in other cases.

23. The foregoing provisions relating to assessors as applied to cases of encroachment or trespass may at the instance of the complainant or the person complained against or of the Justice himself be applied to the case of any other complaint or information under this Act over which Justices of the Peace in Courts of Petty Sessions have summary jurisdiction.

Punishment for forgery and personation.

24. Any person who shall forge any miner's right license or lease issued or purporting to be issued under the authority of this Act or fraudulently use utter or exhibit any such forged miner's right license or lease knowing the same to be forged or fraudulently personate the holder of any such miner's right lease or license or falsely and fraudulently represent that any servant or other person is an authorized person within the meaning of this Act or fraudulently use or exhibit as his own any miner's right license or lease belonging or granted to any other person

or

District Courts Amendment.

or use or exhibit as a valid miner's right lease or license any miner's right license or lease which shall have expired shall be deemed guilty of a misdemeanor.

25. Any holder of a lease issued under the provisions of this or any other Act who shall by any fraudulent device or contrivance defraud or attempt to defraud Her Majesty or any person authorized to receive the same of any money or gold payable or reserved by such lease or conceal or make a false statement as to the amount of any gold procured by him or falsify any account with a fraudulent intent and all officers and servants of such holder and other persons whosoever who shall knowingly be concerned in any such fraud or attempted fraud whether with or without the knowledge or concurrence of such holder shall be deemed guilty of a misdemeanor. Punishment for fraud.

26. Nothing in this Act shall except so far as herein expressly enacted be deemed to abridge or control the prerogative rights and powers of Her Majesty in respect of the Gold Mines and Gold Fields of the Colony. Royal prerogative not interfered with.

27. All proceedings for any infringement of any of the provisions of this Act or of any of the Regulations or Rules lawfully established as aforesaid and the hearing and determining of which is not herein otherwise specially provided for shall be had and taken by or before any two Justices of the Peace in a summary way and all penalties and fines under this Act shall be recovered in like manner. Summary proceedings.

28. All fees or other moneys levied under this Act unless otherwise expressly appropriated shall be paid over to the Colonial Treasurer and become a part of the Consolidated Revenue Fund of the Colony. Appropriation of fees.

29. This Act shall commence and take effect on and from the first day of January one thousand eight hundred and sixty-seven and may be cited as the "Gold Fields Act of 1866." Commencement and short title.
