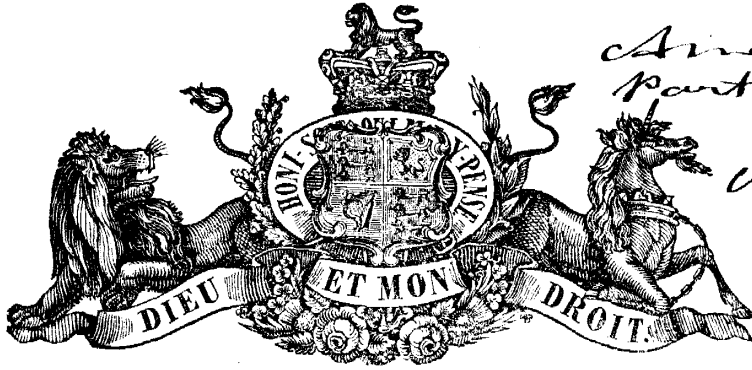


No. 311 of '84, sched 2.

Amended } No. 353 of '85-
Part 1 of 2 }



No. 444 of '88,
S. S. 114, 116

Part 587 of '93,
sched A

ANNO TRICESIMO TERTIO ET TRICESIMO QUARTO

VICTORIÆ REGINÆ.

A.D. 1870-71.

No. 26.

An Act to amend the Laws relating to Gold Mining and for other purposes.

[Assented to, 13th January, 1871.]

WHEREAS it is expedient to amend the Laws relating to Gold Mining in South Australia, and to provide for the issue of licences for the occupation of waste lands of the Crown for purpose of residence, and for the leasing of waste lands for certain mineral purposes—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly, in this present Parliament assembled, as follows: Preamble.

1. This Act shall be divided into four parts, that is to say:— Division of Act.

PART I.—Relating to gold mining:

PART II.—Relating to occupation licences:

PART III.—Relating to leases of lands containing coal and mineral oils:

PART IV.—General matters:

PART I.—Gold mining:

2. So much of an Act to amend the Waste Lands Act, being No. 18 of 1858, as relates to making, varying, and altering regulations affecting the issue of gold licences; and also an Act, No. 10 of 1865-6, intituled "An Act to amend the laws relating to the Leasing of the Waste Lands of the Crown within the Province of South Australia for Mineral Purposes," are hereby repealed: Repeal.
Provided that no existing rights heretofore granted or obtained under the said Acts, or under any regulations made in pursuance thereof, shall be hereby affected. Proviso.

3. In

Gold Mining Laws Amendment Act.—1870-71.

Interpretation.

3. In the construction of this part of this Act, and of any regulations made in pursuance thereof, the following terms shall have the meanings set against them respectively, unless the context otherwise indicate:

“Mine” or “Mining”—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:

“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 the purpose of extracting gold therefrom:

“Waste Lands”—All lands within the said Province vested in Her Majesty which have not been or may not hereafter be reserved for and dedicated to any lawful purpose, or which have not been or may not hereafter be granted or lawfully contracted to be granted in fee simple, or leased with a right of purchase under the provisions of “The Scrub Lands Act, 1866,” or leased under the provisions contained in clause 8 of this Act.

“Claim”—A parcel of Crown land which each person or company shall be entitled to occupy, or to occupy and mine in, by virtue of any miner’s right, licence, or lease issued under the provisions of this part of this Act, and every holding whatsoever occupied by virtue of this part of this Act:

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

“Warden”—One of Her Majesty’s Wardens in and for the said Province duly appointed under this Act:

Words importing the singular number shall include the plural number, and words importing the masculine gender shall include the feminine gender.

Miner’s right.

4. Subject to the provisions of this Act, and of the regulations to be made hereunder, a “miner’s right” may be granted by the Warden to any person applying for the same upon payment of a fee of Five Shillings, and such right shall be in the form contained in Schedule A to this Act.

Duration and effect of miner’s right.

5. Every such miner’s right shall be in force from the date thereof until the expiration of twelve calendar months from such date, and

Gold Mining Laws Amendment Act.—1870-71.

and shall, during the said period, authorize the holder to search and mine for gold upon any waste land, and to occupy (except as against Her Majesty), for the purpose of residence in connexion 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 which shall be 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: Provided that no such search or mining shall be prosecuted or carried on within a radius of fifty yards of any shaft or working then being carried on by the licensee or lessee of waste lands for mineral purposes.

6. A special prospecting licence, securing to the holder the right of search for gold for three months from the date thereof, over all unsold and waste lands of the Crown comprised within a mineral lease (to be specified in the special prospecting licence), provided such search is not prosecuted within a radius of fifty yards of any workings being carried on by the lessee, may be issued by the Commissioner of Crown Lands after giving one month's notice to the lessee, upon payment of a fee of One Pound; and such special prospecting licence may be in the form contained in Schedule B to this Act.

Special prospecting licence.

7. Subject to the provisions of this Act and the regulations aforesaid, any warden may grant a licence to any person applying for the same, on payment of a fee of One Pound, which licence shall be in force till the expiration of the three calendar months from the date thereof, and shall authorize the holder to occupy, for the purpose of carrying on business upon any gold-field during such period, so much of the waste lands, not exceeding one quarter of an acre in extent, as may be deemed desirable by the warden, and for the purpose aforesaid to put up any building or other erection, and at any time to remove the same; and every such holder shall, during the continuance of such business licence, be deemed in law to be possessed (except as against Her Majesty), of the land which he shall occupy by virtue of such licence, and the property in such land shall be deemed a chattel interest, and no person shall be entitled by virtue of a business licence to occupy more than one such portion of land; and such business licence shall be in the form in Schedule C to this Act.

Business licence.

8. The Governor, with the advice and consent of the Executive Council, may, subject to and in accordance with the laws in force for the time being respecting waste lands and the provisions of this Act and the regulations aforesaid, grant leases for mining purposes of portions of auriferous lands, and fix the amount to be paid by way of rent therefor: Provided that the area to be included in any gold mining lease shall not exceed forty acres.

Gold mining leases.

Gold Mining Laws Amendment Act.—1870-71.

Penalty for unlawfully mining.

9. If any person not holding a miner's right, licence, or lease under this Act, shall mine for gold on waste lands, whether on his own behalf or on behalf of any other person, whether or not the lawful possessor of any claim, or as partner with any such person, he shall be liable on conviction to pay for each such offence a penalty not exceeding One Pound for every day he shall so mine, and the burthen of proving that he is the holder of a miner's right, licence, or lease shall rest upon him.

Penalty for carrying on business without licence.

10. Any person not holding a business licence who shall occupy any waste lands for the purpose of business, or shall carry on business thereon, shall, on conviction before the warden, be liable to a penalty not exceeding Five Pounds for the first such offence, and not exceeding Ten Pounds nor less than Five Pounds for every second or any subsequent such offence, and the burden of proof that he is duly licensed shall rest upon him.

Appointment of warden.

11. The Governor, with the advice aforesaid, may appoint one or more person or persons to be a warden or wardens; and such person or persons may from time to time remove, and another or others may appoint in their stead; such warden or wardens, when so appointed, shall have power and authority, subject to the provisions of this Act and the regulations to be made hereunder, to determine the extent and position of the claim to which any person or company is entitled under any miners' right, or licence issued under the provisions of this Act, and to do all such acts, matters, and things as he or they is or are authorized and required to do by this Act or by the regulations aforesaid.

Powers of warden.

12. It shall be lawful for any warden to hear and determine, in a summary way, all suits and disputes between the holders of miner's rights, either amongst themselves or in relation to themselves and third parties, which may arise :—

i. Concerning any waste lands which any person shall be or claim to be entitled to take possession of or occupy by virtue of a miner's right granted for mining for gold, or wherein or whereon any person shall be or claim to be entitled to cut, construct, or use any race, drain, dam, or reservoir, for gold mining purposes by virtue of a miner's right, and concerning any share or interest therein respectively, and of or in which land, race, drain, dam, or reservoir, any other person shall be or shall claim under any such miner's right or licence, to be entitled to be in the occupation or possession, or to search for such metals or minerals, or to cut, construct, or use any such race, drain, dam, or reservoir, or which shall be alleged to have been abandoned or to have been forfeited under some of the regulations to be made as aforesaid; and concerning the title to, or possession, or enjoyment, or recovery thereof by reason of any such abandonment, forfeiture, or otherwise, and concerning any sum claimed in the nature of mesne profits thereof.

ii. Concerning

Gold Mining Laws Amendment Act.—1870-71.

- II. Concerning any waste lands or share or interest therein, which the complainant shall claim to be entitled to take possession of and occupy for business, under a business licence, and concerning any trespass or encroachment on any such land.
- III. Concerning the right which any person shall have or claim to have by virtue of a miner's right, or of any such licence as aforesaid, to the use and enjoyment or sale of any water to which any person shall claim to be entitled, and concerning the right which any person shall have or claim to have to any priority of water taken, diverted, or used, or claimed to be taken, diverted, or used, under the provisions of any such Act, as against any other person claiming the same.
- IV. Concerning any encroachment or trespass upon any such land, race, drain, dam, or reservoir as aforesaid, and concerning the diversion or abstraction of any water possessed or used under a miner's right, or under any such licence as aforesaid, of which land, race, drain, dam, reservoir, or water, any person shall be and shall claim to be entitled to be in the occupation, possession, use of enjoyment for mining purposes, and concerning any unlawful interference therewith or injury thereto, whether wilful, or by negligence, or wrongful omission, causing damage thereto, and whereby mining shall have been hindered or delayed, or any machinery on any such land damaged, or the supply of water, any person shall be lawfully entitled, shall be lessened, and concerning the unlawful ouster or exclusion of any person from any share or interest in any such land, race, drain, dam, reservoir, or water, and concerning the damages and compensation for any such encroachment, trespass, ouster, diversion, abstraction, interference, or injury.
- V. Concerning or out of any contract, verbal or otherwise, relating to mining under a miner's right or licence as aforesaid, or respecting any such land or water as aforesaid, or any share or interest therein, and concerning any debt or money due in respect of any such contract :
- VI. Concerning any gold in or to be taken out of any land occupied or held as aforesaid, or out of land in which any person shall be entitled to search for gold under any such licence as aforesaid, and concerning or out of any contract relating to such gold, or to any money due in respect of the same, or relating to any share or interest therein :
- VII. Concerning or out of any contract, respecting the using for mining purposes of any such land, race, drain, dam, reservoir, or water as aforesaid, or otherwise in relation to gold mining on waste lands occupied under miners' rights or licences, and concerning any money due in respect of any such contract :
- VIII. Concerning or out of any partnership or agreement in the matter thereof, written or verbal, relating to mining in
any

Gold Mining Laws Amendment Act.—1870-71.

any waste lands occupied under miners' rights or licences as aforesaid, or for or in relation to the searching for any such gold, or concerning or out of any partnership in any such land, water race, drain, dam, reservoir, gold, or concerning or out of any contract for or in connexion therewith, or for dissolving in the whole or in part, any such partnership, or which may arise between tenants in common or joint tenants in relation to any such land or water, or in any share or interest therein :

- ix. Concerning boundaries for the purpose of ascertaining the same between portions of any such land in all cases where any such boundaries shall be in dispute or be confused, and whether there may exist or not, the circumstances required by a Court of Equity to grant a suit for the ascertainment of boundaries, and the warden may ascertain such boundaries by such means as shall be found convenient, and shall decide about the same, and shall make and give all such orders and directions as shall be necessary for the purpose of carrying out such decision :
- x. Generally concerning all questions and disputes which may arise between miners holding miners' rights or licences in relation to mining on waste lands :

And the jurisdiction hereby given to the warden shall extend not only to cases where the litigants shall be the parties originally interested in the cause of suit; but to cases where the title of any such litigants shall be derived as assignee or personal representative or otherwise, from or through any of such parties, and in exercise of his jurisdiction, every such warden may make such order as may be just, and without regard to any rule of law affecting form only, or to the practice of any Court of Law or Equity, and in every case may award such reasonable costs to be paid the successful party as he may deem fit.

Warden to exercise powers of Justice of Peace.

13. Every warden, so long as he shall continue to hold his office, shall have and exercise the same powers and authorities as a Justice of the Peace for the said Province within the limits of the gold-field or gold-fields of which he may be appointed warden.

Mode of proceeding before warden.

14. The mode of proceeding in any complaint before the warden shall be as follows:—The person complaining shall lodge a plaint note with the warden, in the form in Schedule D to this Act, specifying therein shortly the subject matter of the complaint, and the remedy sought to be obtained. Upon receipt of such plaint note the warden with whom the same is lodged shall give notice in the form in Schedule E to this Act, by post or otherwise, to the party complained against of the nature of the complaint, and the time and place at which the same will be heard and determined. At the time and place appointed the parties shall attend and state their case before the warden, and may call evidence on oath, which oath the warden

Gold Mining Laws Amendment Act.—1870-71.

warden is hereby authorized to administer in support thereof, and the warden, having heard such statement and evidence, shall give his decision, and such decision shall be final and conclusive: Provided that the warden shall have power to adjourn the hearing of such complaint to any other time or place, and may, either at the original hearing, or at any adjournment, proceed in the absence of either party.

15. It shall not be necessary that any order or decision made by the warden shall be formally drawn up in the first instance, but the record in the warden's book, which he is hereby required to keep for the purpose, shall be sufficient evidence of the making of any such order, and of the terms thereof, and either party to a suit shall be at liberty to obtain a copy of record therein on payment to the warden of a fee of Two Shillings and Sixpence.

Decision need not be in writing.

16. The warden, upon the hearing of any complaint as aforesaid, and upon proof of any gold having been unlawfully taken or removed from the claim of any person encroached or trespassed upon, of which any finding as aforesaid shall be sufficient evidence, may cause any such gold 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 Fifty 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 of the Peace as a pecuniary penalty or compensation: 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 remedy which he may already have at law or in equity.

Warden may order gold to be seized.

17. Every person who shall assault or resist any warden, or any person duly authorized by him, whilst in the execution of any duty under this Act, or who, after the hearing and determining of any complaint as aforesaid, and having had the boundaries of his claim or his mode of operation pointed out by such warden, shall again encroach or trespass, 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 enjoined or suspended under this Act, or who shall be guilty of any contempt of the proceedings before the warden at any sitting, shall be liable to a penalty not exceeding Twenty-five Pounds, or, at the discretion of the adjudicating warden, be imprisoned, with or without hard labor, for any period not exceeding three months, and the warrant of commitment therein may be in the form in Schedule F to this Act: Provided that a warden shall not adjudicate in any case in which he may be interested.

Protection of warden.

Gold Mining Laws Amendment Act.—1870-71.

PART II.—Occupation Licences:

Occupation licences may be granted to miners.

18. The Governor, with the advice and consent of the Executive Council, may grant to any *bonâ fide* miner, or other person actually engaged in mining pursuits, a licence to occupy, for the purpose of residence only for himself and his family, any portion of the waste lands of the Crown, not exceeding in extent half an acre, and such licence may be for such period not exceeding seven years, and at such annual rent, payable in advance, not exceeding Ten Shillings, as may be prescribed by the regulations to be made under this Act; and such licence shall be transferable and may be renewed until such land shall be alienated in fee simple or be resumed by the Crown for public purposes: Provided that in respect to any lands now held under a mineral lease, no licence shall be granted without the consent of the lessee.

Determination of licence on sale of land.

19. When any land included in any licence so granted as aforesaid is sold or alienated in fee simple from the Crown, or set apart for any public purpose, during the term for which such licence is granted, the licence shall thereupon cease, but the licensee shall be entitled to such compensation as the Governor, with the advice aforesaid, may consider just for the loss of so much of the said term as may then be unexpired; and if such land is sold or alienated in fee simple the value of any improvement made thereon, shall be paid to such licensee by the purchaser.

Reserves for occupation licences in mineral leases.

20. Any mineral lease hereafter to be issued shall contain a provision to the effect that occupation licences, as last aforesaid, may be issued for the lands demised by such lease, or any part thereof, under regulations to be made as hereinafter provided.

Penalty for residing on waste lands without licence, and for holding over.

21. If any unlicensed person shall reside on any such lands as aforesaid, or any person having been licensed shall hold over any such lands after the expiration of his licence whether by effluxion of time or by any other determination thereof, he shall, on conviction thereof before any Special Magistrate or two Justices of the Peace for the said Province, forfeit and pay a penalty of not exceeding Ten Pounds for such offence, and the proof that such person is the holder of a valid existing licence shall rest upon him.

PART III.—Leases of lands containing coal or mineral oils:

Governor may grant leases for mining, &c., for coal, and mineral oils.

22. The Governor, with the advice and consent of the Executive Council, and subject to the regulations to be made in pursuance of this Act as hereinafter mentioned, may grant to any person or company a lease for any term not exceeding fifteen years at a peppercorn rent of any portion of the waste lands of the Crown in the said Province, not exceeding in area ten thousand acres in one block, for the purpose of mining, sinking, boring for and obtaining coal, or petroleum, or other mineral oil thereon and therefrom; and the lessee or lessees of the said land shall be entitled to a right of purchase thereof at any time during the last thirteen

No. 444 of 1880,
S. 116

Right of purchase.

Gold Mining Laws Amendment Act.—1870-71.

thirteen years of the said term, at the price of One Pound per acre, upon giving to the Commissioner of Crown Lands six calendar months' notice of his or their intention so to do: Provided Proviso. that such land shall not be situated within the limits comprised in any lease or licence already granted, whether for pastoral or mineral purposes.

23. When any land shall have been leased under the last preceding clause, and the lessee or lessees shall not within two years from the date of such lease prove to the satisfaction of the Governor in Executive Council that coal, or petroleum, or some other mineral oil exists therein in payable quantities, such lease shall be absolutely forfeited at the expiration of such two years, and the lands therein comprised shall revert to the Crown: Provided that the Government of the said Province shall have the option of purchasing at a valuation from the lessee or lessees all or any part of the machinery and improvements erected or being on the said land at the time when the lease shall be so forfeited. Lease forfeited if coal or mineral not discovered within two years.

24. The lessee or lessees of any such land shall not be entitled to claim or receive any reward, now or hereafter to be offered by the said Government, for the discovery of a payable coal field in the said Province, should such coal field be discovered within the limits of the land so leased to him or them as aforesaid. Lessees not entitled to reward for discovering coal field.

PART IV.—General matters:

25. Any person who shall forge any miner's right, licence, or lease, or any occupation licence issued or purporting to be issued under the authority of this Act, or fraudulently use, utter, or exhibit any such forged miner's right, licence, or lease, or any occupation licence, knowing the same to be forged, or fraudulently personate the holder of any such miner's right, licence, or lease, or any such occupation licence, shall be guilty of felony, and, on conviction, he shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding ten years, with or without hard labor, and with or without solitary confinement; and any person who shall fraudulently use or exhibit as his own any miner's right, licence, or lease, or any occupation licence belonging or granted to any other person, or use or exhibit as a valid miner's right, licence, or lease, or occupation licence, any miner's right, licence, or lease, or any occupation licence, which shall have expired, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, either with or without hard labor. Penalty for forging miner's rights, or occupation licences.

26. The Governor, with the advice of the Executive Council, may from time to time make, alter, repeal, and vary such regulations, not being contrary to the provisions of this Act, as shall appear necessary for regulating the form of any rights, leases, and licences, to be issued under this Act, and the mode, times, dates, and places of the issues thereof, the conditions on Governor may make regulations. which

Gold Mining Laws Amendment Act.—1870-71.

which the same shall be issued, the mode of transferring or assigning the same, and of prohibiting any such transfer or assignment, for regulating where necessary the forms of proceedings, and generally for the purpose of carrying the provisions of this Act and of every part thereof into execution, and may by such regulations repeal or alter any existing rules or regulations. And any person being duly convicted of a breach of any of such regulations shall forfeit and pay, for the first offence, a penalty not exceeding Five Pounds, and for the second and subsequent offences not more than Ten Pounds. And any such penalty shall be irrespective of any forfeiture as may be therein provided; and all such regulations, when published in the *South Australian Government Gazette*, shall have the force of law: Provided 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.

Provisions of Ordinance No. 6 of 1850 to apply to this Act.

27. The provisions of Ordinance No. 6, of 1850, "To facilitate the performance of the duties of Justices of the Peace out of Sessions, with respect to summary convictions and orders," shall apply to all proceedings before a warden in the discharge of the duties and powers given to him by Part I. of this Act, and also generally to all proceedings for a penalty for breach of this Act, or the regulations aforesaid: Provided that the Governor may, if he think fit, remit the whole or part of any such penalty.

Appeals.

28. There shall be an appeal from any order, conviction, judgment, or decision of any warden, which appeal shall be to the nearest Local Court of Full Jurisdiction; and such appeal shall be conducted in manner provided by Ordinance No. 6 of 1850.

Fees part of General Revenue.

29. All fees or other moneys received under this Act, unless otherwise expressly appropriated, shall be paid over to the Treasurer, and become a part of the public General Revenue of the said Province.

In the name and on behalf of the Queen I hereby assent to this Act.

JAMES FERGUSSON, Governor.

Gold Mining Laws Amendment Act.—1870-71.

SCHEDULES REFERRED TO.

A

SOUTH [Royal Arms] AUSTRALIA.
 No. Date
Miner's Right.
 Issued to A. B., of _____, under the provisions of
 "Act, No. of 1870-71." _____ day of _____, 18 .
 To be in force until the _____
 Fee paid— C. D., Warden.

B

SOUTH [Royal Arms] AUSTRALIA.
 No. Date
 A. B., of _____, having paid the sum of One Pound, on
 account of the Public Revenue, is hereby licensed for three months from this date,
 and no longer, to dig, search for, and remove gold from the Waste Lands of the
 Crown, within the limits of Mineral Lease No. _____, situate at _____
 Fee paid— E. F., Commissioner of Crown Lands.

C

SOUTH [Royal Arms] AUSTRALIA.
 No. Date
Business Licence.
 Issued to A. B., _____, under the provisions of
 "Act, No. of 1870-71." _____ day of _____, 18 .
 To be in force until the _____
 Fee paid— C. D., Warden.

D

SOUTH AUSTRALIA.
 ["Act, No. of 1870-71."]
 To C. D., Esq., Warden.
 A. B., of _____, complains of E. F., of _____, and
 says — 1. That, &c. } [Set forth the subject matter of complaint in paragraphs].
 2. That, &c. }
 The complainant therefore prays [set forth relief sought], or such other or further
 relief as shall be just.
 The amount sought to be recovered so far as the demand is pecuniary is £
 Dated the _____ day of _____ 18 . A. B.

E

SOUTH AUSTRALIA.
 ["Act, No. of 1870-71."]
 Plaintiff No. _____
 To [insert names of all the defendants], of _____
 You are hereby summoned to appear before me, or some other warden, at
 _____, on the _____ day of _____ next
 at _____

Gold Mining Laws Amendment Act.—1870-71.

at o'clock in the of the same day precisely, to answer the complaint of A. B. of [*insert names of all the complainants*], by which complaint he seeks [*here insert nature of complaint, showing whether for encroachment, or forfeiture, or otherwise*].

You may have a summons to compel the attendance of any witness, or for the production of any books or documents, on applying at my office.

Bring this summons with you when you come to my office.

Given under my hand this

day of

18

C. D., Warden.

F

SOUTH [Royal Arms] AUSTRALIA.

[“Act, No. of 1870-71.”]

Plaint No. .

To [*name of officer*], and to the keeper of the gaol at

These are to command you, the said , to apprehend O. B., and to convey him to the said gaol, and deliver him to the said keeper thereof: And you, the said keeper, are hereby required to receive him into your custody in the said gaol, and him there safely to keep for the term of unless the sum of shall be sooner paid. I, the undersigned [*name of warden*], warden, having now here adjudged the said O. B. to pay a fine of , and in default of immediate payment thereof to be imprisoned for the said term, for that he the said O. B. [*here state the case.*]