

VICTORIA.



ANNO VICESIMO QUINTO

VICTORIÆ REGINÆ.

CXLVIII.

An Act to amend the Law relating to Leases of Auriferous Lands and for other purposes.

[18th June, 1862.]

WHEREAS it is expedient to amend the law relating to the leasing of auriferous land and to authorize the granting of leases of water reservoirs 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 Victoria in this present Parliament assembled and by the authority of the same as follows—

I. From and after the commencement of this Act the eleventh and twelfth sections of the Act of the Parliament of Victoria numbered XXXII. shall be repealed.

II. It shall be lawful for the Governor in the name and on behalf of Her Majesty to demise to any person for any term not exceeding fifteen years from the time of the making of the lease any Crown land not demised under the provisions of any Act now or hereafter to be in force and not occupied by the holder of a miner's right or business license unless with the consent of such holder to any person for the purpose of mining thereon for gold or of erecting thereon any buildings and machinery to be used for washing smelting crushing or obtaining gold or any rock mineral or earth containing gold or of pumping or raising water from any land mined or intended to be mined upon for gold and of residence in connection with any of the purposes aforesaid Provided always that land occupied for the purpose of residence by the holder of a miner's right or business license may be demised if the person applying for a lease shall make compensation (the amount thereof to be determined in the manner prescribed by the regulations hereinafter mentioned) to such holder for any building erected or other improvements made by him or any person under whom he derives title on such land.

III. The amount to be paid by way of rent shall be fixed by the regulations hereinafter mentioned but shall never be less than at the rate of fifty shillings for every acre demised.

IV. Any

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Ground applied for protected.

IV. Any person desirous of having any such lease as hereinbefore mentioned granted to him shall mark out the land he applies for in such manner as shall be prescribed by the regulations hereinafter mentioned and in case any person who shall not previously have been in lawful occupation of such land shall at any time thereafter until and unless the application for a lease shall be refused trespass or encroach upon or occupy such land it shall be lawful for the applicant to complain to a warden of the gold fields and proceedings may thereupon be had and taken in the same manner as is now or shall by any Act hereafter to be made be provided in the case of a person complaining to a warden that any other person has encroached upon or occupied land which such complainant has taken possession of and is entitled to occupy by virtue of any miner's right or business license Provided always that it shall be necessary for the person so complaining to prove to the satisfaction of such warden or warden and assessors as the case may be that he has complied with the regulations in force for the time being Provided further that the amount of damage (if any) assessed and awarded to the complainant shall not be paid to him until his application for a lease shall have been decided upon and if such application shall be refused such amount (if levied) shall be returned to the defendant.

Notice of intention to grant lease to be published in the *Government Gazette*.

V. No such lease as hereinbefore mentioned shall be granted until after the expiration of one month after notice of the intention to grant the same shall have been published in the *Government Gazette*.

Warden may hear objections to granting of lease.

VI. If any person shall object to the granting of such a lease as hereinbefore mentioned it shall be lawful for any warden of the gold fields to hear receive and examine evidence in relation to the application for a lease and the objections thereto.

Not obligatory to grant leases.

VII. Nothing hereinbefore contained shall be construed as rendering it obligatory to grant any such lease as hereinbefore mentioned to any person applying for the same notwithstanding that he may have complied with the regulations in force but in case his application shall be refused he shall be informed of the reasons for such refusal and a lease may be granted notwithstanding that the person applying for the same may not in all respects have complied with such regulations.

Leases may be surrendered.

VIII. Any person holding a lease under the provisions hereinbefore contained or under the provisions of the said Act numbered XXXII. and the assigns of any such person shall be entitled at any time to surrender the same and to receive a lease for any term not exceeding fifteen years of the whole or any part of the land formerly demised and any such new lease may be renewed from time to time for any period not exceeding fifteen years at each renewal Provided that such new lease shall be at the rent and be subject to the covenants and conditions prescribed by the regulations which shall then be in force with regard to the rent to be paid by lessees and the covenants and conditions to be inserted in leases Provided further that before any such new lease shall be granted the person intended to be the lessee shall pay a fine of not more than ten pounds.

Rent payable on leases heretofore granted.

IX. No person holding a lease granted under the provisions of the said Act numbered XXXII shall hereafter be required notwithstanding any covenants therein contained to pay any greater sum by way of rent for the land thereby demised than at the rate of fifty shillings an acre and every person holding any such lease who shall have paid in respect of any instalment which became due after the first day of October One thousand eight hundred and sixty-one
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rent at a rate exceeding fifty shillings an acre shall be entitled to deduct from the rent which he would otherwise be required to pay the amount by which the rent he shall have so paid as aforesaid shall exceed a rent at the rate of fifty shillings an acre.

X. It shall be lawful for every mining board and for every committee appointed under the authority of the Act of the Parliament of Victoria numbered CXV. to make bye-laws for imposing on any person holding a lease under the provisions hereinbefore contained or under the provisions of the said Act numbered XXXII. such fees or charges as may be necessary for the purpose of clearing and keeping clear the sludge and water channels connected with any puddling quartz or other machines used by or belonging to such holders or for enforcing and regulating the drainage of land held under any such lease in the same manner as if the land held under such lease were land occupied by virtue of a miner's right and every committee and all commissioners appointed under the authority of the said Act numbered CXV. shall have the same authority and jurisdiction in the case of land held under any such lease as aforesaid as they now have in the case of land occupied by virtue of a miner's right and all fees charges and rates imposed or assessed by any mining board committee or commissioners by virtue of the powers herein in that behalf conferred on them may be recovered in the same manner as if they were imposed or assessed by virtue of the said Acts hereinbefore mentioned and the expression "claimholders being holders of miners rights" used in the third and fourth sections of the said Act numbered CXV. shall be deemed to include persons holding leases under the provisions hereinbefore contained or under the provisions of the said Act numbered XXXII.

Rates for sludge channels etc. may be imposed on land under lease.

XI. It shall be lawful for the Governor or the Board of Land and Works or any person authorized in that behalf by the Governor to grant for any term not exceeding fifteen years and upon payment of such fee rent or royalty as shall be determined by the regulations hereinafter mentioned licenses which shall authorize the person to whom the same shall be granted his executors administrators and assigns (except as against Her Majesty) to cut construct and use races dams and reservoirs through and upon any Crown lands whether the same shall or shall not have been demised under the provisions of this or any other Act now or hereafter to be in force and take or divert water from any spring lake pool or stream situated or flowing upon or through or bounded by any such Crown lands in such manner as shall be prescribed by such license and the regulations (if any) made as hereinafter mentioned in order to supply water for gold mining purposes to such person or any other person who may be engaged in mining for gold and it shall be lawful for the person to whom any such license shall be granted to take or divert water to the same but no greater extent as and than he might do if he were the owner of such Crown lands and the right conferred by such license and the property and interest in any race dam or reservoir cut or constructed by virtue thereof shall be deemed to be a chattel interest and may be transferred by writing attested by a justice and in such form (if any) as may be prescribed by the regulations hereinafter mentioned Provided always that if any person to whom any such license shall be granted shall by virtue thereof enter upon any land demised under the provisions of this or any other Act now or hereafter to be in force or occupied by virtue of a miner's right or business license he shall make compensation for any injury occasioned by such entry and the amount of such

Water rights may be granted.

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such compensation shall be determined in such manner as shall be prescribed by the regulations hereinafter mentioned and may be recovered in a summary way before any two justices.

Leases may be made of reservoirs and gathering grounds.

XII. It shall be lawful for the Governor in the name and on behalf of Her Majesty to demise to any person any water reservoir constructed at the public expense and any Crown lands which may be necessary for a gathering ground for supplying such reservoir with water or for increasing the supply thereto or for carrying the water from such reservoir to any place or places or to grant to such person the exclusive right of collecting the storm water falling on such gathering ground and of cutting constructing and using races dams and reservoirs through and upon any such gathering ground Provided that every such lease or grant shall save as hereinafter mentioned be for a term not exceeding fifteen years from the time of the making thereof and that the lessee shall be the person who shall have bid or tendered the highest rent after notice of the intention to demise such reservoir and lands shall have been published in the *Government Gazette* Provided nevertheless that it shall be lawful to demise any such reservoir or lands as last aforesaid to any elective body corporate at such rent whether nominal or otherwise and for such term as the Governor shall think fit.

Money due for water supplied may be recovered in a summary manner.

XIII. Her Majesty or any person to whom any such demise as in the last preceding section mentioned shall be made may recover any sum of money due in respect of any water supplied in a summary way before a justice.

Penalty for wrongfully taking water.

XIV. Any person wrongfully taking water from any such reservoir or from any race supplied therefrom shall be liable for the first offence to a penalty not exceeding five pounds or to imprisonment for a period not exceeding one month and for any subsequent offence to a penalty not exceeding twenty pounds or to imprisonment for a period not exceeding three months.

Penalty for polluting water or injuring reservoir.

XV. Any person suffering sludge or other matter to flow into or otherwise polluting the water in any such reservoir whether demised or not or any race flowing into or out of the same or injuring the banks of any such reservoir or otherwise damaging the same respectively or the works connected therewith shall be liable for every such offence to a penalty not exceeding five pounds and such sum by way of compensation not exceeding the sum of twenty pounds as shall be ascertained and determined by the justice before whom such person shall be convicted.

Ejectment may be brought in the court of mines.

XVI. In case any lease granted under the authority of this Act or of the said Act numbered XXXII. shall be liable to be forfeited or in case the term thereby granted shall have expired it shall be lawful for the attorney-general on behalf of Her Majesty to bring a suit in the court of mines of the district in which the land demised by such lease is situate to recover possession of such land and the summons in every such suit may be in the form contained in the schedule to this Act or to the like effect and the proceedings in such suit shall be as nearly as possible the same as those in original suits brought in a court of mines under the provisions of the said Act numbered XXXII. and the parties to such suit shall have the same right of requiring facts to be tried by assessors and of appealing to the supreme court as in such original suits And all such writs may be directed to and executed by the bailiff of such court *mutatis mutandis* as may be directed to and executed by the sheriff in an action of ejectment brought in the supreme court and the said court of mines shall

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shall have and exercise in any such suit the same powers and jurisdiction as are had and exercised by the supreme court in an action of ejectment brought by a lessor or landlord against the lessee or tenant or his assigns and if at the trial the attorney-general appears and the defendant does not appear the attorney-general shall be entitled to recover without producing any evidence.

XVII. Every provision contained in the said Act numbered XXXII. in regard to leases and lessees shall unless inconsistent with this Act be applicable to leases and lessees under the provisions of this Act in the same manner as if leases made under the provisions of this Act were made under the provisions of the said Act and every provision in the said Act in regard to water rights and other easements granted by the Governor shall unless inconsistent with this Act be applicable to and be deemed to include any water right or other privilege enjoyed by virtue of any license granted or grant made under the provisions of this Act.

Provisions in Act No. 32 to apply to leases under this Act.

XVIII. Notwithstanding anything contained in the fourth section of the said Act numbered XXXII. it shall be lawful for the Board of Land and Works or other body having the care and management of any road to permit any one or more holders of miner's rights to mine upon or under any road or street under the care and management of such Board or body as the case may be subject to such conditions and restrictions as they shall think fit.

Board of land and works may authorize roads to be mined under.

XIX. It shall be lawful for the Governor in Council from time to time to make regulations not being contrary to the provisions of this Act prescribing the amount of rent or royalty or the fee to be paid by lessees or licensees under this Act the quantity and shape of the land to be demised the manner in which persons desirous of having leases granted to them shall mark out the land they apply for the mode of determining upon applications for and objections to the granting of leases the amount of deposit (if any) to be paid by the applicant and objector respectively as a security for the costs connected with such determination the manner of dealing with cases when two or more applications are made for a lease of the same land the manner in which leases of reservoirs shall be exposed to auction the form of leases and licenses under this Act the covenants and conditions to be inserted in such leases the manner in which leases under the provisions of this Act shall be registered the fees to be paid upon such registration the duties of the persons conducting the same the conditions upon which licenses under this Act shall be issued and the privileges to be enjoyed under them the manner in which the amount of compensation to be paid by any lessees or licensees under this Act shall be determined and generally for carrying out the provisions of this Act and such regulations may be applicable either to the whole Colony or any part thereof or to any particular description of land or mode of mining and such regulations from time to time to alter amend or rescind.

Regulations of Governor in council.

XX. No such regulation shall have any force or efficacy until twenty-one days after it shall have been published in the *Government Gazette*.

Regulations to be published in the *Gazette*.

XXI. All regulations made by the Governor in Council under the provisions contained in the twelfth section of the Act numbered XXXII. shall until rescinded remain in force and be applicable not only to leases granted under such Act but also as far as possible to leases granted under this Act.

Existing regulations until rescinded to apply to leases under this Act.

SCHEDULE

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SCHEDULE.

PLAINT NO.

Sec. 16.

You are hereby summoned to appear in the Court of Mines at
 on the day of next at ten o'clock
 in the forenoon of the same day precisely to answer the plaint of R. D. I. Esquire, Her
 Majesty's Attorney-General for the Colony of Victoria by which plaint the said Attorney-
 General seeks to recover possession on behalf of Her Majesty of a piece of land demised to
 you by Her Majesty by a certain indenture dated the day of
 on the ground that such lease has become forfeited by reason of your having failed to comply
 with a covenant contained in such indenture to [*to pay the yearly rent of*
pounds or to erect on such land machinery of the value of *pounds within*
months of the date of such indenture or as the case may be.]

If you neglect to appear then upon due proof of the due service of a copy of this
 summons judgment will be given against you.

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

Bring this summons with you when you come to the court or to my office.

Given under my hand and the seal of the said court this day of
 186 .

Clerk of the said Court.

 MELBOURNE :

By Authority : JOHN FERRES, Government Printer.