

No. IV.

GOLD FIELDS.

An Act to amend the Laws relating to the Gold Fields. [22nd November, 1861.]

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 20 Vic.
No. 29.
Proviso.

1. From and after the commencement of this Act the Act twentieth Victoria number twenty-nine shall be repealed except in so far as the same relates to or affects persons who shall mine or employ any person to mine for gold in any land belonging to a private individual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.

Interpretation.

2. In the construction of this Act the following terms in inverted commas shall have the meanings set against them respectively unless the context otherwise indicate—

“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.

“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.

“Gold Fields”—Those parts of the Crown Lands of New South Wales which may be proclaimed as Gold Fields in the *Gazette*.

“Claim”—The portion of land which each person or company shall be entitled to occupy or to occupy and mine in by virtue of any Miner's Right License or Lease issued under the provisions of 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.

“Authorized persons”—All Commissioners for the Gold Fields and Justices of the Peace—all holders of any License or Lease for pastoral purposes—all Ministers of Religion and schoolmasters and any clerk trooper constable or other person employed

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employed exclusively in the Government service and the servants clerks or agents of such persons respectively there residing with and in the actual employment of any of them and all females and all children under fourteen years of age who shall only reside and not mine for gold upon any Gold Field or any person to whom the Resident Commissioner shall think fit to grant a temporary exemption on account of sickness or other accident.

“Commissioner”—Any Commissioner Assistant Commissioner or Sub-Commissioner for the Gold Fields.

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

“Alien”—Any person not being a British subject or a naturalized subject of Her Majesty.

“Chinese”—Any male native of China or its Dependencies or of any Island in the Chinese Seas not born of British parents or any male person born of Chinese parents.

3. The Governor may with the advice of the Executive Council declare by Proclamation in the *Gazette* any Crown Lands to be Gold Fields within the meaning and for the purposes of this Act. 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 for gold 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 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 always it shall be lawful for the Governor with the advice of the Executive Council by Proclamation to order and declare that such Miner’s Right shall authorize aliens described in such Proclamation to mine for gold upon such Gold Fields or at such places only as shall be named in such Proclamation. 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 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 purposes 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. Every alien not being an authorized person who shall mine for gold or become resident on any Gold Field without a Miner’s Aliens not authorized liable to penalty.

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Right as aforesaid shall be liable on conviction before a Justice of the Peace to a penalty not exceeding five pounds for the first such offence and not exceeding ten nor less than five pounds for the second and subsequent offences And any Justice of the Peace or Police Constable may arrest any alien who shall be so found upon any Gold Field and forthwith take him before some Justice to be dealt with.

Unauthorized persons prohibited.

9. Any person not holding a Miner's Right Lease or License under this Act shall not mine for gold or possess any claim on any Gold Field and shall not work for any other person whether or not the lawful possessor of any such claim or as partner with any such person And every such lawful possessor by whom he shall be employed as partner or with whom he shall so work shall absolutely forfeit his claim unless such claim shall be held by virtue of a Business License or by a Lease in which last-mentioned case the Governor may with the advice aforesaid remit such forfeiture.

Penalty for carrying on business without License &c.

10. 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 on conviction before a Justice of the Peace 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 the second or any subsequent such offence.

Partial suspension of Pastoral Leases extending over Gold Fields.

11. When any Gold Mine or Gold Field shall have been discovered upon any Crown Lands then under Lease or License for pastoral purposes the Governor with the advice aforesaid shall 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 Leases or Licenses and for the supply of water and otherwise for effectually working the said Gold Mine or 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.

12. The Governor with the advice aforesaid may authorize the passage of any water for gold mining purposes through any freehold lands and also the passage of any water or liquid discharge from gold mining operations through any such lands Provided that the possessor of any such lands shall be entitled to full compensation for any loss thereby sustained by him.

Commissioners to be appointed.

13. The Governor with the advice aforesaid may appoint Commissioners who 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 each person or company is entitled under any Miner's Right Lease or License issued under the provisions of this Act and to mark such extent and to do all other acts matters and things required of him by this Act or by the regulations aforesaid.

Regulations may be made.

14. 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 regulating the form of Miners' 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—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 And any person being duly convicted before a Justice of the Peace of a breach of any such regulation or of any order made by a Commissioner in virtue thereof shall forfeit and pay for the first offence

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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 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.

15. Any Justice of the Peace being a Commissioner upon the complaint of any person holding a Miner's Right Lease or License under this Act that any other person has encroached or trespassed upon his claim may proceed forthwith to the spot to 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 the discontinuance of such trespass or may if he shall see fit at any time after the complaint made prohibit the working of such claim by any or either party until the dispute shall be finally decided And any such Justice of the Peace 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.

Remedy for encroachment before Justice.

16. Any such complainant or person complained of or such Justice previous to the hearing of any such complaint may require that two persons holding the Miner's Right or a Lease under this Act shall assist such Justice as assessors and thereupon such Justice shall summon four persons duly qualified as aforesaid 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.

And assessors.

17. 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

Compensation for encroachments or trespass.

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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.

If assessors do not attend Justice may adjourn or proceed alone.

18. 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 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.

Fees may be demanded.

19. 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 and may refuse to attend to any such complaint until such fee shall have been paid 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.

Penalty for non-attendance &c. as assessor.

20. If any person holding the Miner's Right or a Lease issued under the provisions of this Act having been duly summoned shall disobey such summons and fail to attend at such time and place as may be named therein or 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 unless some reasonable cause for non-attendance or refusal of such person be made to appear to such Justice may impose a fine not exceeding five pounds which fine may be levied and appropriated in like manner as other fines imposed by virtue of this Act 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 twenty of this Act.

Penalty for resisting officers &c. and renewed encroachment.

21. Every person who shall assault or resist any Commissioner or Justice of the Peace 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 and having had the boundaries of his claim or his mode of operation pointed out by any such Justice of the Peace being a Commissioner 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 enjoined or suspended under this Act shall upon conviction before any two Justices of the Peace be liable to a penalty not exceeding twenty-five pounds or at the discretion of the adjudicating Justices be imprisoned with or without hard labor for any period not exceeding three months.

Establishment and control of licensed public-houses on the Gold Fields.

22. It shall be lawful for the Governor at any time on the recommendation of one Gold Commissioner and of one Justice of the Peace other than such Commissioner to direct that a Publican's License for any place on a Gold Field be issued to the person so recommended upon his entering into the recognizances and paying the duty required by the Licensed Publicans Act and in such cases it shall be in the discretion of such Commissioner and Justice to exempt during

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during the six months next after the issuing of such license the licensed person from providing the whole or such part as they shall think fit of the accommodation required by law to be provided for the public convenience in ordinary licensed public-houses.

23. Upon petition of not less than one hundred persons holding Miners' Rights or Leases under this Act on any Gold Field the Governor with the advice aforesaid may by Proclamation declare such Gold Field to be a district for the purpose of forming a Local Court with the powers and authority hereinafter described and may declare the name of such district and define the limits thereof And after the publication of any such Proclamation the locality so described shall be and become such district Provided that no such Court shall be established if within sixty days of the notification in the *Gazette* of any such petition a counter-petition bearing the signatures of a larger number of persons duly qualified as above shall have reached the office of the Minister for Lands Provided also that the Governor may with advice aforesaid abolish such Court on a petition bearing the signatures of qualified persons in number three times greater than originally petitioned for the same.

District may be proclaimed for purpose of Local Court.

24. Every such Court shall consist of eight persons holding respectively a Miner's Right or a Lease under this Act and who shall be elected as hereinafter provided.

Constitution of Local Court.

25. The eight persons so elected as aforesaid shall at their first meeting proceed to elect one of their number to be Chairman and shall continue members of such Court for twelve months from the date of such election unless they shall sooner retire or cease to be members as hereinafter provided and five of such members shall form a quorum and the acts of such quorum shall be deemed to be the acts of the whole Court and in all proceedings the decision of the majority shall be the decision of such Court and in case of an equality of votes the Chairman shall have an additional or casting vote.

Members of Court.

26. The Commissioner shall name a place and time by public notification in such manner as may seem to him most desirable (the place being some convenient locality within the limits of the Gold Fields District for which he shall be Commissioner and the time being some day not less than seven nor more than fourteen days from the date of the first publication of such notice) when and where a public meeting will be held of persons residing within such district and holding the Miner's Right or a Lease under this Act for the purpose of electing eight persons holding such Miner's Right or a Lease under this Act as are to be members of the Local Court And at such time and place the said Commissioner shall attend and preside at such meeting and any or every person present thereat being so qualified as aforesaid may propose any other person so qualified to be a member of such Court and if not more than eight such persons be so proposed then the Commissioner shall declare such eight persons duly elected as members of such Court and they shall constitute such Court accordingly Provided that if more than eight such persons be so proposed the said Commissioner shall proceed by the best means available to him to ascertain the actual number of votes in favour of each name proposed in the order in which they were proposed and the eight persons receiving the largest number shall be declared elected Provided also that in case of any question arising as to the right of any person present to propose another or to be proposed himself or to vote such Commissioner or any person qualified as aforesaid may demand the production by such person of his Miner's Right or Lease under this Act and if such person cannot produce either of such documents his vote or voice shall not be received or permitted And in the event

Proceedings to be taken by Commissioner.

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event of the votes for any two candidates being equal the Commissioner shall determine such election by giving a casting vote.

Local Courts may
frame rules.

27. Local Courts may appoint a Clerk and may frame rules for regulating the sittings and proceedings of such Courts and may also frame rules not inconsistent with this Act for the better management of all local matters relating to mining within the district for which the members are elected such rules to have effect only when they have received the assent of the Governor with the advice aforesaid and been published in the *Gazette* and such rules shall then have the like force as the regulations aforesaid.

Vacancies how
caused and how
filled.

28. Any member of such Court who shall absent himself from four consecutive meetings thereof or shall send in his resignation in writing addressed to the Chairman or shall in any way become incapacitated from attending such Court shall cease to be a member of such Court and the Chairman shall call a public meeting of persons qualified as aforesaid for the purpose of electing some person to fill the vacancy thus caused and at such meeting the same proceedings as nearly as may be shall be had and taken as at the first election of members. Provided that so long as there is a quorum any vacancy or deficiency in the number of members of such Court shall not affect the proceedings thereof.

Yearly election.

29. Fourteen days before the expiration of the twelve months for which the members of such Court shall have been elected the Chairman shall publicly notify a time and place for a public meeting to elect eight persons qualified as aforesaid to serve as members of the Local Court and at such meeting such Chairman shall preside and the same proceedings shall be had and the same rules shall apply as at the first election of members. And the like proceedings shall be had at the end of every succeeding twelve months. Provided that any member then retiring shall if otherwise qualified be eligible to be re-elected. Provided also that the omission to convene or hold any such meeting at the particular time hereinbefore directed shall not prevent such Chairman from convening such meeting at a later period or such later meeting from proceeding to such election.

Court of Appeal
established.

30. For any Gold Field or Gold Fields a Court of Appeal shall be established and shall consist of a Chairman and two other persons who have held Miners' Rights for six months to be appointed by the Governor with the advice aforesaid. Provided that if any member of such Court be concerned in any decision to be appealed against to any such Court of Appeal or be absent the Governor may appoint any other person to act in his stead. And every member of such Court of Appeal shall be entitled to remuneration at the rate of one pound for every day of his actually sitting therein.

Powers of Courts
of Appeal.

31. Every such Court of Appeal shall have power on the application of any person holding a Miner's Right Lease or License and on payment of a fee of three pounds to entertain any appeal against any decision order or award made under this Act by any Justice of the Peace being a Commissioner or Justice and assessors relating to any encroachment or trespass and to revise or to reverse the same and to make order for the repayment of the fee to the appellant and to award reasonable costs. And pending the hearing of any such appeal the Chairman shall have power to suspend the operation of any decision order or award of any such Justice and to prohibit all working by any person concerned during such suspension. And such Court shall be entitled to administer an oath and to compel the attendance of witnesses and to regulate its mode of procedure in like manner as Justices in Petty Sessions. And to fix its time and place of sitting. And the decision of the majority shall be deemed to be the decision of such Court. And no proceedings of such Court shall be quashed for want of form or be removed

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removed by *certiorari*. And any lawful decision order or award of such Court or any order of the Chairman thereof shall be enforced as by this Act provided for enforcing the decision of a Justice of the Peace being a Commissioner or as by law now provided for enforcing any order or award of Justices in their summary jurisdiction.

32. Any Justice of the Peace being also a Commissioner may 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 may issue process to procure or compel the appearance before him 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 he may inquire into and hear such complaint or application and may make such order relating to the mode of working any claim or the due division thereof as to him shall seem meet.

Justices may entertain partnership questions.

33. 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.

Assessors may also be summoned in other cases.

34. 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 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.

Punishment for forgery and personation.

35. Any holder of a Lease issued under the provisions of this 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 shall be deemed guilty of a misdemeanor. 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 in like manner be deemed guilty of a misdemeanor.

Punishment for fraud.

36. 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 the Queen Her Heirs and Successors in respect of the Gold Mines and Gold Fields of the Colony.

Royal prerogative not interfered with.

37. 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 no such proceedings shall be removed by *certiorari* into the Supreme Court.

Summary proceedings.

38. Any person ordered or adjudged to forfeit or pay any fine penalty or sum of money amounting to ten pounds or upwards who shall feel himself aggrieved by the order or conviction of any Justice or Justices and assessors may appeal from any such order or conviction to

Appeal against fines to District Court.

Wollongong Harbour.

to the next District Court which shall be held nearest to the place where such order or conviction shall have been given or made upon his complying with the provisions of the law in force for the time being in reference to appeals.

Appropriation of fees.

39. 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.

Short title.

40. This Act shall be styled and may be cited as "The Gold Fields Act of 1861."
