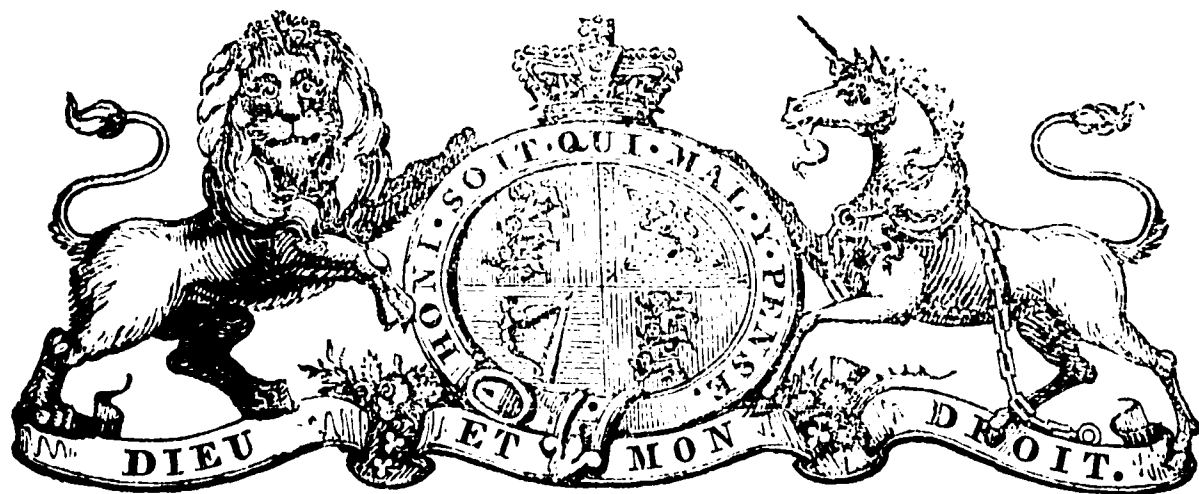


VICTORIA.



ANNO DECIMO SEPTIMO

VICTORIÆ REGINÆ.

By His Excellency CHARLES JOSEPH LA TROBE, ESQUIRE, Lieutenant Governor of the Colony of Victoria and its Dependencies, with the advice and consent of the Legislative Council.

No. IV.

An Act for the better management of the Gold Fields in the Colony of Victoria. [Assented to 1st December, 1853.]

**W**HEREAS it is expedient to make provision for the better management of the Gold Fields in the Colony of Victoria: Be it therefore enacted by His Excellency the Lieutenant Governor of the said Colony of Victoria by and with the advice and consent of the Legislative Council thereof as follows

Preamble

I. An Act of the Lieutenant Governor and Legislative Council of the said Colony of Victoria passed in the fifteenth year of the reign of Her present Majesty Queen Victoria intituled "*An Act to restrain by summary proceeding unauthorised Mining on Waste Lands of the Crown*" and an Act of the Lieutenant Governor and Legislative Council of the said Colony, passed in the present Session of the said Legislative Council intituled "*An Act to alter an Act intituled 'An Act to restrain by summary proceeding unauthorised Mining on Waste Lands of the Crown'*" shall be and the same are hereby repealed.

Repeal of 15 Vic., No. 15,

And of 17 Vic., No. 1.

II. It shall be lawful for the Lieutenant Governor of the said Colony subject to the provisions hereof and to the rules to be made as hereinafter provided to cause licenses to be issued which shall be in force for the periods of one month three six or twelve months from the dates thereof respectively and every such license shall during the time therein expressed authorise the holder to mine for gold upon any waste lands of the Crown or upon such lands alienated by the Crown as may be particularly mentioned therein and the holder of any such license subject to the provisions and rules aforesaid shall during the continuance thereof be deemed in law to be the owner (except as against Her Majesty only) of the claim (not being at any time more than one) which shall be occupied by virtue of such license and during such continuance as aforesaid all gold then being in and upon the said claim (not being at any time more than one occupied as aforesaid) shall except as against Her Majesty be deemed in law to be the absolute personal property of such holder.

Power for Lieutenant Governor to issue licenses.

III. The

Fees payable for licenses.

III. The fees to be paid for any license with reference to the period for which the same shall be issued as aforesaid shall be the following that is to say :—

- For one month . . . . . one pound
- For three months . . . . . two pounds
- For six months . . . . . four pounds
- For twelve months . . . . . eight pounds

Power for Lieutenant Governor to issue licenses to carry on business.

IV. It shall be lawful for the Lieutenant Governor subject to the provisions hereof and to such rules as aforesaid to cause licenses to be issued which shall be in force for the period of three six and twelve months from the dates thereof respectively and every such license shall during the time therein expressed, authorise the holder to carry on the business of a storekeeper upon any Gold Field on any waste lands of the Crown and the fees to be paid for any such last mentioned license with reference to the periods for which the same shall be issued as last aforesaid shall be the following that is to say :—

- For three months . . . . . fifteen pounds
- For six months . . . . . twenty-five pounds
- For twelve months . . . . . fifty pounds

Fees payable in advance, &c.

V. All such fees as hereinbefore mentioned shall be payable in advance and shall be paid to Her Majesty her Heirs and Successors to be applied to the public uses of the said Colony and in support of the Government thereof.

Leases of auriferous lands.

VI. It shall be lawful for the Lieutenant Governor subject to and in accordance with the laws in force respecting Waste Lands of the Crown and the provisions of this Act and the rules to be made as hereinafter provided to grant leases or licenses for mining purposes of portions of auriferous lands.

Amount of royalty.

VII. The amount of royalty to be reserved in cases where any lease shall be granted on the terms of paying a royalty shall be not less than one twentieth part of the gross produce of Gold procuréd from such lands.

Commissioners may define claims.

VIII. The several Commissioners of Crown Lands shall within their respective districts have full power subject to the provisions hereof and the rules to be made as hereinafter provided to determine the extent and position of each licensed person's claim and to mark the same.

Penalties for mining or residing on Gold Fields without authority.

IX. Any person not being the holder of a lease or license under this Act who shall mine or employ any other person to mine or who shall be in a mining partnership with any person who shall mine for gold in any land whatsoever in the Colony of Victoria and any person not being the holder of a lease or license duly empowering him in that behalf and not being an authorised person within the meaning of this Act who shall carry on or follow any business or become resident upon or at any of the gold mines or gold fields on waste lands of the Crown shall be liable on conviction before any two Justices of the Peace to the penalties following that is to say—For the first offence a sum not exceeding five pounds for the second offence a sum not exceeding fifteen pounds nor less than five pounds and for the third and every subsequent offence a sum not exceeding thirty pounds nor less than fifteen pounds.

Commissioner may apprehend persons &c.

X. It shall be lawful for any Commissioner of Crown Lands and his assistants within the view of such Commissioner without warrant to apprehend and detain until he can be brought before any two Justices of the Peace to be dealt with under this Act any person whom he may find mining for gold or residing at or carrying on or following any business at any gold mines or gold fields on waste lands of the Crown contrary to the provisions hereof.

Bail may be taken for appearance.

XI. It shall be lawful for any Justice or Commissioner of Crown Lands to take sufficient bail from any person who may be apprehended

as aforesaid for his due appearance before any two Justices to answer any charge to be made against him under this Act.

XII. It shall be lawful for any such Commissioner upon the complaint of any person holding a Lease or License as aforesaid that any other person has encroached upon the claim of the complainant to proceed forthwith to the spot and to enquire into the case and on his own view or upon oath (which oath he is hereby empowered to administer) to determine the same in a summary way And if it shall appear to such Commissioner that the person complained against has so encroached by occupying mining digging or undermining such claim or in any other manner whatsoever it shall be lawful for such Commissioner to cause the person so found encroaching as aforesaid his servants implements goods and chattels to be removed from the claim so encroached upon And any person found guilty of encroaching as aforesaid shall upon conviction before any two Justices of the Peace for the first offence be subject and liable in the discretion of such Justices to a penalty not exceeding ten pounds or to imprisonment with hard labor for any period not exceeding two months and for a second or any subsequent offence to imprisonment with hard labor for any period not exceeding six months.

Commissioners may decide cases of encroachment.

XIII. If any person shall resist such Commissioner or his assistants or prevent him or them from causing such person so found encroaching his servants implements goods and chattels to be removed as aforesaid or shall after such Commissioner shall have determined the matter of any such complaint and pointed out the respective boundaries of the said parties again encroach as aforesaid such person so resisting such Commissioner or his assistants or so renewing such encroachment shall upon conviction thereof before any two Justices of the Peace forfeit and pay for every such offence a sum not exceeding fifty pounds or in the discretion of such Justices be subject to imprisonment with hard labor for any period not exceeding six months.

Penalty for resisting Commissioner or renewing encroachment.

XIV. It shall be lawful for any two Justices of the Peace upon the complaint of any person being the holder of a lease or license under this Act that any other person has encroached or trespassed upon the claim of such holder by occupying mining digging or undermining as aforesaid to hear and determine such complaint and in their discretion to cause any gold which may have been taken or removed from such claim to be summarily seized and delivered to such complainant and if they shall be satisfied that such complainant has sustained any damage by reason of such encroachment or trespass to assess the same and whether any such gold has been so seized or delivered or not to award to such complainant such reasonable compensation not exceeding two hundred pounds to be paid by the person so having encroached or trespassed as to the said Justices shall seem meet such sum 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 a Justice as a pecuniary penalty or compensation.

Justices may award compensation for encroachment.

XV. It shall be lawful for any Justice of the Peace upon complaint made by any holder of a lease or license under this Act, that he is or has been (whilst such holder) engaged in a mining partnership with any other person and that a balance is due to him on account thereof or upon the application of any such holder so engaged in such partnership that the same may be dissolved and that the sums respectively due to the several members thereof may be ascertained and paid to procure or compel the appearance before any two Justices of such members of the said partnership as shall appear necessary and upon such appearance or in default thereof after such process to procure and compel the same as aforesaid or in the absence of such members as shall not appear to be necessary parties

Justices may adjudicate upon mining partnerships.

parties to such case it shall be lawful for any two Justices to enquire into and hear such complaint or application provided that the balance or amount payable to any one partner does not exceed two hundred pounds and order that such partnership shall be dissolved and ascertain and determine the amount to be paid by any one member to any other member or members thereof and to order that such amount so determined together with reasonable costs shall be paid or to make such other order as to such Justices shall seem meet And such Justice or Justices shall and may have and exercise the same powers and authorities for compelling the appearance of any person and enforcing the compliance with any order or compelling payment of any sum thereby directed to be paid and shall pursue as nearly as possible the same form and manner of proceeding as are provided in such behalf respectively in the Statute of the Imperial Parliament passed in the eleventh and twelfth years of the reign of Her present Majesty Queen Victoria intituled "*An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders*" and any such order or adjudication shall be a bar to any further or other proceeding in any other Court respecting such partnership and may be pleaded in bar thereto

False returns or concealment a misdemeanour.

XVI. If any person holding a lease or license authorising him to mine for Gold shall by any fraudulent device or contrivance defraud or attempt to defraud Her Majesty or any person authorised to receive the same of any money or gold payable or reserved by such lease or license or shall conceal or make a false statement as to the amount of any gold procured by him or falsify any accounts with a fraudulent intent such person shall be deemed guilty of a misdemeanour and shall on conviction thereof before any Court of competent jurisdiction be subject to fine and imprisonment at the discretion of such Court And all officers and servants of such lessee or licensed person and other persons whatsoever who shall knowingly be concerned in any such fraud or attempted fraud whether with or without the knowledge or concurrence of such lessee or licensed person shall in like manner be deemed guilty of a misdemeanour and shall on conviction as aforesaid be liable to the like punishment.

Forgery of lease or license or personation &c. a misdemeanour.

XVII. If any person shall fraudulently forge any such lease or license as aforesaid or shall fraudulently use utter or exhibit any such forged lease or license knowing the same to be forged or if any person shall fraudulently personate any licensed person or shall falsely or fraudulently represent that any servant or other person is an authorised person within the meaning of this Act or shall fraudulently use or exhibit as his own any license belonging or granted to any other person or shall use or exhibit as a valid lease or license any lease or license which shall have expired he shall be guilty of a misdemeanour and shall on conviction before any Court of competent jurisdiction be subject to fine or imprisonment with or without hard labor or to both at the discretion of such Court.

Stealing gold, &c., felony.

XVIII. If any person shall steal or shall sever or excavate with intent to steal any gold from any mine bed or vein thereof or if any person shall with a fraudulent intent take remove or conceal any gold found or being in any mine bed or vein thereof every such offender shall be guilty of felony and on being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

Lieutenant Governor may make Rules.

XIX. It shall be lawful for the Lieutenant Governor with the advice of the Executive Council and in pursuance of the provisions hereof from time to time to make such Rules as shall appear necessary for regulating the form of leases and licenses to be issued under this Act and the mode time dates and places of the issue thereof and for prescribing the extent of ground which may at any time be occupied in one block by any person or number of persons by virtue of any such licenses or leases and for

for determining on what conditions and for what terms such leases or licenses shall be respectively granted renewed and forfeited and the form thereof and the mode of obtaining 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 all rules heretofore made by the Lieutenant Governor and Executive Council of the said Colony respecting the issue of leases for mining purposes or respecting any of the purposes aforesaid shall have the force and effect of law until repealed altered or amended by any rules to be made as aforesaid Provided that every such rule already made or passed shall be laid before the Legislative Council at its present Session and every such rule hereafter to be made in pursuance of the provisions hereof shall be published in the *Government Gazette* and shall not be in force until thirty days after a copy thereof shall have been laid before the Legislative Council

XX. Nothing in this Act contained shall be deemed to abridge or control the prerogative rights and powers of Her Majesty the Queen in respect of the gold mines and gold fields of the Colony of Victoria nor to abridge and control otherwise than by express terms or necessary or obvious inference the powers and authorities conferred upon the Commissioners of the Gold Fields appointed and acting as Commissioners of Crown Lands.

The Royal Prerogative not to be abridged.

XXI. Whenever any penalty shall have been imposed under the provisions of this Act and the person convicted shall not forthwith pay the same into the hands of the convicting Justice or Justices it shall be lawful for such Justice or Justices to direct that such person be imprisoned with or without hard labor as he or they shall think fit for a period not exceeding one month if the penalty shall not exceed five pounds and for a period not exceeding two months nor less than one month if the penalty be above five pounds and not exceeding fifteen pounds and for a period of not less than two months nor more than four months if the penalty be above fifteen pounds unless such sums respectively shall be sooner paid.

Mode of recovering penalties.

XXII. All the powers and jurisdiction which may under the provisions hereinbefore contained except the fourteenth and fifteenth sections hereof be had and exercised by two or more Justices of the Peace shall and may be had and exercised in like manner by one Justice only unless the party proceeded against shall object to such exercise of power and jurisdiction by one Justice alone.

One Justice may act unless objected to.

XXIII. All proceedings before any Justice or Justices for any fine penalty forfeiture or damage under this Act shall be had and taken in a summary way and in any proceeding under this Act it shall not be necessary to lay or file any formal information and the informer and parties interested may be admitted as witnesses and no complaint conviction order for confiscation or forfeiture or other proceeding before or by any Justice or Justices under this Act shall be quashed or set aside or deemed void or insufficient for want of form only or be removed or removable by *certiorari* or any other writ or process whatsoever into the Supreme Court.

Proceedings to be taken in a summary way.

No *Certiorari*.

XXIV. All fines and penalties received under this Act shall be paid one moiety to the Informer and the other moiety to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof.

Appropriation of fines and penalties.

XXV. Any person ordered or adjudged to pay any fine penalty or forfeiture exceeding ten pounds under the provisions of this Act except the fourteenth and fifteenth sections hereof who shall feel himself aggrieved by the judgment of the Justice or Justices adjudicating may appeal from any such order or adjudication to the next Court of General Sessions of the Peace which shall be held nearest to the place where such order

Appeal to General Sessions.

order or adjudication shall have been given or made and the execution of every such order or adjudication so appealed from shall be suspended in case such person shall with one or more sufficient surety or sureties immediately before such Justice or Justices enter into a recognizance to Her Majesty Her Heirs and Successors in the penal sum of double the amount of such fine penalty or forfeiture (which bond or recognizance every such Justice is hereby authorised to take) conditioned to prosecute such appeal with effect and to be forthcoming to abide the determination of such Court of General Sessions and pay such costs as the said Court shall award and such Court is hereby authorised finally to hear and determine the matter of such appeal.

Interpretation  
terms.

of XXVI. In the construction of this Act and the several provisions thereof the verb "mine" shall be understood to include any mode or method 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 provided that nothing in this Act contained shall be construed to extend to any preliminary search or examination commonly called "prospecting" for the purpose merely of discovering the presence of gold in any locality not worked or used as a gold field the word "business" shall be taken to include any trade calling or occupation whatsoever the word "gold" shall signify as well any gold as any earth clay quartz stone or other mineral containing gold or having gold mixed in the substance thereof or set apart for the purpose of extracting gold therefrom the words "gold mines" and "gold fields" shall mean those parts of the waste lands of the Crown in the said Colony on which any persons are actually engaged in mining for gold the word "claim" shall mean the portion of land which each holder of a lease or license shall be entitled to occupy or mine in by virtue of such license the words "mining partnership" shall mean and be limited to a partnership between working miners for mining for gold only the word "storekeeper" shall mean any person who sells or deals in wholesale or retail any goods wares or merchandize not his own manufacture or the produce of his own labor and the words "authorised persons" shall mean and include all holders of any license or lease for pastoral purposes all ministers of religion and school-masters the servants of such holders ministers and school-masters then residing with and being in their actual employment respectively the servants residing with and being in the actual employment of the holder of a license to carry on the business of a storekeeper and all females and all children under fourteen years of age who shall only reside but not mine for gold upon any Gold Field.