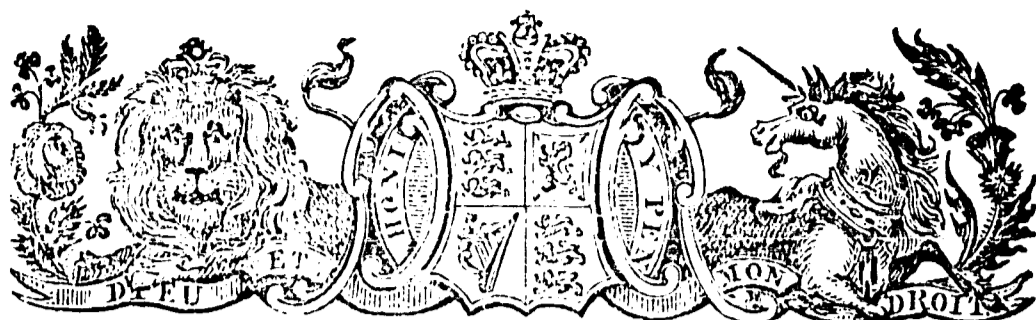


VICTORIA.



ANNO DECIMO OCTAVO

VICTORIÆ REGINÆ.

*By His Excellency SIR CHARLES HOTHAM, Knight Commander of the Most Honorable Military Order of the Bath, Captain-General and Governor-in-Chief of the Colony of Victoria, and Vice-Admiral of the same, &c., &c., &c.*

No. XXXVII.

An Act to amend the Laws relating to the Gold Fields. [Assented to 12th June, 1855.]

**W**HEREAS it is expedient to amend the laws relating to the Gold Fields Be it therefore enacted by His Excellency the Governor of Victoria by and with the advice and consent of the Legislative Council thereof as follows— Preamble.

I. In the construction and for the purposes of this Act if not inconsistent with the context or subject matter the following terms shall have the respective meanings hereby assigned to them that is to say— Interpretation.

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.

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 Victoria on which any persons are or may be actually engaged in mining for gold.

The word "claim" shall mean the portion of land which each person or company shall be entitled to occupy or to occupy and mine in under any document license or lease issued under the provisions of this Act.

The word "business" shall mean and include 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 and

The words "authorised persons" shall mean and include all holders of any license or lease for pastoral purposes all ministers of religion

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religion and schoolmasters the servants of such holders ministers and schoolmasters then residing with and being in the actual employment of any of them and all females and all children under fourteen years of age who shall only reside but not mine for gold upon any gold field.

The Miner's Right may be issued.

II. It shall be lawful for the Governor subject to the provisions of this Act and the rules and regulations to be made as hereinafter provided to cause documents to be issued each of which shall be called "The Miner's Right" and shall be granted to any person applying for the same upon payment of a fee of one pound.

Duration and effect of "The Miner's Right."

III. "The Miner's Right" shall be in force for the period of twelve months from the date thereof and shall during the said period authorise the holder to mine for gold upon any of the waste lands of the Crown and to occupy (except as against Her Majesty) for the purpose of residence in connection with the object of mining so much of the said lands as may be prescribed under the rules and regulations to be made as hereinafter mentioned and every such holder shall during the continuance of such Miner's Right be deemed in law to be the owner (except as against Her Majesty only) 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 (except as against Her Majesty) be deemed in law to be the absolute personal property of such holder

Licenses may be issued.

IV. It shall be lawful for the Governor subject to the provisions of this Act and to such rules and regulations as aforesaid to cause licenses to be issued which shall be in force for the period of three six or twelve months from the dates thereof respectively authorising the holder to carry on business upon any gold field and the fees to be paid for such licenses shall be as follows that is to say:—

For three months .....Two Pounds and Ten Shillings.

For six months .....Five Pounds.

For twelve months.....Ten Pounds.

Leases of auriferous lands may be issued.

V. It shall be lawful for the Governor subject to and in accordance with the laws in force for the time being respecting waste lands of the Colony and the provisions of this Act and the rules and regulations to be made as hereinafter mentioned to grant leases for mining purposes of portions of auriferous lands and to fix the amount to be paid by way of rent whether as a royalty or otherwise.

Fees payable in advance.

VI. All such fees as aforesaid and all other fees herein 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 Colony of Victoria and in support of the Government thereof.

Persons mining without authority to be dealt with as in unauthorised occupation.

VII. Any person not being the holder of the Miner's Right or a lease 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 Victoria and any person not being the holder of a right license or lease 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 shall be deemed to be in the unauthorised occupation of such lands and shall be liable to be dealt with accordingly.

Officers may be appointed.

VIII. It shall be lawful for the Governor to appoint officers who shall have power and authority subject to the provisions of this Act and the rules and regulations to be made as hereinafter mentioned to determine the extent and position of the claim to which each person

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person or company is entitled under any document right license or lease issued under the provisions of this Act and to mark such extent.

IX. It shall be lawful for the Governor with the advice of the Executive Council from time to time to make such rules and regulations not being contrary to the provisions of this Act as shall appear necessary for regulating the form of documents licenses and leases to be issued under this Act the mode times dates and places of the issue 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 all the rules and regulations heretofore made by the Governor and Executive Council respecting the issue of licenses for mining purposes or respecting any of the purposes aforesaid not inconsistent herewith shall have the force and effect of law until repealed altered or amended by any rules or regulations to be made as herein mentioned.

X. It shall be lawful for any Justice of the Peace upon the complaint of any person holding the Miner's Right or any license or lease under the provisions of this Act that any other person has encroached upon the claim of the complainant to proceed forthwith to the spot for the purpose of investigating the matter of such complaint and to enquire into the case and on his own view or upon the oath of any witness (which oath he is hereby empowered to administer) to determine the same in a summary way and if it shall appear to such Justice that the person complained against has so encroached by occupying mining or undermining such claim or in any other way whatsoever it shall be lawful for such Justice to cause the person so found to have encroached as aforesaid his servants implements goods and chattels to be removed from the claim so encroached upon.

XI. It shall be lawful for any such complainant or person complained of or for such Justice previous to the hearing of any such complaint to require that four persons holding the Miner's Right or a lease under this Act shall assist such Justice as assessors and thereupon such Justice if four persons duly qualified are not present and ready to attend and be sworn as such assessors shall summon any number not exceeding eight persons duly qualified as aforesaid and shall select from such number the first four disinterested persons who may attend and shall administer an oath in the form set forth in the schedule hereunto annexed marked A to such persons as may attend whether summoned or not and such persons so sworn shall be and act as assessors and such justice and assessors shall hear and determine every such complaint and shall also find whether any gold has been unlawfully or improperly removed from such claim and whether any damage has been sustained by such encroachment and the decision of the majority consisting of such Justice and two assessors shall be binding.

XII. It shall be lawful for such Justice and assessors upon the hearing of any complaint as aforesaid or for any two Justices of the Peace upon proof of any gold having been removed as aforesaid (of which any such finding as aforesaid shall be sufficient evidence) to cause any gold which may have been taken or removed from such claim to be summarily seized and delivered to such complainant and whether any such gold shall have been so seized or delivered or not to cause the whole or any part of the damages ascertained as aforesaid to an amount not exceeding two hundred pounds to be paid by

Rules and regulations  
may be made.

Persons encroaching  
may be removed.

Assessors may be  
called in.

Compensation may be  
awarded.

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by the person so having encroached or trespassed as to such Justice and assessors or such Justices shall seem just 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 of the peace as a pecuniary penalty or compensation.

Fees may be demanded.

XIII. Previously to the entertaining of any complaint as aforesaid such Justice shall and may demand and receive the fee of two pounds and until such fee shall have been paid such Justice may refuse to attend to any such complaint. Provided that if the decision shall be against the person complained of 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 or such Justice and assessors as the case may be and such fee may be recovered as herein directed in regard to any compensation awarded to any complainant.

Penalty for non-attendance, &c., as Assessor.

XIV. 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 it shall be lawful for such Justice upon proof that such person was duly summoned or having been summoned refused to be sworn unless some reasonable cause for the non-attendance or refusal of such person be made to appear to such Justice to inflict a fine not exceeding five pounds which fine may be levied and appropriated in like manner as other fines inflicted by virtue of this Act and every such 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 and such Justice and assessors shall determine and order by whom such sums or any parts thereof shall be paid.

Penalty for resisting officers, &c., a renewed encroachment.

XV. If any person shall assault or resist any such officer or any of the said assessors or any person duly authorised by him or them whilst in the execution of the duties provided to be performed under this Act or if any person after the hearing and determining of any such complaint and having had the boundaries of his claim pointed out by any officer or justice of the peace shall again encroach or trespass as aforesaid every such person so assaulting resisting or again encroaching shall forfeit and pay a penalty not exceeding fifty pounds or at the discretion of the adjudicating justices be imprisoned with hard labor for any period not exceeding six months.

District may be proclaimed for purpose of a Local Court.

XVI. It shall be lawful for the Governor with the advice of the Executive Council by proclamation from time to time to declare any gold field to be a district for the purpose of forming a local court with the powers and authorities hereinafter described and to declare the name of such district and define the limits and appoint the chairman of such local court and from time to time to vary and alter such limits and revoke such appointment and make another or others and after the publication of any such proclamation the locality so described shall be and become a district for the purposes of this Act.

Constitution of Local Court.

XVII. Every such court shall consist of a Chairman to be nominated as hereinbefore directed and five at the least of nine persons holding the Miner's Right or a lease under this Act to be elected as hereinafter directed and every such court may appoint a clerk and shall have power to frame rules and regulations for determining the extent and position of any claim the conditions on which it shall be worked and

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and the application and use of any machinery and such local rules and regulations relating to mining and applicable to the district for which the members may be elected as they shall deem most beneficial and no such rule shall be in force until it shall have received the assent of the Governor and been published in the *Government Gazette*.

XVIII. Every rule or regulation made as herein mentioned shall be laid before the Legislative Council within fourteen days from the making thereof if the Legislative Council shall be then in session and if not then within fourteen days after the commencement of its next session.

Rules and Regulations must be laid before the Legislative Council.

XIX. It shall be lawful for such Chairman when appointed to name a place and time by public notification in such manner as may seem to such Chairman most desirable the place to be some convenient locality within the limits of the gold field district for which he shall be Chairman and the time some day not less than seven days 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 usually residing within such district and holding the Miner's Right or a lease under this Act for the purpose of electing nine persons holding such Miner's Right or a lease under this Act as and to be members of the local court and at the time and place mentioned the said Chairman shall attend and preside at such meeting and upon the name of any person qualified as aforesaid being proposed and seconded by persons also qualified as aforesaid as a member of such local court such name shall be submitted to the meeting and if the meeting shall signify its approval of such name such person shall be declared by the Chairman to be duly elected a member of such Court and if such meeting shall signify its disapproval of such name such person shall be declared as rejected and so on until nine persons qualified as aforesaid shall have been duly elected and if any dispute or doubt shall arise as to the decision of such meeting in any particular case the said Chairman shall proceed by the best means available to him either by dividing the meeting into two parts those for the proposition and those against it or otherwise to ascertain which side has the majority and the decision of such Chairman shall be final provided in case of any such doubt or dispute as aforesaid it shall be competent for such Chairman or any person qualified as aforesaid to demand the production of the document termed the Miner's Right or lease under this Act of any person voting or speaking at such meeting and if such person cannot produce either of such before-mentioned documents his vote or voice shall not be considered at such meeting.

Proceedings to be taken by Chairman.

XX. The nine persons so elected as aforesaid shall continue members of such court for the period of six 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 with the Chairman 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

XXI. If any member of such Court shall absent himself from the meetings of such Court for four weeks consecutively or shall send in his resignation in writing addressed to the Chairman or shall in any way become incapacitated from attending such Court such person 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

Vacancies, how caused, and how filled.

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caused and at such meeting the same proceedings as nearly as may be shall be had and taken as is herein directed to be had and taken at the first election of members of such Court 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.

Half-yearly Election.

XXII. Fourteen days before the termination of the six months for which the members of such court shall have been elected the chairman shall publicly notify a time when and place where a public meeting shall be held for the purpose of electing nine persons being qualified as aforesaid to serve for the ensuing six months as members of the local court in place of the members whose period of service shall have expired and at such meeting such chairman shall preside and the same proceedings be had and taken and the same rules apply and be applicable as is hereinbefore set forth in regard to the first election of members of such Court and the members so elected shall be members for the six months ensuing the date upon which the first elected members shall retire and so on every succeeding six months provided that any member retiring as aforesaid at the expiration of any six months shall if otherwise qualified be eligible to be re-elected.

Breaches of rules may be enquired into.

XXIII. Every such local court established as aforesaid shall and may take cognizance of any breach whether of omission or commission of any of the rules or regulations framed by the said Court as aforesaid and punish every such breach by the infliction of a fine or penalty not exceeding ten pounds for the first offence and twenty pounds for any second or subsequent offence.

Court may entertain partnership questions.

XXIV. It shall be lawful for the chairman of any such Court upon complaint made by the holder of any right 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 issue process to procure or compel the appearance before such Court 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 to such case it shall be lawful for such Court to enquire into and hear such complaint or application 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 Court shall seem meet provided that the balance or amount payable to any one partner does not exceed two hundred pounds.

Powers of Local Court.

XXV. The chairman of every such Local Court shall have power to summon and examine on oath any witness or witnesses and to administer any such oath and also to commit for any period not exceeding fourteen days any person refusing to be sworn or committing any other contempt in such Court and also to issue a warrant to compel the attendance of any necessary witnesses and shall possess generally the powers of a Court of Petty Sessions and no proceedings in such Court shall be quashed for want of form or be removed into the Supreme Court by *certiorari* or otherwise and such Court shall have power to award reasonable costs to either party in any matter brought before such Court and the orders or awards of such Court shall and may be carried out or enforced by the Chairman of

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of such Court in the manner justices of the peace are now by law authorised to enforce any order or award made in any Court of Petty Sessions.

XXVI. If any person shall forge any document license or lease issued under the authority of this Act or shall fraudulently use utter or exhibit any such forged document license or lease knowing the same to be forged or if any person shall fraudulently personate the holder of any such document license or lease or shall falsely and 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 document license or lease belonging or granted to any other person or shall use or exhibit as a valid document license or lease any document license or lease which shall have expired he shall be guilty of a misdemeanor 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.

Punishment for forgery and personation.

XXVII. If the holder of any document license or lease issued under the provisions of this Act 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 document license or lease 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 misdemeanor 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 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 and shall on conviction as aforesaid be liable to a like punishment.

Punishment for fraud.

XXVIII. If any person shall steal any gold or shall sever or secrete with intent to steal any gold from any claim 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 claim mine bed or vein thereof every such person shall be deemed guilty of felony and being thereof convicted shall be liable to be punished in the same way as in the case of larceny.

Stealing gold larceny.

XXIX. Nothing in this Act contained shall 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 of Victoria.

Royal prerogative not interfered with.

XXX. All proceedings for any infringement of any of the provisions of this Act or of any of the rules established by the Governor with the advice of the Executive Council 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 proceeding.

XXXI. All fines inflicted under this Act shall go and be distributed one moiety thereof to the informer or party complaining and the other moiety to Her Majesty Her Heirs and Successors for the public uses of the Colony of Victoria and in support of the Government thereof.

Appropriation of fines.

XXXII. Any person ordered or adjudged to forfeit or pay any fine

Appeal.

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fine penalty or forfeiture amounting to ten pounds and upwards who shall feel himself aggrieved by the judgment of the local Court or any justice or justices adjudicating or before whom he was convicted may appeal from any such judgment or conviction to the next Court of General Sessions of the Peace which shall be held nearest to the place where such judgment or conviction shall have been given or made and the execution of every such judgment or conviction so appealed from shall be suspended in case such person shall with two or more sufficient sureties immediately before such Court justice or justices enter into a bond or 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 respectively such local Court or justice or justices is and are hereby authorised and required to take and such bond or recognizance shall be conditioned to prosecute such appeal with effect and to be forthcoming to abide the determination of the said Court of General Sessions and to pay such costs as the said court shall award on such occasion and such Court of General Sessions is hereby authorised and required to hear and determine the matter of the said appeal and the decision of such last mentioned Court shall be final between the parties to all intents and purposes.

Repeal of 17 Vict.,  
No. 4.

XXXIII. From and after the passing of this Act an Act of the Lieutenant Governor and Legislative Council of Victoria passed in the seventeenth year of the reign of Her present Majesty intituled "*An Act for the better management of the Gold Fields in the Colony of Victoria*" shall be and the same is hereby repealed except so far as relates to any matter or thing done or commenced under the said Act or any offence committed against the same previous to the passing of this Act.

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SCHEDULE REFERRED TO IN THE FOREGOING ACT.

[A.]

I do swear that I will well and truly enquire into the matter of the complaint now submitted and true finding and decision give according to the evidence. So help me God.