

WESTERN AUSTRALIA.



ANNO NONO

EDWARDI SEPTIMI REGIS,

XXIX.

No. 33 of 1909.

AN ACT to enable a Special Lease to be granted under "The Land Act, 1898," of portions of B Reserve No. 2020.

[Assented to 4th December, 1909.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia in this present Parliament assembled, and by the authority of the same, as follows:—

1. Notwithstanding anything in "The Land Act, 1898," to the contrary, the Governor may grant to the Mount Lyell Mining and Railway Company, Limited, a special lease of those portions of B Reserve No. 2020, together with the rights-of-way and other rights, described in the draft lease set forth in the schedule to this Act, for the term, at the rent, and subject to the covenants and conditions therein stated.

Power to grant
lease of B Reserve
No. 2020.

Provided that any variation in the form of the said draft lease, not being matter of substance, shall not affect the validity of the lease.

Provided, also, that nothing in this Act, or in the said special lease contained, shall exempt the lessees or their assigns from the operation of any law, statute or common, relating to public health.

THE SCHEDULE.

Draft Lease.

THIS INDENTURE made the _____ day of _____, One thousand nine hundred and nine, between His Excellency Sir Gerald Strickland, Count della Catena, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor in and over the State of Western Australia and its Dependencies (hereinafter referred to as "the Governor," which term includes the person lawfully acting as "the Governor" of the said State for the time being) of the one part and The Mount Lyell Mining and Railway Company, Limited, having its registered office in Western Australia at B Reserve No. 2020, Rocky Bay (hereinafter referred to as "the lessees," which term includes the assigns of the lessees) of the other part: Whereas the lessees have applied to the Governor for a special lease of the land and rights of way and other rights hereinafter described for the establishment of works for the manufacture of acids and of superphosphates and other agricultural fertilisers: And whereas the Governor, acting with the advice of the Executive Council, has, subject as hereinafter provided, approved of the said application, and of the grant to the lessees of such special lease for the term at the rent and subject to the covenants and conditions hereinafter expressed: Now this Indenture witnesseth that in consideration of the rent hereinafter reserved, and of the covenants by the lessees hereinafter contained, the Governor, subject as hereinafter provided, hereby demises and leases unto the lessees all those pieces or parcels of land situated at Rocky Bay, near North Fremantle, being portions of B Reserve No. 2020, particularly described in the Schedule hereto and delineated on the annexed plan, being a copy of the plan numbered P.W.D., W.A., 14584, deposited at the Department of Public Works, and therein coloured blue. Together with full and free right and liberty to and for the Lessees, and their servants, agents, workmen, and visitors to go, pass, and repass at all times during the continuance of this lease, if and so long as the Lessees shall be the Lessees of the land coloured red on the said plan, and for all purposes, and either with or without horses or other animals, carts, carriages, and (or) vehicles of any description, into and out of and from the said land or any part thereof hereby demised, through, over, and along a piece of land of the width of one chain, extending from the land hereby demised to the said piece of land coloured red, and to any wharves erected either by the Lessees or the Governor thereon or contiguous thereto, such piece of land over which the right of way is intended to be hereby given being coloured yellow on the said plan, and together also (in the event of the Lessees ceasing to be lessees of the said piece of land coloured red on the said plan) with the like right of way over a piece of land of the width of one chain extending from the land hereby demised to the foreshore of the Swan River opposite the land hereby demised, such land over which the right of way is intended to be hereby given to be defined by the Governor when and so soon as the Lessees shall apply for the same to the intent that the Lessees shall have the right of access from the land hereby demised to the said foreshore, and to the wharves erected thereon, and extending into the said river: and it shall be lawful for the Lessees to erect overway bridges and other overway communication over the said land intended to be used as a right of way from their land to the said land coloured red or to the said foreshore, as the case may be, and the wharves thereon as aforesaid: And together, also, with such other means of communication from the land hereby demised to the said foreshore, either by overway communication, level crossing, and (or) subway, including the right to pump water from the Swan River, as may be approved of from time to time by the Engineer-in-Chief for the time being of the said State: Provided that such overway bridges and (or) other overway communication shall not interfere with the traffic carried on in connection with any wharves erected on the Swan River, and shall be subject to the approval of the Engineer-in-Chief. Together also, with the right, privilege, and convenience of access to the railway system of the said State, subject to the provisions hereinafter contained, by means of the quarry railway and

the branch thereof constructed on a strip of land fifteen feet wide delineated on the said plan annexed to these presents and coloured brown, and the continuance of the said railway to the junction with the Government railway from Fremantle to Perth, for the purposes of and in connection with the business of the Lessees, but subject to the payment of such freights and to such conditions and regulations as the Commissioner of Railways may from time to time prescribe; and together, also, with the right to the Lessees to construct on the land hereby demised and use sidings in connection with the said quarry railway, on such terms and conditions as may be agreed to between the Lessees and the Commissioner of Railways, and with the further right and liberty to and for the Lessees, their servants, agents, workmen, and visitors, during the currency of this lease, to cross and re-cross the said railway line and strip of land within the boundaries of the land hereby demised, at all times and for all purposes, and either with or without horses or other animals, carts, carriages, and (or) vehicles of any description, either on a level crossing or overhead by means of bridges or other overway communication or by subway, and it shall be lawful for the Lessees to construct such bridges, communications, and (or) subways subject to the approval of the Engineer-in-Chief for the time being of the said State: Provided that the Lessees, in exercising their rights hereunder, shall in no way interfere with the traffic of the railway, or injure or endanger the railway line: Provided that the said quarry railway may from time to time, without any compensation to the Lessees, be deviated, altered, or removed as the Commissioner for Railways may think fit (but without in any way interfering with or causing damage to any of the permanent improvements erected by the Lessees on the land hereby demised without making reasonable compensation to the Lessees therefor), but so that whether the quarry railway be deviated, altered, or removed, the Lessees shall, subject as hereinbefore provided, always have the right, privilege, convenience of access, and connection with the said railway system from the land hereby demised by means of such deviated or altered railway, or any railway substituted for any portion or portions removed, and should the quarry railway or any portion or portions thereof be taken up and (or) removed, the strip of land reserved for such portion or portions so removed shall thereupon form portion of the land hereby demised, the Lessees paying an increased rental for the same calculated proportionately at the current rent at per acre: To hold unto the Lessees, subject as hereinafter provided, for the term of 99 years from the 1st day of August, 1909, yielding and paying therefor rent as follows:—For the first five years of the said term the yearly rent of Two hundred and ten pounds, for the next following five years of the said term the yearly rent of Three hundred and fifteen pounds, for the next following five years of the said term the yearly rent of Four hundred and twenty pounds, and during the remainder of the said term the yearly rent of Five hundred and twenty-six pounds; such rent to be paid without any deduction, in equal quarterly instalments in advance, the first payment to be made on or before the first day of August, 1909: And the Lessees covenant with the Governor as follows:—

1. That the Lessees will during the said term duly pay at the Department of Public Works in Perth the said yearly rent hereby reserved at the times and in the manner hereinbefore provided.
2. That the Lessees will pay all rates, taxes, charges, assessments, and outgoings whatsoever payable in respect of the demised premises during the continuance of the said term.
3. That the Lessees will at all times during the said term use the demised premises for the special purpose for which this lease is granted, that is to say, for works for the manufacture of acids and of superphosphates and other agricultural fertilisers, and for no other purpose without the consent of the Governor first obtained.
4. That the Lessees will, within two years from the commencement of this lease, erect on the said land hereby demised, substantial buildings, machinery, and improvements of the value of £25,000 at the least, to the satisfaction of the Engineer-in-Chief of the State, and will thereafter during the said term maintain the said buildings and machinery and improvements in good order and condition, reasonable wear and

tear excepted: Provided that in the event of the buildings and machinery being destroyed by fire, storm, or tempest, the Lessees shall have a reasonable time within which to replace the said buildings and machinery: Provided, however, that nothing herein contained shall in any way prohibit or prevent the Lessees from removing any portion of the buildings, machinery, and (or) improvements for the purpose of, and substituting, altering, and (or) adding others of a like or more improved kind, and again removing such substituted, altered, and (or) additional buildings, machinery, and (or) improvements for substitution, alteration, and (or) addition: Provided that the plans for such substituted, altered, and (or) additional buildings shall be first approved by the Governor.

5. That the Lessees will, at all times during the continuance of this lease, from day to day, Saturday afternoons, Sundays, and holidays excepted, employ on the demised premises in connection with the said works at least twenty-five men, except in circumstances beyond the control of the Lessees.
6. That if at any time during the said term the Lessees shall, except in cases where the circumstances causing the cessation of work shall be beyond the control of the Lessees, cease to duly carry on the said works for any period exceeding six consecutive calendar months the Lessees shall pay to the Governor the sum of Five hundred pounds, and if thereafter the said works are resumed, and the Lessees shall again cease to duly carry on the said works for a further period exceeding six calendar months, the Lessees shall pay to the Governor a further sum of Five hundred pounds, and for every subsequent period exceeding six calendar months' suspension of work after every resumption of work a further sum of Five hundred pounds shall be payable by the Lessees to the Governor: Provided always, and it is hereby expressly agreed and declared that the maximum amount of penalties which may be incurred hereunder during the said term shall not exceed in the aggregate the sum of Three thousand pounds: Provided always that if any question shall arise under this or the last preceding clause as to whether such circumstances are not within the control of the Lessees, then the same shall be referred to two arbitrators, one to be appointed by the Governor and one by the Lessees, or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them, and every such reference shall be deemed an arbitration within the meaning of the Arbitration Act, 1895.
7. That the Lessees will, from time to time, pay to the Commissioner of Railways on demand a proportionate part of the cost of the repair or reinstatement of the said quarry railway, and its continuation from the Western boundary of the demised premises to its junction with the Fremantle-Perth railway, the amount of the proportionate part of such cost to be contributed by the Lessees to be ascertained on the basis of the tonnage per annum carried over the said railway and continuation as aforesaid by the Government and its licensees and the Lessees respectively, based on the records of the Railway Department.
8. That any person or persons acting with a general authority of the Minister for Works may at any time, and from time to time, enter upon the demised premises to examine the state and condition thereof, and of the buildings and works thereon, or for any other purpose he or they may think necessary.
9. That the Lessees will not during the said term transfer, assign, or sublet the premises hereby leased or any part thereof without the consent in writing of the Governor first obtained: Provided that such consent shall not be withheld in the case of a respectable and responsible tenant for a similar purpose, nor shall any premium be demanded for such consent.

Provided always, and it is hereby agreed and declared that at any time within six months from the expiration or sooner determination of this lease, the Lessees may on payment by the Lessees to the Governor of all rent and other moneys payable by the Lessees under this lease, remove from the demised premises all buildings, machinery, and other improvements erected by the Lessees thereon.

Provided also, and it is hereby agreed and declared that (a) in case the said rent or any part thereof shall be in arrear for the space of one month, although no legal or formal demand shall have been made for payment thereof, or (b) in case of any breach of or non-observance or non-performance of any of the covenants, provisos, stipulations, conditions, and agreements hereinbefore expressed, and on the part of the Lessees to be observed and performed, it shall be lawful for the Governor or any person authorised by him in that behalf into and upon the premises hereby leased or any part thereof, in the name of the whole to re-enter, and the said premises to hold and enjoy as if this lease had not been made, and thereupon this lease shall absolutely cease and determine, but without prejudice to any right of action or remedy of the Governor in respect of any antecedent breach by the Lessees of any covenants hereinbefore contained.

And, lastly, it is hereby agreed and declared that the Governor shall at all times during this lease have the right to quarry, remove, and take away from any portion of the said land hereby demised any stone now on the said land: Provided that the level of the land off which any stone may be quarried, removed, and (or) taken away shall not be reduced below the level of the present quarry railway: And provided, also, that no damage shall be done to the Lessees' improvements on the said land, nor that such quarrying, removal, and (or) taking away shall interfere with the Lessees' business or the working or manufacturing of the Lessees' goods and (or) products.

The Schedule.

All that piece or parcel of land situated at Rocky Bay, North Fremantle, being portion of B Reserve 2020; and commencing at a point on the West side of Palmerston Street 400 feet North of the intersection of such street with Fairbairn Street; thence by a line bearing 259deg. 27min. for a distance of 468.5 feet; thence 209deg. 12min. for 426.25 feet; thence 251deg. 12min. for 690 feet; thence 223deg. 42min. for 185 feet; thence 263deg. 52min. for 114.83 feet; thence 316deg. 22min. for 225 feet; thence 244deg. 22min. for 440 feet; thence 153deg. 46min. for 480 feet; thence 58deg. 12min. for 514.12 feet; thence 74deg. 22min. for 1,039.16 feet; thence 51deg. 55min. for 594.25 feet, and thence by a North line along the Western side of Palmerston Street for a distance of about 365 feet to the point of commencement; and containing approximately 16 acres 3 roods 10 perches, as delineated and coloured blue on plan numbered P.W.D., W.A., 14584, deposited in the Department of Public Works at Perth; and being exclusive of the strip of land, fifteen feet wide, coloured brown on the said plan and required for the main quarry railway. All bearings are thereabouts, and measurements more or less.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

Signed, sealed and delivered by His Excellency Sir Gerald Strickland (by and with the advice of the Executive Council) in the presence of—

The Common Seal of the Mount Lyell Mining and Railway Company, Limited, was in pursuance of a Resolution of the said Company hereto affixed in the presence of—

Director,
Director,
Secretary.

