



Western Australia.

ANNO QUINQUAGESIMO
VICTORIÆ REGINÆ.

No. XVIII.

AN ACT for the management of Goldfields.

[Assented to, 16th August, 1886.]

BE it enacted by His Excellency the Governor of Western
Australia and its Dependencies, by and with the advice and
consent of the Legislative Council thereof, as follows:—

Preamble.

1. THIS Act shall be called and may be cited as "The Gold-
fields Act, 1886," and shall come into force on the first day of
October, 1886.

Short Title.

2. IN this Act, unless the context otherwise requires, the
following terms in inverted commas shall have the respective
meanings hereby assigned to them (that is to say)—

Interpretation
clause.

"Business"—The selling or disposition of any chattels by
hawking or in any other manner, except the hawking of
farm or garden produce.

"Claim"—The portion of Crown land which any person or
number of persons shall lawfully have taken possession
of and be enabled to occupy for mining purposes, or any
number of such portions lawfully amalgamated by the
holders. Provided that no land comprised in any lease
granted

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granted for mining purposes shall be deemed to be a claim.

“Mining Purposes”—The purpose for searching for or obtaining gold from earth by any mode or method of mining, and of stacking or otherwise storing any auriferous earth.

“Crown Lands”—All lands vested in Her Majesty which have not been dedicated to any public purpose, or which have not been granted in fee or lawfully contracted to be so granted; or which are not under lease for purposes other than pastoral purposes.

“Earth”—Any rock, stone, quartz, clay, sand, soil, or mineral.

“Gold”—As well any gold as any earth containing gold or having gold mixed in the substance thereof or set apart for the purpose of extracting gold therefrom.

“Goldfield”—Crown lands proclaimed before the passing of this Act, or which may be hereafter proclaimed a goldfield as hereinafter provided.

“Mine”—Any place, pit, shaft, drive, level, or other excavation, drift, gutter, lead, vein, lode, or reef, wherein or whereby any operation for or in connection with mining purposes is or shall be carried on upon Crown land.

“Miner’s Right”—A miner’s right issued under the provisions of this Act or any Regulations relating to auriferous lands heretofore in force.

“The Regulations”—The Regulations made under this Act.

“To Mine”—To disturb, remove, cart, carry, wash, sift, smelt, refine, crush, or otherwise to deal with any earth by any mode or method whatsoever, for the purpose of obtaining gold therefrom.

Asiatic or African alien debarred for five years from proclamation of goldfield.

3. NO miner’s right, or any lease, license, or permit on any goldfield shall be issued or granted under this Act or the Regulations to any Asiatic or African alien before the expiration of five years from the date of the first proclamation of such goldfield.

Saving of Royal prerogative.

4. NOTHING in this Act contained, except so far as is herein expressly enacted, shall be deemed to abridge or control the prerogative rights and powers of Her Majesty in respect of gold mines.

Officers to be appointed.

5. THE Governor shall have power to appoint all officers necessary to carry into effect the provisions of this Act, and assign to such officers such duties and remuneration as he may think proper.

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MINERS' RIGHTS.

6. SUBJECT to the provisions of this Act and the Regulations, a warden may issue documents, each of which shall be called a "Miner's Right," and which shall be in force for any number of years not exceeding ten, and any such document shall be granted to any person applying for the same upon payment of a sum at the rate of Twenty shillings for every year for which the same is to be in force.

Miner's right.

7. SUBJECT to this Act and the Regulations, a warden may issue other documents, each of which shall be called a "Consolidated Miner's Right," and which shall be in force for any number of years not exceeding ten, and any such document shall, on the application of the manager or any trustee or trustees of any company or co-operative body of persons who shall have agreed to work in co-ownership or co-partnership any claim or claims registered under the provisions hereof, be granted to such manager, trustee, or trustees on behalf of the persons who shall from time to time be members of such company or co-operative body, and shall during its continuance be held by the manager, trustee, or trustees for the time being of any claim or claims belonging to any such company or co-operative body on behalf of the persons forming such company or co-operative body.

Consolidated miner's right may also be issued.

8. THE said consolidated miner's right shall be in lieu of, and represent, and be of the same force and effect as a number of miner's rights granted for the same period of time equal to the number of the miner's rights by virtue of which the said claim or claims shall have originally been taken possession of, and the same shall be granted to any such person as aforesaid so applying, on payment of a sum at the rate aforesaid multiplied by the number of miner's rights which the same is to represent; but no consolidated miner's right shall authorise the employment, by virtue thereof, of an Asiatic or African alien, before the expiration of five years from the date of the first proclamation of the goldfield.

Conditions of issuing consolidated miner's rights.

9. ANY person who shall be the holder of a miner's right, and any number of persons in conjunction who shall be the holders of any such consolidated miner's right, shall, subject to the provisions of this Act and to the Regulations, be entitled (except as against Her Majesty)—

Privileges conferred by a miner's right.

To take possession of mine and occupy Crown lands for mining purposes.

To cut, construct, and use races, dams, and reservoirs, roads, and tramways, which may be required for gold mining purposes through and upon any Crown lands.

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To take or divert water from any spring, lake, pool, or stream, situate in or flowing through Crown lands on a proclaimed goldfield, and to use such water for mining purposes and for his own domestic purposes, and to use by way of an easement any unoccupied Crown lands.

To take possession of and occupy Crown lands for the purpose of residence on a proclaimed goldfield but not for business purposes, except as hereinafter otherwise provided.

To put up and at any time to remove any building or other erection upon such land so taken up and occupied.

To cut timber on and to remove the same, to strip and remove the bark from any such timber, and to remove any stone, clay, or gravel from any Crown lands, for the purpose of building for himself or themselves any place of residence, or for mining purposes.

And any person or persons so taking up and occupying Crown land as aforesaid shall, subject as aforesaid, be deemed in law to be possessed (except as against Her Majesty) of such lands so taken up and occupied, and the property therein, and every share or interest which may be created therein under this Act or the Regulations, shall be deemed a chattel interest. And all gold then being in and upon any such land taken up and occupied for mining purposes shall (except as against Her Majesty) be the absolute property of the person or persons in lawful occupation of the same. And the holder or holders of any such land taken up and occupied as aforesaid for mining purposes, or for the purpose of residence, may assign and encumber the same, or any undivided share or interest therein. Provided that no person or persons shall obtain any interest under any such assignment or encumbrance, except he or they be the holder of a miner's right.

GOLD MINING LEASES.

Leases may be
granted for mining,
&c.

10. IT shall be lawful for the Commissioner of Crown Lands, with the approval of the Governor, to grant to any person, subject to the provisions of this Act and the Regulations, a lease of any Crown land not occupied by the holder of a miner's right or business license, unless with the consent of such holder, for mining purposes, or for cutting and constructing thereon races, drains, dams, reservoirs, roads, or tramways, to be used in connection with any such mining, or for erecting thereon any buildings or machinery to be used for mining purposes, for pumping or raising water from any land mined or intended to be mined upon, or for any or all of those purposes and also for residence in connection with any of such purposes for any term not exceeding twenty-one years, and to renew the same for any

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such term at the yearly rental of one pound per acre, and upon the terms and conditions prescribed by the Regulations.

11. ANY such mining lease may be made of any land occupied for the purpose of residence or business by the holder of a miner's right or business license, under the provisions aforesaid, if the person applying for the lease shall make compensation to such holder for any building erected or other improvements made by him, or any prior holder, on such land. No such lease shall embrace an area exceeding twenty-five acres; Provided always that no such lease shall be granted upon any goldfield until two years after the date of the proclamation of such goldfield.

Land occupied for residence or business may be leased on compensation being paid.

12. EVERY mining lease issued under this Act or the Regulations shall contain a condition that if the lessee, his executors, administrators, and assigns, fail at any time during the term to fulfil the conditions or terms therein contained, or to use the land *bonâ fide* for the purpose for which it shall be demised, the lease shall for any such failure be voidable at the will of the Governor.

Special condition.

13. WHEN any land, a mining lease of which shall be applied for, shall be or shall comprise the whole or part of land held by the applicant under a miner's right, the interest of such applicant under such right shall in nowise be affected by such application or by the refusal or abandonment or failure in any other way thereof, and if such lease shall be granted, the interest held under the miner's right shall merge in the interest held under the lease.

Application for lease not to affect land of applicant held under miner's right.

14. THE entry upon, occupation of, or interference with any ground so applied for as aforesaid by any person who shall not, prior to such application, have been in the lawful occupation of such ground shall, at any time after the lodging of such application, and until and unless such application shall be refused or such entry, occupation, or interference shall have been authorised by the Commissioner of Crown Lands, be deemed to be a trespass or encroachment. And the applicant for the said ground may proceed for such trespass or encroachment, and for any damages in respect thereof, and for the recovery of any gold taken by such first-mentioned person from the said ground, or for the value thereof, before any warden's court.

Protection of ground applied for.

Provided always that no such applicant shall recover or succeed under the said procedure, who shall not prove to the satisfaction of the said court that he has complied with the Regulations in force and applicable for the time being to the class of lease applied for, so far as such Regulations shall have been at the time of such entry, occupation, or interference capable of being complied with.

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Re-entering upon
forfeited or expired
leases.

15. IN case any lease granted under the authority of this portion of this Act or the Regulations shall be or be liable to be forfeited or determined by any breach of condition or otherwise, or in case the term thereby granted shall have expired, possession of the land demised shall and may be taken on behalf of Her Majesty in such manner as may be provided by any of the conditions of the lease, or (if there be no such condition) it shall be lawful for the Governor in Council to direct any person, on behalf of Her Majesty, to take possession of the land demised immediately and without suit or process of any kind. A certificate purporting to be signed by the warden of the goldfield within which such lease is situated shall be sufficient *prima facie* proof in every court of justice and for all purposes that such direction has been duly given.

Leases may be sur-
rendered.

16. ANY lease may be surrendered at any time with the consent of the Warden, provided that at the time of the surrender the conditions thereof on the part of the lessee shall have been fulfilled so far as the time which may have elapsed shall permit, and that all payments due in respect thereof up to date shall have been made. The holder or holders of any lease may, in manner provided by the Regulations, assign and encumber the same or any share or interest therein.

BUSINESS LICENSE.

Business license to
issue.

17. SUBJECT to the provisions of this Act and the Regulations, a warden may issue documents, each of which shall be called a "business license," which shall be in force for a period not greater than ten years, and which shall be granted to any person applying for the same upon payment of the sum at the rate of four pounds for every year for which the same is to be in force.

Privileges of a busi-
ness licensee.

18. EVERY business license shall, subject to the provisions of this Act and to the Regulations, entitle the owner thereof, during the continuance of such license, to occupy on any goldfield, for the purpose of residence and carrying on his business, so much of the Crown lands, not exceeding one quarter of an acre in extent, as the warden may think fit, and for either of the purposes aforesaid to put up any building or other erection, and at any time to remove the same; and every such holder shall, during the continuance of such business license, be deemed in law to be possessed (except as against Her Majesty) of the surface of the land which he shall occupy by virtue of such license, and the property in such land shall be deemed a chattel interest, and no person shall be entitled, by virtue of one business license, to occupy more than one such portion of land.

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19. THE holder of any such business license shall be entitled to transfer the same to any other person, and provided he shall express his desire to do so in writing under his hand endorsed on the said license and signed by him in the presence of and attested by a witness, another business license shall be granted to the person named in such endorsement, upon production and surrender of such license and endorsement, and upon payment of the sum of five shillings, and every such last-mentioned business license shall be dated of the day and at the place of the issuing thereof, and shall be in force for the then unexpired period of the license first endorsed as aforesaid, the day when such unexpired period is to end being stated in every such endorsement, and shall contain the christian name and surname, and the occupation and residence of the person in whose favor the same shall be issued.

Business license may be transferred.

20. IF any person who shall be the holder of a miner's right, consolidated miner's right, or business license shall, within one month before the expiration of the current miner's right or license, make application to the proper officer to take out a new right or license as the case may be, the authorised officer shall issue to the applicant a new right or license, as the case may be, dated of the day of such expiration, and which shall have the same force and efficacy as if it had been issued on that day, upon production of such expiring right, and upon payment of the sum ordinarily payable for a miner's right, consolidated miner's right, or business license.

Miner's right and business license may be post-dated in certain cases.

PROCLAMATION OF GOLDFIELDS.

21. IT shall be lawful for the Governor to proclaim any portion of Crown land to be a goldfield.

Proclamation of goldfields.

22. SUCH proclamation shall describe by name and boundaries every goldfield proclaimed thereby, which may from time to time be altered or cancelled by the Governor by proclamation.

Description of goldfields.

23. EVERY goldfield may be mined in, used, and occupied according to the provisions of this Act and the Regulations.

Goldfields subject to this Act.

24. WHENSOEVER the discovery of payable gold on Crown land shall have been reported in writing under the hand of and signed (or, if such person shall be unable to write, by a writing attested by some Justice of the Peace or warden) by the person claiming to have made such discovery, to the warden of the goldfield nearest the situation of such discovery, or to the Commissioner of Crown Lands, the notification of such discovery by such warden posted outside his office, or by such Commissioner in the *Government Gazette*, shall operate to proclaim the portion or portions of Crown

Provisional proclamation of goldfields.

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lands to be a goldfield within the meaning and for the purposes of this Act, which shall be contained in a square, the boundary lines of which shall be directed to the cardinal points and the central point in each boundary line whereof shall be distant half a mile from such place of discovery. And such notification as aforesaid shall have the effect of a provisional proclamation of the said area as a goldfield, to be in force until the same or any enlarged or diminished area shall be proclaimed under the provisions of this Act.

Provided that no such notification shall be posted until the warden or Commissioner shall have satisfied himself that payable gold has been actually discovered on such land; and provided further, that such notification shall be taken to refer back to and to operate from the day upon which the said discovery shall have been so reported as aforesaid.

Provisional proclamation may be cancelled.

And provided also, that if the warden of the goldfield nearest the situation of such discovery, or if any officer authorised in that behalf by such Commissioner, shall, at any time during the continuance of such provisional proclamation, report to such Commissioner that the alleged discovery of payable gold does not in his opinion warrant the proclamation as a goldfield of the said area, then it shall be lawful for such Commissioner, by notice in the *Government Gazette*, to revoke and cancel the provisional proclamation of such area, and the lands comprised therein shall thereupon resume the same character and incidents as were attached to them before the notification of such discovery as aforesaid.

Partial suspension of pastoral leases on proclamation of goldfield.

25. WHEN any goldfield shall have been proclaimed upon any Crown lands then under lease or license for pastoral purposes, the Governor may suspend or cancel such lease or license in respect of the land comprised in such proclamation, and shall thereupon remit to the lessee or licensee such portion of the rent of such land as may be reasonable and just.

Certain lands exempted.

26. NOTWITHSTANDING any provisions to the contrary, all Crown land which shall have been applied to or reserved for any public use or purpose, or which shall be lawfully and *bona fide* used as a yard, garden, cultivated field, or orchard, or upon which any house, out-house, shed, or other building shall have been erected, provided the same be in actual use and occupation, or any artificial dam or reservoir which shall have been made, shall be and the same are hereby exempted from occupation for mining purposes, and for residence or business under any miner's right or business license.

Provided that such exemption shall cease upon payment of compensation, such compensation to be determined by arbitration, in manner prescribed by the Regulations.

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Provided also, that Crown lands in any goldfields reserve, which have been or shall be proclaimed as a common, shall not be deemed to have been or to be applied to any public purpose within the meaning of this Act.

27. THE Governor may at any time, by proclamation in the *Government Gazette*, except from occupation for mining purposes, or for residence or business under any miner's right or business license, any specific portion of Crown lands within a goldfield. Other lands may be excepted.

28. THE Governor may, by proclamation as aforesaid, set aside any portion of any goldfield as a common. Common may be proclaimed.

ADMINISTRATION OF JUSTICE.

29. IT shall be lawful for the Governor to appoint officers to be called wardens, who shall have and exercise the jurisdiction conferred upon them herein or by the Regulations, and also to appoint such and so many registrars, mining surveyors, mining engineers, clerks, officers, bailiffs, and assistants, and for such places respectively as the Governor shall think necessary for the efficient performance of the duties of inspection, surveying, and registration of claims and mines and of all other duties in connection with mining and with the administration of this Act which the said Governor may think fit to impose; and the said Governor may by regulations define the powers and duties of such warden, officers, clerks, and assistants, and the mode of exercising and performing the same in all cases where such powers and duties have not been defined by this Act, and also the amount of and mode of providing the remuneration of such wardens, officers, clerks, and assistants, and the time for which the same shall be paid. Appointment of wardens and other officers.

Provided always, that any persons who at the time of the passing of this Act shall hold the office of warden on or for the Kimberley goldfield shall be the first warden under this Act, and shall so act without any fresh appointment or commission.

30. EVERY warden shall have and exercise jurisdiction, in respect of the matters hereinafter contained, throughout the Colony, with power to issue summonses, warrants, or other process, which shall have legal effect and operation throughout the said Colony. Extent of jurisdiction of wardens.

31. IT shall be lawful for the Governor, by proclamation in the *Government Gazette*, to establish on any goldfield one or more courts to be presided over and holden by a warden, and which shall be a court of record and shall have jurisdiction to hear and determine all actions, suits, claims, demands, disputes, and questions which may arise in relation to mining. Warden's court.

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Its jurisdiction generally.

Its jurisdiction as to place.

Power of warden sitting alone.

Manner of hearing cases in warden's court.

Payment into court.

Payment to warden of less than the demand.

32. THE several wardens' courts shall have jurisdiction when the defendants or one of two or more defendants, as the case may be, shall be resident within the goldfield to which such courts respectively shall belong. Provided that when the hearing of any complaint shall involve the trial of a right to any claim, residence, business, or machine area, or other mining tenement, or share therein, or any money due in respect thereof, or in any way connected therewith, the same shall take place in the warden's court appointed for the goldfield in which such claim or mining tenement is situate.

33. EVERY warden sitting alone shall have power to hear and determine all cases of complaint of breach of any of the Regulations under this Act and of alleged forfeiture, and to inflict any fine or penalty to be imposed thereby. The warden shall carry into effect the orders or awards of the warden's court, and, except where herein otherwise specially provided for, shall have the same power to carry out such orders or awards as Justices in Petty Sessions now have.

34. THE warden or warden and assessors shall hear and determine all cases within the jurisdiction of the warden's court, and proceedings taken, forms used, and manner and time of hearing and determining the same, except when otherwise specially provided, shall be in accordance with this Act and the Regulations.

35. IT shall be lawful for the defendant in any case in the said court, at any time before the hearing thereof, to pay into court the amount claimed, together with the costs incurred by the complainant up to the time of such payment into court, and to give notice thereof to the complainant or his attorney, and the same shall be paid to the complainant, and after such payment no other proceeding shall be brought in any court in respect of the demand, in satisfaction of which such amount shall have been so paid.

36. ANY defendant in any case in the said court, whereby a debt or money demand is sought to be recovered, may at any time before the hearing thereof pay into court such sum of money as he shall think a full satisfaction for such demand, together with the costs incurred by the complainant up to the time of such payment, and shall cause notice of such payment to be given to the complainant, and the said sum of money and the costs shall be paid to the complainant or his attorney; but if the complainant shall elect to proceed, and shall recover no further sum in respect of such money demand than shall have been so paid to the warden, he shall pay to such defendant the costs incurred by him in the said pro-

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ceeding after such payment, and the warden may decree the same accordingly.

37. IT shall be lawful for either of the parties, previous to the hearing of any complaint, to require or for the warden either before or during such hearing to require that such complaint shall be heard before such warden and two assessors, and thereupon such warden shall summon before him, either orally or in writing, not less than six nor more than eight persons as a panel of assessors who shall be registered claim-holders, machine owners, lease-holders, or holders of business licenses resident within such goldfield, and the two assessors shall be selected by ballot in open court from such panel, and in case two assessors cannot be so selected by reason of the non-attendance of the persons so summoned or otherwise, the parties in difference may thereupon themselves select any two indifferent persons as assessors, and in case of disagreement the same may be selected by the warden, or he may proceed with the hearing of the complaint alone.

Assessors to be summoned by warden.

38. UPON the requisition of either party to any cause that the complaint should be heard by the warden and assessors, the warden or his clerk shall appoint a time and place at which the ballot for the assessors shall take place, and notice thereof shall be given by the party making such requisition to the opposite party, and each party shall be entitled to be present at such ballot. Provided that the warden shall not summon to attend at any one sitting of the court more than one panel of assessors, which shall be the panel of assessors for all cases to be heard on such day before the warden and assessors.

Notice when assessors required.

39. BEFORE any assessors shall be summoned by any warden, such warden shall demand and receive the sum of two pounds five shillings from the person demanding assessors, and in case the hearing of any complaint shall be adjourned to any future day, the warden shall demand and receive the further sum of two pounds five shillings for every such adjournment, and the said sums, together with the amount of all fines on assessors, shall form a fund for paying the expenses of assessors, to be dealt with and accounted for as the Governor may direct.

Fee for assessors.

40. EVERY assessor summoned as aforesaid, who shall attend a warden's court in pursuance of such summons, shall for every day of such attendance be paid at the rate of seven shillings and sixpence a day.

Fees to assessors.

41. EITHER party shall be admitted to challenge any number of persons called as assessors, not exceeding two, without assigning cause, and any additional number provided he assigns of his challenge

Challenges.

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a cause certain, and the truth of such challenges shall be inquired of by the warden.

Fines for non-attendance.

42. ANY person so summoned who, without lawful excuse, shall neglect or refuse to attend or to be sworn or serve as such assessor shall be fined such sum of money, not exceeding five pounds, as such warden shall think fit.

Oath or affirmation to be administered by warden to assessors.

43. BEFORE such warden's court shall proceed to hear any such complaint, such warden shall administer to each of such assessors an oath in the form in the following form—

“I, A.B., do swear well and truly to try and determine the matters which shall be brought before me, and a true judgment to give according to the evidence, without fear or favor.

So help me God.”

And on such oath being administered, such warden's court shall proceed to hear such complaint, and the decision of the majority of the said warden's court shall have the same force and effect as the decision of such warden if acting alone would have had; Provided that in the case of any assessor who may by law make an affirmation in lieu of swearing, the warden shall in lieu of the oath hereinbefore mentioned administer the following declaration—

“I, A.B., do solemnly, sincerely, and truly affirm and declare that the taking of an oath is according to my religious belief unlawful, and I do also solemnly, sincerely, and truly affirm and declare that I will well and truly try and determine the matters which shall be brought before me, and a true judgment give according to the evidence, without fear or favor.”

Warden may decide summarily by consent.

44. IT shall nevertheless be lawful for the warden, upon oral or written complaint of any party, and with the consent of both parties, immediately on the making of such complaint, or at any time agreed on by the parties, and at any place within the goldfield, to investigate the matter of such complaint and to inquire into the case, and on his own view or the oath of any witness to determine the same in a summary way and thereupon to exercise all and every the powers and authorities vested in him, in the same manner in every respect as if the cause had been heard upon plaint and notice of defence in the usual way. Provided always, that the warden shall in every such case make an entry of the grounds of complaint and defence or cross relief, and of the decision. Every such case may be heard before the warden and assessors, who shall be selected by ballot by the warden, who shall prepare a list of six or as near six of

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indifferent bystanders as the number present will permit, and shall then select by ballot two assessors, who shall be the assessors to hear the case with the warden. Provided that each party shall have the same rights of challenge as in ordinary cases.

45. ANY affidavit to be used in any warden's court, or before a warden, may be sworn before any Judge of the Supreme Court or any Commissioner of that Court for taking affidavits, or before any warden or Justice of the Peace.

Who may take affidavits.

SPECIAL POWERS AND DUTIES.

46. EITHER of the parties shall be at liberty, previous to or during the hearing of any complaint, to apply to a warden for inspection to be made by such warden's court of any land claim, water race, drain, dam, or easement in dispute, and if the party so applying shall satisfy such warden as to the propriety and reasonableness of his application, such warden if the case be heard before him alone shall make such inspection, but if heard before him and assessors shall make such inspection with the assessors, upon payment to the warden by the party so applying of such sum (if any) and upon such terms as to the said warden shall seem reasonable, and any sum so paid shall be appropriated towards defraying the expenses of the assessors by reason of such inspection as such warden may direct, or if such warden shall himself think that any such inspection would be proper he shall if the case be heard before him alone make such inspection, or if heard before him and assessors may and if required by either of the assessors shall make an order therefor and (in case of inspection by assessors) for payment of the expenses thereof by such of the parties as he shall think right, and the money paid for such expenses shall eventually be paid as part of the costs of the proceeding by such of the parties as the warden shall in that behalf direct.

Inspection may be demanded.

47. IF before or during the hearing of any complaint, it shall appear to the warden that it will be necessary for a survey to be made of any land or water in dispute, such warden may order either party to cause such survey and a plan thereof to be made, and the costs thereof shall be deemed to be a part of the costs of the hearing.

Warden may order survey to be made.

48. NOTWITHSTANDING any of the provisions hereinbefore contained, it shall be lawful for such warden's court, if it shall think fit, at the time of the making of any decision under this Act or the Regulations, to order that any gold in the possession of and belonging to the party by whom payment of any sum in respect of any such debt, damages, or costs shall be ordered, to the extent in value of

Gold may be seized.

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of such sum (such value to be fixed by such court) shall be delivered up to the party entitled to such sum by way of satisfaction or in part satisfaction thereof. Provided that as to the balance the procedure herein otherwise provided shall apply.

Warden may authorise entry on adjacent claim.

49. IT shall be lawful for any warden, upon the application of any person claiming to be legally or equitably interested in any claim or in any land comprised in any lease (granted under this Act), or in any other land adjoining any claim or land comprised as aforesaid by writing under the hand of such warden, to authorise the applicant, together with a mining surveyor, his assistants or some experienced miner to enter upon any claim or land (whether at the time of such application alienated from the Crown or not if any mining operations shall be then carried on on such land) adjoining such first-mentioned claim or land or other land for the purpose of ascertaining whether the owner or occupier of the claim or land so to be entered upon is encroaching on said first-mentioned claim or land or other land.

Powers given to carry out order in last section.

50. IT shall be lawful for the persons so authorised to enter upon the claim or land described in such order as last aforesaid and to descend any shaft or mine, and to make the necessary surveys, and for such purpose to use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine shall be descended, and to make such plans and sections of the claim or land entered upon and of any drives or other works therein as shall be necessary for the purpose aforesaid.

Warden may grant injunction on notice.

51. IT shall be lawful for any warden, upon the application of any person claiming to be legally or equitably interested in any land claim, water-race, drain, dam, reservoir or easement, such application to be made on notice served twenty-four hours at least before the time for the making thereof on the parties interested in opposing the same, or such of them as shall appear to such warden sufficiently to represent the parties so interested, or upon such of them as such applicant can, by using reasonable diligence or means in the opinion of such warden, serve with such notice, in the presence of such parties, or such of them as aforesaid, or in the absence of any of them upon whom service of such notice shall be proved to the satisfaction of the warden, to hear, receive, and examine evidence, and thereupon if he in his discretion shall think fit and upon such terms (if any) as he may consider just, by order under his hand to enjoin any person named in such order from encroaching upon, occupying, using, or working such land claim, water-race, drain, dam, reservoir or easement, or from seeking for, washing out, winning, extracting, or removing any earth or gold taken from such land or from selling or disposing of or damaging or otherwise interfering with such land claim, water-race, drain, dam, reservoir,

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easement, or earth, or gold, or any share or interest therein respectively, or from doing any act whereby the right, title, or interest of such applicant in or to the same might be affected.

52. IF endeavors, reasonable in the opinion of the warden, to serve such notice shall be proved to the satisfaction of such warden to have failed it shall be sufficient service of such notice if the same shall be advertised in some newspaper published in the magisterial district in which the subject matter of the application shall be situated and which shall be published twenty-four hours at least before the time for the making of the application, and if there shall be no newspaper published in the district, then by causing such notice to be affixed to the door of the warden's courthouse, and on every such application the said warden shall make such order as to costs as to him shall seem just.

The notice by the last section required.

53. IF by reason of the pressing emergency of any particular case, it shall seem proper to the warden so to do, he may, on the application of any such person as aforesaid but without any notice by order under his hand, grant such injunction as aforesaid, but to be in force for a period of seven days only, inclusive of the day upon which such order shall have been made, or until the same shall by the said warden be discharged. And no second order for an injunction shall be made for the same cause under this section, but any person at whose instance any injunction shall have been granted under this section shall be at liberty at any time before the expiration of the said period of seven days, as well as thereafter, to apply under the provisions of this Act for an injunction for any longer period.

Warden may grant injunction for seven days without notice.

54. IT shall be lawful for any warden, upon the application of any party to any cause, by order under his hand to direct any person, party to or interested in such proceeding, to deposit within the time or times mentioned in such order with any person or at any place named in such order in the name of such warden, or of any other person mentioned in such order, to abide the decision of the warden's court, any earth or gold or any money or other chattel described in such order which may then be or which at any time before the final termination of such proceeding may come into the possession, power, or control of such person, party to or interested in such proceeding, and the right to the possession whereof shall be claimed by such applicant. Provided that no such order shall be made except upon proof to the satisfaction of the warden that twelve hours notice at the least of the application has been served on the parties interested in opposing the same, or such of them as shall appear to such warden sufficiently to represent the whole. Provided also, that the

Warden may order deposit of gold, &c.

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provisions of the last preceding section but one shall apply to such notices and the service thereof respectively.

Complaints not to be dismissed for informality.

55. NO complaint shall be dismissed by any warden's court because of any informality either in the plaint or summons itself or in the entry thereof, nor shall any objection be taken or allowed to any such summons or complaint for any alleged defect or misnomer or inaccurate description of any person or place, or on the ground that the complainant shall appear at the hearing of the summons to be entitled to different relief from that which is sought thereby or therein, or for any variance between such summons and the evidence adduced on the part of the complainant, but such summons shall be amended by the warden so that the subject matter in dispute between the parties shall plainly appear, and the warden's court shall proceed to adjudicate according to the rights of the parties.

Adjournment.

Provided always, that if it shall appear to the warden's court upon the hearing of the case that the defendant has been thereby deceived or misled, and that injustice would be done by proceeding at once with the case, it shall be lawful for such warden's court, on such terms as to costs or otherwise as he shall think fit, to adjourn the further hearing of the case to some future day.

Warden may state special case.

56. IN any cause before a warden's court, it shall be lawful for such court (if it shall think fit) to reserve any question in the form of a special case for the opinion of any Judge of the Supreme Court, and in such case no final order shall be made in respect of any matter on which such question shall have been reserved until such opinion shall have been given.

Warden to transmit special case to Judge of Supreme Court.

57. AND every such special case shall, after it shall have been prepared by such warden's court, be transmitted to the Registrar of the Supreme Court, who shall cause the same to be set down for argument before the said Judge, whose opinion when given shall be drawn up and transmitted by said Registrar to the said warden's court, which shall make its order in accordance with such opinion.

In case of a special case an injunction, &c., may be had.

58. AND whenever any such special case shall have been reserved, it shall be lawful for the warden who shall have reserved the same, on the application of any of the parties interested in such case, to make such order for an injunction or payment of money into court, and upon such terms as such warden shall think proper.

Duty of warden's court when proceeding is for recovery of land, &c.

59. IN case any such proceeding before a warden's court shall be for the recovery and possession of any gold, earth, land, water race, drain, dam, or reservoir, or any share therein, such warden or warden and assessors shall determine the right to the

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same and fix the boundaries thereof or the limits and quantity to be taken by either of the parties of such water if necessary so to do for the purpose of terminating the dispute, and if the complainant shall succeed shall determine whether any and what sum in the nature of mesne profits should be paid to the complainant, and in the event of the complainant so succeeding the court shall order possession of such gold, earth, land, race, drain, dam, reservoir, or water, or share to be delivered to the complainant, and any such sum to be paid to him, and shall or any other warden may cause such complainant to be put into possession of any such gold, earth, land, race, drain, dam, reservoir, or water, or share as aforesaid, and (if necessary) cause or order any defendant, his servants, buildings, fixtures, implements, goods, and chattels to be removed therefrom or from such of them as such share or interest shall be held in or from the using of such water.

60. IN case any such proceeding before a warden's court shall be in respect of the right to divert any water or to remove any reservoir, race, drain, or dam, such warden's court shall determine such right, and if the complainant shall succeed such court shall declare him at liberty to divert or remove the same, and may make an order enjoining any defendant, his servants, agents, and workmen from preventing such diversion or removal.

Duty of warden and assessors when proceeding is as to right to divert water, &c.

61. IN case any such proceeding shall be in respect of any encroachment or trespass upon, or injury to any such land, race, drain, dam, reservoir, or water, such warden's court shall determine the right to the same and fix the boundaries of any such land or the limits or quantity to be taken by either of the parties of such water if necessary so to do for the purpose of terminating the dispute, and at the same time assess the amount to be paid to the complainant by way of damages (if any), by reason of any such encroachment, trespass, or injury found to have been committed, whether the same shall exceed the sum of one hundred pounds or not, and the warden's court shall order such damages to be paid accordingly, and that the person found to have encroached, trespassed, or injured as aforesaid, his servants, agents, and workmen do cease from such encroachment, trespass, or injury; and it shall be lawful for the same or any other warden to cause the person so found to have encroached, trespassed, or injured, his servants, implements, goods, and chattels to be removed from the land, race, drain, dam, reservoir, or water so encroached or trespassed upon or injured, or from the using of such water, and to cause such complainant to be put into possession thereof.

Duty of warden and assessors when proceeding is in respect of encroachment.

62. IN case any such proceeding shall be in relation to any debt or contract or to money due in respect of any such land or

Duty of warden and assessors when pro-

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ceeding is in respect of money due on a contract. water, or any share or interest therein, or in respect of any gold or earth, or to the amount of any contribution or other sum of money, the court shall order any money, or damages, or gold, or earth which it shall find due or payable or deliverable by either of the parties to the other of them to be paid or delivered.

Or in respect of a partnership. **63.** AND in case such proceeding shall be in respect of money due, or gold or earth deliverable upon a mining partnership account, or accruing to the complainant from any mining partnership, adventure, or interest, the court shall take the account of such partnership, adventure, or interest, so far as shall be necessary to ascertain what sum or amount of gold or earth (if any) shall be so due or accruing, and the court shall order any such sum or gold to be paid or delivered, and may make an order for the dissolution of such partnership if it shall deem fit, upon such terms as to the sale or division of the partnership property and the payment of the partnership debts as it may consider equitable and just.

Lands held under miner's right. **64.** ALL lands held under a miner's right, consolidated miner's right, business license, or mining lease shall, on the death or insolvency of the holder or holders thereof, devolve on his or their personal representative or representatives, or assignee, or trustee in bankruptcy, and shall be liable to seizure and sale under any execution issued from the Supreme Court, any Local Court, warden's court, or any other competent court in the said Colony. The proper officer appointed to sell the same shall have full power to give an effectual transfer of the interest sold by him.

Enforcing decision in case of debt, &c. **65.** WHEN any sum of money shall be awarded in a warden's court, by way of debt, damages, or costs, or otherwise, and the same shall not be forthwith paid, the warden, on the application of the person entitled to receive such sum, or of any attorney on his behalf, shall grant to the party so applying a writ of execution under his hand; and any bailiff of a warden's or Local Court to whom such writ shall be delivered for execution, and all constables and other peace officers, within their several jurisdictions, shall do and perform all things in respect of such writ which such bailiff, constables, and peace officers are required to do and perform in respect of a warrant or writ of execution issued out of a Local Court, in the case of the non-payment of money under a judgment of such Court; and every such bailiff may, by virtue of such writ, seize and take such property as, and dispose thereof in the manner he could seize, take, and dispose thereof by virtue of a warrant issuing out of a Local Court, and shall have the same powers in respect of the sale and disposal of such property, and do and execute all duties in respect thereof, as are by law conferred and imposed on the bailiff of a Local Court upon a warrant issued therefrom.

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Provided that no such writ shall, except upon special cause shown to the satisfaction of the warden, be issued until after the expiration of seven days from the day in which the decision under which such sum of money was awarded shall have been made.

66. NO person shall be entitled to institute proceedings in any court whatsoever to recover possession of any claim, or of any share therein, or to recover damages for or to restrain the occupation of or encroachment upon such claim or any part thereof, or to obtain any relief as tenant in common, joint tenant, co-partner, or co-adventurer, against his tenant in common, joint tenant, co-partner, or co-adventurer, or to recover any interest or part interest in any water-race, dam, or reservoir used, or to be used, for or in connection with gold-mining, unless such person shall have been the holder of a miner's right at the time when his alleged title to recover such possession, or damages, or interest, or to obtain such relief first arose or accrued.

Incapacity to sue.
&c., without miner's
right.

67. WHENEVER any warden's court or warden is empowered or required by this Act to cause any act to be performed, and the mode of performing such act is not otherwise expressly provided for, it shall be lawful for any person verbally authorised by the warden and in his presence, or for any constable or peace officer authorised in writing under the hand of such warden, to perform such act, and all constables and peace officers shall, if thereunto required, aid and assist any warden or person authorised as aforesaid in the performance of his duty under this Act.

Mode of enforcing
warden's order
where not specially
provided for.

MISCELLANEOUS PROVISIONS.

68. IT shall be lawful for any person in custody under any order of commitment made under this Act or the Regulations, upon giving reasonable notice to the person (or to one of such persons if more than one) on whose application such order was granted, or if such person or none of such persons can be found, to the warden by whom such order was made, to apply in a summary way, on affidavit to the Magistrate of any Local Court, or a Judge of the Supreme Court, for his discharge; and it shall be lawful for such Magistrate, or Judge, in his discretion, and on such terms (if any) as he shall think fit, by order under his hand directed to the gaoler, or other person in whose custody such applicant may be, to direct that such applicant shall be discharged, and such applicant shall be discharged accordingly. Provided, that when such order of commitment shall have been founded on any previous decree or order, it shall not be lawful for such Magistrate, or Judge of the Supreme Court, upon such application, to inquire into the merits of such previous decree or order.

Party imprisoned
may be discharged
by Magistrate of
Local Court or
Judge of Supreme
Court.

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Allowance and taxation of costs.

69. IT shall be lawful for the warden, in all proceedings before him, or him and assessors, in his discretion, to give or refuse to either party the costs of the suit, hearing, re-hearing, or other proceeding or any part thereof, and in case of giving them to give them in his discretion as between party and party, or as between solicitor and client. The warden shall, at the time when the decision of him, or of him and assessors, shall be pronounced, or any order made by him under this Act, tax the costs of such suit, hearing, re-hearing, appeal, or proceedings, to be paid by the plaintiff or defendant, and the amount of costs to be paid by either or any of the parties shall form part of the decree or order of the warden's court, and in default of any special direction each party shall pay his own costs.

Penalty for certain offences.

70. IF any person shall forge any miner's right, consolidated miner's right, or any lease, license, or permit issued, or purporting to be issued under the authority of this Act, or of any regulations relating to auriferous lands heretofore in force, or fraudulently use, utter, or exhibit any such forged miner's right, consolidated miner's right, lease, license, or permit, knowing the same to be forged, such person shall be guilty of a misdemeanor, and shall, on conviction thereof, be sentenced to imprisonment either with or without hard labor, at the discretion of the court, for any period not exceeding twelve months.

Penalty on warden holding mining interest or acting if interested.

71. IF any warden shall at any time during his appointment hold any interest or share in any claim, gold mining or mineral lease, or mining adventure, or shall adjudicate in any matter in which he shall have any pecuniary interest, he shall be guilty of a misdemeanor, and be liable to fine or imprisonment, or both, in the discretion of the court.

Penalty for extortion.

72. ANY person who shall wilfully and corruptly exact, take, or accept any fee, sum, or reward whatsoever other than and except such fees or sums as are, or shall be lawfully appointed or allowed for or on account of anything done under the authority of this Act, shall, on conviction thereof before two Justices of the Peace, forfeit and pay any sum not exceeding Fifty pounds, and in default of immediate payment thereof to imprisonment, with or without hard labor, not exceeding six calendar months.

Assault on warden and other offences.

73. ANY person who shall assault, obstruct, or resist any warden or any person duly authorised by any warden in lawfully entering upon any claim or land or in performing any other act authorised hereby, or any bailiff or other officer or any clerk or assistant of such bailiff or officer or any inspector or other person in the performance of his duty or in the exercise of his powers under this Act, or any person who after being removed by any

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warden under the provisions of this Act from any claim or other place shall forcibly or clandestinely retake or retain or endeavor to retake or retain possession thereof or of any portion thereof or of any share therein, or who after any decision of a warden that any complainant is entitled to use for mining purposes or to divert any water shall resist such complainant or his agents in such use or diversion, or who upon or in consequence of the decision of any warden's court against him shall assault or threaten to assault any person in whose favor such decision shall have been made shall, on conviction thereof before any two Justices, forfeit any sum not exceeding Fifty pounds, and in default of payment shall be liable to be imprisoned for any period not exceeding six months.

74. IF any claim shall be made to or in respect of any goods or chattels taken in execution under any process issued by a warden, or in respect of the proceeds or value thereof, by any person not being the party against whom such process shall have issued, it shall be lawful for such warden upon application to the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before such warden as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any court in respect of such claim shall be stayed, and the court in which such action shall have been brought, or any Magistrate or Judge thereof, on proof of the issue of such summons and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the service upon him of such summons issued out by the warden, and the warden shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the costs of the proceedings as to it or him shall seem fit, and such order may be enforced in like manner as any order made in any suit brought or any proceedings before such warden as the case may be.

Interpleader.

75. IF any person shall be found by the warden to be engaged in mining on any goldfield without being able on demand to produce his miner's right, or without being able satisfactorily to account to the warden for not having a miner's right, the warden is hereby empowered to demand the payment on the spot of the miner's right fee, and in addition thereto then and there in his discretion to impose a fine on any such offender of a sum not exceeding Forty shillings; and unless the amount of such miner's right fee and fine be thereupon immediately paid to the said warden, he may cause the said offender to be arrested, and to be imprisoned in the nearest lock-up for any period not exceeding one calendar month, unless in the meantime the whole amount shall have been paid, and the order

Power to warden to fine persons found mining without miner's right.

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Power to remove
certain persons from
goldfields.

in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender. If any person shall occupy any waste lands of the Crown within any proclaimed goldfield, and carry on business thereon without having a business license empowering him in that behalf, he shall be liable to be fined by the warden a sum not exceeding Ten pounds, and in default of immediate payment to be imprisoned in the nearest lock-up for any period not exceeding one calendar month, unless in the meantime the whole amount shall have been paid, and the order in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender. And if any person found mining or in occupation of any waste lands of the Crown as aforesaid shall be an Asiatic or African alien, the warden is hereby empowered either before, during, or after the expiration of any term of imprisonment under this section, by his order to cause such person to be removed from the goldfield and whether such person has or has not paid any fine imposed upon him under the provisions of this section.

Penalty on witness
neglecting to appear.

76. ANY person on whom any summons issued out by any warden, requiring such person to appear as a witness in court or before such warden, shall have been served personally or in such other manner as shall be directed by the rules to be framed as aforesaid, and to whom at the same time payment or tender of his expenses shall have been made on the fixed scale, and who shall refuse or neglect without sufficient cause to appear according to the tenor of such summons, or who having so appeared shall refuse to be sworn or answer any lawful question, shall, on conviction thereof before any two Justices, forfeit and pay any sum not exceeding Ten pounds, and in default of immediate payment thereof he shall be liable to imprisonment in the nearest lock-up for any period not exceeding one calendar month, unless in the meantime the whole amount shall have been paid and the order in writing of the said warden shall be sufficient authority to the keeper of the said lock-up for the detention of the offender, but no such conviction shall exempt such person from any action for disobeying such summons.

Fees, penalties, &c.,
how recoverable and
applied.

77. ALL fees, charges, and sums of money which shall or may be imposed or made payable under this Act, and all penalties incurred thereunder or under the Regulations, for which no other mode of recovery is provided herein or by the Regulations, may be recovered, carried out, or enforced by any warden in the manner in which Justices of the Peace are now by law authorised to enforce any order or award made in any court of petty sessions.

Proceedings not to
be removed into Su-
preme Court.

78. NO proceedings under this Act shall be removed or removable into the Supreme Court.

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79. IT shall be lawful for the Governor in Council from time to time to make, alter, and repeal such regulations, not being contrary to the provisions of this Act as may be necessary for the purpose of giving effect to this Act, and for the management of goldfields generally.

Power to make regulations.

Such regulations may be made for the whole Colony or for any particular part thereof.

Regulations may be partial or general.

Such regulations shall be published in the *Government Gazette*, and after publication therein shall have the force and effect of law, and shall be judicially noticed in any court of justice.

Regulations to be published.

It shall be lawful by such regulations to impose for any breach thereof, or for any disobedience of a lawful order of the warden or warden's court, a fine not exceeding Ten pounds, and in default of payment imprisonment, with or without hard labor, for any period not exceeding three months.

Copies of all regulations made under this Act shall be laid before the Legislative Council within fourteen days from the making thereof, if the Council shall be then in session, and if not, then within fourteen days after the commencement of the next session thereof.

80. ALL regulations relating to auriferous lands now in force are hereby repealed from and after the coming into operation of this Act provided that such repeal shall not affect the validity of any act done or document issued under such regulations; and all such documents shall for the purposes of this Act be deemed to be issued under the provisions of this Act.

Repeal.

81. IT shall be lawful for the Governor in Council to cause to be paid a sum of money not exceeding One thousand pounds to the actual discoverers of any new goldfield; such sum to be paid under the terms and conditions to be prescribed by the regulations.

Reward for the discoverers of goldfields.

In the name and on behalf of the Queen I hereby assent to this Act.

F. NAPIER BROOME, Governor.