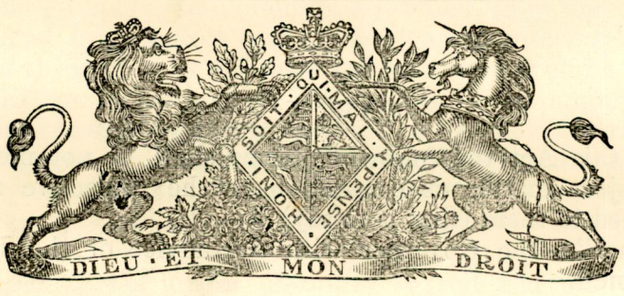
New South Wales.



ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

****

No. XXXII.

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects. [Assented to, 11th June, 1894.]

Preamble.

WHEREAS from time to time since the establishment of the Colony of New South Wales Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of

mining

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Mining on Private Lands Act of 1894."

PART I.

Interpretation of terms.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say) :—

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall, subject to the provisions of this Act, be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains, or if not yet issued would when issued contain, no reservation of minerals, or of minerals other than gold, the mining on such land, under the provisions of this Act, shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to lands now or hereafter to be alienated and situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

8. It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right or mineral license in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right or mineral license, but without any dog, be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall have been first

first obtained: Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.

Authorised person considered first applicant.

9. Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

10. Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner, define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

11. The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land,

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

land, or, unless fenced, to depasture horses, cattle, or sheep thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within two hundred yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, yard, orchard, or pleasure ground: Provided further that it shall be for the Minister to determine whether any improvement on such restricted portion referred to in this section is of a substantial or valuable character, and the Minister may define an area adjoining such substantial or valuable improvement within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or 200 yards of principal residence without owner's consent.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

13. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

Lessee no right to impound or molest any animal, belonging to the owner, on land, unless fenced.

Trespass, &c.

15. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be

Service of notices.

no

no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Appraisers to be appointed who shall assess surface damages.

16. The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.

Either party may appeal to Minister.

17. On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties,

Warden to determine amount of compensation.

and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs as shall appear to him just: Provided always that the Warden may upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, or a contract or agreement has been entered into as provided for in the last proviso of the preceding section, a lease for mining under the provisions of this Act may be granted by the Governor, and shall then be notified in the *Gazette*.

Applicant failing to pay award.

18. In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Owner, occupier, or mortgagee failing to accept award.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land, or any estate or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid may so settle with the applicant (that is to say) ;—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons.

Lessee must fence if requested.

20. During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine : Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected and kept in good repair around the shafts, machinery, or other works in connection with such mining : Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be

be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser shall have power to examine the surface or undergound workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonble time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.

Appraiser may award further damages.

21. If any land, or buildings thereon, adjoining or in the vicinity of any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner and occupier respectively of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner and occupier, to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

22. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is appled for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

23. In any case where at the time of the passing of this Act *bonâ fide* mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for

Existing agreements protected by special lease.

for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Permit may be converted into special lease.

24. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall, with respect to rent and other matters, be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

25. The owner of any private land or his agent on his behalf may at any time apply for a special lease of such land for mining purposes; but, except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date except for the period of two months after the passing of this Act. In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

26. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

Area of lease.

Applications how dealt with.

27. In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed, shall have priority, and in the event of two or more applications for the same land being received at the same time, it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases, or of any portion thereof, shall be so registered within one month after the date of such transfer.

Miners' rights necessary.

28. It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right or a mineral license to establish or maintain a title to a lease for mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased.

No lease to be granted until after publication of intention.

Encroaching on highways, streets, &c.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

Encroachment on private land.

30. The Warden may, upon the application of the owner or occupier of any land adjoining any land, whereon mining is being carried on for gold or minerals other than gold, or upon the application of any person authorised by such owner or occupier authorise, in writing, any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person.

Powers of surveyor authorised to enter and inspect.

31. The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

32. Every such mining surveyor shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness

witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right or mineral license to occupy for mining purposes.

33. The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right or mineral license giving such holder power to take possesssion of such land for mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights or mineral licenses: Provided that every such agreement shall within fourteen days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

34. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

Possession how recovered.

35. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under,

Former lessee may remove machinery.

under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governor re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Jurisdiction of Wardens.

36. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections seventeen and twenty hereof with respect to compensation, be read and construed as forming part of this Act.

Appeals.

Leases may be granted through which to carry mining-races.

37. Subject to compensation as provided for in section sixteen hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make.

Leases may be granted for machine site, smelting works, &c.

38. In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary.

Lands may be resumed for village purposes.

39. Whenever land is required for the purposes of a mining village, and no Crown land is available, it shall be lawful for the Governor by notification in the *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption

appearing

appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such tenant or occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Lands may be surrendered and other lands acquired by way of exchange.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands.

PART III.

Where alluvial gold deposits occur.

40. The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act, nor held under agreement for mining purposes as provided in section thirty-three hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof containing such deposits to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the Local Land Board subject to appeal to the Land Court under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Land may be resumed.

Former owner to have preferent right to repurchase or release.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining

mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Deposit to cover surface damage.

41. Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Prospector to have preferent right to claim.

42. Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes; and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of Part II of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

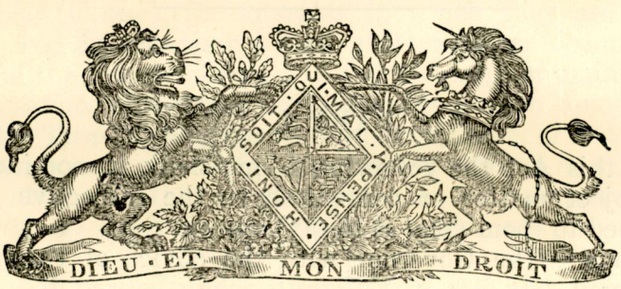
Governor may make regulations.

43. It shall be lawful for the Governor to make regulations in accordance with this Act which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1894.

[1*s*.]

New South Wales.



ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

****

No. XXXII.

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects. [Assented to, 11th June, 1894.]

Preamble.

WHEREAS from time to time since the establishment of the Colony of New South Wales Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Mining on Private Lands Act of 1894."

PART I.

Interpretation of terms.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say) :—

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall, subject to the provisions of this Act, be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains, or if not yet issued would when issued contain, no reservation of minerals, or of minerals other than gold, the mining on such land, under the provisions of this Act, shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to lands now or hereafter to be alienated and situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

8. It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right or mineral license in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right or mineral license, but without any dog, be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall have been

first

first obtained: Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.

Authorised person considered first applicant.

9. Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

10. Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner, define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

11. The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land,

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

land, or, unless fenced, to depasture horses, cattle, or sheep thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within two hundred yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, yard, orchard, or pleasure ground: Provided further that it shall be for the Minister to determine whether any improvement on such restricted portion referred to in this section is of a substantial or valuable character, and the Minister may define an area adjoining such substantial or valuable improvement within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or 200 yards of principal residence without owner's consent.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

13. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

Lessee no right to impound or molest any animal, belonging to the owner, on land, unless fenced.

Trespass, &c.

15. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no

Service of notices.

no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Appraisers to be appointed who shall assess surface damages.

16. The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.

Either party may appeal to Minister.

17. On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties,

Warden to determine amount of compensation.

and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs as shall appear to him just: Provided always that the Warden may upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, or a contract or agreement has been entered into as provided for in the last proviso of the preceding section, a lease for mining under the provisions of this Act may be granted by the Governor, and shall then be notified in the *Gazette*.

Applicant failing to pay award.

18. In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Owner, occupier, or mortgagee failing to accept award.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land, or any estate or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid may so settle with the applicant (that is to say) ;—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons.

Lessee must fence if requested.

20. During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine : Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected and kept in good repair around the shafts, machinery, or other works in connection with such mining : Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be

be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser shall have power to examine the surface or undergound workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonble time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.

Appraiser may award further damages.

Owner of adjoining land, &c., entitled to compensation for damage.

21. If any land, or buildings thereon, adjoining or in the vicinity of any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner and occupier respectively of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner and occupier, to be recovered in any Court of competent jurisdiction.

Not obligatory to grant leases.

22. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is appled for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Existing agreements protected by special lease.

23. In any case where at the time of the passing of this Act *bonâ fide* mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for

for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Permit may be converted into special lease.

24. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall, with respect to rent and other matters, be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

25. The owner of any private land or his agent on his behalf may at any time apply for a special lease of such land for mining purposes; but, except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date except for the period of two months after the passing of this Act. In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

26. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

Area of lease.

Applications how dealt with.

27. In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed, shall have priority, and in the event of two or more applications for the same land being received at the same time, it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases, or of any portion thereof, shall be so registered within one month after the date of such transfer.

Miners' rights necessary.

28. It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right or a mineral license to establish or maintain a title to a lease for mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased.

No lease to be granted until after publication of intention.

Encroaching on highways, streets, &c.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

Encroachment on private land.

30. The Warden may, upon the application of the owner or occupier of any land adjoining any land, whereon mining is being carried on for gold or minerals other than gold, or upon the application of any person authorised by such owner or occupier authorise, in writing, any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person.

Powers of surveyor authorised to enter and inspect.

31. The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

32. Every such mining surveyor shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness

witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right or mineral license to occupy for mining purposes.

33. The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right or mineral license giving such holder power to take possesssion of such land for mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights or mineral licenses: Provided that every such agreement shall within fourteen days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

34. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

Possession how recovered.

35. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under,

Former lessee may remove machinery.

under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governor re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Jurisdiction of Wardens.

36. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections seventeen and twenty hereof with respect to compensation, be read and construed as forming part of this Act.

Appeals.

Leases may be granted through which to carry mining-races.

37. Subject to compensation as provided for in section sixteen hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make.

Leases may be granted for machine site, smelting works, &c.

38. In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary.

Lands may be resumed for village purposes.

39. Whenever land is required for the purposes of a mining village, and no Crown land is available, it shall be lawful for the Governor by notification in the *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption

appearing

appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such tenant or occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Lands may be surrendered and other lands acquired by way of exchange.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands.

PART III.

Where alluvial gold deposits occur.

40. The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act, nor held under agreement for mining purposes as provided in section thirty-three hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof containing such deposits to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the Local Land Board subject to appeal to the Land Court under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Land may be resumed.

Former owner to have preferent right to repurchase or release.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining

mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Deposit to cover surface damage.

41. Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Prospector to have preferent right to claim.

42. Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes; and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of Part II of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

Governor may make regulations.

43. It shall be lawful for the Governor to make regulations in accordance with this Act which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1894.

[1*s*.]

I Certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

Legislative Assembly Chamber,
Sydney, 7 June, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

***

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Mining on Private Lands Act of 1894."

PART I.

Interpretation of terms.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say) :—

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall, subject to the provisions of this Act, be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains, or if not yet issued would when issued contain, no reservation of minerals, or of minerals other than gold, the mining on such land, under the provisions of this Act, shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to lands now or hereafter to be alienated and situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

8. It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right or mineral license in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right or mineral license, but without any dog, be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall have been

first

first obtained: Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.

Authorised person considered first applicant.

9. Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

10. Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner, define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

11. The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land,

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

land, or, unless fenced, to depasture horses, cattle, or sheep thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *boná fide* in use as a garden or orchard, or to within two hundred yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, yard, orchard, or pleasure ground: Provided further that it shall be for the Minister to determine whether any improvement on such restricted portion referred to in this section is of a substantial or valuable character, and the Minister may define an area adjoining such substantial or valuable improvement within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or 200 yards of principal residence without owner's consent.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

13. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

Lessee no right to impound or molest any animal, belonging to the owner, on land, unless fenced.

Trespass, &c.

15. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no

Service of notices.

no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Appraisers to be appointed who shall assess surface damages.

16. The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.

Either party may appeal to Minister.

17. On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs as shall appear to him just: Provided always that the Warden may upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, or a contract or agreement has been entered into as provided for in the last proviso of the preceding section, a lease for mining under the provisions of this Act may be granted by the Governor, and shall then be notified in the *Gazette*.

Warden to determine amount of compensation.

Applicant failing to pay award.

18. In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Owner, occupier, or mortgagee failing to accept award.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land, or any estate or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid may so settle with the applicant (that is to say) ;—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons.

Lessee must fence if requseted.

20. During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine : Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected and kept in good repair around the shafts, machinery, or other works in connection with such mining : Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to

be

be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser shall have power to examine the surface or undergound workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonble time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.

Appraiser may award further damages.

Owner of adjoining land, &c., entitled to compensation for damage.

21. If any land, or buildings thereon, adjoining or in the vicinity of any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner and occupier respectively of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner and occupier, to be recovered in any Court of competent jurisdiction.

Not obligatory to grant leases.

22. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is appled for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Existing agreements protected by special lease.

23. In any case where at the time of the passing of this Act *bonâ fide* mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired

for

for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Permit may be converted into special lease.

24. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall, with respect to rent and other matters, be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

25. The owner of any private land or his agent on his behalf may at any time apply for a special lease of such land for mining purposes; but, except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date except for the period of two months after the passing of this Act. In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

26. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

Area of lease.

Applications how dealt with.

27. In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed, shall have priority, and in the event of two or more applications for the same land being received at the same time, it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases, or of any portion thereof, shall be so registered within one month after the date of such transfer.

Miners' rights necessary.

28. It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right or a mineral license to establish or maintain a title to a lease for mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased.

No lease to be granted until after publication of intention.

Encroaching on highways, streets, &c.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

Encroachment on private land.

30. The Warden may, upon the application of the owner or occupier of any land adjoining any land, whereon mining is being carried on for gold or minerals other than gold, or upon the application of any person authorised by such owner or occupier authorise, in writing, any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person.

Powers of surveyor authorised to enter and inspect.

31. The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

32. Every such mining surveyor shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness

witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right or mineral license to occupy for mining purposes.

33. The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right or mineral license giving such holder power to take possesssion of such land for mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights or mineral licenses: Provided that every such agreement shall within fourteen days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

34. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *boná fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

Possession how recovered.

35. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under,

Former lessee may remove machinery.

under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governor re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Jurisdiction of Wardens.

36. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections seventeen and twenty hereof with respect to compensation, be read and construed as forming part of this Act.

Appeals.

Leases may be granted through which to carry mining-races.

37. Subject to compensation as provided for in section sixteen hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make.

Leases may be granted for machine site, smelting works, &c.

38. In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary.

Lands may be resumed for village purposes.

39. Whenever land is required for the purposes of a mining village, and no Crown land is available, it shall be lawful for the Governor by notification in the *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing

appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such tenant or occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Lands may be surrendered and other lands acquired by way of exchange.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands.

PART III.

Where alluvial gold deposits occur.

40. The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act, nor held under agreement for mining purposes as provided in section thirty-three hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof containing such deposits to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the Local Land Board subject to appeal to the Land Court under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Land may be resumed.

Former owner to have preferent right to repurchase or release.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining

mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Deposit to cover surface damage.

41. Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Prospector to have preferent right to claim.

42. Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes; and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of Part II of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

Governor may make regulations.

43. It shall be lawful for the Governor to make regulations in accordance with this Act which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

In the name and on the behalf of Her Majesty I assent to this Act.

R. W. DUFF.

Government House,
Sydney, 11*th June*, 1894.

I Certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

Legislative Assembly Chamber,
Sydney, 7 June, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

****

No. XXXII.

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects. [Assented to, 11th June, 1894.]

Preamble.

WHEREAS from time to time since the establishment of the Colony of New South Wales Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

NINIAN MELVILLE,
Chairman of Committees of the Legislative Assembly.

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Mining on Private Lands Act of 1894."

PART I.

Interpretation of terms.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say) :—

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall, subject to the provisions of this Act, be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains, or if not yet issued would when issued contain, no reservation of minerals, or of minerals other than gold, the mining on such land, under the provisions of this Act, shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to lands now or hereafter to be alienated and situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

8. It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right or mineral license in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right or mineral license, but without any dog, be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall have been

first

first obtained: Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.

Authorised person considered first applicant.

9. Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

10. Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner, define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

11. The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, who shall place substantial sheep-proof gates at all fences intersected by such right-of-way; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land,

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

land, or, unless fenced, to depasture horses, cattle, or sheep thereon, or to keep or permit to be kept on such land any dog, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within two hundred yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, yard, orchard, or pleasure ground: Provided further that it shall be for the Minister to determine whether any improvement on such restricted portion referred to in this section is of a substantial or valuable character, and the Minister may define an area adjoining such substantial or valuable improvement within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or 200 yards of principal residence without owner's consent.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

13. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

Lessee no right to impound or molest any animal, belonging to the owner, on land, unless fenced.

Trespass, &c.

15. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no

Service of notices.

no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Appraisers to be appointed who shall assess surface damages.

16. The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.

Either party may appeal to Minister.

17. On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties,

Warden to determine amount of compensation.

and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs as shall appear to him just: Provided always that the Warden may upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, or a contract or agreement has been entered into as provided for in the last proviso of the preceding section, a lease for mining under the provisions of this Act may be granted by the Governor, and shall then be notified in the *Gazette*.

Applicant failing to pay award.

18. In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Owner, occupier, or mortgagee failing to accept award.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land, or any estate or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid may so settle with the applicant (that is to say) ;—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons.

Lessee must fence if requseted.

20. During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine : Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected and kept in good repair around the shafts, machinery, or other works in connection with such mining : Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to

be

be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser shall have power to examine the surface or undergound workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonble time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.

Appraiser may award further damages.

21. If any land, or buildings thereon, adjoining or in the vicinity of any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner and occupier respectively of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner and occupier, to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

22. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is appled for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

23. In any case where at the time of the passing of this Act *bonâ fide* mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for

Existing agreements protected by special lease.

for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Permit may be converted into special lease.

24. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall, with respect to rent and other matters, be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

25. The owner of any private land or his agent on his behalf may at any time apply for a special lease of such land for mining purposes; but, except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date except for the period of two months after the passing of this Act. In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

26. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

Area of lease.

Applications how dealt with.

27. In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed, shall have priority, and in the event of two or more applications for the same land being received at the same time, it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases, or of any portion thereof, shall be so registered within one month after the date of such transfer.

Miners' rights necessary.

28. It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right or a mineral license to establish or maintain a title to a lease for mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased.

No lease to be granted until after publication of intention.

Encroaching on highways, streets, &c.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

Encroachment on private land.

30. The Warden may, upon the application of the owner or occupier of any land adjoining any land, whereon mining is being carried on for gold or minerals other than gold, or upon the application of any person authorised by such owner or occupier authorise, in writing, any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person.

Powers of surveyor authorised to enter and inspect.

31. The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

32. Every such mining surveyor shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness

witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right or mineral license to occupy for mining purposes.

33. The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right or mineral license giving such holder power to take possesssion of such land for mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights or mineral licenses: Provided that every such agreement shall within fourteen days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

34. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

Possession how recovered.

35. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under,

Former lessee may remove machinery.

under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governor re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Jurisdiction of Wardens.

36. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections seventeen and twenty hereof with respect to compensation, be read and construed as forming part of this Act.

Appeals.

Leases may be granted through which to carry mining-races.

37. Subject to compensation as provided for in section sixteen hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make.

Leases may be granted for machine site, smelting works, &c.

38. In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary.

Lands may be resumed for village purposes.

39. Whenever land is required for the purposes of a mining village, and no Crown land is available, it shall be lawful for the Governor by notification in the *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing

appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such tenant or occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Lands may be surrendered and other lands acquired by way of exchange.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands.

PART III.

Where alluvial gold deposits occur.

40. The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act, nor held under agreement for mining purposes as provided in section thirty-three hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof containing such deposits to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the Local Land Board subject to appeal to the Land Court under and subject to the provisions of section six of the "Crown Lands Act of 1889,"—

Land may be resumed.

Former owner to have preferent right to repurchase or release.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining

mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Deposit to cover surface damage.

41. Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Prospector to have preferent right to claim.

42. Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes; and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of Part II of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

Governor may make regulations.

43. It shall be lawful for the Governor to make regulations in accordance with this Act which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

In the name and on the behalf of Her Majesty I assent to this Act.

R. W. DUFF.

Government House,
Sydney, 11*th June*, 1894.

SCHEDULE of the Amendments referred to in Message of 30th May, 1894.

Page 2. Preamble, line 3. *Omit* "or"
Page 2, clause 1, line 9. At end of clause *add* "**of 1894**"
Page 3, clause 3, line 8. *Omit* "no reservation"
Page 3, clause 3, line 8. *Omit* "such grant be"
Page 3, clause 3, line 9. *After* "minerals" *insert* "**or of minerals other than gold**"
Page 3, clause 3, line 10. *After* "land" *insert* "**under the provisions of this Act**"
Page 3, clause 4, line 14. *Omit* "alienated"
Page 3, clause 4, line 14. *After* "lands" *insert* "**now or hereafter to be alienated and**"
Page 3. *After* clause 6 *insert* new clause **7.**
Page 3, clause ~~7.~~ **8,** line 39. *After* "right" *insert* "**or mineral license**"
Page 3, clause ~~7.~~ **8,** line 46. *After* "right" *insert* "**or mineral license**"
Page 3, clause ~~7.~~ **8,** line 46. *Omit* "dogs" *insert* "**any dog**"
Page 4, clause ~~7.~~ **8.** At end of clause *add* "**Provided that the Warden may refuse to grant an "authority if he has good reason to believe that such private land as aforesaid contains "neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant "may appeal to the Minister, who may reverse the Warden's decision**"
Page 4, clause ~~9.~~ **10,** line 28. *Omit* "Part III of"
Page 4, clause ~~10.~~ **11,** lines 44 and 45. *Omit* "vested in trust and"
Page 4, clause ~~10.~~ **11,** line 56. *After* "lessee" *insert* "**who shall place substantial sheep-proof gates "at all fences intersected by such right of way**"
Page 5, clause ~~10.~~ **11,** line 1. *After* "or" first time occurring *insert* "**unless fenced**"
Page 5, clause ~~10.~~ **11,** line 2. *Omit* "dogs" *insert* "**or permit to be kept on such land any dog**"
Page 5, clause ~~10.~~ **11,** line 9. *Omit* "one hundred and fifty" *insert* "**two hundred**"
Page 5, clause ~~10.~~ **11,** line 15. *Omit* "or" *insert* "**yard**"
Page 5, clause ~~10.~~ **11,** line 15. *After* "orchard" *insert* "**or pleasure ground**"
Page 5, clause ~~10.~~ **11,** line 16. *After* "improvement" *insert* "**on such restricted portion**"
Page 5, clause ~~10.~~ **11,** line 18. *Omit* "to" *insert* "**the Minister may**"
Page 5, clause ~~10.~~ **11,** line 18. *Omit* "the" *insert* "**an**"
Page 5, clause ~~10.~~ **11,** line 18. *After* "area" *insert* "**adjoining such substantial or valuable improvement**"
Page 5, clause 11. *Omit* clause 11 *insert* new clause **12.**
Page 5. *After* clause ~~12.~~ **13** *insert* new clause **14.**
Page 6, clause ~~14.~~ **16.** At end of clause *add* "**Provided also that notwithstanding anything in this "section or in this Act contained, an agreement or contract may be entered into with "the owner, occupier, or mortgagee for compensation being made by a percentage of the "gold or other minerals taken from the mines on or under such land or otherwise**"
Page 6, clause ~~15.~~ **17,** line 59. *Omit* "of Court"
Page 7, clause ~~15.~~ **17,** line 4. *After* "paid" *insert* "**or a contract or agreement has been entered "into as provided for in the last proviso of the preceding section**"
Page 7, clause ~~15.~~ **17,** lines 6 and 7. *Omit* "in due course"
Page 7, clause ~~15.~~ **17,** line 7. *Omit* "issued" *insert* "**granted**"
Page 7, clause ~~15.~~ **17.** At end of clause *add* "**and shall then be notified in the Gazette**"
Page 7. *After* clause ~~16~~ **18** *insert* new clause **19**
Page 8, clause ~~17.~~ **20,** line 1. *After* "erected" *insert* "**and kept in good repair**"
Page 8, clause ~~17.~~ **20,** line 21. *Omit* "in Council"
Page 8, clause ~~17.~~ **20.** At end of clause *add* "**and the lease shall be liable to forfeiture and may be "forfeited on the authority of the Governor**"
Page 8, clause ~~18.~~ **21,** line 33. *After* "adjoining" *insert* "**or in the vicinity of**"
Page 8, clause ~~18.~~ **21,** line 35. *After* "owner" *insert* "**and occupier respectively**"
Page 8, clause ~~18.~~ **21,** line 38. *After* "owner" *insert* "**and occupier**"
Pages 8 and 9, clause 20. *Omit* clause 20, *insert* new clause **23.**
Page 10, clause ~~22.~~ **25,** line 1. *After* "land" *insert* "**or his agent on his behalf**"
Page 10, clause ~~22.~~ **25,** line 2. *Before* "lease" *insert* "**special**"
Page 10, clause ~~22.~~ **25,** line 5. *After* "date" *insert* "**except for the period of two months after the "passing of this Act**"
Page 10, clause ~~25.~~ **28,** line 52. *After* "right" *insert* "**or a mineral license**"
Page 10, clause ~~25.~~ **28,** line 53. *Omit* "gold"
Page 10. *After* clause ~~25.~~ **28,** *insert* new clause **29**
Page 11, clause ~~26.~~ **30,** lines 9 and 10. *Omit* "whereof a mining lease has been granted under the "provisions of this Act" *insert* "**whereon mining is being carried on for gold or minerals "other than gold**"
Page 11, clause ~~26.~~ **30,** lines 12 and 13. *Omit* "by writing under the hand of the Warden"
Page 11, clause ~~26.~~ **30,** line 13. *After* "authorise" *insert* "**in writing**"
Page 11, clause ~~26.~~ **30,** line 17. *After* "person" *omit* remainder of clause.
Page 11, clause ~~29.~~ **33,** line 45. *After* "right" *insert* "**or mineral license**"
Page 11, clause ~~29.~~ **33,** line 47. *Omit* "gold"
Page 11, clause ~~29.~~ **33,** line 54. *After* "rights" *insert* "**or mineral licenses**"
Page 11, clause ~~29.~~ **33,** line 55. *Omit* "seven" *insert* "**fourteen**"
Page 13, clause ~~32.~~ **36,** lines 4 and 5. *Omit* "fifteen and seventeen" *insert* "**seventeen and twenty**"
Page 13, clause ~~33.~~ **37,** line 7. *Omit* "fourteen" *insert* "**sixteen**"
Page 13, clause ~~35.~~ **39,** line 27. *Omit* "Government"
Page 13, clause ~~35.~~ **39,** line 37. *After* "such" *insert* "**tenant or**"
Page 13, clause ~~35.~~ **39,** line 40. *After* "Land" *omit* "Appeal"
Page 14, clause ~~36.~~ **40,** line 5. *Omit* "or" *insert* "**nor**"
Page 14, clause ~~36.~~ **40,** line 6. *Omit* "twenty-nine" *insert* "**thirty-three**"
Page 14, clause ~~36.~~ **40,** line 17. *After* "thereof" *insert* "**containing such deposits**"
Page 14, clause ~~36.~~ **40,** line 27. *After* "Land" *omit* "Appeal"
Page 14, clause ~~36.~~ **40,** line 39. *After* "Land" *omit* "Appeal"
Page 15, clause ~~38.~~ **42,** line 9. *Omit* "section thirteen" *insert* "**Part II**"
Page 15, clause ~~39.~~ **43,** line 14. *After* "regulations" *insert* "**in accordance with this Act**"

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 27 April, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with Amendments.*

Legislative Council Chamber,
Sydney, 30th May, 1894.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

* *

No. .

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects.

WHEREAS from time to time since the establishment of the Colony of New South Wales, Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England, whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining Preamble.

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are printed in **black letter.**

mining thereon or thereunder for such gold as may be found therein : And whereas it is deemed expedient to define the rents to be derived under the operations of this Act ~~or~~ on behalf of the landowner, as hereinafter provided : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Mining on Private Lands Act of 1894." Short title.

PART I.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say) : Interpretation of terms.

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus ; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall subject to the provisions of this Act be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains ~~no reservation~~, or if ~~such grant be~~ not yet issued would when issued contain no reservation of minerals, **or of minerals other than gold,** the mining on such land, **under the provisions of this Act,** shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to ~~alienated~~ lands **now or hereafter to be alienated and** situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

~~7.~~ **8.** It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right **or mineral license** in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right **or mineral license,** but without ~~dogs,~~ **any dog,** be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall

shall have been first obtained: **Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.**

~~8.~~ **9.** Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area. Authorised person considered first applicant.

~~9.~~ **10.** Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in ~~Part III of~~ this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden. Owner or occupier obstructing applicant.

~~10.~~ **11.** The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands ~~vested in trust~~ ~~and~~ referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, **who shall place substantial sheep-proof gates at all fences intersected by such right-of-way**; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such Governor may grant lease. Regard must be had to reservations in grants. Lease gives right to occupy for all purposes connected with mining.

such land, or, unless fenced, to depasture horses, cattle, or sheep thereon, or to keep ~~dogs,~~ or permit to be kept on such land any dog, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within ~~one hundred and fifty~~ two hundred yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, ~~or~~ yard, orchard, or pleasure ground: Provided further that it shall be for the Minister to determine whether any improvement on such restricted portion referred to in this section is of a substantial or valuable character, and ~~to~~ the Minister may define ~~the~~ an area adjoining such substantial or valuable improvement within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or ~~150~~ 200 yards of principal residence without owner's consent.

11. The Warden shall not grant an authority to any person to enter and examine the surface of any cultivated land during the time there is a growing crop thereon, other than cultivated grasses or lucerne, unless the applicant for such authority shall deposit with the Warden such sum of money as the Warden shall think sufficient to cover any damage which may accrue to such crop by the examination of the surface of such land.

Lands under growing crop.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

~~12.~~ 13. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

~~13.~~ **15.** All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier. Service of notices.

~~14.~~ **16.** The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: **Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.** Appraisers to be appointed who shall assess surface damages.

~~15.~~ **17.** On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs ~~of Court~~ as shall appear to him just: Provided always Either party may appeal to Minister. Warden to determine amount of compensation.

always that the Warden may, upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, **or a contract or agreement has been entered into as provided for in the last proviso of the preceding section,** a lease for mining under the provisions of this Act may ~~in due course~~ be ~~issued~~ **granted** by the Governor, **and shall then be notified in the Gazette.**

Applicant failing to pay award

~~16.~~ **18.** In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier, shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Owner, occupier, or mortgagee failing to accept award.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land or any estate, or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid, may so settle with the applicant (that is to say);—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust, for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons.

Lessee must fence if requested.

~~17.~~ **20.** During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure

secure fence to be erected and kept in good repair around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor ~~in Council.~~ And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, **and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.**

Appraiser may award further damages.

~~18.~~ **21.** If any land, or buildings thereon, adjoining **or in the vicinity of** any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner **and occupier respectively** of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner **and occupier,** to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

~~19.~~ **22.** Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

20. In any case where *bonâ fide* mining operations were being carried on under agreement upon any private land at the time of the passing of this Act a joint application by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other ~~applications~~

Special leases may be granted.

applications with respect to the land defined therein. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of such land on the twenty-sixth day of April, one thousand eight hundred and ninety-four, whether in detached portions or otherwise, any such application made by him or them shall, if made within two months as aforesaid, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold, silver, lead, tin, or antimony, or all of such minerals from such private land, the owner may within two months after the passing hereof apply in the prescribed manner to convert such permit into a lease under this Act; and in all cases referred to in this section, such leases shall not be subject to the provisions of this Act with respect to payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, otherwise such rights of exemption shall be liable to forfeiture; and such lands shall be open to the provisions of this Act with respect to mining thereon.

Existing agreements protected.

Permits may be converted into leases.

23. In any case where at the time of the passing of this Act bona fide mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Existing agreements protected by special lease.

Permit may be converted into special lease.

~~21.~~ **24.** Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall with respect to rent, and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

~~22.~~ **25.** The owner of any private land **or his agent on his behalf** may at any time apply for a **special** lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date **except for the period of two months after the passing of this Act.** In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land. Owner may obtain a lease.

~~23.~~ **26.** The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister, a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface. Duration of lease. Rents payable. Area of lease.

~~24.~~ **27.** In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed shall have priority, and in the event of two or more applications for the same land being received at the same time it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases or of any portion thereof shall be so registered within one month after the date of such transfer. Applications how dealt with.

~~25.~~ **28.** It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right **or a mineral license** to establish or maintain a title to a lease for ~~gold~~-mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased. Miners' rights necessary. No lease to be granted until after publication of intention.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor Encroaching on highways, streets, &c.

surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

Encroachment on private land.

~~26.~~ **30.** The Warden may, upon the application of the owner or occupier of any land adjoining any land ~~whereof a mining lease has been granted under the provisions of this Act,~~ **whereon mining is being carried on for gold or minerals other than gold,** or upon the application of any person authorised by such owner or occupier ~~by writing under the hand of the Warden,~~ authorise, **in writing,** any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person ~~under the provisions of this Act.~~

Powers of surveyor authorised to enter and inspect.

~~27.~~ **31.** The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

~~28.~~ **32.** Every such mining surveyor, shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right **or mineral license** to occupy for mining purposes.

~~29.~~ **33.** The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right **or mineral license** giving such holder power to take possession of such land for ~~gold~~ mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights **or mineral licenses:** Provided that every such agreement shall within ~~seven~~ **fourteen** days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

~~30.~~ **34.** Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such

such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture, and may be forfeited on the authority of the Governor : Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

~~31.~~ **35.** The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same, and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein : Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governer re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns ; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Possession how recovered.

Former lessee may remove machinery.

~~32.~~ **36.** The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land ; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall

Jurisdiction of Wardens.

shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections ~~fifteen and seventeen~~ **seventeen and twenty** hereof with respect to compensation, be read and construed as forming part of this Act. Appeals.

~~33.~~ **37.** Subject to compensation as provided for in section ~~fourteen~~ **sixteen** hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make. Leases may be granted through which to carry mining-races.

~~34.~~ **38.** In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary. Leases may be granted for machine site, smelting works, &c.

~~35.~~ **39.** Whenever land is required for the purposes of a mining village and no Crown land is available, it shall be lawful for the Governor by notification in the ~~Government~~ *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such **tenant or** occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land ~~Appeal~~ Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889"— Lands may be resumed for village purposes.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands. Lands may be surrendered and other lands acquired by way of exchange.

PART

PART III.

~~36.~~ **40.** The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act ~~or~~ **nor** held under agreement for mining purposes, as provided in section ~~twenty-nine~~ **thirty-three** hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof **containing such deposits** to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the local Land Board subject to appeal to the Land ~~Appeal~~ Court under and subject to the provisions of section six of the Crown Lands Act of 1889.

Where alluvial gold deposits occur.

Land may be resumed.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land ~~Appeal~~ Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Former owner to have preferent right to repurchase or release.

~~37.~~ **41.** Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land, of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Deposit to cover surface damage.

~~38.~~ **42.** Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication

Prospector to have preferent right to claim.

of

of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes, and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of ~~section thirteen~~ **Part II** of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

~~39.~~ **43.** It shall be lawful for the Governor to make regulations **in accordance with this Act** which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

Governor may make regulations.

Sydney: Charles Potter, Government Printer.—1894.

[1*s*.]

SCHEDULE of the Amendments referred to in Message of 30th May, 1894.

Page 2. Preamble, line 3. *Omit* "or"
Page 2, clause 1, line 9. At end of clause *add* "**of 1894**"
Page 3, clause 3, line 8. *Omit* "no reservation"
Page 3, clause 3, line 8. *Omit* "such grant be"
Page 3, clause 3, line 9. *After* "minerals" *insert* "**or of minerals other than gold**"
Page 3, clause 3, line 10. *After* "land" *insert* "**under the provisions of this Act**"
Page 3, clause 4, line 14. *Omit* "alienated"
Page 3, clause 4, line 14. *After* "lands" *insert* "**now or hereafter to be alienated and**"
Page 3. *After* clause 6 *insert* new clause **7.**
Page 3, clause ~~7.~~ **8,** line 39. *After* "right" *insert* "**or mineral license**"
Page 3, clause ~~7.~~ **8,** line 46. *After* "right" *insert* "**or mineral license**"
Page 3, clause ~~7.~~ **8,** line 46. *Omit* "dogs" *insert* "**any dog**"
Page 4, clause ~~7.~~ **8.** At end of clause *add* "**Provided that the Warden may refuse to grant an "authority if he has good reason to believe that such private land as aforesaid contains "neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant "may appeal to the Minister, who may reverse the Warden's decision**"
Page 4, clause ~~9.~~ **10,** line 28. *Omit* "Part III of"
Page 4, clause ~~10.~~ **11,** lines 44 and 45. *Omit* "vested in trust and"
Page 4, clause ~~10.~~ **11,** line 56. *After* "lessee" *insert* "**who shall place substantial sheep-proof gates "at all fences intersected by such right of way**"
Page 5, clause ~~10.~~ **11,** line 1. *After* "or" first time occurring *insert* "**unless fenced**"
Page 5, clause ~~10.~~ **11,** line 2. *Omit* "dogs" *insert* "**or permit to be kept on such land any dog**"
Page 5, clause ~~10.~~ **11,** line 9. *Omit* "one hundred and fifty" *insert* "**two hundred**"
Page 5, clause ~~10.~~ **11,** line 15. *Omit* "or" *insert* "**yard**"
Page 5, clause ~~10.~~ **11,** line 15. *After* "orchard" *insert* "**or pleasure ground**"
Page 5, clause ~~10.~~ **11,** line 16. *After* "improvement" *insert* "**on such restricted portion**"
Page 5, clause ~~10.~~ **11,** line 18. *Omit* "to" *insert* "**the Minister may**"
Page 5, clause ~~10.~~ **11,** line 18. *Omit* "the" *insert* "**an**"
Page 5, clause ~~10.~~ **11,** line 18. *After* "area" *insert* "**adjoining such substantial or valuable im-"provement**"
Page 5, clause 11. *Omit* clause 11 *insert* new clause **12.**
Page 5. *After* clause ~~12.~~ **13** *insert* new clause **14.**
Page 6, clause ~~14.~~ **16.** At end of clause *add* "**Provided also that notwithstanding anything in this "section or in this Act contained, an agreement or contract may be entered into with "the owner, occupier, or mortgagee for compensation being made by a percentage of the "gold or other minerals taken from the mines on or under such land or otherwise**"
Page 6, clause ~~15.~~ **17,** line 59. *Omit* "of Court"
Page 7, clause ~~15.~~ **17,** line 4. *After* "paid" *insert* "**or a contract or agreement has been entered "into as provided for in the last proviso of the preceding section**"
Page 7, clause ~~15.~~ **17,** lines 6 and 7. *Omit* "in due course"
Page 7, clause ~~15.~~ **17,** line 7. *Omit* "issued" *insert* "**granted**"
Page 7, clause ~~15.~~ **17.** At end of clause *add* "**and shall then be notified in the Gazette**"
Page 7. *After* clause ~~16~~ **18** *insert* new clause **19**
Page 8, clause ~~17.~~ **20,** line 1. *After* "erected" *insert* "**and kept in good repair**"
Page 8, clause ~~17.~~ **20,** line 21. *Omit* "in Council"
Page 8, clause ~~17.~~ **20.** At end of clause *add* "**and the lease shall be liable to forfeiture and may be "forfeited on the authority of the Governor**"
Page 8, clause ~~18.~~ **21,** line 33. *After* "adjoining" *insert* "**or in the vicinity of**"
Page 8, clause ~~18.~~ **21,** line 35. *After* "owner" *insert* "**and occupier respectively**"
Page 8, clause ~~18.~~ **21,** line 38. *After* "owner" *insert* "**and occupier**"
Pages 8 and 9, clause 20. *Omit* clause 20, *insert* new clause **23.**
Page 10, clause ~~22.~~ **25,** line 1. *After* "land" *insert* "**or his agent on his behalf**"
Page 10, clause ~~22.~~ **25,** line 2. *Before* "lease" *insert* "**special**"
Page 10, clause ~~22.~~ **25,** line 5. *After* "date" *insert* "**except for the period of two months after the "passing of this Act**"
Page 10, clause ~~25.~~ **28,** line 52. *After* "right" *insert* "**or a mineral license**"
Page 10, clause ~~25.~~ **28,** line 53. *Omit* "gold"
Page 10. *After* clause ~~25.~~ **28,** *insert* new clause **29**
Page 11, clause ~~26.~~ **30,** lines 9 and 10. *Omit* "whereof a mining lease has been granted under the "provisions of this Act" *insert* "**whereon mining is being carried on for gold or minerals "other than gold**"
Page 11, clause ~~26.~~ **30,** lines 12 and 13. *Omit* "by writing under the hand of the Warden"
Page 11, clause ~~26.~~ **30,** line 13. *After* "authorise" *insert* "**in writing**"
Page 11, clause ~~26.~~ **30,** line 17. *After* "person" *omit* remainder of clause.
Page 11, clause ~~29.~~ **33,** line 45. *After* "right" *insert* "**or mineral license**"
Page 11, clause ~~29.~~ **33,** line 47. *Omit* "gold"
Page 11, clause ~~29.~~ **33,** line 54. *After* "rights" *insert* "**or mineral licenses**"
Page 11, clause ~~29.~~ **33,** line 55. *Omit* "seven" *insert* "**fourteen**"
Page 13, clause ~~32.~~ **36,** lines 4 and 5. *Omit* "fifteen and seventeen" *insert* "**seventeen and twenty**"
Page 13, clause ~~33.~~ **37,** line 7. *Omit* "fourteen" *insert* "**sixteen**"
Page 13, clause ~~35.~~ **39,** line 27. *Omit* "Government"
Page 13, clause ~~35.~~ **39,** line 37. *After* "such" *insert* "**tenant or**"
Page 13, clause ~~35.~~ **39,** line 40. *After* "Land" *omit* "Appeal"
Page 14, clause ~~36.~~ **40,** line 5. *Omit* "or" *insert* "**nor**"
Page 14, clause ~~36.~~ **40,** line 6. *Omit* "twenty-nine" *insert* "**thirty-three**"
Page 14, clause ~~36.~~ **40,** line 17. *After* "thereof" *insert* "**containing such deposits**"
Page 14, clause ~~36.~~ **40,** line 27. *After* "Land" *omit* "Appeal"
Page 14, clause ~~36.~~ **40,** line 39. *After* "Land" *omit* "Appeal"
Page 15, clause ~~38.~~ **42,** line 9. *Omit* "section thirteen" *insert* "**Part II**"
Page 15, clause ~~39.~~ **43,** line 14. *After* "regulations" *insert* "**in accordance with this Act**"

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 27 April, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with Amendments.*

Legislative Council Chamber,
Sydney, 30th May, 1894.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

* *

No. .

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects.

WHEREAS from time to time since the establishment of the Colony of New South Wales, Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England, whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining Preamble.

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are printed in **black letter.**

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act ~~or~~ on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Mining on Private Lands Act of 1894."

PART I.

Interpretation of terms.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say):—

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall subject to the provisions of this Act be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains ~~no reservation~~, or if ~~such grant be~~ not yet issued would when issued contain no reservation of minerals, **or of minerals other than gold,** the mining on such land, **under the provisions of this Act,** shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to ~~alienated~~ lands **now or hereafter to be alienated and** situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

~~7.~~ **8.** It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right **or mineral license** in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right **or mineral license,** but without ~~dogs,~~ **any dog,** be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall

shall have been first obtained: **Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.**

~~8.~~ **9.** Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area. Authorised person considered first applicant.

~~9.~~ **10.** Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in ~~Part III of~~ this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden. Owner or occupier obstructing applicant.

~~10.~~ **11.** The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands ~~vested in trust~~ ~~and~~ referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, **who shall place substantial sheep-proof gates at all fences intersected by such right-of-way**; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such Governor may grant lease. Regard must be had to reservations in grants. Lease gives right to occupy for all purposes connected with mining.

such land, or, unless fenced, to depasture horses, cattle, or sheep thereon, or to keep ~~dogs,~~ or permit to be kept on such land any dog, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within ~~one hundred and fifty~~ two hundred yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, ~~or~~ yard, orchard, or pleasure ground: Provided further that it shall be for the Minister to determine whether any improvement on such restricted portion referred to in this section is of a substantial or valuable character, and ~~to~~ the Minister may define ~~the~~ an area adjoining such substantial or valuable improvement within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or ~~150~~ 200 yards of principal residence without owner's consent.

11. The Warden shall not grant an authority to any person to enter and examine the surface of any cultivated land during the time there is a growing crop thereon, other than cultivated grasses or lucerne, unless the applicant for such authority shall deposit with the Warden such sum of money as the Warden shall think sufficient to cover any damage which may accrue to such crop by the examination of the surface of such land.

Lands under growing crop.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

~~12.~~ 13. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

~~13.~~ **15.** All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier. Service of notices.

~~14.~~ **16.** The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: **Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.** Appraisers to be appointed who shall assess surface damages.

~~15.~~ **17.** On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs ~~of Court~~ as shall appear to him just: Provided always Either party may appeal to Minister.

Warden to determine amount of compensation.

always that the Warden may, upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, **or a contract or agreement has been entered into as provided for in the last proviso of the preceding section,** a lease for mining under the provisions of this Act may ~~in due course~~ be ~~issued~~ **granted** by the Governor, **and shall then be notified in the Gazette.**

~~16.~~ **18.** In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier, shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Applicant failing to pay award

Owner, occupier, or mortgagee failing to accept award.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land or any estate, or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid, may so settle with the applicant (that is to say);—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust, for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

~~17.~~ **20.** During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure

Lessee must fence if requested.

secure fence to be erected and kept in good repair around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor ~~in Council.~~ And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, **and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.**

Appraiser may award further damages.

~~18.~~ **21.** If any land, or buildings thereon, adjoining **or in the vicinity of** any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner **and occupier respectively** of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner **and occupier,** to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

~~19.~~ **22.** Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

20. In any case where *bonâ fide* mining operations were being carried on under agreement upon any private land at the time of the passing of this Act a joint application by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other

Special leases may be granted.

~~applications~~

applications with respect to the land defined therein. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of such land on the twenty-sixth day of April, one thousand eight hundred and ninety-four, whether in detached portions or otherwise, any such application made by him or them shall, if made within two months as aforesaid, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold, silver, lead, tin, or antimony, or all of such minerals from such private land, the owner may within two months after the passing hereof apply in the prescribed manner to convert such permit into a lease under this Act; and in all cases referred to in this section, such leases shall not be subject to the provisions of this Act with respect to payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, otherwise such rights of exemption shall be liable to forfeiture; and such lands shall be open to the provisions of this Act with respect to mining thereon.

Existing agreements protected.

Permits may be converted into leases.

23. In any case where at the time of the passing of this Act bona fide mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Existing agreements protected by special lease.

Permit may be converted into special lease.

~~21.~~ **24.** Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall with respect to rent, and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

~~22.~~ **25.** The owner of any private land **or his agent on his behalf** may at any time apply for a **special** lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date **except for the period of two months after the passing of this Act.** In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land. Owner may obtain a lease.

~~23.~~ **26.** The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister, a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface. Duration of lease. Rents payable. Area of lease.

~~24.~~ **27.** In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed shall have priority, and in the event of two or more applications for the same land being received at the same time it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases or of any portion thereof shall be so registered within one month after the date of such transfer. Applications how dealt with.

~~25.~~ **28.** It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right **or a mineral license** to establish or maintain a title to a lease for ~~gold~~-mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased. Miners' rights necessary. No lease to be granted until after publication of intention.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining Encroaching on highways, streets, &c.

surveyor

surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

~~26.~~ **30.** The Warden may, upon the application of the owner or occupier of any land adjoining any land ~~whereof a mining lease has been granted under the provisions of this Act,~~ **whereon mining is being carried on for gold or minerals other than gold,** or upon the application of any person authorised by such owner or occupier ~~by writing under the hand of the Warden,~~ authorise, **in writing,** any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person ~~under the provisions of this Act.~~ Encroachment on private land.

~~27.~~ **31.** The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid. Powers of surveyor authorised to enter and inspect.

~~28.~~ **32.** Every such mining surveyor, shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds. Mining surveyor to make a declaration.

~~29.~~ **33.** The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right **or mineral license** giving such holder power to take possession of such land for ~~gold~~ mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights **or mineral licenses:** Provided that every such agreement shall within ~~seven~~ **fourteen** days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor. Power to owner of private land to enter into agreement with holder of miner's right **or mineral license** to occupy for mining purposes.

~~30.~~ **34.** Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such Adjoining lands may be worked as one area.

such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture, and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

~~31.~~ **35.** The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same, and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governer re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Possession how recovered.

Former lessee may remove machinery.

~~32.~~ **36.** The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall

Jurisdiction of Wardens.

shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections ~~fifteen and seventeen~~ **seventeen and twenty** hereof with respect to compensation, be read and construed as forming part of this Act. Appeals.

~~33.~~ **37.** Subject to compensation as provided for in section ~~fourteen~~ **sixteen** hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make. Leases may be granted through which to carry mining-races.

~~34.~~ **38.** In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary. Leases may be granted for machine site, smelting works, &c.

~~35.~~ **39.** Whenever land is required for the purposes of a mining village and no Crown land is available, it shall be lawful for the Governor by notification in the ~~Government~~ *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such **tenant or** occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land ~~Appeal~~ Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889"— Lands may be resumed for village purposes.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands. Lands may be surrendered and other lands acquired by way of exchange.

PART

PART III.

~~36.~~ **40.** The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act ~~or~~ **nor** held under agreement for mining purposes, as provided in section ~~twenty-nine~~ **thirty-three** hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof **containing such deposits** to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the local Land Board subject to appeal to the Land ~~Appeal~~ Court under and subject to the provisions of section six of the Crown Lands Act of 1889.

Where alluvial gold deposits occur.

Land may be resumed.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land ~~Appeal~~ Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Former owner to have preferent right to repurchase or release.

~~37.~~ **41.** Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land, of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Deposit to cover surface damage.

~~38.~~ **42.** Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of

Prospector to have preferent right to claim.

of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes, and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of ~~section thirteen~~ **Part II** of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

~~39.~~ **43.** It shall be lawful for the Governor to make regulations **in accordance with this Act** which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

Governor may make regulations.

Sydney: Charles Potter, Government Printer.—1894.

[1*s*.]

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 27 April, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with Amendments.*

Legislative Council Chamber,
Sydney, May, 1894.

Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

* *

No. .

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects.

WHEREAS from time to time since the establishment of the Colony of New South Wales, Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England, whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining Preamble.

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are printed in **black letter.**

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act ~~or~~ on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining on Private Lands Act of 1894." Short title.

PART I.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say):— Interpretation of terms.

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall subject to the provisions of this Act be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains ~~no reservation~~, or if ~~such grant be~~ not yet issued would when issued contain no reservation of minerals, **or of minerals other than gold,** the mining on such land, **under the provisions of this Act,** shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to ~~alienated~~ lands **now or hereafter to be alienated and** situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

~~7.~~ **8.** It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right **or mineral license** in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right **or mineral license,** but without ~~dogs,~~ **any dog,** be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall

shall have been first obtained: **Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.**

Authorised person considered first applicant.

~~8.~~ **9.** Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

~~9.~~ **10.** Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in ~~Part III of~~ this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

~~10.~~ **11.** The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands ~~vested in trust~~ ~~and~~ referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, **who shall place substantial sheep-proof gates at all fences intersected by such right-of-way**; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

such land, or, **unless fenced,** to depasture horses, cattle, or sheep thereon, or to keep ~~dogs,~~ **or permit to be kept on such land any dog,** unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within ~~one hundred and fifty~~ **two hundred** yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, ~~or~~ **yard,** orchard, **or pleasure ground:** Provided further that it shall be for the Minister to determine whether any improvement **on such restricted portion** referred to in this section is of a substantial or valuable character, and ~~to~~ **the Minister may** define ~~the~~ **an** area **adjoining such substantial or valuable improvement** within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or ~~150~~ **200** yards of principal residence without owner's consent.

11. The Warden shall not grant an authority to any person to enter and examine the surface of any cultivated land during the time there is a growing crop thereon, other than cultivated grasses or lucerne, unless the applicant for such authority shall deposit with the Warden such sum of money as the Warden shall think sufficient to cover any damage which may accrue to such crop by the examination of the surface of such land.

Lands under growing crop.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

~~12.~~ **13.** Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

~~13.~~

~~13.~~ **15.** All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier. Service of notices.

~~14.~~ **16.** The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: **Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.** Appraisers to be appointed who shall assess surface damages.

~~15.~~ **17.** On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs ~~of Court~~ as shall appear to him just: Provided always Either party may appeal to Minister.

Warden to determine amount of compensation.

always that the Warden may, upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, **or a contract or agreement has been entered into as provided for in the last proviso of the preceding section,** a lease for mining under the provisions of this Act may ~~in due course~~ be ~~issued~~ **granted** by the Governor, **and shall then be notified in the Gazette.**

~~16.~~ **18.** In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier, shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Applicant failing to pay award

Owner, occupier, or mortgagee failing to accept award.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land or any estate, or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid, may so settle with the applicant (that is to say);—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust, for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

~~17.~~ **20.** During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure

Lessee must fence if requested.

secure fence to be erected **and kept in good repair** around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor ~~in Council.~~ And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, **and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.**

Appraiser may award further damages.

~~18.~~ **21.** If any land, or buildings thereon, adjoining **or in the vicinity of** any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner **and occupier respectively** of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner **and occupier,** to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

~~19.~~ **22.** Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

20. In any case where *bonâ fide* mining operations were being carried on under an agreement upon any private land at the time of the passing of this Act a joint application by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other ~~applications~~

Special leases may be granted.

applications with respect to the land defined therein. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of such land on the twenty-sixth day of April, one thousand eight hundred and ninety-four, whether in detached portions or otherwise, any such application made by him or them shall, if made within two months as aforesaid, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold, silver, lead, tin, or antimony, or all of such minerals from such private land, the owner may within two months after the passing hereof apply in the prescribed manner to convert such permit into a lease under this Act; and in all cases referred to in this section, such leases shall not be subject to the provisions of this Act with respect to payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, otherwise such rights of exemption shall be liable to forfeiture; and such lands shall be open to the provisions of this Act with respect to mining thereon.

Existing agreements protected.

Permits may be converted into leases.

23. In any case where at the time of the passing of this Act bona fide mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Existing agreements protected by special lease.

Permit may be converted into special lease.

~~21.~~ **24.** Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall with respect to rent, and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

~~22.~~ **25.** The owner of any private land **or his agent on his behalf** may at any time apply for a **special** lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date **except for the period of two months after the passing of this Act.** In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land. Owner may obtain a lease.

~~23.~~ **26.** The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister, a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface. Duration of lease. Rents payable. Area of lease.

~~24.~~ **27.** In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed shall have priority, and in the event of two or more applications for the same land being received at the same time it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases or of any portion thereof shall be so registered within one month after the date of such transfer. Applications how dealt with.

~~25.~~ **28.** It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right **or a mineral license** to establish or maintain a title to a lease for ~~gold~~-mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased. Miners' rights necessary. No lease to be granted until after publication of intention.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor Encroaching on highways, streets, &c.

surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

~~26.~~ **30.** The Warden may, upon the application of the owner or occupier of any land adjoining any land ~~whereof a mining lease has been granted under the provisions of this Act,~~ **whereon mining is being carried on for gold or minerals other than gold,** or upon the application of any person authorised by such owner or occupier ~~by writing under the hand of the Warden,~~ authorise, **in writing,** any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person ~~under the provisions of this Act.~~ Encroachment on private land.

~~27.~~ **31.** The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid. Powers of surveyor authorised to enter and inspect.

~~28.~~ **32.** Every such mining surveyor, shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds. Mining surveyor to make a declaration.

~~29.~~ **33.** The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right **or mineral license** giving such holder power to take possession of such land for ~~gold~~ mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights **or mineral licenses:** Provided that every such agreement shall within ~~seven~~ **fourteen** days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor. Power to owner of private land to enter into agreement with holder of miner's right **or mineral license** to occupy for mining purposes.

34. ~~30.~~ Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided **such** Adjoining lands may be worked as one area.

such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture, and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

~~31.~~ **35.** The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same, and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governer re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Possession how recovered.

Former lessee may remove machinery.

~~32.~~ **36.** The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall

Jurisdiction of Wardens.

shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections ~~fifteen and seventeen~~ **seventeen and twenty** hereof with respect to compensation, be read and construed as forming part of this Act. Appeals.

~~33.~~ **37.** Subject to compensation as provided for in section ~~fourteen~~ **sixteen** hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make. Leases may be granted through which to carry mining-races.

~~34.~~ **38.** In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary. Leases may be granted for machine site, smelting works, &c.

~~35.~~ **39.** Whenever land is required for the purposes of a mining village and no Crown land is available, it shall be lawful for the Governor by notification in the ~~Government~~ *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such **tenant or** occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land ~~Appeal~~ Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889"— Lands may be resumed for village purposes.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands. Lands may be surrendered and other lands acquired by way of exchange.

PART

PART III.

~~36.~~ **40.** The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act ~~or~~ **nor** held under agreement for mining purposes, as provided in section ~~twenty-nine~~ **thirty-three** hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof **containing such deposits** to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the local Land Board subject to appeal to the Land ~~Appeal~~ Court under and subject to the provisions of section six of the Crown Lands Act of 1889.

Where alluvial gold deposits occur.

Land may be resumed.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land ~~Appeal~~ Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Former owner to have preferent right to repurchase or release.

~~37.~~ **41.** Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land, of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Deposit to cover surface damage.

~~38.~~ **42.** Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication

Prospector to have preferent right to claim.

of

of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes, and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of ~~section thirteen~~ **Part II** of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

~~39.~~ **43.** It shall be lawful for the Governor to make regulations **in accordance with this Act** which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

Governor may make regulations.

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 27 April, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with Amendments.*

Legislative Council Chamber,
Sydney, May, 1894.

Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

* *

No. .

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects.

WHEREAS from time to time since the establishment of the Colony of New South Wales, Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England, whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining Preamble.

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are printed in **black letter.**

mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived under the operations of this Act ~~or~~ on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining on Private Lands Act of 1894." Short title.

PART I.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say):— Interpretation of terms.

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall subject to the provisions of this Act be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains ~~no reservation~~, or if ~~such grant be~~ not yet issued would when issued contain no reservation of minerals, **or of minerals other than gold,** the mining on such land, **under the provisions of this Act,** shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to ~~alienated~~ lands **now or hereafter to be alienated and** situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

Register and registration.

7. A register shall be kept for the purposes of this Act in the prescribed manner, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

~~7.~~ **8.** It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right **or mineral license** in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right **or mineral license,** but without ~~dogs,~~ **any dog,** be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person

shall

shall have been first obtained: **Provided that the Warden may refuse to grant an authority if he has good reason to believe that such private land as aforesaid contains neither gold, silver, lead, tin, or antimony, but in case of such refusal the applicant may appeal to the Minister, who may reverse the Warden's decision.**

~~8.~~ **9.** Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area. Authorised person considered first applicant.

~~9.~~ **10.** Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in ~~Part III of~~ this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden. Owner or occupier obstructing applicant.

~~10.~~ **11.** The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands ~~vested in trust~~ ~~and~~ referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee, **who shall place substantial sheep-proof gates at all fences intersected by such right-of-way**; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such Governor may grant lease. Regard must be had to reservations in grants. Lease gives right to occupy for all purposes connected with mining.

such land, or, **unless fenced,** to depasture horses, cattle, or sheep thereon, or to keep ~~dogs,~~ **or permit to be kept on such land any dog,** unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within ~~one hundred and fifty~~ **two hundred** yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden, ~~or~~ **yard,** orchard, **or pleasure ground:** Provided further that it shall be for the Minister to determine whether any improvement **on such restricted portion** referred to in this section is of a substantial or valuable character, and ~~to~~ **the Minister may** define ~~the~~ **an** area **adjoining such substantial or valuable improvement** within which mining operations may be excluded.

Not to approach within 100 yards of garden, &c., or ~~150~~ **200** yards of principal residence without owner's consent.

11. The Warden shall not grant an authority to any person to enter and examine the surface of any cultivated land during the time there is a growing crop thereon, other than cultivated grasses or lucerne, unless the applicant for such authority shall deposit with the Warden such sum of money as the Warden shall think sufficient to cover any damage which may accrue to such crop by the examination of the surface of such land.

Lands under growing crop.

12. Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation.

Not to apply to lands under cultivation.

~~12.~~ **13.** Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Notice to owner and occupier.

14. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or occupier of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act, unless the said land be fenced as hereinafter provided. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this section shall lie, either at law or in equity, against any such owner or occupier of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

~~13.~~ **15.** All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier. Service of notices.

~~14.~~ **16.** The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes: **Provided also that notwithstanding anything in this section or in this Act contained an agreement or contract may be entered into with the owner, occupier, or mortgagee for compensation being made by a percentage of the gold or other minerals taken from the mines on or under such land or otherwise.** Appraisers to be appointed who shall assess surface damages.

~~15.~~ **17.** On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs ~~of Court~~ as shall appear to him just: Provided always Either party may appeal to Minister. Warden to determine amount of compensation.

always that the Warden may, upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, **or a contract or agreement has been entered into as provided for in the last proviso of the preceding section,** a lease for mining under the provisions of this Act may ~~in due course~~ be ~~issued~~ **granted** by the Governor, **and shall then be notified in the Gazette.**

~~16.~~ **18.** In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier, shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Applicant failing to pay award

Owner, occupier, or mortgagee failing to accept award.

19. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land or any estate, or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid, may so settle with the applicant (that is to say);—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust, for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, femes covert, or other persons.

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

~~17.~~ **20.** During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure

Lessee must fence if requested.

secure fence to be erected **and kept in good repair** around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining thereinto as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor ~~in Council.~~ And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law, **and the lease shall be liable to forfeiture and may be forfeited on the authority of the Governor.**

Appraiser may award further damages.

~~18.~~ **21.** If any land, or buildings thereon, adjoining **or in the vicinity of** any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner **and occupier respectively** of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner **and occupier,** to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

~~19.~~ **22.** Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

20. In any case where *bonâ fide* mining operations were being carried on under agreement upon any private land at the time of the passing of this Act to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other ~~applications~~

Special leases may be granted.

applications with respect to the land defined therein. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of such land on the twenty-sixth day of April, one thousand eight hundred and ninety-four, whether in detached portions or otherwise, any such application made by him or them shall, if made within two months as aforesaid, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold, silver, lead, tin, or antimony, or all of such minerals from such private land, the owner may within two months after the passing hereof apply in the prescribed manner to convert such permit into a lease under this Act; and in all cases referred to in this section, such leases shall not be subject to the provisions of this Act with respect to payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, otherwise such rights of exemption shall be liable to forfeiture; and such lands shall be open to the provisions of this Act with respect to mining thereon.

Existing agreements protected.

Permits may be converted into leases.

23. In any case where at the time of the passing of this Act bona fide mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land has been acquired for or is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor or made application for a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent.

Existing agreements protected by special lease.

Permit may be converted into special lease.

~~21.~~ **24.** Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall with respect to rent, and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

~~22.~~ **25.** The owner of any private land **or his agent on his behalf** may at any time apply for a **special** lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date **except for the period of two months after the passing of this Act.** In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land. Owner may obtain a lease.

~~23.~~ **26.** The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shillings per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister, a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface. Duration of lease. Rents payable. Area of lease.

~~24.~~ **27.** In the event of more than one application being made for the same land, or any part thereof, the application, except as hereinbefore provided, which shall have been first received in manner prescribed shall have priority, and in the event of two or more applications for the same land being received at the same time it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases or of any portion thereof shall be so registered within one month after the date of such transfer. Applications how dealt with.

~~25.~~ **28.** It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right **or a mineral license** to establish or maintain a title to a lease for ~~gold~~-mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased. Miners' rights necessary. No lease to be granted until after publication of intention.

29. The Warden may, upon the application of any corporation having the care and management of any public highway, street, or road, or upon the application of any person authorised by such corporation by writing under the hand of the Warden, authorise any mining surveyor Encroaching on highways, streets, &c.

surveyor or surveyors to enter upon and inspect any land or mines comprised in any mining lease under this Act, and every part thereof, for the purpose of ascertaining whether the persons working such mines are encroaching on any public highway, street, or road, and whether the mining operations carried on can be continued without causing injury or damage to such public highway, street, or road, or to any house or building abutting thereon or adjoining thereto.

~~26.~~ **30.** The Warden may, upon the application of the owner or occupier of any land adjoining any land ~~whereof a mining lease has been granted under the provisions of this Act,~~ **whereon mining is being carried on for gold or minerals other than gold,** or upon the application of any person authorised by such owner or occupier ~~by writing under the hand of the Warden,~~ authorise, **in writing,** any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person ~~under the provisions of this Act.~~ Encroachment on private land.

~~27.~~ **31.** The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid. Powers of surveyor authorised to enter and inspect.

~~28.~~ **32.** Every such mining surveyor, shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds. Mining surveyor to make a declaration.

~~29.~~ **33.** The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right **or mineral license** giving such holder power to take possession of such land for ~~gold~~ mining purposes as if it were Crown land, and with respect to the area which may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights **or mineral licenses:** Provided that every such agreement shall within ~~seven~~ **fourteen** days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor. Power to owner of private land to enter into agreement with holder of miner's right **or mineral license** to occupy for mining purposes.

34. ~~30.~~ Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided **such** Adjoining lands may be worked as one area.

such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture, and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

~~31.~~ **35.** The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same, and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governer re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Possession how recovered.

Former lessee may remove machinery.

~~32.~~ **36.** The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall

Jurisdiction of Wardens.

shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections ~~fifteen and seventeen~~ **seventeen and twenty** hereof with respect to compensation, be read and construed as forming part of this Act. Appeals.

~~33.~~ **37.** Subject to compensation as provided for in section ~~fourteen~~ **sixteen** hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make. Leases may be granted through which to carry mining-races.

~~34.~~ **38.** In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary. Leases may be granted for machine site, smelting works, &c.

~~35.~~ **39.** Whenever land is required for the purposes of a mining village and no Crown land is available, it shall be lawful for the Governor by notification in the ~~Government~~ *Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such **tenant or** occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land ~~Appeal~~ Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889"— Lands may be resumed for village purposes.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands. Lands may be surrendered and other lands acquired by way of exchange.

PART

PART III.

~~36.~~ **40.** The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act ~~or~~ **nor** held under agreement for mining purposes, as provided in section ~~twenty-nine~~ **thirty-three** hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof **containing such deposits** to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the local Land Board subject to appeal to the Land ~~Appeal~~ Court under and subject to the provisions of section six of the Crown Lands Act of 1889.

Where alluvial gold deposits occur.

Land may be resumed.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land ~~Appeal~~ Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Former owner to have preferent right to repurchase or release.

~~37.~~ **41.** Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land, of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Deposit to cover surface damage.

~~38.~~ **42.** Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication

Prospector to have preferent right to claim.

of

of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes, and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of ~~section thirteen~~ **Part II** of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

~~39.~~ **43.** It shall be lawful for the Governor to make regulations **in accordance with this Act** which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

Governor may make regulations.

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*Amendments to be proposed in Committee of the Whole by* Mr. John Smith.)

Page 5, clause 11, lines 9, 10, and 11. *Omit* "during the time there "is a growing crop thereon other than cultivated grasses or "lucerne"

Page 5, clause 11, line 13. *Omit* "to such crop"

Page 7, clause 17. At end of clause *add* "and the lease shall be "liable to forfeiture, and may be forfeited on the authority "of the Governor"

Page 10, clause 31, lines 34 to 44. *Omit* all the words after "expired" in line 34 down to "time" inclusive in line 44 *insert* "the "land"

Page 10, clause 31, line 44. *Omit* "or occupier"

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*Amendments to be proposed in Committee of the Whole by* Mr. John Smith.)

Page 5, clause 11, lines 9, 10, and 11. *Omit* "during the time there "is a growing crop thereon other than cultivated grasses or "lucerne"

Page 5, clause 11, line 13. *Omit* "to such crop"

Page 7, clause 17. At end of clause *add* "and the lease shall be "liable to forfeiture, and may be forfeited on the authority "of the Governor"

Page 10, clause 31, lines 34 to 44. *Omit* all the words after "expired" in line 34 down to "time" inclusive in line 44 *insert* "the "land"

Page 10, clause 31, line 44. *Omit* "or occupier"

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*New clause to be proposed in Committee of the Whole by* MR. WEBB.)

Page 5. *After* clause 12 *insert* the following new clause :—

13. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or his tenant or tenants or other the occupier or occupiers of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this clause shall lie, either at law or in equity, against any such owner or his tenant or tenants or other the occupier or occupiers of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced with a substantial six-wire fence, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*New clause to be proposed in Committee of the Whole by* MR. WEBB.)

Page 5. *After* clause 12 *insert* the following new clause :—

13. Nothing in this Act contained shall give the lessee the right to impound any sheep, cattle, horses, or other animals belonging to, or being the property of, or being in the custody or under the control of the owner or his tenant or tenants or other the occupier or occupiers of the said land, or to disturb or molest any such sheep, cattle, horses, or other animals in any way whatever, or to prevent any such sheep, cattle, horses, or other animals from depasturing on or over the said land so demised under this Act. And no action or suit for trespass or otherwise in respect of any of the matters or things mentioned or referred to in this clause shall lie, either at law or in equity, against any such owner or his tenant or tenants or other the occupier or occupiers of the said land so demised at the suit of the lessee or any person or persons claiming under such lessee, unless the said land so demised under the provisions of this Act to the said lessee shall, at the time when any alleged cause of action or suit arose, have been securely fenced with a substantial six-wire fence, and the same shall have been, at the time when the alleged cause of action or suit arose, in good order and repair, and the cost of erecting and keeping such fence in good order and repair shall have been borne or paid by the lessee.

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*Amendments to be proposed in Committee of the Whole.*)

By Mr. Pigott:—

Page 2, clause 2, line 19. *After* "owner" second occurring *insert* "mortgagee"

Page 3, clause 4, line 14. *Omit* "alienated"; *after* "lands" *insert* "now or hereafter to be alienated and"

Page 3. *After* clause 6 *insert* the following new clause:—

Register and registration.

7. A register shall be kept for the purposes of this Act in accordance with regulations to be made by the Governor in Council, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

Page 4, clause 8, line 1. *Omit* "twenty-eight" *insert* "fourteen"

Page 4, clause 10, line 45. *Omit* "marked" *insert* "surveyed"

Page 4, clause 10, line 47. *After* "cost of" *insert* "surveying and"

Page 4, clause 10, line 51. *Omit* "dogs" *insert* "any dog"

Page 4, clause 10, line 57. *Omit* "one hundred and fifty" *insert* "two hundred"

Page 5, clause 10, line 4. *Omit* "or"; *after* "orchard" *insert* "or "pleasure ground"

Page 5. *After* clause 10, *insert* the following new clause:—

Not to apply to lands under cultivation or *bonâ-fide* held for mining purposes.

Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation, or to lands which have been *bonâ-fide* acquired and are held for the purposes of mining.

Page 5, clause 14, line 46. *After* "damage" *insert* "by reason of "the land being taken or of being deprived of the possession "of the surplus estate or of any part of such surplus (as the "case may be), and for damage to the whole or any part "thereof (as the case may be) which may arise from the "carrying on of mining operations therein or thereon, and "for the expense of severing such land or any part thereof "from any lands of the owner or occupier, and for all "consequential damages, and the right to compensation in "respect of any such damage, shall not be abridged or in any "way affected by reason that such damage would not be the "subject of an action at law."

Page 6, clause 15, line 23. *Omit* "of Court"

Page 6, clause 16, line 44. *After* "occupier" *omit* remainder of the clause.

Page 6. *After* clause 16 *insert* the following new clauses :—

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

17. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land or any estate, or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid, may so settle with the applicant (that is to say) ;—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust, for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons.

If agreement not made between applicant and owner or occupier or whole of land not purchased, compensation to be paid to Minister for owner and occupier.

18. Unless an agreement have been made between any person applying for a mining lease under this Act and the owner or occupier of any land to pay a percentage of gold taken from the mines under such land, or otherwise in lieu of compensation, or unless such person have taken the whole of the land and paid the purchase money thereof in respect of which such mining lease is applied for, before any mining lease is granted to any such person such person shall pay to the Minister the amount of compensation and costs (if any) ascertained by agreement or determined as payable in respect of any land of which such person desires a mining lease, and the Minister shall pay to the owner and occupier respectively the amount to which each may be entitled.

Page 7, clause 18, line 28. *After* "adjoining" *insert* "or in the "vicinity of"

Page 7, clause 18, line 29. *After* "injured" *insert* "or depreciated "in value"

Page 7, clause 18, line 30. *After* "owner" *insert* "and occupier "respectively"

Page 7, clause 18, line 32. *After* "owner" *insert* "and occupier"

Page 7, clause 20, lines 57 and 58. *Omit* "on the twenty-sixth day "of April, one thousand eight hundred and ninety-four" *insert* "at the time of the passing of this Act"

Page 8, clause 22, lines 27 to 33. *Omit* "at any time apply for a "lease of such land for mining purposes; but except as "hereinbefore provided, he shall have no preferential right "to such lease as against any other application of prior or "even date. In the event of there being no conflicting "application, or of such conflicting application having been "refused, the Minister may dispense with the preliminary "proceedings, applicable in other cases" *insert* "if a mining "lease of such land have not previously been applied for, "make application for, and shall have priority in respect of "such application for a mining lease of such land"

Page 8, clause 22, lines 34 to 36. *Omit* "in other respects such "lease shall be granted, subject to all the provisions of this "Act and the regulations thereunder as if the lessee were "not the owner of such land"

Page 9, clause 26, line 27. *After* "authorise" *insert* "such owner "or occupier or any person nominated as his agent by such "owner or occupier or"

Page 9, clause 26, line 28. *Before* "to" *insert* "or some experienced "miner or miners"

Page 9, clause 27, line 32. *Omit* "surveyor or surveyors" *insert* "person or persons"

Page 9, clause 27, line 40. *Omit* "surveyor or surveyors" *insert* "person or persons"

Page 9, clause 28, line 44. *After* "such" *insert* "owner, occupier, "agent, and"

Page 9, clause 28, line 46. *After* "said" *insert* "owner, occupier, "agent"

Page 9, clause 28, line 46. *After* "surveyor" *insert* "or miner"

Page 9, clause 28, line 53. *Omit* "surveyor" *insert* "person"

Page 9, clause 29, lines 56 and 57. *Omit* "not applied for or occu- "pied for mining purposes under the provisions of this Act"

Pages 9 and 10, clause 29, line 60. *After* "land" *omit* all the words "down to and including the word "worked" in line 4 of "page 10"

Page 10. *After* clause 30 *insert* the following new clauses :—

In mining operations not commenced or ceased for one year land to revert to owner.

31. If after any private land has been taken by an applicant for a mining lease under the authority of this Act and mining operations have not been commenced on the land comprised in such mining lease within a period of one year from the date of the taking of such private land, or if mining operations have been commenced on such private land but have wholly ceased for a period of one year then the same shall revert to and shall be reconveyed to the person who was the owner thereof at the time the same was taken.

On forfeiture of lease for breach of covenants tributer entitled to lease and when mining shall have wholly ceased the owner may re-enter.

32. If any mining lease of any private land be declared void, or forfeited for breach of any of the covenants of the same, any person mining on such land as a tributer or sub-tributer shall, unless he have been the cause either wholly or partly of such breach, be entitled to have a mining lease issued to him for the remainder of the term of the mining lease so declared void or forfeited. If after mining operations have been commenced in or upon any private land held under a mining lease granted under this Act, the same have wholly ceased without the consent of the Governor-in-Council, it shall be lawful for the Governor-in-Council on the application of the owner of the land to authorise him to re-enter and take possession of such land whereon mining operations have so wholly ceased, notwithstanding that such lease may not have expired.

Page 11, clause 33, line 19. *Add* "s" to "section"

Page 11, clause 33, line 19. *After* "fourteen" *insert* "and eighteen"

Page 11. Clause 33, line 21. *After* "land" *insert* "excepting the "lands referred to in the first proviso to section 10 of this "Act"

Page 11, clause 34, line 30. *After* "lands" *insert* "excepting the "lands referred to in the first proviso to section 10 of this "Act."

Page 11, clause 34, line 35. *Omit* "surface" *insert* "by reason of "the land being taken or"

Page 11, clause 35, line 48. *After* "a" *insert* "mortgagee"

Page 11, clause 35, line 49. *After* "such" *insert* "mortgagee, tenant, "or"

Page 12, clause 36, line 29. *After* "a" *insert* "mortgagee or a"

Page 12, clause 36, line 30. *After* "such" *insert* "mortgagee, tenant, "or"

By

BY MR. KING :—

Page 4, clause 9, line 20. *After* "in" *insert* "sections twenty and "and twenty-nine and"

Page 12, clause 36, line 12. *Omit* "or " *insert* "nor"

BY MR. KATER :—

Page 3, clause 7. At end of clause *add* "Provided that the Warden "shall refuse to grant an authority if he has reason to doubt "that such private land as aforesaid contains either gold, "silver, lead, tin, or antimony"

Page 6, clause 17, line 54. *After* "erected" *insert* "and kept in good "repair"

Page 12, clause 36, line 14. *After* "Act" *insert* "and provided that "the Warden has reason to believe that such private land as "aforesaid contains either gold, silver, lead, tin, or antimony"

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*Amendments to be proposed in Committee of the Whole.*)

BY MR. PIGOTT :—

Page 2, clause 2, line 19. *After* "owner" second occurring *insert* "mortgagee"

Page 3, clause 4, line 14. *Omit* "alienated"; *after* "lands" *insert* "now or hereafter to be alienated and"

Page 3. *After* clause 6 *insert* the following new clause :—

Register and registration.

7. A register shall be kept for the purposes of this Act in accordance with regulations to be made by the Governor in Council, and registration of any lease purporting to give the right to mine in or on private land, or of any agreement for mining in or on private land, shall consist in recording in such register particulars of such lease or agreement.

Page 4, clause 8, line 1. *Omit* "twenty-eight" *insert* "fourteen"

Page 4, clause 10, line 45. *Omit* "marked" *insert* "surveyed"

Page 4, clause 10, line 47. *After* "cost of" *insert* "surveying and"

Page 4, clause 10, line 51. *Omit* "dogs" *insert* "any dog"

Page 4, clause 10, line 57. *Omit* "one hundred and fifty" *insert* "two hundred"

Page 5, clause 10, line 4. *Omit* "or"; *after* "orchard" *insert* "or "pleasure ground"

Page 5. *After* clause 10, *insert* the following new clause :—

Not to apply to lands under cultivation or *bonâ-fide* held for mining purposes.

Nothing in this Act contained shall, unless with the consent of the owner, apply or be held to apply to any lands which are enclosed and under cultivation, or to lands which have been *bonâ-fide* acquired and are held for the purposes of mining.

Page 5, clause 14, line 46. *After* "damage" *insert* "by reason of "the land being taken or of being deprived of the possession "of the surplus estate or of any part of such surplus (as the "case may be), and for damage to the whole or any part "thereof (as the case may be) which may arise from the "carrying on of mining operations therein or thereon, and "for the expense of severing such land or any part thereof "from any lands of the owner or occupier, and for all "consequential damages, and the right to compensation in "respect of any such damage, shall not be abridged or in any "way affected by reason that such damage would not be the "subject of an action at law."

Page 6, clause 15, line 23. *Omit* "of Court"

Page 6, clause 16, line 44. *After* "occupier" *omit* remainder of the clause.

Page 6. *After* clause 16 *insert* the following new clauses :—

Parties under disability or having limited interest enabled to sell or convey and exercise other powers.

17. All parties under disability to sell and convey who are seized, or possessed of, or entitled to any private land or any estate, or interest therein, may settle by agreement, subject to the approval of the Warden, with any person desiring to mine therein or thereon, the amount of compensation to be paid in respect of any such land, estate, or interest, and may enter into all necessary agreements for that purpose, and particularly any of the following parties so seized, possessed, or entitled as aforesaid, may so settle with the applicant (that is to say) ;—all corporations, tenants in tail or for life, guardians, committees of lunatics and idiots, trustees, or feoffees in trust, for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such land in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest, and every valuation so settled as aforesaid by all such parties, other than lessees for life, or lives and years, or for years, or for any less interest, shall be binding not only on themselves and their respective heirs, executors, administrators, and successors, but also on every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such guardians on their wards and as to such committees on the lunatics and idiots of whom they are the committees respectively, and as to such trustees, executors, or administrators on their cestuique trusts, whether infants, issue unborn, lunatics, *femes covert*, or other persons.

If agreement not made between applicant and owner or occupier or whole of land not purchased, compensation to be paid to Minister for owner and occupier.

18. Unless an agreement have been made between any person applying for a mining lease under this Act and the owner or occupier of any land to pay a percentage of gold taken from the mines under such land, or otherwise in lieu of compensation, or unless such person have taken the whole of the land and paid the purchase money thereof in respect of which such mining lease is applied for, before any mining lease is granted to any such person such person shall pay to the Minister the amount of compensation and costs (if any) ascertained by agreement or determined as payable in respect of any land of which such person desires a mining lease, and the Minister shall pay to the owner and occupier respectively the amount to which each may be entitled.

Page 7, clause 18, line 28. *After* "adjoining" *insert* "or in the "vicinity of"

Page 7, clause 18, line 29. *After* "injured" *insert* "or depreciated "in value"

Page 7, clause 18, line 30. *After* "owner" *insert* "and occupier "respectively"

Page 7, clause 18, line 32. *After* "owner" *insert* "and occupier"

Page 7, clause 20, lines 57 and 58. *Omit* "on the twenty-sixth day "of April, one thousand eight hundred and ninety-four" *insert* "at the time of the passing of this Act"

Page 8, clause 22, lines 27 to 33. *Omit* "at any time apply for a "lease of such land for mining purposes; but except as "hereinbefore provided, he shall have no preferential right "to such lease as against any other application of prior or "even date. In the event of there being no conflicting "application, or of such conflicting application having been "refused, the Minister may dispense with the preliminary "proceedings, applicable in other cases" *insert* "if a mining "lease of such land have not previously been applied for, "make application for, and shall have priority in respect of "such application for a mining lease of such land"

Page 8, clause 22, lines 34 to 36. *Omit* "in other respects such "lease shall be granted, subject to all the provisions of this "Act and the regulations thereunder as if the lessee were "not the owner of such land"

Page 9, clause 26, line 27. *After* "authorise" *insert* "such owner "or occupier or any person nominated as his agent by such "owner or occupier or"

Page 9, clause 26, line 28. *Before* "to" *insert* "or some experienced "miner or miners"

Page 9, clause 27, line 32. *Omit* "surveyor or surveyors" *insert* "person or persons"

Page 9, clause 27, line 40. *Omit* "surveyor or surveyors" *insert* "person or persons"

Page 9, clause 28, line 44. *After* "such" *insert* "owner, occupier, "agent, and"

Page 9, clause 28, line 46. *After* "said" *insert* "owner, occupier, "agent"

Page 9, clause 28, line 46. *After* "surveyor" *insert* "or miner"

Page 9, clause 28, line 53. *Omit* "surveyor" *insert* "person"

Page 9, clause 29, lines 56 and 57. *Omit* "not applied for or occu- "pied for mining purposes under the provisions of this Act"

Pages 9 and 10, clause 29, line 60. *After* "land" *omit* all the words "down to and including the word "worked" in line 4 of "page 10"

Page 10. *After* clause 30 *insert* the following new clauses :—

In mining operations not commenced or ceased for one year land to revert to owner.

31. If after any private land has been taken by an applicant for a mining lease under the authority of this Act and mining operations have not been commenced on the land comprised in such mining lease within a period of one year from the date of the taking of such private land, or if mining operations have been commenced on such private land but have wholly ceased for a period of one year then the same shall revert to and shall be reconveyed to the person who was the owner thereof at the time the same was taken.

On forfeiture of lease for breach of covenants tributer entitled to lease and when mining shall have wholly ceased the owner may re-enter.

32. If any mining lease of any private land be declared void, or forfeited for breach of any of the covenants of the same, any person mining on such land as a tributer or sub-tributer shall, unless he have been the cause either wholly or partly of such breach, be entitled to have a mining lease issued to him for the remainder of the term of the mining lease so declared void or forfeited. If after mining operations have been commenced in or upon any private land held under a mining lease granted under this Act, the same have wholly ceased without the consent of the Governor-in-Council, it shall be lawful for the Governor-in-Council on the application of the owner of the land to authorise him to re-enter and take possession of such land whereon mining operations have so wholly ceased, notwithstanding that such lease may not have expired.

Page 11, clause 33, line 19. *Add* "s" to "section"

Page 11, clause 33, line 19. *After* "fourteen" *insert* "and eighteen"

Page 11. Clause 33, line 21. *After* "land" *insert* "excepting the "lands referred to in the first proviso to section 10 of this "Act"

Page 11, clause 34, line 30. *After* "lands" *insert* "excepting the "lands referred to in the first proviso to section 10 of this "Act."

Page 11, clause 34, line 35. *Omit* "surface" *insert* "by reason of "the land being taken or"

Page 11, clause 35, line 48. *After* "a" *insert* "mortgagee"

Page 11, clause 35, line 49. *After* "such" *insert* "mortgagee, tenant, "or"

Page 12, clause 36, line 29. *After* "a" *insert* "mortgagee or a"

Page 12, clause 36, line 30. *After* "such" *insert* "mortgagee, tenant, "or"

By

BY MR. KING :—

Page 4, clause 9, line 20. *After* "in" *insert* "sections twenty and "and twenty-nine and"

Page 12, clause 36, line 12. *Omit* "or " *insert* "nor"

BY MR. KATER :—

Page 3, clause 7. At end of clause *add* "Provided that the Warden "shall refuse to grant an authority if he has reason to doubt "that such private land as aforesaid contains either gold, "silver, lead, tin, or antimony"

Page 6, clause 17, line 54. *After* "erected" *insert* "and kept in good "repair"

Page 12, clause 36, line 14. *After* "Act" *insert* "and provided that "the Warden has reason to believe that such private land as "aforesaid contains either gold, silver, lead, tin, or antimony"

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*Amendments to be proposed in Committee of the Whole by* Dr. MacLaurin.)

Page 3, clause 3, line 8. *After* "contains" *omit* "no reservation"
Page 3, clause 3, line 8. *After* "or if" *omit* "such grant be"
Page 3, clause 3, line 9. *After* "minerals" *insert* "or of minerals "other than gold"
Page 3, clause 3, line 10. *After* "land" *insert* "under the provisions "of this Act"
Page 3, clause 7, line 33. *After* "miner's right" *insert* "or mineral "license"
Page 7, clause 20, line 48. *Omit* all words after "where" to end of clause and *insert* the following "at the time of the passing "of this Act *bona fide* mining operations are being carried "on under agreement upon any private land which is subject "to be mined upon under the provisions of this Act, a joint "application by the parties to such agreement or by their "respective representatives for a special lease, if made in the "prescribed manner within two months after this Act comes "into force and if accompanied by an attested copy of such "agreement shall have priority over all other applications "with respect to the land defined therein. And such private "agreement then in force shall in no way be disturbed or inter- "fered with by the operations of this Act. And in the event of "mining operations being carried on by the owner or owners of "any such land, on their own account, at the time of the passing "of this Act, and whether such land is held in one area or "in two or more conjoined areas, or in detached portions, if "such land is owned and worked as one mine any applica- "tion for a special lease of such lands by the owner or owners "shall, if made within two months after this Act comes into "force, have a like priority, and shall not be other- "wise affected by this Act; or in any case where active "mining operations have not been commenced, not- "withstanding that the owner has, prior to the passing "of this Act, obtained from the Governor a permit "to mine for, win, and remove gold or any mineral "other than gold from such private land, the owner may "within two months after this Act coming into force apply "in the prescribed manner to convert such permit into a "special lease under this Act; and in all cases referred to in "this section such special leases shall not be subject to the "provisions of this Act with respect to area or the payment "of rent: Provided that the mines on such lands shall be "worked according to the practice of efficient mining, and "in default thereof any such special lease after report by the "Warden shall be liable to forfeiture, and may be forfeited "by the Governor, and in the event of such forfeiture and "after notification therof in the *Gazette* such lands shall be "open to the ordinary provisions of this Act with respect to "mining on private lands."

Existing agreements protected by special lease.

Permit may be converted into special lease.

Page 9, clause 25, line 17. *After* "miner's right" *insert* "or a "mineral license"
Page 9, clause 25, line 18. *After* "lease for" *omit* "gold"

1894.

Legislative Council.

MINING ON PRIVATE LANDS BILL (No. 2).

(*Amendments to be proposed in Committee of the Whole by* Dr. MacLaurin.)

Page 3, clause 3, line 8. *After* "contains" *omit* "no reservation"

Page 3, clause 3, line 8. *After* "or if" *omit* "such grant be"

Page 3, clause 3, line 9. *After* "minerals" *insert* "or of minerals other than gold"

Page 3, clause 3, line 10. *After* "land" *insert* "under the provisions of this Act"

Page 3, clause 7, line 33. *After* "miner's right" *insert* "or mineral license"

Page 7, clause 20, line 48. *Omit* all words after "where" to end of clause and *insert* the following "at the time of the passing of this Act *bona fide* mining operations are being carried on under agreement upon any private land which is subject to be mined upon under the provisions of this Act, a joint application by the parties to such agreement or by their respective representatives for a special lease, if made in the prescribed manner within two months after this Act comes into force and if accompanied by an attested copy of such agreement shall have priority over all other applications with respect to the land defined therein. And such private agreement then in force shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of any such land, on their own account, at the time of the passing of this Act, and whether such land is held in one area or in two or more conjoined areas, or in detached portions, if such land is owned and worked as one mine any application for a special lease of such lands by the owner or owners shall, if made within two months after this Act comes into force, have a like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, notwithstanding that the owner has, prior to the passing of this Act, obtained from the Governor a permit to mine for, win, and remove gold or any mineral other than gold from such private land, the owner may within two months after this Act coming into force apply in the prescribed manner to convert such permit into a special lease under this Act; and in all cases referred to in this section such special leases shall not be subject to the provisions of this Act with respect to area or the payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, and in default thereof any such special lease after report by the Warden shall be liable to forfeiture, and may be forfeited by the Governor, and in the event of such forfeiture and after notification therof in the *Gazette* such lands shall be open to the ordinary provisions of this Act with respect to mining on private lands."

Existing agreements protected by special lease.

Permit may be converted into special lease.

Page 9, clause 25, line 17. *After* "miner's right" *insert* "or a mineral license"

Page 9, clause 25, line 18. *After* "lease for" *omit* "gold"

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 27 April, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

* *

No. .

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects.

WHEREAS from time to time since the establishment of the Colony of New South Wales, Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England, whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived Preamble.

under the operations of this Act or on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining on Private Lands Act." Short title.

PART I.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say): Interpretation of terms.

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall subject to the provisions of this Act be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains no reservation, or if such grant be not yet issued would when issued contain no reservation of minerals, the mining on such land shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to alienated lands situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

7. It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right, but without dogs, be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall have been first obtained.

Authorised person considered first applicant.

8. Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon

upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

9. Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in Part III of this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

10. The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands vested in trust and referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land, or to depasture horses, cattle, or sheep thereon, or to keep dogs, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within one hundred and fifty yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

Not to approach within 100 yards of garden, &c., or 150 yards of principal residence without owner's consent.

restricted

restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden or orchard: Provided further that it shall be for the Minister to determine whether any improvement referred to in this section is of a substantial or valuable character, and to define the area within which mining operations may be excluded.

Lands under growing crop.

11. The Warden shall not grant an authority to any person to enter and examine the surface of any cultivated land during the time there is a growing crop thereon, other than cultivated grasses or lucerne, unless the applicant for such authority shall deposit with the Warden such sum of money as the Warden shall think sufficient to cover any damage which may accrue to such crop by the examination of the surface of such land.

Notice to owner and occupier.

12. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Service of notices.

13. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Appraisers to be appointed who shall assess surface damages.

14. The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes.

Either party may appeal to Minister.

15. On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner,

owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs of Court as shall appear to him just: Provided always that the Warden may, upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, a lease for mining under the provisions of this Act may in due course be issued by the Governor.

Warden to determine amount of compensation.

16. In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier, shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Applicant failing to pay award.

Owner, occupier, or mortgagee failing to accept award.

17. During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner

Lessee must fence if requested.

or

or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining therein into as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor in Council. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law.

Appraiser may award further damages.

18. If any land, or buildings thereon, adjoining any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner, to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

19. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

20. In any case where *bonâ fide* mining operations were being carried on under agreement upon any private land at the time of the passing of this Act a joint application by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other applications with respect to the land defined therein. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of such land on the twenty-sixth day of April, one thousand eight hundred and ninety-four, whether in detached portions or otherwise, any such application made by him or them shall, if made within two months as aforesaid, have a like

Special leases may be granted.

Existing agreements protected.

like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold, silver, lead, tin, or antimony, or all of such minerals from such private land, the owner may within two months after the passing hereof apply in the prescribed manner to convert such permit into a lease under this Act; and in all cases referred to in this section, such leases shall not be subject to the provisions of this Act with respect to payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, otherwise such rights of exemption shall be liable to forfeiture; and such lands shall be open to the provisions of this Act with respect to mining thereon.

Permits may be converted into leases.

21. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall with respect to rent, and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

22. The owner of any private land may at any time apply for a lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date. In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

23. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shilling per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister, a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

Area of lease.

24. In the event of more than one application being made for the same land, or any part thereof, the application, except as herein-before provided, which shall have been first received in manner prescribed

Applications how dealt with.

prescribed shall have priority, and in the event of two or more applications for the same land being received at the same time it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases or of any portion thereof shall be so registered within one month after the date of such transfer.

Miners' rights necessary.

25. It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right to establish or maintain a title to a lease for gold-mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased.

No lease to be granted until after publication of intention.

Encroachment on private land.

26. The Warden may, upon the application of the owner or occupier of any land adjoining any land whereof a mining lease has been granted under the provisions of this Act, or upon the application of any person authorised by such owner or occupier by writing under the hand of the Warden, authorise any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person under the provisions of this Act.

Powers of surveyor authorised to enter and inspect.

27. The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

28. Every such mining surveyor, shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right to occupy for mining purposes.

29. The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right giving such holder power to take possession of such land for gold mining purposes as if it were Crown land, and with respect to the area which

may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights: Provided that every such agreement shall within seven days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

30. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture, and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

Possession how recovered.

31. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same, and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governer re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless

Former lessee may remove machinery.

unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Jurisdiction of Wardens.

32. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections fifteen and seventeen hereof with respect to compensation, be read and construed as forming part of this Act.

Appeals.

Leases may be granted through which to carry mining-races.

33. Subject to compensation as provided for in section fourteen hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make.

Leases may be granted for machine site, smelting works, &c.

34. In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary.

Lands may be resumed for village purposes.

35. Whenever land is required for the purposes of a mining village and no Crown land is available, it shall be lawful for the Governor by notification in the *Government Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land Appeal Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889"—

Lands may be surrendered and other lands acquired by way of exchange.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire

inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands.

PART III.

Where alluvial gold deposits occur.

36. The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act or held under agreement for mining purposes, as provided in section twenty-nine hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the local Land Board subject to appeal to the Land Appeal Court under and subject to the provisions of section six of the Crown Lands Act of 1889.

Land may be resumed.

Former owner to have preferent right to repurchase or release.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land Appeal Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Deposit to cover surface damage.

37. Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land, of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited

deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Prospector to have preferent right to claim.

38. Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes, and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of section thirteen of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

Governor may make regulations.

39. It shall be lawful for the Governor to make regulations which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

Sydney: Charles Potter, Government Printer.—1894.

[1s.]

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Legislative Assembly Chamber,
Sydney, 27 April, 1894, A.M.

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.

ANNO QUINQUAGESIMO SEPTIMO

VICTORIÆ REGINÆ.

* *

No. .

An Act to legalise Mining on Private Lands; to provide for charging Rents in connection therewith; and for the resumption of land or the surrender by way of exchange and the granting of other lands in lieu thereof for certain purposes; to make better provision for and in connection with mining on Crown Lands in certain particulars; to effect such amendments in the Statutes as may be necessary to give this Act full force and effect; and for purposes consequent upon, connected with, or incidental to the aforementioned objects.

Preamble.

WHEREAS from time to time since the establishment of the Colony of New South Wales, Crown lands within the said Colony have been alienated, subject to various reservations in the Crown grants with respect to gold and minerals other than gold, and in the public interest it is now deemed necessary to give legal effect to such reservations: And whereas certain other lands have from time to time been alienated without express reservation of any minerals which might afterwards be found therein, but having regard to the well established laws of England, whereby it has been held from time immemorial that the royal metal gold does not pass from the Crown unless by express conveyance in the grant of such lands: And whereas, for the well being of the State, it is now deemed necessary that all such lands should be made available for the operations of mining thereon or thereunder for such gold as may be found therein: And whereas it is deemed expedient to define the rents to be derived

under the operations of this Act or on behalf of the landowner, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Mining on Private Lands Act." Short title.

PART I.

2. In this Act the following terms shall, if not inconsistent with the subject matter or context, have the respective meanings hereby assigned to them (that is to say):— Interpretation of terms.

"Governor"—The Governor with the advice of the Executive Council.

"Minister"—The Minister for Mines for the time being.

"Gold"—As well any gold as any earth or rock containing gold, or having gold intermixed therewith.

"Minerals other than gold"—Any of the following metals or any ore containing the same, namely, silver, lead, tin, or antimony.

"Owner"—The owner or conditional purchaser of any land dealt with under the provisions of this Act, whether such title is completed or not, or any trustee for such land, if vested in trust.

"Occupier"—The person in occupation of such land, whether as conditional lessee, the valid applicant for a conditional lease, the lessee of any land for tramway, irrigation, water supply or power purposes, whether under any special Act or otherwise, or a tenant.

"Applicant"—The person applying for a mining lease under this Act.

"Lessee"—The holder of a lease under this Act, or his executors, administrators, or assigns.

"Private land"—Any land included within the provisions of this Act, whether alienated or in process of alienation, or vested in trust, or demised by lease under any of the forms hereinafter referred to, or land held under any valid application for such lease.

"Mining," or "To mine"—To sink shafts, construct drives, adits, tunnels, or surface excavations, or to remove earth, rock, metals, or ores, or to wash, crush, smelt, or conduct any operation in connection with mining.

"Mining-race"—Any artificial channel, flume, aqueduct, tunnel, culvert, or pipe for the conveyance of water or detritus; also the natural bed of any creek or gully in which water or detritus is conducted in connection with mining.

"Warden"—Any Warden appointed under the Act thirty-seventh Victoria number thirteen, or any Act relating to mining, who may be in charge of the mining district or division denoted by the context where the expression is used, or any Warden acting for him or in his stead, or (if none such is denoted) any Warden.

"Prescribed"—Prescribed by this Act or any regulation made thereunder.

When gold or other minerals may be mined for.

3. From and after the passing of this Act all land alienated or in process of alienation from the Crown shall subject to the provisions of this Act be open to mine thereon or thereunder for gold, and where the Crown grant contains, or if not yet issued would when issued contain, a reservation to the Crown of all minerals which the said land contains, such land shall be open to mine thereon or thereunder for silver, lead, tin, and antimony, in addition to gold: Provided that where the said grant contains no reservation, or if such grant be not yet issued would when issued contain no reservation of minerals, the mining on such land shall be confined to mining for gold only, or for any ore the chief and most profitable metallic product of which is gold.

Town and village lands not open.

4. Nothing in section three of this Act shall be held to apply to alienated lands situated within the boundaries of any town or village unless the Governor shall have first proclaimed in the *Gazette* that any such lands particularised in such proclamation shall be subject to the provisions of this Act.

Lands under lease or reserved for public purposes.

5. Lands held from the Crown under tramway, irrigation, or power leases, and lands held under lease for water supply in virtue of any special Act or otherwise, and lands granted or vested in trust by the Crown for the purposes of a race-course, cricket ground, recreation reserve, park, or permanent common, shall, subject to the provisions of this Act, be open for mining thereon and thereunder, but only on a proclamation being made by the Governor in the *Gazette*, notifying that the lands therein described are subject to the provisions of this Act, and from and after the day named in the proclamation.

Depth from surface at which underground leases shall commence.

6. In all cases, whether on private lands or Crown lands, wherever a lease is granted to mine under such land only, and without the right of mining on the surface thereof, the Governor may stipulate at what vertical depth from the surface such lease shall commence.

PART II.

Proceedings in connection with Mining.

Authority to examine surface may be granted by the Warden.

7. It shall be lawful for the Warden of any mining district to grant to any person holding a miner's right in the prescribed manner an authority in duplicate to enter into and upon any specified portion of private land which is subject to the operations of mining under the provisions of this Act, which authority shall be effective during the next succeeding fourteen days; and on serving the duplicate of such authority on the owner or occupier thereof, such person shall either personally or accompanied by one other person who is the holder of a miner's right, but without dogs, be entitled to enter upon such land, and may detach one or more samples of any vein or lode, outcropping at the surface thereof, not exceeding in the aggregate twenty-eight pounds in weight, and may remove such samples for the purpose of assaying or testing the value thereof, but such authority shall not entitle the holder to commence to mine thereon or thereunder until the amount of compensation, to be ascertained as hereinafter provided, shall have been paid, and a lease from the Governor to such person shall have been first obtained.

Authorised person considered first applicant.

8. Any person having received authority from the Warden to enter upon such private land as hereinbefore provided shall be deemed to be in possession as against other applicants for authority to enter upon

upon the same land for a period of twenty-eight days from the date of such authority to the full extent of the area allowed in such class of lands to be leased: Provided that such authorised person if requested so to do by other authorised persons desirous of occupying the adjoining land shall within twenty-four hours approximately define the boundaries of such area.

Owner or occupier obstructing applicant.

9. Any such authorised person desiring to obtain a lease for mining purposes of such private land, or any portion thereof, as under the provisions of this Act shall become open to lease, may at all reasonable times and doing no unnecessary damage and without incurring any liability for trespass, enter upon such land, either personally or by an agent, and in the prescribed manner define the boundaries of the portion intended to be applied for. And any owner, occupier, or other person who shall obstruct such authorised person in the performance of any such act, or who shall interfere with, remove, destroy, or deface any boundary mark so made or any necessary notice posted in connection therewith, shall, on conviction thereof, be liable for the first offence to a penalty not exceeding ten pounds, or on conviction of a second or any subsequent offence, to a penalty not exceeding fifty pounds. And except as provided in Part III of this Act any person who shall commence to mine on or under any private land without having first obtained a lease under the provisions of this Act shall be, and be deemed to be, guilty of a misdemeanour: Provided that any surveyor with his assistants may enter upon any private land for the purpose of defining the road to and the boundaries of the portion held under lease, or for any other purpose under this Act, in pursuance of and bearing an order of the Minister or of a Warden.

Governor may grant lease.

10. The Governor, in the name and on behalf of Her Majesty, shall have power under and subject to the provisions of this Act to grant to any person a lease of such private lands, to be effectual either on and below the surface, or on one or more limited portions of the surface and below the whole area, or to be effectual below the surface only, for the purpose of mining thereon or thereunder, either for gold only, or for silver, lead, tin, or antimony, or any of such minerals, regard being had to the reservations (if any) contained in the Crown grants thereof, except in the case of certain lands vested in trust and referred to in sections four and five hereof. And such lease shall take effect only when notification of its approval shall be published in the *Gazette*, and shall confer the right of cutting and constructing on the lands thereby demised races, drains, dams, reservoirs, or tramways, and erecting thereon buildings and machinery in connection with such mining, but not otherwise, and generally for doing all such acts and things as shall be requisite for efficiently mining the said land, with full right of ingress, egress, and regress for the purposes herein provided, by a right-of-way to be marked in the prescribed manner from the land comprised in the lease to the nearest practicable point of a public road, and the cost of marking such right-of-way shall be borne by the lessee; but such lease shall in nowise give the lessee the right to use water artificially conserved by the owner of such land, or to fell trees, strip bark, or cut timber on such land, or to depasture horses, cattle, or sheep thereon, or to keep dogs, unless chained up or kept under proper control, or, except in connection with such mining operations, to remove earth or rock therefrom, without the consent of the owner and occupier: Provided that no such lease shall, except with the consent of the owner, extend to within one hundred yards on the surface of any land which is *bonâ fide* in use as a garden or orchard, or to within one hundred and fifty yards on the surface of any land on which is erected the principal residence of the owner or occupier, or to either the surface or below the surface of any

Regard must be had to reservations in grants.

Lease gives right to occupy for all purposes connected with mining.

Not to approach within 100 yards of garden, &c., or 150 yards of principal residence without owner's consent.

restricted

restricted portion of land whereon is erected or constructed any substantial building, bridge, dam, reservoir, well, or other valuable improvement, nor shall any right-of-way be granted through any garden or orchard: Provided further that it shall be for the Minister to determine whether any improvement referred to in this section is of a substantial or valuable character, and to define the area within which mining operations may be excluded.

Lands under growing crop.

11. The Warden shall not grant an authority to any person to enter and examine the surface of any cultivated land during the time there is a growing crop thereon, other than cultivated grasses or lucerne, unless the applicant for such authority shall deposit with the Warden such sum of money as the Warden shall think sufficient to cover any damage which may accrue to such crop by the examination of the surface of such land.

Notice to owner and occupier.

12. Within one month from the date of the aforementioned authority such authorised person may in the prescribed manner apply to the Minister for a lease of such land, and on receipt of such application, accompanied by the prescribed sum by way of rent and fees, the Minister shall cause a notice to be served on the owner and occupier of such land. And in case the whole or any part of the surface thereof is required, such notice shall so state, and if a part only is required, such notice shall define such part, and shall also request from the owner and occupier respectively such particulars of their estate and interest therein as the Minister shall deem necessary for carrying out the objects and intentions of this Act, and within twenty-one days therefrom such owner or occupier shall give such particulars to the Minister.

Service of notices.

13. All notices required by this Act to be served upon the owner or occupier of any private land shall either be served personally on such persons or left at their usual place of abode (if the same can after diligent inquiry be found), and in case the owner shall be absent from the Colony or he or his agent cannot after diligent inquiry be found, the notices shall be left with the occupier of the land, or if there be no such occupier, shall be affixed upon some conspicuous part of the land, and in the latter case such notice shall be advertised in two issues of a newspaper circulating in the district in which the land is situated. And in such latter case the affixing of such notices in addition to the aforementioned advertisements shall be deemed service of notice on the owner and occupier.

Appraisers to be appointed who shall assess surface damages.

14. The Governor may appoint mining appraisers as may from time to time be found necessary, who may also hold other offices in the Public Service, and shall be paid such salaries or fees as the Governor shall direct, and any such mining appraiser, on being authorised by the Minister so to do, shall assess the amount of compensation to be made to the owner and occupier of such lands respectively for the loss which he or they may sustain by way of damage which may be caused through mining operations either on, in, or under such land to the surface thereof, or to any crop growing thereon, or to any buildings, structures, or other improvements erected or constructed thereupon: Provided that with respect to the land of which a lease of the surface is required (not being less than one acre), such compensation as aforesaid shall in no case exceed the then ascertained market value of such land for other than mining purposes.

Either party may appeal to Minister.

15. On receipt of an application for a lease under this Act, unless such application be accompanied by a document signed by the applicant and the owner and the mortgagee (if any), and by the occupier (if any), or their respective agent or agents, certifying that they have mutually agreed as to the amount of compensation, whether by way of money, shares, or otherwise, to be paid by the applicant to the owner,

owner, mortgagee, and occupier, the Minister shall authorise a mining appraiser to assess the amount of compensation to be paid to the owner, or mortgagee, and occupier respectively, and it shall be the duty of such mining appraiser, without loss of time, to forward his assessment to the Minister, who shall thereupon, by notices of even date, acquaint the applicant and the owner or mortgagee and the occupier (if any) with the amount of such assessment, and shall specify the time within which the same shall be paid. And in the event of the applicant or the owner or mortgagee or occupier being dissatisfied with such assessment, any party may, within twenty-one days of the date of such notices, apply to the Minister to have such assessment reviewed, and the Minister shall thereupon refer such matter to the Warden, who shall fix a time and place for holding an inquiry, not being more than thirty days from the receipt of such reference, and shall give due notice thereof to all the parties interested therein, and at the time and place so appointed shall hear, receive, and examine such evidence as shall be produced by any of the parties, and shall thereupon determine the amount of compensation to be paid to such owner or occupier or mortgagee in respect of his or their respective claim or claims, and may specify the time within which and to whom the same shall be paid; and the decision of the Warden in all such cases shall be final, and he may make an order for the payment of such costs of Court as shall appear to him just: Provided always that the Warden may, upon cause shown, adjourn the hearing to any other time or place, but such adjournment shall not be for a longer period than fourteen days. When the amount of compensation so awarded shall have been paid, a lease for mining under the provisions of this Act may in due course be issued by the Governor.

Warden to determine amount of compensation.

16. In the event of the applicant for a lease failing to pay the amount of compensation within the time specified, his application shall become void, and all moneys accompanying the application for such lease shall thereupon become forfeited to the Crown, and shall be paid into the Consolidated Revenue. And in the event of such owner or occupier refusing or neglecting to supply the particulars of his estate and interest in such land as requested so to do by the Minister, such refusal or neglect shall in no way act as a bar to an award being made by such mining appraiser or a final decision of the Warden being arrived at. On the amount of such compensation being paid into Court, the Warden shall in due course pay to the owner, mortgagee, and occupier (if any), the amounts to which they are respectively entitled. And in case such owner, mortgagee, or occupier, shall for the space of three months refuse or fail to accept or claim the amount of compensation so assessed or determined, such amount shall be passed to the Treasury Suspense Account and be held in trust for such owner, mortgagee, or occupier, but without interest accruing thereon, and if not claimed within six years from the time of the receipt thereof by the Treasury such amount shall be paid into the Consolidated Revenue.

Applicant failing to pay award.

Owner, occupier, or mortgagee failing to accept award.

17. During the progress of mining operations a lessee having a lease empowering him to mine below the surface of any area of land, may, for the purposes of mining or any purpose in connection therewith, apply to the Minister for a lease of a portion or any number of additional portions of the surface of the area of land under which he is empowered to mine: Provided that such lessee shall if required in writing so to do by the owner or occupier without delay cause a secure fence to be erected around the shafts, machinery, or other works in connection with such mining: Provided also that if at any time the surface of any part of such land or any building, erection, or structure thereon belonging to such owner

Lessee must fence if requested.

or

or occupier for which full compensation has not been previously paid shall be damaged by reason of such mining operations, the Minister, on application by the owner or occupier, accompanied by such fees as may be prescribed, shall cause an assessment of such damages to be made by a mining appraiser, who shall have power to assess both the amount of damage (if any) and also the costs of such assessment. And if the cause of such damage be disputed by either party, such mining appraiser may, if necessary, call in the aid of a mining engineer or surveyor, who, as well as such appraiser, shall have power to examine the surface or underground workings of such mine. And the lessee shall, during ordinary working hours, and within a reasonable time, comply with any request of such mining appraiser, engineer, or surveyor to furnish the usual appliances and aid necessary for descending to and ascending from such underground workings, and for examining therein as often as may reasonably be found necessary, and in the event of any lessee refusing or neglecting so to do, such lease shall be liable to forfeiture by the Governor in Council. And within twenty-one days from the date of the notice of such assessment either party may appeal to the Minister; and such appeal shall be dealt with by the Warden whose decision shall be final, as in the case of ascertaining surface damages at the time of application for a lease; and should the lessee fail for the space of one month after the date of the notice informing him of the assessment—if no appeal shall have been made, or of the final decision of the Warden, as the case may be—to pay the amount assessed to whomsoever such notice shall direct, such amount shall be recoverable by the owner or occupier under the ordinary process of law.

Appraiser may award further damages.

18. If any land, or buildings thereon, adjoining any land held under any mining lease granted under this Act, be injured by any operations carried on by the lessee, the owner of such land or buildings shall be entitled to recover from such lessee compensation for all loss and damage thereby sustained by such owner, to be recovered in any Court of competent jurisdiction.

Owner of adjoining land, &c., entitled to compensation for damage.

19. Nothing herein contained shall be construed as rendering it obligatory on the Governor to grant a lease to any person applying for the same, notwithstanding that he may have complied with the provisions of this Act and the regulations hereunder, but in case his application shall be refused he shall be informed of the reasons for such refusal. And a lease may be granted notwithstanding that the person applying for the same may not in every respect have complied with such regulations, and the Minister may alter, amend, and modify any application for a lease, and may reduce or increase the area of land of which a lease is applied for either on or below or both on and below the surface, or may direct a Warden to hold an inquiry in open Court with reference to any matter touching an application for a lease under this Act, and at all such inquiries the evidence shall be taken on oath.

Not obligatory to grant leases.

20. In any case where *bonâ fide* mining operations were being carried on under agreement upon any private land at the time of the passing of this Act a joint application by the parties to such agreement, or by their representatives, for a special lease, if made within two months after this Act comes into force, and if accompanied by an attested copy of such agreement, shall have priority over all other applications with respect to the land defined therein. And such private agreement then existing shall in no way be disturbed or interfered with by the operations of this Act. And in the event of mining operations being carried on by the owner or owners of such land on the twenty-sixth day of April, one thousand eight hundred and ninety-four, whether in detached portions or otherwise, any such application made by him or them shall, if made within two months as aforesaid, have a like

Special leases may be granted.

Existing agreements protected.

like priority, and shall not be otherwise affected by this Act; or in any case where active mining operations have not been commenced, and the owner has obtained from the Governor a permit to mine for, win, and remove gold, silver, lead, tin, or antimony, or all of such minerals from such private land, the owner may within two months after the passing hereof apply in the prescribed manner to convert such permit into a lease under this Act; and in all cases referred to in this section, such leases shall not be subject to the provisions of this Act with respect to payment of rent: Provided that the mines on such lands shall be worked according to the practice of efficient mining, otherwise such rights of exemption shall be liable to forfeiture; and such lands shall be open to the provisions of this Act with respect to mining thereon.

Permits may be converted into leases.

21. Any person who prior to the passing of this Act shall have obtained a permit from the Secretary for Lands or the Secretary for Mines to dig and search for gold, silver, lead, tin, or antimony in any private land may, within two months as aforesaid, apply for and in such event shall have a preferent claim for a lease under this Act, but such lease shall with respect to rent, and other matters be subject to all the provisions of this Act: Provided that two months after the passing of this Act all such permits shall become extinguished and inoperative, and the power of granting such permits is hereby repealed, all other Acts to the contrary notwithstanding. And if the holder of such permit shall fail for a period of two months as aforesaid to apply for the conversion thereof into a lease under this Act, any other person may thereafter apply for a lease of such land, and the Governor may grant the same as if such permit had not been issued.

Permit to dig and search gives preferent claim to lease.

22. The owner of any private land may at any time apply for a lease of such land for mining purposes; but except as hereinbefore provided, he shall have no preferential right to such lease as against any other application of prior or even date. In the event of there being no conflicting application, or of such conflicting application having been refused, the Minister may dispense with the preliminary proceedings, applicable in other cases, and the Governor may grant such lease, free from the charge of any rent. In other respects such lease shall be granted, subject to all the provisions of this Act and the regulations thereunder, as if the lessee were not the owner of such land.

Owner may obtain a lease.

23. The term for which a lease may be granted under this Act shall not exceed twenty years, but may, subject to such conditions as the Governor may approve, be renewed for a further period not exceeding twenty years, and the yearly rental reserved to the owner of the land in respect of such leases shall be twenty shilling per acre, commencing from the date of the notification in the *Gazette* of the approval of the lease by the Governor, and which shall be payable in the prescribed manner half-yearly in advance. The area of a lease shall not exceed twenty acres in the case of ordinary auriferous lands, and shall not exceed forty acres in the case of alluvial auriferous land where the mining operations will be conducted through basaltic rock formations, or where the quantity of water is such as to necessitate the erection of steam machinery, or where, in the opinion of the Minister, a large outlay of money is necessary to make such land available for gold-mining purposes. And no lease of land for mining for silver, lead, tin, or antimony shall be granted of an area greater than eighty acres. Where practicable such leases shall be granted in conformity with the existing divisions of such land, but in all other cases the areas of such leases shall be measured in the prescribed form. The areas and rents herein specified shall apply to leases whether for only below the surface or for both on and below the surface.

Duration of lease.

Rents payable.

Area of lease.

24. In the event of more than one application being made for the same land, or any part thereof, the application, except as herein-before provided, which shall have been first received in manner prescribed

Applications how dealt with.

prescribed shall have priority, and in the event of two or more applications for the same land being received at the same time it shall be determined by lot which application shall take precedence. And except when the lease applied for will cover the whole of a measured portion all such areas shall be surveyed before the issue of a lease, and in the event of any applicant refusing or neglecting to execute such lease for the space of one month after notice shall have been given him of such lease being ready for execution such lease shall be liable to forfeiture, with all moneys paid thereon, and all such leases shall, within one month after execution thereof, be registered with the Mining Registrar in Sydney, who shall forward a copy thereof to the Mining Registrar of the Division in which such land is situated, and thereafter all transfers of such leases or of any portion thereof shall be so registered within one month after the date of such transfer.

Miners' rights necessary.

25. It shall be necessary for the applicant for a lease or the lessee to be the holder of a miner's right to establish or maintain a title to a lease for gold-mining purposes under this Act. No mining lease shall be granted under this Act until after the expiration of fourteen days from the date of notification in the *Gazette* of intention to grant the same, and in some newspaper, the place of publication of which is near to the land sought to be leased.

No lease to be granted until after publication of intention.

Encroachment on private land.

26. The Warden may, upon the application of the owner or occupier of any land adjoining any land whereof a mining lease has been granted under the provisions of this Act, or upon the application of any person authorised by such owner or occupier by writing under the hand of the Warden, authorise any mining surveyor or surveyors to enter into and inspect such mines and every part thereof for the purpose of ascertaining whether the persons working such mines are encroaching upon the land of any owner not being land comprised in the mining lease of such person under the provisions of this Act.

Powers of surveyor authorised to enter and inspect.

27. The surveyor or surveyors authorised by an order made under the authority of this Act may enter into and inspect and survey the land and mines described in such order, and every part thereof, and descend any shaft or mine, and for such purpose use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended; and the lessee of such shaft or mine or other person for whom the same is being worked shall provide all labour, assistance, appliances, and materials necessary to facilitate such inspection and survey, and such surveyor or surveyors authorised as aforesaid may make such plans and sections of the land entered upon, and of any drives or other works therein as are necessary for the purposes aforesaid.

Mining surveyor to make a declaration.

28. Every such mining surveyor, shall before entering on such land make a declaration before the Warden, who is hereby authorised to take the same, that he, the said surveyor, will not, except as a witness in a court of justice, without the consent in writing of the lessee of the land or mines to be entered upon, divulge, or cause to be divulged, to any person whomsoever any information obtained in the case of any such entry, save only as to whether such persons working such mines are encroaching on such land of any owner, not being land comprised in the mining lease of such person as aforesaid; and every surveyor who acts contrary to such declaration shall be liable on complaint before the Warden to forfeit and pay any sum not exceeding fifty pounds.

Power to owner of private land to enter into agreement with holder of miner's right to occupy for mining purposes.

29. The owner of any private land not applied for or occupied for mining purposes under the provisions of this Act shall be at liberty to enter into an agreement in writing with any holder of a miner's right giving such holder power to take possession of such land for gold mining purposes as if it were Crown land, and with respect to the area which

may be so taken possession of, the form of measurement, the mode of defining the boundaries thereof, the labour conditions, and the lapsing of title for non-compliance therewith, such land shall be held and worked, subject to the regulations of the Mining Board in force for the time being, and it shall not be necessary to obtain a mining lease under the provisions of this Act for such private land so occupied as aforesaid under miners' rights: Provided that every such agreement shall within seven days thereafter be registered with the Mining Registrar for the district in which such land is situated, in accordance with regulations to be made by the Governor.

Adjoining lands may be worked as one area.

30. Adjoining lands or lands disconnected by roads only and held under separate leases may be worked conjointly as one mine, provided such contiguous lands shall not in the aggregate exceed the area allowed respectively for leases under this Act, and except as hereinafter provided such mines shall be continuously worked according to the practice of efficient mining. And every lease granted under the authority of this Act shall contain a provision that if the lessee, his executors, administrators, or assigns fail at any time during the term of such lease to fulfil the conditions and covenants therein contained, or to use the land *bonâ fide* for the purposes for which it shall be demised, such lease shall for any such failure be liable to forfeiture, and may be forfeited on the authority of the Governor: Provided that if at any time the mine shall become unworkable from any cause which, in the opinion of the Warden, would necessitate a suspension of mining operations, he may grant such suspension for a period not exceeding six months, and, in the event of operations having wholly ceased in connection with such mine for a period of twelve months, the lease shall thereupon become absolutely void and determined.

Failing to fulfil conditions lease may be forfeited.

Possession how recovered.

31. The lessee shall be entitled at any time, with the consent of the Governor, to surrender his lease. And in case any such lease shall become forfeited, or determined by any breach of covenant or condition or otherwise, or in case the term thereby granted shall have expired, possession of the land thereby demised may be recovered in such manner as may be set forth by any of the provisions of the lease, or if there be no such provision, it shall be lawful for the Attorney-General, on behalf of Her Majesty, to bring a suit in any Court of competent jurisdiction to recover possession of such land, and such suit may be commenced and carried on, and the proceedings therein may be the same, and the judgment enforced in like manner as in the case of any other suit in such Court. Land, possession to which has been so recovered, or which has been abandoned, forfeited, or surrendered by the lessee, or of which the lease has expired by effluxion of time, shall revert to the owner or occupier thereof, but may at any time thereafter be again mined upon or mined under, subject to the provisions contained herein: Provided also that in the event of any such lease being forfeited for any breach of the conditions or covenants contained therein, or in the event of such lease having expired by effluxion of time or being otherwise determined, or in the event of the owner of such land having by the authority of the Governer re-entered and taken possession of such land, the former lessee, his executors, administrators, or assigns shall be at liberty within six months thereafter to remove all machinery and buildings erected over the same, and all appliances, tools, and material (other than the poppet-legs or brace erected over any shaft or any material already used for the purpose of keeping open the shafts, adits, or mine) belonging to such former lessee, or to his executors, administrators, or assigns; but the said lessee shall not be permitted to remove any machinery, buildings, plant, or material from such land unless

Former lessee may remove machinery.

unless and until all rent due in respect thereof has been paid, and all compensation for damage done thereto by mining thereon has been duly assessed and paid.

Jurisdiction of Wardens.

32. The jurisdiction, powers, and authorities conferred by or under the "Mining Act, 1874," or any Act amending or repealing the said Act, upon Wardens or Inspectors of Mines shall apply to and may be exercised in respect of all private lands the subject of any agreement or lease under this Act, and in respect of all questions affecting such lands or interests therein, or matters in dispute arising out of or connected with mining upon or under such land; and for that purpose the said Act shall be read in connection with, and as forming part of, this Act. And the word land as used in the said Mining Act shall be deemed to comprise any private land the subject of an agreement or lease under this Act. And the provisions of the said Mining Act relating to appeals from the decisions of Wardens and Mining Appeal Courts shall, except as hereinbefore provided in sections fifteen and seventeen hereof with respect to compensation, be read and construed as forming part of this Act.

Appeals.

Leases may be granted through which to carry mining-races.

33. Subject to compensation as provided for in section fourteen hereof, the Governor may, in the prescribed manner, grant a mining-race lease of any private land, irrespective of any mineral reservations with respect to such lands, for the purpose only of cutting mining-races thereon and conveying water or detritus through or over such land to or from any mine, whether such mine be held under the provisions of this Act, or under the provisions of the "Mining Act of 1874," or any Act amending the same, and such leases shall be subject to the regulations to be provided hereunder, and to any special provisions the Governor may deem necessary to make.

Leases may be granted for machine site, smelting works, &c.

34. In like manner the Governor may grant a lease of any area of private lands for the purpose of a tramway or a machine site, or for smelting works, or water conservation, or for any other purpose in connection with mining, and the rent to be reserved for the owner of the land in leases granted under this and the preceding section shall be determined in the same manner as if it were a question of compensation for surface damages, and such leases shall be subject to such special provisions as the Governor may deem necessary.

Lands may be resumed for village purposes.

35. Whenever land is required for the purposes of a mining village and no Crown land is available, it shall be lawful for the Governor by notification in the *Government Gazette* to resume any private land which he may deem necessary for such purpose. And on publication of such notification in the *Gazette*, such private lands shall vest in Her Majesty and become Crown lands reserved from sale or lease and from the operation of miners' rights, mineral licenses, or business licenses, until the Minister for Lands shall by notification in the *Gazette* revoke such reservation. On notification of such resumption appearing in the *Gazette*, the owner of such private land shall be entitled to compensation for the value thereof, and in the event of there being a tenant or rightful occupier of such land other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall on reference thereto by the Minister for Lands be appraised by the Local Land Board subject to appeal to the Land Appeal Court, under and subject to the provisions of section six of the "Crown Lands Act of 1889"—

Lands may be surrendered and other lands acquired by way of exchange.

(*a*) Whenever under the provisions of this and the next succeeding sections it is deemed necessary to acquire private land instead of resuming the same, it shall be lawful, if the owner so desires, for the Governor to accept a surrender of such land and to grant to the owner by way of exchange any area of Crown lands of equal value. The Local Land Board shall inquire

inquire into and report on any such proposal for exchange, and the value of any land to be so acquired or granted shall be determined under the provisions of section six of the "Crown Lands Act of 1889," and the land so acquired shall vest in Her Majesty and become Crown lands, reserved from sale or occupation as otherwise provided in respect of resumed lands.

PART III.

Where alluvial gold deposits occur.

36. The Warden may grant a prospecting license to any person being the holder of a miner's right, and such license shall entitle the holder thereof to enter upon any private land not occupied under the provisions of this Act or held under agreement for mining purposes, as provided in section twenty-nine hereof, provided such land is subject to the operations of mining for gold under the provisions of this Act, and to mark off and occupy a prospecting area of the dimensions and in manner provided for in any Mining Act or regulations in force for the time being and appertaining to mining for gold on Crown lands, and such prospector shall have the right within such prospecting area to dig and search for gold subject to the provisions herein contained. And whenever alluvial deposits containing gold of a payable character are discovered such discovery shall forthwith be reported to the Warden, who shall report the same to the Minister, and on his being satisfied of the payable nature of such discovery the Minister may cause the land or any part thereof to be resumed for mining purposes, and on notification of such resumption appearing in the *Gazette*, the owner thereof shall be entitled to compensation for the value of such land for other than mining purposes and for the severance thereof from other land of the owner if only a part of a measured portion be resumed, and in the event of there being a tenant or rightful occupier of such land, other than the owner, such occupier shall be entitled to compensation for the loss of his interest therein. The amount of such compensation shall, on reference thereto by the Minister for Lands, be appraised by the local Land Board subject to appeal to the Land Appeal Court under and subject to the provisions of section six of the Crown Lands Act of 1889.

Land may be resumed.

Former owner to have preferent right to repurchase or release.

(*a*) Lands resumed for the aforesaid purposes shall vest in Her Majesty, Her Heirs and Successors according to law, and become Crown lands, and without further notification shall be reserved from sale and from occupation for other than mining purposes until such reservation be revoked by the Governor; and whenever such revocation shall take place, the then owner of the estate of which such land originally formed a part shall be entitled to repurchase or release such land at a price or rental to be determined by the Minister for Lands after appraisement by the Land Board, subject to appeal to the Land Appeal Court, and failing such repurchase or release the land shall be dealt with as ordinary Crown lands.

Deposit to cover surface damage.

37. Before authorising any person to enter upon such private land for prospecting purposes, the Warden shall hold an inquiry on the land, of which due notice shall be given to the owner and occupier (if any), or their respective local agents, provided such agents are registered as such with the Mining Registrar as well as to the applicant, and shall thereupon assess the amount of money to be deposited

deposited by the applicant for a prospecting license towards covering the damage to the surface of such land likely to be caused by mining operations being conducted thereon; and the Warden may make such stipulations and conditions with respect to such mining operations as shall appear to him necessary and expedient, and shall have power to enforce the same in all cases.

Prospector to have preferent right to claim.

38. Whenever a notification of resumption as aforesaid shall appear in the *Gazette*, the authorised prospector, in the event of his being the discoverer of such payable deposits, and having duly reported the same to the Warden shall be deemed to be the first applicant for a prospecting claim under his miner's right; and the date of publication of such notification in the *Gazette* shall be reckoned as the date of application of such prospecting claim; but in all other respects as to area, labour conditions, and other matters, the application shall be dealt with subject to the regulations in force for the time being authorising the occupation of Crown lands for mining purposes, and in the event of an auriferous quartz vein being discovered in such prospecting area, the holder or holders thereof shall report the same to the Warden, and within thirty days thereafter shall be entitled to apply for a lease of such land in accordance with the provisions of section thirteen of this Act, and he or they shall in such case be deemed to be the first applicant or applicants as the case may be. And in the event of such land not being proved to contain payable alluvial deposits of gold it shall not be resumed for mining purposes.

If auriferous veins are discovered, prospector may apply for a lease.

Governor may make regulations.

39. It shall be lawful for the Governor to make regulations which may provide for their enforcement by penalties not exceeding in any case fifty pounds for carrying out the provisions of this Act, which regulations shall, upon being published in the *Gazette*, be valid in law: Provided that a copy of every such regulation shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session, and if both Houses of Parliament shall by resolution passed within one month thereafter disapprove of the same or any part thereof, the same or such part shall thereupon cease to be valid in law.

Sydney: Charles Potter, Government Printer.—1894.

[1s.]

314—C