

Part 12.

GENERAL PROVISIONS.

Under this head many most important enactments are made in "The Gold Fields Act, 1866." Authority is given to the Governor to make regulations, and the delegation of this and other powers is provided for. With regard to the Rules and Regulations to be made, subject to the provisions of the new Statute, it will be desirable to follow the arrangement of the existing Acts—(section 11 of "The Gold Fields Act, 1866," and section 98 of "The Gold Mining Districts Act, 1871")—and define the specialities for which purposes these may be made. At the same time, it would be well to re-enact section 107 of "The Gold Fields Act, 1866," which gives general power to the Governor "from time to time, for the purpose of facilitating or more effectually carrying into execution any of the objects thereof, to make and prescribe all such rules and regulations touching any of the matters intended to be hereby provided and to revoke the same."

A very serious question as to the tenure of mining property is raised by section 112 of "The Gold Fields Act, 1866," which is included under this Part. I have already alluded to this in dealing with the miner's right as an element of title, and have referred to the able minute of Mr. Wilson Gray, printed amongst the Parliamentary Papers of last Session (A. No. 8, 1871). Under any circumstances, as to the adoption or otherwise of new principles in the proposed Mining Statute, it should be essential to set at rest, by legislation, the very grave doubts upon the subject which exist under the present laws. The section referred to has been taken, irrespective of congruity with the rest of the Act, almost *verbatim* from section 246 of the Victorian Mining Statute, 1865.

I do not know that there are any further general provisions, under the existing law, which call for any special comment, beyond what I have noted. It is necessary, however, to remark that the enactment which decrees immunity from the necessity of shareholders in incorporated Companies taking out miners' rights, is not to be found in any of the Gold Fields Acts, but in "The Mining Companies Limited Liability Act Amendment Act, 1869," section 10. It will be advisable that this very important enactment should form one of the provisions of any new Mining Statute, and not be left to the chance of being overlooked in any Limited Liability Act which may be passed. Under this same head of "General Provisions," it is very desirable that authority should be given to the Governor to issue "Prospecting Licenses,"* which shall authorize the persons to whom the same are issued, to prospect and search for gold on any Crown Land within the district specified in such license, such district being without the boundaries of any gold field. "The Crown Lands (Nelson) Leasing Act Amendment Act, 1870," enacts that the Waste Lands Board may grant protection, for a period not exceeding thirty days, to discoverers of auriferous lands outside any proclaimed gold field, and at the expiration of such period may, if they shall think fit, grant the prospector a lease for mining purposes of the area occupied, but not exceeding ten acres of alluvial ground or 400 yards by 200 yard upon a quartz reef. This is a very admirable provision, tending greatly to encourage mining enterprise, and I would recommend that it be included in the new Statute, having general application to the whole Colony.

The question of mining upon private property is very summarily dealt with under the present Gold Fields Acts, which simply enact certain penalties in the event of persons mining for gold upon private property without the consent of the owner (section 98, Gold Fields Act, 1866); and provide for the settlement of disputes between persons, so mining by consent, and the owner of the land, by the Warden's Court (section 64 Gold Fields Act, 1866). This subject requires to be dealt with upon a very different basis, and provisions made for compelling the owner of private land to permit mining thereon, with stringent enactments as to conditions and compensation. The present position of the freeholder with regard to the precious metals is one of great uncertainty, and it is evidently practicable for any owner in fee simple to play the "dog in the manger," neither mining himself nor allowing others to do so. I would not deprive the proprietor of the soil of the power to make reasonable arrangements with the miners, but they should not be permitted absolutely to prevent mining upon their lands. This principle has already been recognised by the Parliament of New Zealand in "The Westland Waste Lands Act, 1870," which includes a provision that all suburban or rural lands sold under the provisions of the Act shall, for the period of fourteen years after sale, be open to entry by miners, for the purpose of mining for gold, subject to the provisions contained in the regulations set forth in the fourth Schedule of the Act. These regulations are of a very stringent character, and provide for settlement by arbitration, in the event of the owner of the land and the miner not being able to arrange between themselves the terms of the contract. I am not aware whether this enactment has ever practically been given effect to; but I am inclined to the opinion that the regulations referred to are practically prohibitory. In the Colony of Victoria, the Land Act of 1869 (33 Vict. CCCLV.), section 99, provides, "That all lands alienated under the provisions of this Act shall be liable to be resumed for mining purposes by Her Majesty, on paying full compensation to the licensee, lessee, or purchaser in fee-simple thereof for the value other than auriferous of the lands and improvements so resumed; such value, in case of disagreement, to be ascertained by arbitration; the terms, conditions, and events upon which such lands may be resumed, and the manner in which such arbitration shall be conducted, shall be determined by regulations in such manner as the Governor shall from time to time direct." The Otago Mining Commission, 1871, remarks upon this subject,—“Believing that the development of gold mining is of such importance to the Colony that it would justify the Legislature in sanctioning for that purpose an invasion of the stricter rights of private ownership, and seeing that in making such a recommendation they are supported by the precedents of the immemorial customs of the tin-producing portions of England and other European countries, and also by recent legislation in the Colony of Victoria, they recommend that the Legislature should take steps to enable gold mining to be carried on upon private as well as upon Crown lands, and that the miner should

* Section 6 of "The Gold Fields Act Amendment Act, 1868," provides for the issue of "Prospecting Licenses," but the application is intended to be confined to "Native Lands."