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CHAP. 26.

An Act granting to T. B. H. Cochrane and James Brady a Lease of a portion of the bed of Findlay Creek and Lands contiguous thereto, for Mining purposes.

[6th April, 1886.]

WHEREAS the said T. B. H. Cochrane and James Brady have Preamble.
represented by their petition that they have spent during the last two seasons a large amount of money in prospecting for gold in Kootenay District;

That Findlay Creek, in the said district, has been prospected and work commenced at various times and by different prospectors and miners for many years past, but all claims ever taken up have been abandoned on account of the low pay of the gravel, the difficulty of controlling the water, and the great expense attending the mining of the benches;

That in order to work the said creek and its benches, a large outlay will be necessary in constructing dams, ditches, bed-rock flumes, and in the purchase and placing of hydraulic machinery, and in bringing in water in sufficient quantities from a long distance;

That the gravel available for hydraulic mining is not continuous along the said creek, but exists in patches between the rocky cañons and at the bends of the stream;

And whereas the said T. B. H. Cochrane and James Brady are desirous of having granted to them for mining purposes a lease for twenty-five years of the bed of the said creek, extending from the First Forks or South Branch of said creek to a point three miles below and five miles above said Forks, together with certain lands lying contiguous thereto, as described in said petition and hereinafter described, for the purpose of carrying on hydraulic and other mining;

And whereas it is expedient to grant the prayer of the said petition, subject to the provisions of this Act:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. That the said T. B. H. Cochrane and James Brady (hereinafter called the Lessees) shall be entitled to, and there is hereby granted to

Grants lease for 25 years of mining ground on Findlay Creek.

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Limits and boundaries.

them, for the term of twenty-five years from the time of the passing of this Act, a lease of all the unworked and abandoned mining ground on Findlay Creek, Kootenay District; to include all bench, bar, dry, hill and other diggings for five hundred feet on each side of the said creek (including the bed of the stream), and to extend from the First Forks or South Branch of said Findlay Creek along the said stream three miles below and five miles above the said Forks.

Lessees may erect dams, flumes, and ditches,

2. It shall be lawful for the said Lessees, their executors, administrators, and assigns, to erect dams, construct flumes and ditches along the said creek or its tributaries, or on the banks, benches, or hills contiguous thereto, of such size, length, capacity, and at such elevations as may be suitable for working the above mining ground, and to supply miners or mining companies who may wish to work adjacent mining ground with water, at rates to be fixed by this Act: Provided always, that the grant by this Act made shall not include any ground which at the time of the passing of this Act is lawfully occupied and recorded, or otherwise legally held, by persons other than the said Lessees.

And supply water to miners.

Land occupied not included in lease.

Lessees to have exclusive right for the term granted to dig and search for precious metals on the lands demised.

3. The Lessees shall for the term hereby granted have the exclusive right to search, dig for, and obtain and appropriate to their own use all gold or other valuable or precious metals on the lands hereby demised; to cut, dig, and use all timber, gravel, and material on the said lands for mining purposes on the said creek, and to utilize so much of the waters of Findlay Creek and its tributaries as may be necessary for the miner-like working of the said demised premises, and shall have the right of supplying companies or parties desirous of mining adjacent or contiguous grounds; together with all rights of way necessary for the above objects to and over the waste lands of the Crown, and the right to erect thereon flumes, ditches, hydraulic pipes, and other appliances, and to do all things usual or necessary for the miner-like working of the bed of the said creek and the lands hereby demised: Provided, that nothing in this Act contained shall prevent any free miner taking and using such of the waters of Findlay Creek and its tributaries as shall not be required by the Company for the miner-like working of their ground, and any free miner may cut and take away timber for mining purposes.

Free miners' rights preserved.

They may sell water at rates not to exceed 20 cts. an inch.

4. That the Lessees, their executors, administrators, and assigns shall have the power to sell water from their ditch or ditches, at rates not to exceed twenty cents an inch, according to the measurement provided for by the gold mining laws for the time being in force in the Province: Provided always, that the Lessees shall be bound to dispose of their surplus water to all applicants being free miners, in a fair proportion.

5. That the Lessees, their executors, administrators, and assigns shall expend in prospecting, construction of ditches, flumes, hydraulic machinery, and other works and appliances in connection with the mining of the premises by this Act demised, not less than \$500 during the first year, not less than \$1,500 during the second year, not less than \$2,000 during the third year, not less than \$3,000 during the fourth year, not less than \$5,000 during the fifth year, and not less than \$1,000 a year thereafter until the lease expires; such expenditure to be made to the satisfaction of the Gold Commissioner for the Kootenay District, who may require the said Lessees, or their administrators or assigns, to make a statement of the expenditure as above, verified by declaration in manner provided in the "Oaths Ordinance, 1869." Provided always, that if the said Lessees, their executors, administrators, or assigns shall in any year expend on the said works as aforesaid any sum exceeding the sum limited, any such excess may be credited on the expenditure to be made in the following year or years.

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Annual expenditure by lessees:

1st year \$500.

2nd year \$1,500.

3rd year \$2,000.

4th year \$3,000.

5th year \$5,000.

And \$1,000 per year thereafter.

6. If the Lessees, their executors, administrators, or assigns fail to expend the moneys according to the tenor of section five of this Act, it shall be lawful for the Lieutenant-Governor in Council, by proclamation, to suspend the operation of this Act.

Act to be suspended if section 5 not complied with.

7. Nothing in this Act contained shall be construed so as to prevent free miners holding and working claims adjacent to or in the vicinity of the lands above demised, from depositing tailings in the said portion of Findlay Creek, if such deposit can be made without injuring the mining work of the Lessees or prejudicing their interests: Provided always, that in case the Lessees shall object in any instance to the deposit of tailings as aforesaid, the Gold Commissioner for the time being of the district, after hearing all parties, may, if he shall think that such deposit would not be prejudicial to the interests of the Lessees or their executors, administrators, or assigns, make an order permitting the deposit of tailings on such terms and conditions (if any) as the Gold Commissioner for the said district for the time being may think just, and such order may at any time be varied or set aside by the Gold Commissioner.

Free miners working adjacent land may deposit tailings in Findlay Creek,

Unless stopped by Gold Commissioner.

8. No transfer or other disposition to any Chinese of the lands by this Act demised, or any interests therein, or any of the rights and privileges granted by this Act, shall be valid or confer any title whatsoever.

No transfer to Chinese to pass any right or title.

9. The Lessees, their executors, administrators, or assigns shall pay an annual rent of \$200, payable yearly in advance, to the Gold Commissioner or the person acting in that capacity for Kootenay District, or at the Treasury in Victoria; the first year's rent to be due and payable on the 30th day of June, 1887, and afterwards on the 30th day of June in each and every year thereafter during the currency of

Lessees to pay annual rent of \$200.

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Distress.

If rent in arrear for 6 months all rights and privileges hereunder to be void.

Lease may be determined by lessees giving 3 months' notice.

Chinese not to be employed, directly or indirectly, by the lessees or their contractors.

Penalties.

the said lease, without any deduction whatsoever: Provided, that if any rent falling due hereunder shall be in default or unpaid for the space of one calendar month after the same shall have respectively become due, then, and upon every such default, it shall be lawful for Her Majesty, Her heirs and successors, by the Chief Commissioner of Lands and Works, his agent or servant, into and upon the said premises to enter and therefrom to distress, seize, take, and sell any goods or chattels there found, and out of the proceeds of all such sale or sales to repay herself or themselves such rents or moneys so due, and all costs attendant on such distress and sale: Provided always, that if the rent by this Act reserved, or any part thereof, shall be in arrear for six months after any of the days upon which the same should have been paid, although no demand has been made therefor, this Act, and the powers, rights and privileges granted and conferred by this Act, shall be null and void.

10. The Lessees, their executors, administrators, and assigns may at any time terminate the said lease and all the powers heretofore granted, by giving to the Chief Commissioner of Lands and Works a three months' notice in writing of their intention so to do, and thereupon this Act shall be void.

11. This Act is passed upon the express understanding that no Chinese, either directly or indirectly, shall be employed in or about, or concerning any work or services authorized by this Act, or required by the Lessees to be done or performed. In the event of any Chinese being employed by the Lessees, the Lessees shall be liable, upon summary conviction before any two Justices of the Peace or functionary having the power of two Justices of the Peace, upon the oath or affirmation of one or more credible witness or witnesses, to a penalty not exceeding twenty-five dollars or less than ten dollars for every Chinese employed; and in default of immediate payment of the penalty the same may be levied by distress and sale of the goods and chattels of the Lessees. And in the event of any Chinese being employed by any of the Lessees' contractors, or sub-contractors, contrary to the provisions of this Act, then any such contractor or sub-contractor shall be liable, upon summary conviction as aforesaid, to a penalty not exceeding twenty-five dollars nor less than ten dollars for every Chinese employed; and in case of default in immediate payment of such last mentioned penalty, the same may be recovered by distress and sale of the goods and chattels of the offender; and in default of sufficient distress, the offender may be committed to any gaol or place of confinement situate within the territorial jurisdiction of the convicting justices, and there imprisoned for any term not exceeding thirty days; and any director or officer of the Lessees who causes or procures any Chinese to be employed, contrary to the provisions of this Act, or permits or connives at such employment, shall be liable, upon sum-

mary conviction as aforesaid, to the like penalties as hereinbefore in this section provided, recoverable in manner secondly hereinbefore mentioned.

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12. The offender shall be liable to separate and successive penalties for each and every day during which any Chinese shall be employed. Successive penalties.

13. The term "Chinese" wherever used in this Act shall mean any native of the Chinese Empire or its dependencies not born of British parents, and shall include any person of the Chinese race. Meaning of "Chinese."

14. Upon any prosecution under sections eleven and twelve of this Act, evidence under oath of any witness that to the best of his knowledge and belief any person alleged to have been employed contrary to the provisions of this Act, is a Chinese, shall be prima facie evidence that such person is a Chinese within the meaning of this Act, and shall cast upon the defendant the burden of proving that such person is not a Chinese. The Justices may also decide upon their own view and judgment whether any person produced before them is a Chinese within the meaning of this Act. Evidence.

15. No conviction or warrant for enforcing the same or any other process or proceeding under this Act shall be held insufficient or invalid by reason of any variance between the information and the conviction, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding, that the same was made for an offence against some provision of this Act, and provided there is evidence to prove such an offence, and that it can be understood from such conviction, warrant or process that the appropriate penalty or punishment for such offence was intended to be thereby adjudged. Upon any application to quash any such conviction, or the warrant for enforcing the same, or other process or proceeding, whether in appeal or upon habeas corpus, or by way of certiorari or otherwise, the Court or Judge to which such appeal is made, or to which such application has been made upon habeas corpus, or by way of certiorari, or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defects as aforesaid; and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed (as the case may be); and such Court or Judge may, in any case, amend the same if necessary, and any conviction, warrant, process or proceeding so affirmed, or affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. Convictions, &c., not to be quashed for want of form.