

(No. 43.)



1877.

SESSION II.

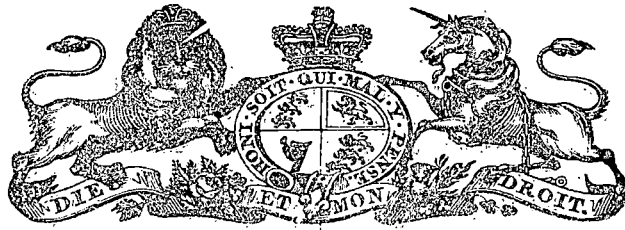
T A S M A N I A.

LEGISLATIVE COUNCIL.

RICHARD M'DONALD:

PETITION.

Presented by Mr. Aikenhead, May 4, 1877; and ordered by the Council to be printed, May 8, 1877.



To the Honorable the Members of the Legislative Council of the Parliament of Tasmania.

The humble Petition of us Richard M'Donald and William Bradshaw, of the County of Devon, Miners.

SHOWETH :

THAT on the tenth day of November, 1877, the Petitioners and one Benjamin Cole applied in writing, under the provisions of "The Mineral Leases Act, 1870," and the regulations thereunder, to the Commissioner of Crown Lands for a lease from him for tin-mining purposes of three Sections of crown lands, each containing forty acres, and situate on a creek running into the Blue River in the County of Dorset in Tasmania, and the locality of which said Sections of land respectively was stated in such application : and the Petitioners paid to the said Commissioner the sum of One Pound sterling with each such application in compliance with the said regulations ; and subsequently, on demand being made by the said Commissioner, each of the applicants duly paid to him the sum of Five Pounds in accordance with such regulations for the survey of the said Sections to them.

That on the 5th day of the month of October, 1876, S. Baker and J. Leonard, by their agent Edward Lodewyk Crowther, had applied, under the provisions of the said Act and regulations, to the said Commissioner of Crown Lands for a lease from him for tin-mining purposes of two Sections of crown land, each containing eighty acres, situate at the heads of the Musselroe River in the said County of Dorset ; but the locality of such Sections was not otherwise stated in such applications, and there is a distance of about 4 miles between the said heads of the Musselroe River and the locality of the Petitioners' said Sections.

That by "The Mineral Leases Act, 1870," it was, amongst other things, enacted that it should be lawful for the Commissioner of Crown Lands for Tasmania, with the consent of the Governor in Council, to grant leases for mining purposes for any term not exceeding 21 years from the making of any such lease of any portion of the waste lands of the Crown not exceeding 80 acres if containing metalliferous rocks, with right of renewal for a further period of 14 years by payment of a fine ; and also in like manner to grant water rights and other easements for mining purposes, and to fix the amount to be paid by way of rent or royalty for the same respectively, provided that every such lease and grant should be subject to such terms and conditions as the Governor of Tasmania in Council should seem fit to impose.

That by "The Mineral Leases Amendment Act" it was enacted that it should be lawful for the said Governor in Council to appoint officers to be called Commissioners of Mines for Tasmania, or for any part thereof as he saw fit, who should have and exercise such powers and duties as might be assigned to them under that Act and the regulations made under "The Mineral Leases Act, 1870 ;" and for the purpose of deciding any dispute which might arise between any two or more persons under the said "Mineral Leases Act, 1870," or that Act, or the regulations made by the said Governor in Council, it should be lawful for any Commissioner appointed under the last-mentioned Act to receive evidence, and to administer oaths, and to examine witnesses, and to determine such dispute, and in all respects conduct such inquiry as any Justice of the Peace might lawfully proceed to hear and determine any matter depending before him ; and further, that that Act and "The Mineral Leases Act, 1870," should, save as amended by that Act, be read and examined together as one Act.

That Bernard Shaw, of Launceston, Esquire, was, on the 20th day of November, 1876, duly appointed Commissioner of Mines of Tasmania under the provisions of "The Mineral Leases Act."

That a dispute having arisen between the Petitioners and Edward Lodewyk Crowther, as nominal agent for the said J. Leonard and S. Baker, with reference to the said three Sections of ground in the first paragraph hereof mentioned of which the Petitioners were in possession, and your Petitioners, under their said applications, claiming to be entitled to leases thereof respectively as aforesaid, and the said Edward Lodewyk Crowther, as agent for the said J. Leonard and S. Baker, also claiming to be entitled to have leases granted to them, the said J. Leonard and S. Baker, of the said two Sections of 80 acres each, applied, for by them as aforesaid, and to comprise in such last-mentioned leases the whole of the said three Sections of the Petitioners, such dispute was referred to the said Commissioner of Mines, who, under the said "Mineral Leases Amendment Act," duly summoned the said respective applicants to appear before him with their respective witnesses for the purpose of trying and deciding such dispute.

That your Petitioners and also the said Edward Lodewyk Crowther, as agent for the said J. Leonard and S. Baker, appeared before the said Commissioner of Mines with their respective

counsel and witnesses, and such Commissioner duly entered upon the inquiry into such dispute, and received evidence on oath and examined witnesses, and decided and determined the same on the fifth day of April last as follows :—"The applications of Baker and Leonard were received on 9th October at the Lands Office ; those of Bradshaw and party on the 14th November : Baker and Leonard therefore take precedence, and the question is what land was intended to be applied for. The witness Timbs distinctly states that the place he instructed Dr. Ed. Crowther to apply for was the ground where he showed me the marked tree, and which is the ground in dispute. Dr. Crowther says these applications were meant for the ground reported to him by Timbs. I think therefore the identity of the ground is clearly established. The applications before me were intended for this ground. Timbs states his intention was to fix the position of the lots after the survey of the first one had been made, and that he considers he is entitled to take the lots any way about the marked tree he chooses. Dr. Crowther also claims the right to move the Section north, south, east, or west. It is stated it has been the practice to allow such a privilege to first applicants in any particular neighbourhood. There is nothing in the Act or regulations to warrant such a course ; nor is there anything which can possibly be construed into such a meaning, and I cannot recognise a practice which would undoubtedly lead to great injustice. I have refused to allow it in other cases. A first applicant may select his lot in any direction he chooses and apply for it ; but once having selected and applied for it, he must keep to his Section. To allow him to change the position of his Section to a place where another person may have discovered something more valuable would, in my opinion, be inflicting a monstrous wrong upon another. In this case I cannot allow Dr. Edward Crowther to choose now which side of the marked tree he will take the lot, as he claims the right to do, but I order that the survey of one Section shall not extend below the marked tree, but from there up the stream, as the application distinctly states the head of the river, and the other Section at the head of the other stream. As Timbs states he marked a tree (which he could not find to show me, but of the existence of which I have no reason to doubt,) where the creek is running out, I consider Bradshaw and party entitled to their ground from the marked tree down the creek, to take in the ground they have been working, and I decide accordingly."

On the 24th day of April instant your Petitioners caused application to be made to the said Commissioner to enquire when the leases of their said Sections would be issued, and if they could proceed to work upon such Sections ; and in reply, and notwithstanding the said decision, your Petitioners were informed by the Deputy Commissioner of Crown Lands by letter, dated the 25th day of April, 1877, that the identity of the ground claimed by the said Edward Crowther, as agent for the said S. Baker and J. Leonard, having been clearly established to the satisfaction of the Commissioner of Mines, the invariable practice of the Department of allowing the prospectors to take their Sections in any direction they think proper would not be departed from in this instance ; and your Petitioners are further informed, and believe, that since such decision, and notwithstanding the same, your Petitioners' said three Sections have been surveyed by Ernest Coombes, one of the District Surveyors to the Government of Tasmania, and acting under instructions from the said Commissioner, for leases thereof to be granted to the said J. Leonard and S. Baker, or to the said Edward Lodewyk Crowther as their agent.

Your Petitioners have sustained great loss, expense, and delay in consequence of being interfered with by the said Edward Lodewyk Crowther, J. Leonard, and S. Baker, and the said Commissioner, in the enjoyment of their said Sections, and in the issue of lease thereof to them respectively ; and if the Commissioner issues a lease to the said Edward Lodewyk Crowther as agent, or to the said J. Leonard and S. Baker, of the land comprised in your Petitioners' said Sections, your Petitioners will lose the benefit of all labour, trouble, and money expended by them in and about prospecting and taking up such Sections, and of the just and due advantage and profit which they claim to be entitled to as the successful applicants for such Sections, and under the said decision of the Commissioner of Mines in your Petitioners' favour.

That your Petitioners also allege that the result of the Commissioner's action will in effect upset other decisions of the Mining Commissioner, and render the wholesome provisions of "The Mineral Leases Amendment Act," which was intended to transfer to the judicial decision of an officer empowered to hear evidence on oath in open Court, questions before them decided upon imperfect information, and thus discourage that legitimate mining enterprise which "The Mineral Leases Act" was avowedly passed to facilitate.

Your Petitioners, before approaching your Honorable House, by an application before the Judges of the Supreme Court, have endeavoured to ascertain whether for the wrong which they allege they have sustained they had any legal redress, but having by the decision of the Supreme Court to which your Petitioners would refer you, been informed that Courts of Law cannot control the action of the Governor in Council—in other words the action of Ministers—in dealing with Crown lands, now humbly solicit that your Honorable House will cause an enquiry with the production of all papers and persons necessary for a full investigation into this your Petitioners' humble appeal for justice.

And your Petitioners will ever pray, &c.

RICHARD M'DONALD,
for self and Wm. BRADSHAW.

JAMES BARNARD,
GOVERNMENT PRINTER, TASMANIA.